

**Gendered Market Devices:  
The Persistence of Gender Discrimination in Insurance Markets\***

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**Abstract**

This paper explores the reasons for the stubborn persistence of gender discrimination in insurance long after gender classifications have been banned in employment, housing, and credit markets. In order to understand why insurance is the last bastion of overt, legally sanctioned discrimination in the post-civil rights era, I draw on a historical analysis of political contestation surrounding insurers' pricing practices in life and auto insurance markets in the 1980s and 1990s. I argue that insurers' persistent discrimination can be explained by attending to the way in which gender comes to be embedded in the tools insurers use to price risk. This analysis has implications for understanding how social difference can be understood not simply as providing a context for market behavior, but as built into the infrastructure of the economy itself, a durable part of the apparatus used to price and value.

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## Introduction

On January 1, 2019 the California Insurance Commissioner issued a regulation prohibiting the use of gender in determining the price that drivers in America’s largest state would pay for auto insurance.<sup>1</sup> In implementing this change, regulators sought to make auto insurance practices consistent with a new law in California that allows residents of the state to identify their gender as “non-binary” for all official purposes. Besides signaling a reconfigured terrain of gender identity, what is perhaps most noteworthy about the new regulation is that it exists at all. In issuing the ban, California joins only a handful of other states to prohibit the use of gender in the pricing of auto insurance, and such restrictions are even rarer in other lines of insurance (see Avraham, Logue, and Schwarcz 2014).<sup>2</sup> In fact, the insurance industry is one of the last bastions of overt, legally sanctioned discrimination in the post-civil rights era, an almost singular exception to the progressive elimination of classifications involving sex from determining access to goods and services in the marketplace (Heen 2014; Horan 2021). Until the passage of the Affordable Care Act in 2010, a federal law that made it illegal to charge men and women different prices for health insurance, there was no federal statute that regulated insurers’ rating practices in *any* segment of the industry, even though similar bans pertaining to gender discrimination in employment, housing, and credit have been on the books since the 1960s and 1970s.<sup>3</sup>

In this paper, I explore the puzzling persistence of gender discrimination in auto and life insurance markets in the United States. The stubborn persistence of gender-based inequities is a problem that has long occupied gender scholars, generating a rich vein of scholarship that

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<sup>1</sup> “California Bans Gender in Setting Car Insurance Rates,” CBS News, Moneywatch, January 8, 2019. Accessed here: <https://www.cbsnews.com/news/car-insurance-california-bans-gender-as-a-factor-in-setting-rates/>

<sup>2</sup> States banning the use of gender in the pricing of auto insurance include Hawaii, Massachusetts, Montana, North Carolina, Pennsylvania, and Michigan.

<sup>3</sup> The European Union passed comprehensive legislation banning the use of gender as a pricing variable across all lines of insurance in 2012 (Mabbett 2014), making the case I examine here anomalous not only with respect to other institutional domains in the United States, but also with respect to insurance practices in the international context.

examines gender as a multi-level structure of patterned advantages and disadvantages (e.g., Acker 1990; 2006; England 1992; Lorber 1995; Reskin 2000; 2002; 2003; Risman 2004; Ridgeway 1997; 2011). While broad institutional changes in society such as the passage of anti-discrimination laws and shifting social norms about gender equity have moved to lessen the significance of gender in determining life chances generally (see Graham 1990; Jackson 1998; Blau, Brinton, and Grusky 2008), processes operating at other social levels have worked against significant progress toward gender equity. One strand in this literature highlights how cognitive processes such as the reliance on sex categorization in interpersonal interactions work to reinscribe gender differences in institutions from which they have been putatively eliminated (Ridgeway and England 2007; Ridgeway 2011). Another line of research observes how organizational procedures implemented inside firms may amplify (or more rarely, suppress) these cognitive biases, exacerbating (or mitigating) inequalities based on gender and other forms of status ascription (see Baron 1991; Baron and Pfeffer 1994; Reskin 2000; 2002; 2003; Reskin and McBrier 2000). Thus, the existing literature demonstrates that processes working at both interpersonal and organizational levels may entrench gender differences in institutions that have been formally or informally remade on an egalitarian basis through the elaboration of legal rules and the transformation of social norms. In contrast, my focus here is on an institution that has *not* been remade to achieve gender equality, either formally or informally. By examining overt, legally sanctioned gender discrimination in insurance markets, then, I explore the persistence of gender inequality in its most pernicious form.

In the following analysis, I will argue that the persistence of overt, legally sanctioned gender discrimination in insurance markets can be explained by the way in which *gender difference comes to be embedded in the tools used to price risk*. The question that I pose in this paper regarding the persistence of gender discrimination in insurance markets has only rarely been

examined directly.<sup>4</sup> In fact, the vast majority of work dealing with insurers' pricing practices implicitly treats gender as a natural and obvious classifier, following the logic of insurers themselves, who note the "convenience," "ease of verifiability," and "low cost" of gender classifications (e.g., Sydlaske 1975: 1390; Kimball 1979:107-8; Wortham 1985: 374; Shilton 2012: 392). Why precisely gender classifications are convenient, easy to verify, and low cost is generally not investigated.<sup>5</sup>

In making this argument, I draw on an earlier, feminist literature on comparable worth that examined how gender difference was built into organizational routines and structures (Acker 1990; England 1992; Mills and Tancred 1992; Steinberg 1992), understanding this to be integrally connected to how discrimination occurs in – and why it is so difficult to root out of – organizations.<sup>6</sup> The paradigmatic case of the gendering of organizations explored in the comparable worth literature concerned the design and implementation of job evaluation systems. Job evaluation systems are classificatory schemes that assess the content of different jobs inside a firm and rate them according to skill, difficulty, discomfort, and so on. These systems were first developed in the 1940s and 1950s to provide "fair" compensation that would legitimate pay structures and avoid disputes with labor unions. As scholars such as Joan Acker (1989; 1990) and

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<sup>4</sup> Notwithstanding Viviana Zelizer's (1979) early and influential intervention, insurance has been curiously neglected as a site of study by sociologists. When compared to the vast scholarship on the welfare state (the domain of public insurance), only a handful of cultural and economic sociologists have examined the workings of the private insurance industry (see Zelizer 1979; Heimer 1985; Dobbin 1992; Schneiberg 1999; 2002; Schneiberg and Bartley 2001; Baker and Simon 2002; Quinn 2008; Chan 2012; McFall 2015; Kiviat 2019; Krippner and Hirschman 2022; Krippner 2023).

<sup>5</sup> There is a large socio-legal literature (cited below) that describes the controversy around the use of gender classifications in insurance pricing. But this literature does not directly ask *why* insurers discriminate. The one exception that I have identified is legal scholar Mary Heen's (2014) examination of gender discrimination in insurance markets. Heen's (2014: 4) argument that entrenched opposition on the part of insurers to ending gender discrimination can be explained in terms of the "industry's long-established infrastructure to identify and classify risk" is broadly consistent with the argument I develop in this paper. However, Heen characterizes this "infrastructure" differently than I do, and as such, the details of our respective explanations are distinct.

<sup>6</sup> For more recent efforts to develop the literature on gendered organizations outside of the specific context of comparable worth, see Britton (2000), Martin and Collinson (2002), Acker (2006; 2012), Smith-Doerr et al. (2019), and Springer (2020).

Ronnie Steinberg (1990b; 1992) observed, job evaluation systems built in gender bias by using separate classificatory schemes for jobs performed primarily by men versus women (hence avoiding their direct comparison and legitimating pay differentials between them). These systems also built in bias by differentially valuing tasks associated with men (e.g., supervision) and women (e.g., relational skills), as well as by overweighting an employee's position in the formal organizational hierarchy over the *actual* distribution of tasks within organizations. While recognizing the manner in which job evaluation encoded gender bias, feminists also saw these systems as capable of being recalibrated to reflect a gender-neutral standard, offering a potential mechanism for alleviating wage discrimination (see Treiman and Hartmann 1981; Remick 1984; Acker 1989; England 1992). Although this aspiration remained elusive, a critical contribution of this work was its incontrovertible demonstration that organizational structures were deeply imprinted by gender in ways that could work to women's detriment or advantage.

While the gendering of organizational theory provides useful resources for understanding how gender discrimination persists in formal institutional practices, researchers examining the problem of comparable worth for the most part stopped short of extending these ideas from organizational routines inside firms to the market proper. This was at least in part a deliberate strategy: when discrimination is considered as an organizational matter – a product of administrative routines such as hiring procedures, promotion protocols, wage schedules, and so on – it becomes possible to identify *specific* individuals responsible for discriminatory harms. Accordingly, feminist scholars intended to place the blame for discrimination on identifiable actors inside bureaucracies who designed compensation systems and thus could presumably be held to account by the courts (Nelson and Bridges 1999). However unassailable the underlying logic, this approach reinforced the notion that markets do not themselves contribute to discriminatory

outcomes (or, if they do, these outcomes are not actionable) (Heen 1984; Weller 1986; Steinberg 1990a; McCann 1994: 40-41). This perception ultimately undermined feminists' political aims, as employers were able to dodge responsibility for discrimination by pointing to competitive pressures emanating from the market that allegedly dictated firm behavior (Heen 1984; Weller 1986; McCann 1994: 40-41; Adler 2022; 2024).<sup>7</sup>

If the gendering of organizational theory failed to extend its important insights to markets (and to use these insights to mitigate gender discrimination in compensation systems), we might look instead for illumination to economic sociology – a field of inquiry that has directly investigated pricing and valuation in markets (e.g., Velthuis 2007; Karpik 2010; Beckert 2011; Beckert and Aspers 2011; Fourcade 2011). But here we quickly discover analogous difficulties. As Fourcade and Healy (2013: 560; emphasis added) astutely observe, the conventional view in the literature holds that “modern markets reproduce inequalities that originate *elsewhere* in the social structure,” obscuring the operation of the market itself as a mechanism of discrimination (cf., Pager and Shepard 2008). As a result, inequalities around gender and sexuality (among other facets of social difference) are not generally understood as intrinsic to the market and its modalities (Scott 1986; cf., Milkman and Townsley 1994; England and Folbre 2005). In recent years, some economic sociologists have begun to attend to the operation of gender and sexuality as constitutive of market mechanisms in various domains, providing leverage on questions about how markets might themselves *produce* hierarchies organized around forms of social difference (e.g., Salzinger 2003; 2016; Almeling 2011; Mears 2011; Hoang 2015; 2020).<sup>8</sup> Notwithstanding these important

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<sup>7</sup> As Justice Kennedy wrote in a Supreme Court opinion, “Neither law nor logic deems the free market system a suspect enterprise.” Accordingly, the principle of anti-discrimination was not intended to “abrogate ... the laws of supply and demand or prevent employers from competing in the labor market.” *AFSCME v. Washington*, 770 F.2d 1407 (9<sup>th</sup> Circuit, 1985).

<sup>8</sup> Viviana Zelizer, of course, was attending to gender all along, and her foundational contributions to the field must be recognized. However, Zelizer's (1985; 1994; 2005) work operated by broadening the notion of the economy to include

advances, however, the broader tendency in the literature is to treat the market as a neutral apparatus that merely amplifies social inequities that have their sources *outside* the market itself (see Krippner and Flores 2024).

Thus, we have a double lacuna: feminist theorists who gender organizational theory, but leave the market itself outside this analysis, on the one side, and economic sociologists who for the most part neglect gender and sexuality as a constituent part of the apparatus of the market, on the other. Needless to say, the impoverished state of sociological scholarship on questions of gender and economy does not provide the necessary resources to explain why gender discrimination persists in insurance markets. Confronting these limitations in existing scholarship, I draw on Muniesa, Millo, and Callon's (2007: 2) notion of a *market device* to refer to "material and discursive assemblages" that constitute markets in concrete settings – pricing models, trading protocols, merchandising tools, instruments of measurement, and so on. Market devices describe highly technical objects such as the Black-Scholes formula for options trading on futures markets (MacKenzie and Millo 2003) or the spectrum auctions that determine access to electromagnetic frequencies (Mirowski and Nik-Khah 2007), as well as more rudimentary technologies such as the supermarket shopping cart (Cochoy 2007). Put simply, market devices refer to specific tools *and the meanings those tools construct* that enable transactions in particular markets to take place. To my knowledge, the notion of a market device has not been used in any empirical analysis to enable an understanding of how gender and sexuality are constitutive of the market as a pricing mechanism, and yet I find a clear affinity between this concept and the work of gender scholars who entered the terrain of organizational sociology in the 1980s and 1990s.<sup>9</sup> What both of these

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domains typically understood as lying outside it (especially the family and other intimate relationships) rather than examining gender or sexuality as a critical element of market mechanisms in the heart of a capitalist economy.

<sup>9</sup> There is a large body of work in Science and Technology Studies (STS) that treats gender relations as materially inscribed in various technologies, but this wide-ranging literature has not dealt centrally with gender as constitutive

approaches share is an emphasis on the concrete tools that organize economic relationships and an understanding of these tools as combining both material practices and a system of meanings.

Accordingly, *I propose extending the concept of a market device by suggesting that the meanings encoded in the tools used to price are often gendered*, enabling certain kinds of transactions and constraining others, while assigning a distinct value to *male* and *female* work, *male* and *female* products, *male* and *female* risk. More specifically, the gendered market device I will consider in the following pages is the *risk classification scheme* used by actuaries to sort and price individuals in insurance markets (see Appendix 1). As we shall see, risk classification is a material technique that concretely organizes the practices of insurers and also expresses (or performs) a specific vision of the shape of the social world—a vision, we will see, deeply imprinted by beliefs about gender difference.

Thus, in the following analysis, I will suggest that the concept of *gendered market devices* offers an opportunity to develop a more nuanced understanding of how social difference is built into the infrastructure of the economy than is available in much of the existing literature. The challenge here is to treat forms of social difference not as impinging on the operation of the market from the outside, but as part of the *internal* machinery of pricing and valuing (cf., Fourcade and Healy 2017). That is, rather than conceptualizing the market as a passive instrument, working on but not generating distinctions in social position that are more typically characterized as vestigial from earlier social formations (e.g. feudalism, patriarchy, etc.), the approach I advocate here examines the market as directly constituted by inequalities organized around gender and

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of technologies that assign prices to goods and services in a market (see Zaloom 2006 for an exception). For recent overviews of this expansive literature, see Wajcman (2007; 2010), Subramaniam et. al. (2017), and D'Ignazio and Klein (2020).



sexuality.<sup>10</sup> Accordingly, the notion of gendered market devices allows a conceptual understanding of gender as a durable part of the apparatus used to price risk, configuring patterned relationships that enable the market to stratify and sort.

The argument proceeds in several steps. The next section of the paper elaborates on how gendered market devices function in the insurance context to maintain discriminatory pricing. I then describe my data sources and methods of analysis before introducing my empirical case, which explores political contestation over insurers' pricing practices in life and auto insurance markets in the 1980s and 1990s. Periods of contention are often moments in which the cultural logic of a system is laid bare, and litigation is particularly likely to produce this result as the courts require a clear articulation of first principles. Accordingly, I center my empirical analysis on a series of legal challenges brought by feminist activists that sought – largely unsuccessfully – to end the use of gender classifications in insurance markets. My purpose is not to explain why these challenges mostly failed, but rather to use these instances of contestation to explore more broadly the reasons for the persistence of gender discrimination in the domain of private insurance.<sup>11</sup> A concluding section briefly examines the contrasting case of credit and considers larger lessons of the analysis presented here.

## **Gendered Market Devices in Insurance Markets**

The notion of a market device is helpful for understanding how gender discrimination persists in insurance markets, I suggest, precisely because it integrates technical and discursive

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<sup>10</sup> This analysis could also be extended to other forms of social difference such as race, ethnicity, and citizenship. For recent examples of work along these lines pertaining to race, see Hirschman and Garbes (2019), Ray (2019), Robinson (2020), and Korver-Glenn (2021).

<sup>11</sup> A note on terminology is in order: In what follows, I refer to “gender discrimination,” “gender classifications,” “sex-based pricing,” and “sex-based classifications” somewhat indiscriminately. “Gender” is the preferred terminology in the contemporary social sciences for good analytical reasons, but it was more common in the period I am studying to refer to “sex.” Accordingly, I split the difference between these usages.

elements, material and meaning, tool and text, concrete practice and cultural model. Yet while this is a major advantage of the concept as it has been elaborated in the literature (see Callon, Millo, and Muniesa 2007; Çaliskan and Callon 2009; 2010; Callon 2021), the actual deployment of the concept has leaned into material technologies and away from cultural meanings (but see Preda 2006; Muneisa 2007), arguably overcorrecting for sociology's relative neglect of materiality in the wake of the "cultural turn" (McFall 2015: 12).<sup>12</sup> In order to leverage the concept to provide an account of the persistence of gender discrimination in insurance markets, however, we will need the concept to both specify a range of material practices that "select" gender as a pricing variable *and* the broader cultural logic that holds these practices together in a loosely coherent (if not fully determined) system of meaning (Sewell 2005: 166). Both, I argue, are essential elements of how risk classification schemes operate as a market device in insurance markets to perpetuate gender discrimination.

In the following analysis, I suggest that the broader culture logic that binds gender to insurers' pricing tools is supplied by legacies of mutualism that have shaped the evolution of insurance as a social institution over several centuries. *Mutualism* refers to traditional practices that embed risk in solidaristic groups in order to provide social protection to group members (see Stalson 1942; Gosden 1961; Thompson 1963; Zelizer 1979; Clark 1999; Levy 2012).<sup>13</sup> Notably, the practice of collectively provisioning against risk has always been a part of human societies, albeit in widely varying forms. There are references to the provision of pensions in the Old Testament and in Talmudic texts (Lewin 2003: 6, 17); the ancient Greeks and Romans are known

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<sup>12</sup> For evidence on this point, one need only survey titles of some of the key pieces in the literature: "Tools of the Trade" (Buena and Stark 2004); "A Price is a Social Thing" (Buena, Hardie, and Mackenzie 2006); *Living in a Material World* (Pinch and Swedberg 2008); *Material Markets* (Mackenzie 2009); and so on.

<sup>13</sup> Note that in referencing "mutualism" and "mutual traditions" I am referring to the affinities between private insurance and systems of mutual aid that preceded insurance proper and *not* to the distinction between joint stock and mutual forms of corporate organization (on the latter, see Zelizer 1979; Schneiberg 2002; Murphy 2010).

to have organized burial societies (Trenerry et al. 1926). But in a recognizably modern form, the invention of the idea of insurance is conventionally traced to the medieval guilds (Stalson 1942: 33-35), where a common practice was to maintain a box or chest to collect contributions to aid members who became ill or disabled. The tradition of the “box” survived in the practice of the English friendly societies – sometimes called “box clubs” – which first appeared in the early seventeenth century and became the main form of working-class association by the middle decades of the nineteenth century (Gosden 1961). Critically, the friendly societies provided a predecessor not only for the development of modern insurance but also for the institutions of the welfare state (Gilbert 1966; Clark 1999; Beito 2000).

While the friendly societies are primarily known to us today as the precursor of disability, accident, health, and life insurance, the provision of security was woven into other, non-pecuniary functions (Gosden 1961: Chapter 5). Most importantly, as indicated by their name, the friendly societies afforded an important social outlet for their working-class members. “Lodge nights” were not simply expedient functions dedicated to the collection and disbursement of funds, but raucous, hard-drinking occasions that typically went late into the evening. Accordingly, members joined friendly societies for the communal experience and only secondarily appreciated material advantages in the form of sick benefits or burial insurance (Gosden 1961: 117-18, 122). Opportunities for conviviality were enhanced by the fact that friendly societies tended to be organized around particularistic identities, typically based on occupation, place of residence, or religious sect (Clark 1999; Lengwiler 2006; Alborn 2009).

Importantly, such restrictions on membership functioned to reinforce group solidarity, but they also provided a method of risk reduction appropriate to an era before reliable actuarial statistics were available (Clark 1999: 124). Since contributions were not differentiated across

members – all paid the same freight, regardless of personal circumstance – it was essential that group members were (at least perceived to be) roughly equal in life chances. The presumption was that by forming groups around shared social conditions – and excluding older individuals expected to be in poorer health, or individuals working in high-risk occupations such as mining (Gosden 1961: 78, 85) – the stable financial condition of the organization could be made consistent with the spirit of fraternity. Accordingly, the social engineer and pamphleteer (and also author of *Robinson Crusoe*), Daniel Defoe (1697, cited in Clark 1999: 124, emphasis added), offered this direction to those organizing friendly societies:

None can be admitted, but such whose Circumstances are, at least in some degree, alike, and so *Mankind must be sorted into Classes*; and as their contingencies differ, every different Sort may be a Society upon even Terms; for the circumstances of people, as to Life, differ extremely by the Age and Constitution of their Bodies, and difference of Employment; as he that lives on shore, against him that goes to Sea, or a Young Man against an Old Man; or a Shopkeeper against a Soldier, are unequal ... So that it is necessary to sort the World into Parcels, Seaman with Seaman, Soldiers with Soldiers, and the like.

Defoe here usefully reminds us that the mutuality practiced by the friendly societies was exclusionary rather than universalistic (cf., Clark 1999: 124; Alborn 2009: 193-94). That is, risk sharing was internal to a group that was constructed to be uniform by strictly limiting membership (Lengwiler 2006). In this respect, Defoe succinctly captures the cultural model embedded in the principle of insurance from its early instantiation in the friendly societies to its modern capitalistic forms: the insurer envisions a world composed of numerous, internally homogeneous groups each containing individuals approximately equal in risk (i.e., “a Society upon even terms”). But whereas

for the friendly societies, each such group formed a “society” unto itself, for modern commercial insurers, these groups are constituted by risk classes differentiated *within* a population of insureds. The notion of the *risk class* is, accordingly, an inheritance of mutualism, and also a critical determinant of insurers’ predilection for gender discrimination, as we will see.

Having introduced mutualism as a cultural model underlying the institution of insurance, it would be tempting to treat it as a “blueprint” that guides or directs the practice of insurers, expressed and enacted in the material technologies that organize the process of risk classification (see Holm 2007). Here we have to be careful, as Callon and others who have elaborated the “market device” concept are very clear that such a stark division between cultural meaning and material practice is precisely what the concept seeks to overcome (McFall 2015). It is therefore not correct to see mutualism as an idea, model, or blueprint that *determines* what insurers concretely do in a mechanical fashion. Rather, cultural concept and material technology are better understood as flip sides of the same coin, inextricably intertwined in shaping insurers’ practices. As Latour (1990: 129) explains, these elements are “not two ontologically distinct entities but more like phases of the same essential action.”

Proceeding from this intuition, I examine three distinct aspects of insurers’ pricing technologies held together (or “assembled”) by the idea of mutualism that constitute gender discrimination as a persistent feature of insurance markets: 1) insurers’ reliance on *class-based pricing* to value risk; 2) the salience of the idea of *subsidy* in organizing risk classes; and 3) *data conventions* that require information collected from insurers’ own populations of insureds. In my empirical analysis below, I elaborate on how each of these practices derives from the mutual idea that undergirds the institution of insurance, and how each also privileges gender as a pricing variable among many other possible risk factors. Before proceeding to that discussion, it is first

necessary to explore the relationship between mutualism and discrimination in insurance markets a bit more broadly.

### *Mutuality and Discrimination*

In an important sense, discrimination lies at the very heart of the insurance business. But this is not “discrimination” as it is typically understood in American society; nor do insurers necessarily view discrimination as an undesirable practice. Rather insurers are at pains to distinguish between what they term “fair” and “unfair” discrimination (see Gerber 1975; Bailey, Hutchinson, and Narber 1976; Kimball 1979; Wortham 1985; Avraham 2018; Kiviat 2019). “Fair” discrimination involves differentiating between insureds based on the cost they contribute to insurers’ risk pools. “Unfair” discrimination, by contrast, involves differences in treatment between insureds that are *not* based on cost (Williams 1959). From the perspective of insurers, the first form of discrimination is completely legitimate and in fact necessary for insurance markets to function. Only the latter form of discrimination is problematic and merits redress.

Understanding how insurers arrive at this somewhat idiosyncratic understanding of discrimination takes us directly to the role of mutual traditions in shaping the insurance industry. Given uncertainty regarding the occurrence of misfortune, the institution of insurance allows the pooling of resources to create a reserve fund that can be used to assist those afflicted by misfortune. As we have seen, the method of risk pooling long preceded the creation of modern insurance, having been earlier developed in various forms of working-class self-help (see Gosden 1961; Hopkins 1995). The critical innovation associated with commercial insurance over earlier instantiations of mutual aid involved the collection of premiums in advance of the occurrence of misfortune (Clark 1999: 100). This meant that insurers were required to *predict* future losses to

determine the necessary size of the reserve fund. They did so by examining the prior losses of members of the risk pool, assessing each individual her equal share of total anticipated claims. The main consequence of this development is still evident in the operation of insurance today: because the costs of covering losses are shared across the group – and the reserve fund must be maintained at a fixed level to preserve the solvency of the insurance organization – a *lower* contribution from one member of the risk pool necessarily requires another member to make a *higher* contribution (Josephson 1960; Gerber 1975; Lautzenheiser 1976). In this regard, the insurance contract is not organized around a dyadic tie between buyer and seller of the insurance policy, but rather involves *a web of mutuality* in which each individual joined in a “community of fate” is bound to every other (Baker 2002: 36; cf., Heimer 1985).

Thus, the notion that each individual must pay an *equitable* share of the cost of maintaining the insurance fund emerged as a necessary, if paradoxical, result of the mutualism of the insurance contract (see Bailey, Hutchinson, and Narber 1976: 782).<sup>14</sup> In fact, this expectation was written into regulations governing the insurance industry, which following an anti-discrimination law passed in New York in 1899 prohibited life insurance companies from making or permitting any distinction between “individuals of the same class and equal expectation of life” (Josephson 1960: 11). Critically, the language of the New York statute – some version of which persists in state insurance codes regulating all branches of the insurance industry to the present day – joined insurers’ cost-based notion of discrimination to the imperative to classify and sort risks. Two individuals of the “same class and equal expectation of life” represented the *same* risk, requiring

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<sup>14</sup> Insurers make a strong distinction between “equity” and “equality.” “Equity,” which is a term of art in the insurance context, refers to the requirement that each individual pays into the reserve fund according to the precise risk she contributes to the risk pool. “Equality,” which is more the familiar concept in a civil rights context, refers to the imperative that each individual be treated identically (i.e., pay the same premium or receive the same benefit) regardless of her underlying risk (see Keyfitz 1978).

a similar provision from the insurance fund. Accordingly, these individuals should be treated identically by the insurer; to treat them differently would unfairly discriminate by asking each to contribute an amount not in accordance with her individual cost. Conversely, two individuals not of “same class and equal expectation of life” represented *different* risks, and hence different costs to the insurer. To treat these individuals identically would also unfairly discriminate by moving costs and contributions out of alignment. In this regard, “fairness” or “unfairness” – whether discrimination was legitimate or a problem that required remedy – ultimately depended on how individuals were sorted into classes.

The problem was a considerable one: because the factors that exposed individuals to hazard were potentially infinite, classification of risks involved innumerable, apparently arbitrary decisions about how to divide and sort groups. Unfortunately, the language of the New York statute was vague, and also frustratingly circular: since “expectation of life” could not be precisely the same for any two individuals, interpreting the statute depended on the specific criteria used to define a “class,” which the law itself failed to provide (Blevins 1980: 72). The National Association of Insurance Commissioners (NAIC) attempted to clarify matters in 1955 when it commissioned a report that endorsed the practice of “premium grading” – that is, treating otherwise identical policies purchased in larger and smaller amounts as constituting separate “classes” (Josephson 1960). The report opened the flood gates: if policy size was a basis for discriminating between classes (i.e., charging different amounts for coverage), virtually *anything* could be treated in this fashion.

In the wake of the NAIC report, accordingly, insurers sought to differentiate their products by creating “preferred policies,” proliferating classes to enable the collection of higher and lower premiums from policyholders sorted into different groups. Notably, this development created



considerable consternation within the industry—and in the broader society.<sup>15</sup> Traditionalists saw the erosion of risk sharing with the expansion of more finely calibrated classes, potentially negating the very purpose of insurance itself. One life insurance executive noted, with evident alarm, that the creation of preferred classes pointed toward “constru[ing] every policyholder, by virtue of his individual characteristics together with the characteristics of his policy, as a separate class, *thus establishing as many classes as [there are] individuals*” (Josephson 1960: 126; emphasis added).

Occurring alongside these developments was another change, less commented on at the time, but arguably as consequential for the future development of the industry: life insurers began to use gender as a classifier for the purpose of sorting risks into groups in the mid-1950s (Heen 2014: 5). Prior to the mid-twentieth century, life insurers had relied primarily on age and other characteristics such as race, region, and medical history to price insurance (see Heen 2009; 2014; Murphy 2010; Bouk 2015). That the introduction of gender as a pricing variable was closely timed with the advent of premium grading was not a coincidence. Insurers were eager to capture a growing female market as women began to participate more fully in society, and they sought to lure women customers by offering a “female discount.” Conveniently, after 1955, the cost of this discount could be offset by charging higher premiums on the smaller policies that women disproportionately purchased (Randall 1978: 539).

While the introduction of gender as a classifier increased the fragmentation of risks that so alarmed insurance industry traditionalists, it also marked the inherent limits of this process. We

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<sup>15</sup> The controversy over the development of preferred classes in life insurance was covered in such wide-circulation periodicals as *Time* magazine (see “Insurance for Everyone: More Competition Should Lower Rates,” January 3, 1955: 58). Even more remarkably, social anxiety over the proliferation of risk classes was made the subject of a dystopian science fiction novel titled *Preferred Risk* in which one’s insurance group fully determined one’s social position (McCann 1955).

can understand why by considering two discrete problems that define the material technology of risk classification, helping to explain why discrimination (as the term is conventionally understood) is such a persistent feature of these markets. The first problem reflects the imperative faced by insurers to combine risks such that the resulting classes group individuals who represent the *same* underlying hazard or exposure to loss (Abraham 1986). The difficulty is that because the determinants of risk are nearly limitless, there will necessarily be unmeasured heterogeneity between individuals within any class constructed around a fixed number of risk factors. In any such group, lower risk individuals will necessarily absorb – or in the preferred language of insurers, “subsidize” – some of the costs represented by higher risk individuals. While insurers tend to assume that they have constructed perfectly homogeneous risk classes (Cummins 1983), the only way to fully avoid subsidies between individuals would be to *price every single individual characteristic* relevant to risk (Wortham 1985: 375). But to the extent that insurers move in this direction by “establishing as many classes as [there are] individuals” (Josephson 1960: 126), we come to the second problem that confronts insurers. Here the concern is that each risk class is populated with an adequate number of individuals to produce statistically valid predictions of loss (Abraham 1986). As insurers adopt more finely calibrated risk classes (to assign each individual her exact cost), some classes may not have a sufficient number of individuals to produce reliable group estimates, unraveling the statistical basis on which insurers assess uncertain future events.

These two problems form something like the Scylla and Charybdis of insurance markets: steering away from one involves steering closer to the other, and without precise navigation through these dangerous waters, the ship is doomed. Put simply, in grouping risks, insurers are compelled to partition classes ever more finely in order to price each individual risk accurately; but in doing so, insurers’ ability to predict (and thereby socialize) losses across individuals is

eroded (Gowri 1987; Stone 1993). To return to larger themes, each of these problems reflects the long history of mutual traditions in insurance, since it is the organization of a reserve fund (the “box” in pre-modern times) to pay out future losses that requires both the aggregation *and* classification of risks. Notably, for reasons I will explore below, among all the possible factors that could be used to sort and price risks, gender works particularly well to split the difference between these countervailing forces, balancing the need to share risks in a collectivity with the need to assign costs to individuals (Ruben and Elliott 1973; Horan 2021: 171). Accordingly, I suggest that the persistence of gender discrimination in insurance markets reflects the manner in which gender classifications are durably embedded in insurers’ pricing tools, a *gendered market device* that operates to reconcile contradictory imperatives to socialize and fragment risks.

### **Data and Methods of Analysis**

In the following pages, I elaborate this argument through an exploration of contestation surrounding the use of gender classifications in insurance markets in the period from the early-1980s to the mid-to-late 1990s. This span of years reflects the period in which the National Organization for Women (NOW) and NOW’s Legal Defense and Education Fund (NOW LDEF) were involved in efforts to eliminate gender discrimination across a variety of lines of insurance, including life, disability, health, and auto. Other organizations pursued these issues in legislatures and courthouses earlier (from the mid-1970s) and later (until the passage of the Affordable Care Act in 2009) (see Heen 2014; Horan 2021), but NOW and its sister legal organization were among the most active protagonists in this struggle, and their extended battle with the insurance industry reveals the logic of insurers’ persistent discrimination with particular clarity.

One advantage to focusing my analysis on a particular organization – or rather a pair of linked organizations – is that NOW’s and NOW LDEF’s activities are meticulously documented in an expansive collection of materials on file at the Schlesinger Library at the Radcliffe Institute of Harvard University (see Appendix 2). NOW LDEF’s records contain documentation of every major lawsuit involving NOW over the period the insurance campaign was active from the early 1980s to the late 1990s. In addition to court filings (briefs, appeals, court opinions, and so on), these records include correspondence and memoranda detailing legal strategies, and well as the legal team’s expansive research on insurance industry practices. Over this same period, NOW’s Insurance Project developed materials to publicize and build support for NOW’s fight against gender discrimination in insurance markets among the broader public. NOW’s Insurance Project produced fact sheets, press releases, interview transcripts, conference materials, Congressional testimony, as well as extensive research on insurance pricing in various markets. Especially valuable in this collection are the papers of Patrick Butler, who directed NOW’s Insurance Project from its inception in 1982. A former NASA scientist who stumbled into insurance industry efforts to impede the passage of the Equal Rights Amendment, Butler left his job curating lunar samples to work for NOW and fully devoted himself to the cause of ending sex-based pricing in auto insurance. The indefatigable ex-scientist produced a voluminous correspondence, typically writing several lengthy letters, detailed memoranda, and briefer notes to colleagues *each day*, which document NOW’s activities and evolving strategies in this arena, as well as provide a comprehensive mapping of NOW’s allies and adversaries in this struggle.

In conducting research for this paper, I read and took detailed notes on the complete records of NOW’s Insurance Project. I also read and took notes on the filings associated with every major legal case that NOW LDEF (or NOW) was involved in litigating: *NOW vs. Metropolitan Life*,

*NOW vs. Mutual of Omaha, Kirsch vs. State Farm, Equitable Life vs. Maryland Commission on Human Rights, and Pennsylvania NOW vs. State Farm.* While all of these cases provided important insights into the persistence of gender discrimination in insurance markets, I focus my analysis below on the latter two cases, involving life insurance and auto insurance, respectively. The selection of these two cases for closer study reflects the fact that substantive rather than merely procedural considerations shaped the trajectory of litigation in these lawsuits, making them useful sites in which to excavate insurers' practices.

Across all of the materials I read and analyzed, I was particularly interested in understanding how insurers made sense of and responded to feminists' anti-discrimination campaign, and how they adapted their response as NOW's legal challenge unfolded. These responses were recorded in the legal arguments insurers made in briefs filed in court, as well as in position papers and trade publications on file with NOW and NOW LDEF. (I also separately examined the papers of David Durenberger, a U.S. Senator representing the state of Minnesota, which contained extensive correspondence with insurance industry executives regarding their views of pending anti-discrimination legislation.) It could be argued that one should not take arguments pressed before the court at "face value" as they are manufactured for public consumption (and similarly for position papers and industry research published in trade journals). While it is of course possible that there are hidden meanings and motivations that these records cannot capture, I find the "face value" reading quite illuminating as these materials reveal an understanding of discrimination wholly at odds with the civil rights tradition that will be familiar and intuitive to most Americans. In other words, it is not necessary to scrape too far beneath the surface to appreciate that insurers are operating with a distinct worldview that has shaped the practice of sex-based pricing in this industry.

## NOW's "Insurance Revolution"

NOW's "Insurance Revolution" was launched in the wake of the Supreme Court's 1978 *Manhart* decision ending gender discrimination in pension plans (Horan 2021: 180).<sup>16</sup> On behalf of Marie Manhart and other female employees of the Los Angeles Water and Power Company, the American Civil Liberties Union (ACLU) challenged the company's practice of withholding more money from female employees' paychecks to fund pension benefits compared to male employees with otherwise identical benefit packages. From Manhart's perspective, lower take-home pay for an equivalent month-to-month pension payment at retirement constituted sex discrimination; from the company's perspective, the benefits provided to male and female employees were "actuarially equivalent" and hence not discriminatory. By claiming that benefits were equivalent in actuarial terms, the company pointed to the fact that women *on average* live longer than men, and hence a larger sum would be required to support the average woman because she would draw on her pension for a longer period of time than the average man. The problem was that Marie Manhart was not "the average woman" – in fact, no individual woman was "average" – and it was unknown whether she would live past the typical mortality for male employees of the company or not.

This problem did not give the actuaries pause. It was, rather, intrinsic to the business of prediction to subsume individual experience into group averages. As one commentator noted, "Once life contingencies become a part of the problem, it is factually impossible to deal with persons as individuals" (Kimball 1980: 916). Individuals do not have life expectancies; only groups do. That is, actuaries cannot know with any precision when a *particular* individual will die, but given a large enough group, it is possible to predict with considerable accuracy that some

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<sup>16</sup> The *Manhart* case has been subject to extensive legal analysis. For some of the key pieces, see Kimball (1979; 1980); Brilmayer et al. (1980); Laycock and Sullivan (1981); Benston (1982); and Brilmayer, Laycock, Sullivan (1983).

*number* of individuals will die. But which group to choose? As *Manhart*'s advocates were quick to note, a person might have many life expectancies depending on whether she is considered as a woman, an American, a Southerner, a Caucasian, or any combination of these characteristics together (Brilmayer et al. 1980). All of these expectancies are equally "true" in a statistical sense, revealing the fundamental indeterminacy of the actuarial certainties that insurers asserted.

An even greater difficulty for the Los Angeles Water and Power Company was that, even if actuarially justified, its reliance on group averages flew in the face of established civil rights traditions. As Brilmayer et al. (1980: 508) observed, "Most actuaries cannot think of individuals except as members of groups," and yet the dominant strand of civil rights law requires that individuals be treated *as individuals* before the law. According to this view, membership in a group – particularly a group bearing some social stigma – must not be allowed to determine individual outcomes. In deciding the *Manhart* case for the plaintiffs, the Supreme Court vigorously affirmed this principle, asserting that an individual's pension benefits could not be determined on the basis of protected group characteristics, even where there was a valid statistical relationship between the characteristic and longevity.

*Manhart* was a decisive victory for feminists, and yet it was subject to some important limitations. The most important was that *Manhart* dealt with employer-sponsored pension plans; as such it fell under the provisions of Title VII of the Civil Rights Law of 1964 that explicitly prohibited the use of classifications such as gender in determining compensation. There was no comparable federal civil rights statute that touched insurance rating practices, and indeed an attempt to pass such a law failed repeatedly in the 1980s in the face of staunch resistance from the insurance lobby (Heen 2014; Horan 2021). Justice Stevens' majority opinion referenced the fact that *Manhart* applied only to the employment context, stating explicitly that the decision was not

intended “to revolutionize the insurance and pension industries.”<sup>17</sup> But feminists were not daunted. Indeed, they hoped to extend the lessons of *Manhart* from employer-sponsored group plans to the “open market” where insurance companies operated seemingly without constraint.<sup>18</sup> As such, feminists saw the extension of the *Manhart* ruling from pensions to insurance as the inevitable culmination of a string of feminist victories in employment, housing, and credit markets that had removed gender classifications from each of these domains.<sup>19</sup>

As it happened, NOW’s hoped for transformation of the insurance industry was thwarted in a series of drawn-out lawsuits that slowly moved through the court system. At the time, though, insurance seemed ripe for a revolution. NOW estimated that a woman who purchased auto, health, disability, life insurance and an annuity could expect to pay \$16,000 more over her lifetime for the same benefits received by a man who was identical to her in every respect except gender.<sup>20</sup> Women’s disadvantage took different forms across various lines of insurance. Health and disability presented the most egregious abuses, where women paid as much as twice as men for comparable coverage. According to NOW, insurers’ justification for these overcharges rested on familiar stereotypes of female malingerers rather than reliable statistical evidence. In fact, NOW argued that the data showed that women were not more likely to claim sick pay or reimbursement for medical expenses, and moreover many conditions *specific* to women, such as pregnancy, were not

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<sup>17</sup> *Los Angeles Water and Power Company v. Manhart*, 435 U.S. 702 (1978).

<sup>18</sup> “Proposal for NOW LDEF Insurance Project,” NOW LDEF Records, MC 623, Box 128.6.

<sup>19</sup> An additional impetus for NOW’s Insurance Project arose when it became clear that the insurance industry was providing substantial financial support to groups organizing to stop the passage of the ERA amendment (Horan 2021: 180-81). Insurers seemed to be motivated by a fear that if the ERA were passed, they would be prohibited from using gender classifications in pricing their policies. By pro-actively prohibiting the use of gender classifications in insurance, NOW hoped to eliminate insurers’ rationale for opposing the ERA. See “Declaration of Sarah E. Burns in Support of Plaintiff’s Motion for Protective Order” (*Kirsh v. State Farm Automobile Insurance Company*), June 2, 1988, MC 623, Box 540.8, NOW LDEF Records; Letter to Muriel from Patrick Butler, July 14, 1982, MC 666, Box 362.9, NOW Records; “Is the Insurance Industry Blocking Passage of the ERA?” May 9, 1982, MC 666, Box 362.9, NOW Records; Letter to Geza Kedar from Patrick Butler, August 25, 1982, MC 666, Box 362.9, NOW Records; Letter to Iris Mitgang from Patrick Butler, November 4, 1982, MC 666, Box 362.9, NOW Records.

<sup>20</sup> “Fact Sheet, Benefits to Women through HR 100/S 372,” July 1983, NOW Records, MC 666, Box 362.11. This is equivalent to approximately \$49,000 in current dollars.



covered by most health and disability plans.<sup>21</sup> Life insurance appeared more favorable to women, as here women generally paid *lower* premiums than men, since women's greater longevity made these policies less expensive to insurers on average. In fact, life insurance represented the mirror image of the pension issue litigated in *Manhart*, where women's greater longevity made them more expensive to insure. But unlike pensions, where the full six-year differential in average longevity counted against women, NOW claimed that life insurers only gave women the benefit of *three*, not six, years of greater longevity. Of course, NOW was not asking insurers to discriminate "better," but rather not to discriminate at all, asserting that even in instances where discrimination appeared to benefit women, sex-based classifiers were ultimately harmful to women's progress toward equality.<sup>22</sup> NOW took a similar tack in auto insurance, where again women appeared to pay lower premiums than men, based on women's lower average accident rate compared to men. In fact, only women under 25 paid lower premiums than men, even though women at all ages had, on average, a lower accident rate; rather than young women "getting a break," in reality older women were overcharged for auto insurance coverage. Once these overcharges were eliminated, NOW estimated that women would save \$1 billion in auto insurance premiums each year.<sup>23</sup>

In light of these various circumstances, NOW launched its Insurance Project in 1982.<sup>24</sup> In conjunction with NOW's Legal Defense and Education Fund (NOW LDEF), the project's primary objective was to litigate several high-profile lawsuits that would force insurers to cede in court

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<sup>21</sup> More specifically, the data showed that women sought medical attention more frequently than men, but generally with less serious problems, requiring fewer days of hospitalization and missed work. "Inconsistent use of Actuarial Data," August 2, 1987, MC 623, Box 127.64, NOW LDEF Records; "Fact Sheet, Benefits to Women through HR 100/S 372," July 1983, MC 666, Box 362.11, NOW Records.

<sup>22</sup> Interview with Deborah Ellis conducted by the author, February 8, 2017, Rutgers, New Jersey.

<sup>23</sup> As we will see below, NOW did not endorse extending the sex-differentiated rates that applied to younger drivers to older drivers, but instead wanted to substitute mileage for gender classifications as a way of distinguishing high- and low-risk drivers in a unisex pricing system. "Fact Sheet, Benefits to Women through HR 100/S 372," July 1983, MC 666, Box 362.11, NOW Records.

<sup>24</sup> "NOW Insurance Project," October 29, 1982, MC 623, Box 126.5, NOW LDEF Records.

what they had been unwilling to give up in legislative battles in Congress.<sup>25</sup> Ultimately, feminists hoped for a ruling in their favor as broad and definitive as *Manhart*, although without the protection of Title VII, they were navigating a decidedly less favorable legal terrain (Heen 2014).<sup>26</sup> In examining this litigation, however, my purpose is not to provide a detailed legal history. Rather, I use NOW's stalled insurance revolution to explore three interrelated aspects of insurance pricing, all broadly connected to traditions of mutualism and each operating to fix gender in insurers' apparatus for sorting and stratifying risk: 1) insurers' reliance on *class-based* methods of pricing, which privileged gender as a rating factor; 2) the salience of the problem of *subsidy*, which tended to anchor risk classification schemes around groups with a perceived sociological significance (such as "women" and "men"); and 3) *data conventions* that created a preference for variables, like gender, on which data had been collected over many years. While each of these three aspects of insurance pricing are present across both of the legal cases I examine here (as well as in other cases litigated by NOW and NOW LDEF that are not the focus of my analysis), for ease of presentation I rely primarily on the *Equitable* case to address the first aspect and the *State Farm* case to address the latter two aspects.<sup>27</sup> Taken together, I argue these three features of insurance pricing help to explain why insurers continue to use gender classifications after such discriminatory practices have been long abandoned in other industries.

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<sup>25</sup> "Proposal for NOW LDEF Insurance Project," MC 623, Box 128.6, NOW LDEF Records.

<sup>26</sup> "ACLU Report on Sex Classification," May 1988, MC 623, Box 126.2, NOW LDEF Records.

<sup>27</sup> NOW LDEF served as a plaintiff in the *Equitable* case, whereas the *State Farm* suit was brought on behalf of the Pennsylvania chapter of NOW. Because both cases were implicated in NOW's larger insurance campaign, I refer both to "NOW" and more specific plaintiffs ("NOW LDEF" and "Pennsylvania NOW") as protagonists in my discussion of each case below.

## *Classification Struggles*

When NOW LDEF became involved in litigation against the Equitable Life Insurance Society in 1990 – joining a lawsuit brought by the Maryland Commission on Human Rights against the storied insurer 15 years earlier – two competing (and in fact, incompatible) notions of discrimination shaped the terrain of struggle. For NOW activists, insurers’ pricing practices were a clear violation of the *anti-classification* imperative embedded in civil rights law. Women who were assigned a price on the basis of gender were not being treated as individuals, and therefore were discriminated against by insurers. As NOW LDEF asserted, “generalizations about differences between ‘most’ or ‘average’ men and women” should be irrelevant to insurers’ assessments of risk, unless they are rooted in “immutable, inarguable physical characteristics never found in one sex.”<sup>28</sup>

Rather than prohibiting group-based classifications – as in the civil rights tradition invoked by feminists – insurers’ notion of “fair” discrimination *required* classification on the basis of group characteristics in order to assure equitable treatment.<sup>29</sup> “The bedrock concept of ... insurance,” noted the American Council of Life Insurers in its *amicus* brief, “...is that risks with similar characteristics must be grouped for purposes of determining insurability and price.”<sup>30</sup> “Bedrock” was no exaggeration, as the practice of risk classification could be traced back centuries to Defoe’s early exhortation to sort *like* with *like* (1697, cited in Clark 1999: 124). Across the ages the

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<sup>28</sup> NOW LDEF followed the language of the Maryland ERA in formulating its argument. “Memorandum of Amici Curiae NOW LDEF, NOW (Maryland and Baltimore Chapters), American Association of University Women (Maryland Division), Women’s Law Center” (*The Equitable Life Assurance Society of the United States v. Maryland Commission on Human Relations*), December 13, 1990, p. 21, MC 623, Box 515.1, NOW LDEF Records .

<sup>29</sup> “Brief Amici Curiae of American Council of Life Insurance and Health Insurance Association of America” (*The Maryland Commission on Human Relations v. The Equitable Life Assurance Society of the United States*), August 30, 1991, MC 623, Box 516.6, NOW LDEF Records.

<sup>30</sup> “Brief Amici Curiae of American Council of Life Insurance and Health Insurance Association of America” (*The Maryland Commission on Human Relations v. The Equitable Life Assurance Society of the United States*), August 30, 1991, p. 23, MC 623, Box 516.6, NOW LDEF Records.

principle remained the same: as long as insurers divided the population into classes that grouped individuals presenting the same risk to insurers, differentiating between these groups was not only legitimate but actually necessary to ensure that each member paid their share of the insurer's cost.

But as NOW's litigation against insurers made clear, matters were not quite so simple. While it seemed obvious to Defoe where one would carve the joints – young versus old, healthy versus infirm, shopkeeper versus seafarer, and so on – in fact the characteristics that could be used to sort risks were nearly infinite. There was, moreover, nothing in the methodology of the statistical analyses applied by the actuary that dictated that any particular risk factor be used to construct groups.<sup>31</sup> In fact, statistical data to substantiate a group difference, defined on whatever basis, could almost always be generated.<sup>32</sup> “As long as the insurer has statistics,” feminists complained, “it can do almost anything it wants.”<sup>33</sup>

NOW seized on the seemingly arbitrary nature of insurers' risk classification practices to attack gender discrimination in the industry. Feminists were especially wary of how justifications for insurers' use of gender classifications – as opposed to other available risk factors – were circular and self-confirming. In this sense, NOW LDEF suggested, Equitable's argument for sex-based classifications “begins by impermissibly classifying individuals by sex then attempts to justify that classification by using results derived from such classification.”<sup>34</sup> Accordingly, this

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<sup>31</sup> “Brief of The American Association of Retired Persons and Other Parties, as Amicus Curiae” (*The Insurance Commissioner of the State of Maryland, Maryland Commission on Human Relations, Maryland National Organization for Women, Baltimore National Organization for Women v. The Equitable Life Assurance Society of the United States*), July 30, 1993, MC 623, Box 517.5, NOW LDEF Records.

<sup>32</sup> “Transcript of Debate and Discussion Concerning H.R. 100 at meeting of the Chevy Chase Business and Professional Women,” Phineas Indritz Statement, March 18, 1981, MC 623, Box 126.5, NOW LDEF Records.

<sup>33</sup> “Reply Memorandum of Maryland Commission on Human Relations and NOW Chapters to Memoranda of Equitable and the Insurance Commissioner (Part IV)” (*The Equitable Life Assurance Society of the United States v. The Insurance Commissioner of the State of Maryland, et al.*), December 18, 1992, p. 23, MC 623, Box 516.3, NOW LDEF.

<sup>34</sup> “Reply Memorandum of Amici Curiae NOW LDEF, NOW (Maryland and Baltimore Chapters), American Association of University Women (Maryland Division), Women's Law Center” (*The Equitable Life Assurance Society of the United States v. Maryland Commission on Human Relations*), January 24, 1991, p. 6, MC 623, Box 515.1, NOW LDEF Records.

operation begged the question of whether discrimination on the basis of gender was or was not allowed under the law. For feminists, the answer was an unqualified “no.”

From the perspective of insurers, however, there was nothing arbitrary about their reliance on gender as a classifier. In fact, the basic logic of using classes to price risk – the “bedrock principle” that connected the practice of modern insurance to earlier traditions of mutualism – strongly inclined insurers toward the use of gender as a classifier. Notably, when actuaries assigned individuals a price, they did so by first constructing a *group membership* for these individuals. That is, insurers placed individuals in a class with others who shared select characteristics and assigned each individual a price that reflected the *average* risk of the group. The class-based nature of insurance pricing was consequential for a variety of reasons. Most importantly, because individuals together “occupied” the cell defined by the intersection of conditions selected as predictors of risk, it was necessary that there were a sufficient number of appropriately classed individuals so that insurers could accurately predict losses for each group (Abraham 1986).<sup>35</sup> For example, if gender and smoking were two factors considered most important in determining longevity, then the insurer required a sufficient number of *smoking men*, *nonsmoking men*, *smoking women*, and *nonsmoking women* to test statistical differences between these groups. As a result, the task of statistically validating differences between groups grew exponentially more difficult as characteristics were added to models predicting longevity. Accordingly, insurers’ classification schemes were typically very simple, relying on only a few variables that could create the broadest possible groupings, such as, notably, gender.<sup>36</sup>

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<sup>35</sup> The rule of thumb used by actuaries was that each risk class should contain at least 10,000 individuals to generate reliable estimates of loss. “Unisex Mortality Tables (Equal Employment Opportunity Commission Report),” no date, MC 623, Box 127.5, NOW LDEF Records.

<sup>36</sup> “Equal Retirement Benefits without Regard to Sex of the Plan Beneficiary,” John Campbell, *Journal of American Society of American Society of CLU*: 58-67, MC 623, Box 127.1, NOW LDEF Records; “Statement of Herbert S. Denenberg (Pennsylvania Insurance Commissioner) Prepared for the Hearings on Economic Problems of Women of the Joint Economic Committee of the U.S. Congress,” July 12, 1973, MC 623, Box 128.3, NOW LDEF Records.

Indeed, it would have been difficult to improve upon gender as a characteristic that neatly divided the population into two equivalently-sized groups (Ruben and Elliot 1973: 627).<sup>37</sup> Here the contrast to racial classifications is informative. Race had been used as a classifier in insurance markets from the late nineteenth century, when African Americans first began to purchase “industrial” life insurance policies in large numbers,<sup>38</sup> until the 1960s, when racial classifications were eliminated from insurance pricing at approximately the same time that gender was introduced as a rating variable (McGlamery 2008; Heen 2009; Bouk 2015; Horan 2021). We do not know precisely why insurers’ swapped out racial and gender classifications in the middle decades of the twentieth century. The explanation insurers themselves offered (some decades later) for their preference for gender classifications centered on their view that racial differences in mortality were rooted in changeable socio-economic conditions, whereas gender differences reflected immutable physiological (and possibly genetic) factors (see Lautzenheiser 1976). Feminists rejected these arguments as spurious, vehemently contesting the “biological” nature of gender difference.<sup>39</sup> The debate was inconclusive, but the issue could be easily resolved in terms of straightforward arithmetic: By the 1970s, approximately 13 percent of the U.S. population was non-white, but 50 percent was female.<sup>40</sup> Given this, gender more effectively “populated” risk classes than almost any

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<sup>37</sup> “Gender Discrimination in Insurance,” Diana Steele (ACLU), *Congressional Record*, December 9, 1981, MC 623, Box 126.5, NOW LDEF Records.

<sup>38</sup> “Industrial” life insurance was a type of life insurance policy that was marketed directly to the working classes. Sold in small amounts, with premiums collected by an agent who went door-to-door every week, industrial policies were intended to cover the cost of a burial and little more (Zelizer 1979; McGlamery 2008; Bouk 2015).

<sup>39</sup> “Affidavit of Uta Francke” (*In Re: Equitable Life Assurance Society of the United States*), August 29, 1991, MC 623, Box 515.2, NOW LDEF Records; “Declaration of Ingrid Waldron” (*In Re: Equitable Life Assurance Society of the United States*), August 29, 1991, MC 623, Box 515.2, NOW LDEF Records; “Affidavit of Lois Verbrugge” (*In Re: Equitable Life Assurance Society of the United States*), August 29, 1991, MC 623, Box 515.2, NOW LDEF Records. See also literature cited with reference to *Manhart* in note 16.

<sup>40</sup> “Transcript of Debate and Discussion Concerning H.R. 100 at meeting of the Chevy Chase Business and Professional Women,” Barbara Lautzenheiser Statement, March 18, 1981, MC 623, Box 126.5, NOW LDEF Records.

other available rating factor – including race – easing actuaries’ anxieties about the reliability of their estimates.

Nor was this the only advantage of using gender as a classifier. Insurers also stressed that gender created relatively homogeneous groups – with “men” and “women” constituting classes with approximately the same level of risk internal to each group<sup>41</sup> – consistent with the broader imperative in the industry to treat individuals equitably.<sup>42</sup> As such, insurers believed that gender could thread the needle between creating sufficiently large classes and producing estimates that were “tailored to the individual.”<sup>43</sup> Accordingly, insurers presented themselves, not feminists, as vigorously defending “individual rights.” They noted that using gender as a classifier involved applying *more* information about the individual than would a unisex system that stripped away gender classifications.<sup>44</sup> By contrast, the feminist position “taken to its fullest” would result in “applying averages to [ever] larger groups” once gender classifications were eliminated, threatening the ultimate erasure of the individual (Lautzenheiser 1976: 13).<sup>45</sup>

Contrary to what insurers claimed, NOW activists did not object to the use of group averages to price insurance, but only the use of groups protected by anti-discrimination law.<sup>46</sup> The

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<sup>41</sup> Feminists vigorously contested the assertion that gender constituted homogeneous groups, as is evident in discussion of the *State Farm* case below.

<sup>42</sup> “Brief Amici Curiae of American Council of Life Insurance and Health Insurance Association of America” (*The Maryland Commission on Human Relations v. The Equitable Life Assurance Society of the United States*), August 30, 1991, MC 623, Box 516.6, NOW LDEF Records; “Brief of Amici Curiae Health Insurance Association of America and American Council of Life Insurance” (*Kirsh v. State Farm Mutual Automobile Insurance Company*), June 14, 1991, MC 623, Box 541.1, NOW LDEF Records.

<sup>43</sup> “Brief of Mutual of Omaha Insurance Co.” (*National Organization for Women v. Mutual of Omaha Insurance Co.*), May 28, 1986, MC 623, Box 559.3, NOW LDEF Records; “Brief of Amicus Curiae League of Life and Health Insurers of Maryland” (*The Insurance Commissioner of the State of Maryland, et al. v. The Equitable Life Assurance Society of the United States*), July 30, 1993, MC 623, Box 517.5, NOW LDEF Records.

<sup>44</sup> “Supreme Court to Reconsider Illegal and Legal Sex Discrimination in Pensions,” *National NOW Times*, February 1983, MC 663, Box 12.5, Patricia Ireland Papers.

<sup>45</sup> “Brief Amici Curiae for the American Council of Life Insurance and the Health Insurance Association of America” (*National Organization for Women v. Mutual of Omaha Insurance Co.*), May 28, 1986, MC 623, Box 560.4, NOW LDEF Records; “Respondent’s Brief on Appeal” (*Kirsh v. State Farm Mutual Automobile Insurance Co.*), February 4, 1991, MC 623, Box 540.8, NOW LDEF Records.

<sup>46</sup> “National Association of Life Underwriters: Discussion with Phineas Indritz, Re: H.R. 100,” December 2, 1980, MC 623, Box 126.5, NOW LDEF Records; “Statement of Ira Glasser, Executive Director of American Civil Liberties

distinction was lost among insurers, who conflated NOW's opposition to gender classifiers with a broader rejection of the basic logic of insurance. This same conflation also operated when insurers invoked the class-based nature of insurance pricing as though it *obviously* justified the use of gender – without even the necessity of naming gender directly. “[B]ecause life insurance is uniquely and by necessity class-based,” insurers pleaded before the court, “Equitable should be permitted to draw class-wide generalizations in underwriting and rate-setting.”<sup>47</sup> Feminists had their rebuttal ready: “Sure, the industry needs to set their rates on the basis of groups. But the question is *which* groups.”<sup>48</sup>

In fact, NOW's assumption was not that the elimination of gender classification would result in the formation of one large and undifferentiated group, but rather that insurers would substitute *other* rating variables for gender.<sup>49</sup> Denied the use of gender as a rating variable, competitive pressures would force insurers to identify alternative factors – weight, medical history, fitness activities, alcohol use, etc. – that could separate high risk and low risk individuals.<sup>50</sup> Thus,

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Union, Hearings before the U.S. Senate on S. 372,” May 19, 1983, MC 623, Box 126.6, NOW LDEF Records; “Merits of the Case, Preliminary Statement” (*The Equitable Life Assurance Society of the United States v. Maryland Commission on Human Relations*), August 11, 1986; MC 623 516.6, NOW LDEF Records; “Brief of The American Association of Retired Persons and Other Parties, as Amicus Curiae” (*The Insurance Commissioner of the State of Maryland, Maryland Commission on Human Relations, Maryland National Organization for Women, Baltimore National Organization for Women v. The Equitable Life Assurance Society of the United States*), July 30, 1993, MC 623, Box 517.5, NOW LDEF Records; “NOW Targets Mutual of Omaha,” *Insurance Times*, August 28, 1984, MC 623, Box 561.15, NOW LDEF Records; “Angered over Foster’s ‘Damaging Lie’ – Pennsylvania NOW Charges Tactic is Divisive and Blocks Reform Chances,” *Atlantic States Insurance*, September 23, 1989, MC 663, Box 24.14, Patricia Ireland Papers.

<sup>47</sup> “Reply Brief of the Equitable Life Assurance Society of the United States” (*The Insurance Commissioner of the State of Maryland, et al. v. The Equitable Life Assurance Society of the United States*), October 14, 1993, p. 29, MC 623, Box 518.2, NOW LDEF Records.

<sup>48</sup> “The Unisex Policy Uproar,” *National Law Journal*, February 28, 1983, MC 666, Box 364.1, NOW Records.

<sup>49</sup> Letter to (Name Redacted) from Twiss Butler, no date, MC 666, Box 362.9, NOW Records.

<sup>50</sup> “Issues Relating to the Proposed Unfair and Deceptive Insurance Practices Act,” May 16, 1984, MC 623, Box 125.9, NOW LDEF Records; “National NOW Times Draft Article,” October 25, 1984, MC 623, Box 125.10, NOW LDEF Records; “Women are Cheated in Auto Insurance (Statement of Patrick Butler),” December 7, 1984, MC 623, Box 125.10, NOW LDEF Records.



NOW believed that a more refined classification scheme that better calibrated each individual's risk would ultimately emerge from unisex pricing.<sup>51</sup>

Paradoxically, feminists were correct that the anti-discrimination challenge would move insurers inexorably toward more individualized forms of pricing, although incorrect that this would result from the adoption of unisex insurance. In fact, the casual logic seemed to flow in the opposite direction, as more individualized forms of pricing offered insurers a useful way to resist the adoption of unisex pricing. That is, Equitable sought to *pre-empt* allegations that the company was engaged in gender discrimination by proactively expanding the range of factors it used to classify risks. In testimony before the court, Equitable boldly advanced the argument that, all appearances to the contrary, the company did *not* in fact use gender classifications to price risk, but rather classified on the basis of *longevity* (which, through no fault of the actuaries, varied for “men” and “women”).<sup>52</sup> Following this same logic, Equitable asserted that its decisions were driven by *data*, not gender, and it did not “prejudge” the results of its statistical analyses.<sup>53</sup> In this context, the company launched an “experiment” with preferred classes, which involved investigating a variety of risk factors such as hazardous avocation, foreign travel, driving record, cholesterol level, liver

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<sup>51</sup> “Reply Brief of Appellants Baltimore and Maryland NOW” (*Insurance Commissioner of the State of Maryland v. Equitable Life Assurance Society*), September 27, 1993, MC 623, Box 517.6, NOW LDEF Records; “Letter to Judge Revercomb from Jeffrey Braun,” October 21, 1985; MC 623, Box 553.5, NOW LDEF Records; “Memo to the Leadership List from Vice President – Action,” March 19, 1984, MC 666, Box 363.7, NOW Records.

<sup>52</sup> “Brief for Equitable Life Assurance Society” (*The Maryland Commission on Human Relations v. Equitable Life Assurance Society of the United States*), September 18, 1991, MC 623, Box 515.3, NOW LDEF Records; “Memorandum of Law of The Equitable Life Assurance Society of the United States” (*The Equitable Life Assurance Society of the United States v. Insurance Commissioner of the State of Maryland*), October 30, 1992, MC 623, Box 516.2, NOW LDEF Records; “Brief and Appendix of the Equitable Life Assurance Society of the United States” (*The Insurance Commissioner of the State of Maryland v. The Equitable Life Assurance Society of the United States*), July 30, 1993, MC 623, Box 517.4, NOW LDEF Records.

<sup>53</sup> “Post-Hearing Memorandum” (*The Maryland Commission on Human Relations v. The Equitable Life Assurance Society of the United States*), June 18, 1992, MC 623, Box 515.4, NOW LDEF Records; “Memorandum of Law of the Equitable Life Assurance Society of the United States” (*The Equitable Life Assurance Society of the United States v. Insurance Commission of the State of Maryland*), October 30, 1992, MC 623, Box 516.2, NOW LDEF Records; “Brief and Appendix of the Equitable Life Assurance Society of the United States” (*The Insurance Commissioner of the State of Maryland, et al. v. The Equitable Life Assurance Society of the United States*), July 30, 1993, MC 623, Box 517.4, NOW LDEF Records.

function, body build, and so on.<sup>54</sup> “If the data resulting from this analysis [produces] an insignificant differential between male and female mortality,” actuaries promised, “gender distinctions will be removed.”<sup>55</sup> From Equitable’s perspective, the fact that the company committed to “abide by whatever experience data it obtains in male/female mortality” revealed as false feminists’ assertion that insurers continued to “use” sex as a rating factor.<sup>56</sup>

NOW was not convinced by Equitable’s claim that it was indifferent to the results of its experiment and merely a “bystander” to its own data.<sup>57</sup> Instead, feminists viewed Equitable’s data as deeply structured by its *prior* decision to classify on gender – itself a form of “pre-judgment.” Insofar as insurers were committed to the methodology of class-based pricing, NOW’s skepticism was well-founded. As Equitable’s testimony demonstrated, not all characteristics predictive of mortality risk were treated equivalently. Critically, the pricing technique used by insurers *first* sorted individuals into standard classes using age, sex, and smoking behavior, and *then* considered other risk factors in order to adjust a given individual’s premium up or down according to their particular risk (Dicke 2004: 64-65).<sup>58</sup> As the court affirmed, “[G]ender remains the determinative factor on which rates are based.”<sup>59</sup> Accordingly, feminists viewed Equitable’s experiment with

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<sup>54</sup> “Memorandum of Baltimore NOW and Maryland NOW” (*The Insurance Commission of the State of Maryland, Maryland Commission on Human Relations, Maryland National Organization for Women, Baltimore National Organization for Women v. The Equitable Life Assurance Society of the United States*), June 29, 1993, MC 623, Box 517.2, NOW LDEF Records.

<sup>55</sup> “Brief and Appendix of the Equitable Life Assurance Society of the United States” (*The Insurance Commissioner of the State of Maryland, et al. v. the Equitable Life Assurance Society of the United States*), July 30, 1993, p. 12, MC 623, Box 517.4, NOW LDEF Records.

<sup>56</sup> “Brief and Appendix of the Equitable Life Assurance Society of the United States” (*The Insurance Commissioner of the State of Maryland, et al. v. the Equitable Life Assurance Society of the United States*), July 30, 1993, p. 13, MC 623, Box 517.4, NOW LDEF Records.

<sup>57</sup> “Memorandum of Law of the Equitable Life Assurance Society of the United States” (*The Equitable Life Assurance Society of the United States v. Insurance Commissioner of the State of Maryland*), October 30, 1992, MC 623, Box 516.2, NOW LDEF Records.

<sup>58</sup> “Reply Brief of the State of Maryland Commission on Human Rights” (*The Equitable Life Assurance Society of the United States v. Maryland Commission on Human Relations, et al.*), April 25, 1996, MC 623, Box 518.7, NOW LDEF Records.

<sup>59</sup> “Provisional Opinion and Order” (*State of Maryland Commission on Human Relations v. The Equitable Life Assurance Society of the United States*), April 28, 1986, p. 28, MC 623, Box 515.3, NOW LDEF Records.

preferred classes as more public relations stunt than a credible attempt to assess the validity of gender classifications:

[A]ll of the data used to justify [Equitable's] rates, being gender differentiated, cannot establish actuarial justification [for gender]. Even Equitable's most recent experiment in developing more highly refined classifications for a preferred class of men and women non-smokers [is] gender based. [These results] do not provide any information about the actuarial soundness of rates that are not gender based.<sup>60</sup>

Whether Equitable was engaged in massaging its public image, or had simply learned from feminists that there were advantages in adopting more finely calibrated risk classifications,<sup>61</sup> gender was – and would remain – durably embedded in insurers' class-based pricing mechanism. When NOW LDEF finally abandoned the *Equitable* case in 1997 following an unfavorable legal ruling,<sup>62</sup> gender classifications appeared as entrenched in insurance pricing as when the litigation had been initiated some two decades earlier.<sup>63</sup> While in one sense this outcome is a predictable result of the significant resource advantage insurers enjoyed over their opponents, enabling them to finance seemingly endless legal appeals, a deeper analysis requires us to examine the reasons for insurers' intransigence. The account I have presented here indicates that it is the imperative to share risk broadly within a group – an inheritance from traditions of mutualism – that constitutes

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<sup>60</sup> "Brief and Appendix of Maryland Commission on Human Rights," (*The Insurance Commission of the State of Maryland, Maryland Commission on Human Relations, Maryland National Organization for Women, Baltimore National Organization for Women*), June 30, 1993, p. 38, MC 623, Box 518.1, NOW LDEF Records.

<sup>61</sup> For evidence in line with the latter interpretation, see "On Listening Carefully," *National Underwriter*, July 2, 1983, 143.H.3.10F, Folder "Women's Issues: Economic Equity Act, 1983," David Durenburger Papers, MHS.

<sup>62</sup> The ruling determined that the Maryland Insurance Administration's regulation of the insurance industry did not constitute "state action," and hence Maryland's Equal Rights Amendment was not applicable to insurers' rating practices in the state. "Memorandum and Order on Remand" (*The Equitable Life Assurance Society of the United States, et al. v The Maryland Commission on Human Relations, et al.*), February 6, 1997, MC 623, Box 518.7, NOW LDEF Records.

<sup>63</sup> NOW LDEF attorneys made the decision not to appeal very reluctantly, but by this point the case was seen as too costly, and not worth the resources it would take to mount further challenges. Interview with Martha Davis conducted by the author, February 10, 2017, Boston, Massachusetts.

insurers' risk classification schemes as a gendered market device. Most notably, because gender enjoys a special advantage in organizing data in the broadest possible groupings –and yet does so in a way that also seems to validate “individual” differences – it is privileged over other available classifications (cf., Horan 2021: 171). As we shall see in examining NOW's litigation against State Farm, this is not the only feature of gender that explains insurers' strong preference for using sex-based classifications in pricing risk.

### *The Problem of Subsidy*

NOW's legal battle with State Farm and four other insurers operating in Pennsylvania produced a different outcome than *Equitable*, but the broad lessons are nevertheless similar.<sup>64</sup> Notably, what feminists understood by “removing” gender from insurance pricing in *State Farm* diverged from *Equitable*, underscoring the complexities of the terrain that feminists were navigating in challenging gender discrimination in the insurance industry. In part, these complexities were a product of a more convoluted pricing structure in auto insurance, in which gender classifiers were used for younger drivers but not for older drivers. In fact, young women drivers paid *lower* premiums than young men, creating the appearance that women benefited from sex-based pricing. In some limited sense, they did, and this placed NOW in a difficult position in objecting to gender as a factor in determining premiums.<sup>65</sup> As a result, NOW's strategy was two-pronged: they demanded first that gender classifiers be removed from insurance pricing, consistent

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<sup>64</sup> NOW's original complaint to the Insurance Department was filed against State Farm, Nationwide, Allstate and Liberty Mutual Insurance. In addition, the Insurance Services Office, the state agency that pools data to create standardized risk classifications for use by smaller insurers, was also included on the complaint.

<sup>65</sup> In fact, *Equitable* appeared to present the same problem, as women paid lower rates for life insurance than men. However, women also *received* less for their life insurance policies, which accrued lower cash surrender values and earned lower dividends when compared to comparable policies taken out by men. See “Fact Sheet, Benefits to Women through HR 100/S 372,” July 1983, MC 666, Box 362.11, NOW Records.

with their position in *Equitable*; but they also required that auto insurers replace gender with mileage – a variable that NOW believed accounted for women’s lower risk of accident – in order to protect women of *all ages* from being overcharged in a unisex pricing system.<sup>66</sup>

Of course, an “overcharge” was always relative to an “undercharge,” and the harm against women was not simply that they paid *more* but also that men paid *less*. Indeed, the lurking danger of “subsidization” permeated every aspect of NOW’s legal argument. NOW’s fixation on the problem of subsidy was not native to feminism, but a borrowing from insurers’ conceptual apparatus. For insurers, as we have already seen, the problem of subsidy is simply the flip side of the classification of risks. In theory, risks that are properly classified avoid subsidies, as each individual is assigned a price that fully reflects her cost to insure. But in practice, insurers only consider a few salient risk factors at a time, with the result that any given classificatory scheme will group individuals who are in actuality heterogeneous with respect to the underlying risk they present to insurers. That is, in any given risk category, some individuals will have higher and lower risk propensities than the average identified for that class. Where there is a discrepancy between an individual’s risk and the average risk of the category she is placed in, subsidization occurs. As James Stone (1978: 153), the Insurance Commissioner of Massachusetts, observed, “Any classification system will misprice almost every [individual] in the population,” with the result that subsidies will be pervasive.

Typically, insurers bracket such difficulties by assuming that existing risk classes *are* homogeneous: i.e., there is no *feasibly identifiable* subset of individuals with a lower or higher risk than average for the class (see Kimball 1979: 119-20). This reflects insurers’ faith that the pricing

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<sup>66</sup> “Plaintiffs’ Brief in Opposition to Defendants’ and Insurance Department’s Motions for Stay of Proceedings, More Specific Pleadings, and Dismissal of Plaintiffs’ Claims” (*Pennsylvania National Organization for Women, et al. v. State Farm Mutual Auto Insurance Company, et al.*), November 21, 1986, MC 666, Box 132.1, NOW Records.

mechanism will exploit all available differences in risk; to fail to do so would be to leave profits unclaimed, a violation of market logic. “If there is a difference [in driving patterns between the sexes] and it’s reflected in loss experience,” State Farm’s actuary testified, “then if such a difference does exist and it influences loss costs, then rates will be reflective of that.”<sup>67</sup> Of course, when pressed, the same actuary acknowledged that in order to find any such group difference, it would be necessary to first hypothesize that it exists and look for it in the data.

Here it is possible to discern the lurking “groupism” contained in the notion of subsidy – a concept that is once again reflects the mutual origins of insurance. The very idea of subsidy requires the division of the world into socially meaningful collectivities (Williams 1978: 404); otherwise there would be no way to express (or reason to be concerned about) the transfer of resources between individuals. Indeed, what separates risk sharing – the basic objective of insurance as a social institution – from the pernicious danger of subsidy is the presence of *recognizable groups*. But insurers typically take these groups as *prior* to – rather than an artifact of – the act of classification, ruling out the possibility that a different set of classifiers would produce a different constellation of groups (and therefore a different distribution of subsidies). In the words of one observer of the industry, insurers assign a “high ontological status” to the classes that anchor risk classification schemes (Shilton 2012: 390). This both privileges the selection of groups such as “men” and “women” that map on to classifications that already organize access to resources in society, and tends to further entrench these groupings once selected (see Austin 1983). Paradoxically, it is not only insurers who succumb to such “groupism”: feminists also had

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<sup>67</sup> “Plaintiff’s Hearing Brief” (*Pennsylvania National Organization for Women v. State Farm Mutual Auto Insurance Company, Nationwide Mutual Insurance Company, Allstate Insurance Company, Liberty Mutual Fire Insurance Company, and Insurance Services Office*), August 14, 1987, p. 62, MC 496, Box 117.24, NOW Records.

difficulty mobilizing claims for gender neutrality except through the prism of group differences that were ultimately grounded in the divergent experiences of “men” and “women.”

Indeed, this was the key lesson of the lawsuit that the Pennsylvania NOW initiated in 1986 against State Farm. Because young women were assessed *lower* premiums than young men, insurers argued – not without justification – that removing gender classifiers from auto insurance pricing would hurt women. NOW was alert to this problem, and it undergirded the view within the Insurance Project that an emphasis on “abstract equality” was a losing strategy for feminists, as insurers could easily argue that women were in fact the “beneficiaries” of discrimination.<sup>68</sup> As such, NOW realized that it would be necessary to deal more concretely with benefits and harms under various pricing schemes – even when this required acting in ways that appeared to betray basic principles of gender equality. Accordingly, NOW’s initial foray into auto insurance involved an attempt to *block* the implementation of a pending legal ruling that would require the elimination of gender classifications for drivers under the age of 25 until such time as a mileage classification could be imposed on *all* drivers.<sup>69</sup> NOW’s legal action reflected its view that women’s lower rate of accident was a product of the fact that women, on average, drove fewer miles than men. Accordingly, if gender classifications were stripped from the young driver category, young women who spent less time on the road would end up absorbing the higher costs of young men, whose greater exposure made them more prone to accident – a subsidy that women over the age of 25 were *already* paying under the unisex rates applied to older drivers.<sup>70</sup>

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<sup>68</sup> The notion that women “benefited” from discrimination was also a consideration in *Equitable*, but feminists remained more solidly within the anti-classification perspective of civil rights law in that case.

<sup>69</sup> The legal action was brought by Ann and Craig Bartholomew (on behalf of their 17-year-old son) against the Pennsylvania Insurance Commissioner in 1986. The lawsuit, which sought to ban the use of gender classifiers in auto insurance, was awaiting a decision when Pennsylvania NOW filed its lawsuit in September of that same year.

<sup>70</sup> “Plaintiffs’ Brief in Opposition to Defendants’ and Insurance Department’s Motions for Stay of Proceedings, More Specific Pleadings, and Dismissal of Plaintiffs’ Claims” (*Pennsylvania National Organization for Women, et al. v. State Farm Mutual Auto Insurance Company, et al.*), November 21, 1986, MC 666, Box 132.1, NOW Records.

Naturally, this was a difficult argument to convey, both in the courtroom and to the broader public. In particular, NOW's attempt to block the implementation of unisex rates until insurers could be legally required to substitute mileage for gender as a rating factor created confusion among would-be supporters and produced accusations that NOW was "siding" with insurers. Pennsylvania's Insurance Commissioner was particularly exasperated by NOW's legal action, noting that feminists inexplicably wanted to use "mileage as a surrogate for gender," impeding gender equality at the exact moment when it was finally in reach.<sup>71</sup>

NOW saw things differently. Rather than mileage being a surrogate for gender, it was *gender that was a surrogate for mileage* – as mileage was the causal factor underlying observed differences between men's and women's accident rates.<sup>72</sup> In this sense, NOW was not "siding" with insurers, but it had fully absorbed the insurance industry's particular understanding of cost-based discrimination (Williams 1959; cf., Horan 2021). From this perspective, it was critical that groups be organized around factors that best differentiated between individuals on the basis of the risk they presented to insurers. Because gender was only a crude proxy for the causal factor ultimately responsible for differences in men's and women's accident risk, it was bound to misclassify some individuals – i.e., women and men whose driving patterns diverged from what was typical for their sex. If instead insurers sorted directly on mileage, NOW argued, they would produce truly homogeneous groups that avoided subsidies between individuals misclassified under sex-based pricing. As NOW summarized, "Without accurately assessing mileage, auto insurance premium rates *cannot* be based on costs."<sup>73</sup>

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<sup>71</sup> "Women's Groups Split on Unisex Car Insurance Rates," *The Pittsburgh Press*, September 23, 1988.

<sup>72</sup> "Montana NOW's Testimony before Human Rights Commission of the State of Montana," September 13, 1985, MC 666, Box 363.3, NOW Records.

<sup>73</sup> "Montana NOW's Testimony before Human Rights Commission of the State of Montana," September 13, 1985, p. 12, MC 666, Box 363.3, NOW Records (emphasis added).



In support of its legal argument, NOW marshaled data suggesting that men's rate of accident exceeded women's rate of accident by a ratio of two to one *at every age* – consistent, NOW observed, with a similar differential between men's and women's time-on-the-road. “It happens to be [the case] that men drive every year twice as many miles as women,” NOW's Twiss Butler explained to the host of Philadelphia radio call-in show. “Now that doesn't mean that all men drive twice as many miles as all women. But it means that if you want to look at people as sex classes, *which is certainly not the way NOW wants to look at them*, that's the ratio you end up with.”<sup>74</sup> Women's lower accident rate was simply an artifact of their lower exposure on the road, and “true unisex” as opposed to “false unisex” pricing took this difference into account.<sup>75</sup>

The resolution of the unisex debacle, feminists suggested, was remarkably straightforward: every car had on its dashboard an odometer that registered in an objective manner on-the-road exposure to the risk of an accident. Collecting this data and using mileage in place of gender as a rating factor supplied not only a practical solution to the otherwise indeterminate mixing of “low-risk” and “high-risk” individuals within classes defined by sex, but also a new legal theory to be applied to the *State Farm* litigation. NOW's legal case against auto insurers would center on discrimination against “low-mileage drivers” – and through these drivers, indirectly, on discrimination against women.<sup>76</sup> NOW's effort to redirect its litigation on behalf of low-mileage drivers may have been a brilliant legal maneuver, but avoiding “sex classes” was not as simple as NOW's tacticians imagined. Critically, the notion of subsidy that NOW adopted from the insurance industry implied the presence of socially meaningful *groups*: groups whose “over-” and

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<sup>74</sup> “Dialogue on Pennsylvania NOW's Auto Insurance Sex Discrimination Lawsuit,” September 23, 1988, p. 2, MC 496, Box 117.23, NOW Records (emphasis added).

<sup>75</sup> “Some Thoughts on True Equality,” *Allentown Morning Call*, October 2, 1988, MC 496, Box 117.23, NOW Records.

<sup>76</sup> “Press Strategy and Analysis, PA NOW Auto Insurance Case,” October 14, 1986, MC 666, Box 363.4, NOW Records.

“undercharges” inflicted tangible harms on recognizable social actors. Even as NOW attempted to re-narrate its legal case around the experience of low-mileage drivers, one basic fact asserted itself again and again: “*men drive twice as many miles as women.*” Notwithstanding NOW’s embrace of advocacy on behalf of low-mileage drivers, these motorists were not in fact the political constituency that NOW represented. The distribution of benefits and harms between *women* and *men* was the only way of making sense of the manner in which low-mileage drivers subsidized high-mileage drivers – and the only reason it mattered that they did.

The lessons of the *State Farm* case once again suggest how practices of risk classification shaped by mutual traditions operate to fix gender as a pricing variable in insurance markets. The basic imperative to organize insurance around groups that are constructed to be internally homogeneous is another inheritance of mutualism, which relies on solidarities produced by shared conditions and experiences (per Defoe 1697, cited in Clark 1999: 124). Where such groups are imperfectly formed – as is almost inevitable – one group will necessarily (and likely, unwillingly) absorb the costs of another. Critically, this becomes visible (and a possible source of contention) only where groups are socially legible, making the problem of “subsidy” an inherently sociological one. Accordingly, as we have seen, risk classification schemes tend to be anchored by salient social categories such as “men” and “women,” even where other groupings (e.g., “high” and “low mileage drivers”) may be more causally proximate to risk. The notion that risk is shared within neatly bounded, socially meaningful groups also constrains how insurers collect and analyze data in ways that similarly privilege gender classifications – a final aspect of insurance pricing that I examine next.

## *Communities of Fate*

NOW's legal case against State Farm floundered not only because its campaign on behalf of low-mileage drivers failed to ignite the public imagination – either in the courtroom, among insurance regulators, or in the broader society – but also because insurers had other reasons for resisting NOW's seemingly reasonable request that insurers use mileage as a rating variable. In rejecting the data that NOW presented to substantiate its claims about the two-to-one ratio of men to women's driving exposure, insurers pointed to the fact that NOW's data were drawn from a national survey conducted by the U.S. Department of Transportation (Butler, Butler, and Williams 1988). The industry refuted this data using its own internal estimate of future mileage – data in which NOW's asserted two-to-one ratio simply did not emerge. Of course, as NOW argued (and the industry itself acknowledged), these estimates of future mileage – generated from a questionnaire circulated to each insurance company's policyholders in which they were asked to guess at their likely miles on the road in the next year – were inherently unreliable. But these flimsy data had one feature that made them superior to NOW's arguably more scientific survey data: *they were generated from each company's own population of insureds.*

Critically, insurers typically developed support for their pricing schemes by analyzing the loss experience of their own policyholders. In part, this practice reflected insurers' conviction that individuals who buy insurance differ in systematic ways from individuals who do not, but it also was yet another instantiation of the mutual idea, which envisioned a “community of fate” constituted by the insurance contract (Heimer 1985). One consequence of relying on one's own internal data was that new rating variables could be introduced only as data slowly accumulated, favoring variables – such as gender – on which data had been collected over many decades.<sup>77</sup>

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<sup>77</sup> “Post-Hearing Memorandum,” (*The Maryland Commission on Human Relation v. The Equitable Life Assurance of the United States*), June 18, 1992, MC 623, Box 515.4, NOW LDEF Records.

Of course, conservatism was practically an industry cliché, and it was particularly marked in life insurance, where actuaries literally waited for people to die in order to construct estimates of mortality. Because life insurers had collected data on gender since the 1950s, overwhelming evidence would be required to cause the industry to recalibrate actuarial predictions in favor of other risk factors. A case in point was the introduction of a smoking/non-smoking variable: In 1964, the Surgeon General's office released its landmark report, *Smoking and Health*, which provided incontrovertible evidence of the negative health consequences of smoking. In particular, the Surgeon General's report indicated that smokers had mortality rates 60 percent higher than non-smokers. In spite of this finding, and many subsequent studies that confirmed it, Equitable did not adopt a smoking classification until the 1980s, *two full decades* after the release of the Surgeon General's original report.<sup>78</sup>

Auto insurers had also introduced gender classifiers in the 1950s (Zoffer 1959), but they were somewhat more nimble in introducing new rating variables given the shorter duration of policies. In addition, the fact that auto insurance was essentially mandatory in most states lessened anxieties about differences between individuals who voluntarily chose to purchase insurance coverage versus those who refused coverage. Nevertheless, the conviction that State Farm's policyholders might be systematically different from Allstate's meant that statistical techniques that attempted to make inferences from one population of insureds to another were treated with skepticism. This is not to say that insurers never made use of such data. In fact, as risk classification schemes became more finely honed and risk classes became smaller – a tendency that proceeded much further in auto insurance than life insurance – any given insurer might not have enough individuals in a particular class to be able to verify data. In these cases, insurance companies might

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<sup>78</sup> “Brief of the Maryland Commission on Human Relations” (*The Equitable Life Assurance Society of the United States v. The Maryland Commission on Human Relations*), June 22, 1992, MC 623, Box 515.4, NOW LDEF Records.

find it necessary to pool data with other insurers – or to rely on data compiled by regulators – in order to statistically validate their estimates of accident risk (Casey, Pezier, and Spetzler 1976). But this was a practice that was engaged in with some trepidation; where available, internal data were preferred.

Of course, as NOW insisted in its legal arguments, auto insurers could have collected odometer readings from their own subscribers easily enough. But as with life insurers who hesitated to introduce a smoking classification, auto insurers were similarly reluctant to trust the patterns generated by new data.<sup>79</sup> In the case of auto insurers, this appeared less a function of the slow accretion of data and more related to the seemingly circular faith auto insurers placed in their methods of defining risk classes, with the resulting assumption that all relevant group differences had *already* been identified. NOW observed the conundrum this created for regulators with bitter irony:

The [Insurance] Department argues ‘there is no existing data to enable insurance companies to use actual mileage for private passenger automobile insurance ratemaking. Any change in private passenger automobile insurance rating resulting from an order to give additional consideration to mileage would require for its implementation the collection of additional data by each individual insurance company.’ By so arguing, the Department takes the position that if it is not being done now, it cannot be ordered. Indeed, *any* order disapproving rates is likely to

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<sup>79</sup> “Post-Hearing Memorandum” (*The Maryland Commission on Human Relation v. The Equitable Life Assurance of the United States*), June 18, 1992, MC 623, Box 515.4, NOW LDEF Records.

result in the need for additional data. Under this argument, the Department is totally without power to disapprove rates.<sup>80</sup>

Thus, NOW got unisex insurance, but not the unisex it wanted. In 1988, Pennsylvania's Commonwealth Court affirmed the Insurance Commissioner's earlier rejection of NOW's complaint. As a result, gender classifications were stripped from Pennsylvania auto insurance in accordance with a prior legal ruling, but without requiring the substitution of mileage as a rating variable as NOW's lawsuit requested. The Court found that although women drive fewer miles than men, on average, and have fewer accidents than men, NOW had not presented statistical evidence showing a relationship between these factors and the actual loss experience of insurers.<sup>81</sup> The Court observed that because NOW's legal argument rested entirely on government data not compiled for insurance purposes, any attempt to extend these statistical findings to insurers was without merit. Mutualism closed the circle: insurers' "community of fate" would prevail over sterile statistics (Heimer 1985).

## **Discussion and Conclusion**

In this paper, I have explored the reasons for the puzzling persistence of gender discrimination in insurance markets long after such practices have been deemed impermissible in other institutional domains. At one level, of course, there is no puzzle: insurers persisted in discriminatory practices because they were able to overwhelm their adversaries in legislatures and courts (see Heen 2014; Horan 2021: 173). Put simply, insurers discriminated because they *could*, wielding sufficient political influence to handily defeat numerous bills introduced in Congress to

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<sup>80</sup> "Plaintiffs' Reply Brief in Response to Defendants' and the Department's Hearing Briefs" (*Pennsylvania National Organization for Women, et al. v. State Farm Mutual Auto Insurance Company, et al.*) October 5, 1987, p. 16, MC 496, Box 117.25, NOW Records.

<sup>81</sup> PA. N.O.W et. al. v. PA. Ins. Dept, 122 PA Commw 283 (1988).

prohibit gender discrimination in insurance markets. When feminists sought to gain through litigation what they had been denied in the legislative process, insurers marshaled their superior economic resources to wage a war of attrition in the courts against their considerably less well-funded opponents, who eventually abandoned the fight. While this explanation is undoubtedly correct, it is also incomplete in an important sense, as it begs the question of *why* insurers were so determined in their resistance to the feminist challenge.

Conveniently, the case of credit provides an informative counterfactual here. Like insurers, creditors confronted significant political mobilization to end gender discrimination in credit markets beginning in the 1970s (see Hyman 2011; Trumbull 2014; Krippner 2017; Thurston 2018). But unlike insurers, creditors ceded to these demands with minimal resistance – and indeed feminist successes in passing legislation that secured women’s access to credit created the basis for optimism on the part of NOW activists and legislators alike that insurers would quickly follow suit in bringing their industry into conformance with civil rights law.<sup>82</sup> These expectations, as we have seen, were roundly disappointed. In this regard, the divergent experiences of the credit and insurance industries complicate explanations based on raw political power. Bankers, certainly, were no less influential in the halls of Congress than insurers (and perhaps more so), and no less concerned about preserving the autonomy of their industry from the expansive reach of regulators. Why, then, should insurers dig in when creditors readily adapted to the anti-discrimination challenge?

Here insurers would undoubtedly point to the necessity of using group-based characteristics to price risk (see Lautzenheiser 1976; Kimball 1979; Gerber 1975) – an argument

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<sup>82</sup> “Discussion with Phineas Indritz re: H.R. 100, National Association of Life Underwriters,” December 2, 1980, MC 623, Box 126.5, NOW LDEF Records; “Q&A: Gray Seeks an End to Insurance Discrimination” *Washington Times*, July 7, 1983, MC 623, Box 126.7, NOW LDEF Records; “The Durenberger Report,” 143.I.12.1B, Folder “Economic Equity Act (S. 1169), 1985,” David Durenberger Papers.

they resorted to frequently in court battles. As insurers emphasized, insurance involves a transaction in which the cost of providing a service (protection against risk) is contingent on an unknowable future event, necessitating the use of group averages to form expectations. Of course, as feminists retorted, the requirement that group averages are used to predict losses tells us nothing about *which* classifications may be used to construct groups and price risks (Brilmayer et al. 1980). In this regard, it should be noted that creditors face similar constraints on their pricing practices, since they also must assess the likelihood of a contingent future event (i.e., default on a loan) and are similarly dependent on group averages to do so (Kemp 1980). But when confronted with political resistance, creditors were willing to use classifications other than gender to price the risk of default (Krippner 2017). Thus, this alternative explanation similarly fails to provide an adequate account of insurers' persistent discrimination.

Yet there *is* something in the group-based nature of insurance that is important for untangling the mystery of insurers' attachment to gender classifications. But the key here lies not in the use of group averages *per se* – a feature common to credit and insurance, and indeed any pricing technology that relies on a statistical methodology (Schauer 2006) – but rather in the social ontology that these averages construct (see Krippner and Hirschman 2022). When creditors make predictions regarding contingent future events, they evaluate a series of risk factors considered independently: prior history of loan repayment, number of credit cards carried, length of time employed in current position, part-time versus full-time employment, and so on (Hsia 1978; Lewis 1994; Thomas, Edelman, and Crook 2002). That is, each separate risk factor is assigned a range of values that reflect its expected contribution to the likelihood of repayment (or default). Individual applicants for credit are then assessed on each such variable and given the indicated number of points, resulting in a score that determines whether credit is granted or denied. By contrast, when



insurers make predictions regarding contingent future events, they do not consider risk factors independently, but construct *classes* composed of individuals who hold all relevant risk factors (e.g., age, smoking status, gender) in common. Thus, in the first case, an individual's risk is simply the tally of her *personal attributes*; in the second, an individual's risk is determined by her *membership in a group*. As François Ewald (1991: 203) writes, “[Insurance] makes each person a part of the whole.” No wonder then that when feminists put pressure on discriminatory practices in these markets they encountered significantly more resistance from insurers than creditors: replacing gender classifications in insurance pricing involved not simply swapping out one risk factor for another in a scoring algorithm, but rather unraveling a laboriously constructed system of classes that embodies a worldview as much as computational necessity.

In fact, the centrality of the notion of the *risk class* is what uniquely defines insurance as a social institution. This, as I have suggested, is a legacy of traditions of mutualism that gave rise to the insurance principle in pre-modern Europe and still provide its basic cultural infrastructure today. Pre-modern traditions of sharing risk have migrated into modern insurance through risk classification techniques that distribute individuals into “parcels,” to use Defoe's (1697, cited in Clark 1999: 124) evocative imagery, in which *like* is sorted with *like*. That insurance is organized around such groupings is key to understanding how it is different from other institutions, such as credit, used to manage risk. Critically, the insurance contract does not simply regulate a dyadic relationship between insurer and insured, but also expresses the mutual obligation of each group member to every other (cf., Heimer 1985).

Indeed, I have argued that it is the mutuality of the insurance contract that inclines insurers toward the use of gender classifications in pricing risk. The imperative of insurance to share risk within a group has a number of implications that work to privilege gender classifications over

available alternatives, as revealed by my analysis of NOW's legal campaign. First, and most fundamentally, insurers' reliance on class-based pricing requires the use of broad classifiers, such as gender, that can effectively populate "cells" in order to produce reliable statistical predictions. Second, the basic requirement that the classes used to organize risk sharing be internally homogeneous – a necessary condition lest one group of individuals absorb the costs of another – raises the problem of "subsidy." This problem is an inherently sociological one, as the social groups that potentially subsidize the risk of other groups must be legible as such. This too tends to anchor risk classification schemes in salient social categories such as "men" and "women," even where other groupings (e.g., "high" and "low mileage drivers") may be more relevant in determining the risk of accident. Finally, actuaries' privileging of internal data in their calculations of risk – a reflection of the notion that a "community of fate" exists among insureds (Heimer 1985) – serves to lock-in classifications on which data has already been collected over time. It is noteworthy in this regard that only age has a longer pedigree than gender classifications in the life and auto insurance markets studied here.

Taken together, these three features of insurance pricing – each deriving from mutual traditions requiring that risks be shared in solidaristic social groups – illustrate how gender has become fixed in the basic operations of the market, shaping how insurers assign value to risk. Importantly, gender does not offer a "context" in which market processes operate; nor is it an external impediment constraining the practices of insurers from the outside. Rather, gender is properly *inside* the domain of the economy, built into the market's apparatus of sorting and stratifying – a *gendered market device*. In demonstrating how deeply embedded gender is in insurers' pricing tools, I have elaborated the key insight of an earlier generation of feminist scholars arguing for comparable worth (see especially Acker 1989; 1990; Steinberg 1990b; 1992),

but also attempted to overcome the limitations of their analyses. The gendering of organizational processes does not stop at the boundaries of the firm, but deeply structures the market itself. In this regard, markets do not merely reproduce (or amplify) inequalities that have their origins in other aspects of the social structure, as the reigning paradigm in economic sociology and social stratification suggests (see Fourcade and Healy 2013; cf., Scott 1986). Instead, markets and gender hierarchies should be understood as *co-produced* social forms (Jasanoff 2004), accounting for how social difference is woven into the space of transacting and valuing.

In proposing to mobilize the concept of a gendered market device to explain the persistence of discrimination in insurance markets, my presumption is that a specific cultural logic is necessary to affix gendered meanings to the market's sorting and stratifying apparatus. I further presume – drawing on a rich comparative literature in economic sociology that describes how culture imprints economic practices and shapes the development of market institutions (see Dobbin 1994; Biernacki 1995; Bourdieu 2005; Fourcade 2011; Zelizer 2011) – that these cultural logics will vary across different institutional domains. Thus, while it is possible to discern gendered market devices operating outside the techniques of risk classification that I examine in this paper – e.g., credit scores (Hyman 2011; Poon 2012; Krippner 2017), performance evaluations (Rivera and Tilesik 2019; Correll et al. 2020; Springer 2020), pay-setting schemes (Adler 2022; 2024), and so on – gender difference will be enacted in material technologies in each of these domains following a cultural model unique to each particular context. This means that that while the gendered market devices concept can travel between contexts, the particulars of how discrimination works in each of these domains will be site specific.

Of course, the gendered market devices concept will be most useful (in whatever context it is applied) to the extent that the temptation to treat either cultural meaning or material technology

as “determinant” is avoided (Keane 2003). Culture is not “inscribed” in material technologies that passively transmit its instructions to those who wield these tools. Nor does technology write its own script, dictating cultural meanings that must conform to its requirements in a mechanical fashion. The advantage of the gendered market devices concept is the play it affords – material and meaning, tool and text, practice and model – in ascertaining the complex structures through which market mechanisms construct hierarchies organized around forms of social difference. Consistent with the objectives of feminists who launched the campaign for comparable worth a generation ago, the aspiration of this paper is that the concept as elaborated here might also offer insights into how these hierarchies can be deconstructed, as well.

## Appendix 1: Gendered Market Devices

**Figure 1: Risk Classification (Life Insurance)**

**Scheduled Basic Premiums - Per \$1,000@**  
**FEMALE STANDARD**  
**Add Policy Fee of \$50**  
**Annual Mode\***  
**POLICY SIZE**

AGE	\$100,000 \$249,999	\$250,000 \$499,999	\$500,000 \$999,999	\$1,000,000 and OVER
60	10.06	9.62	9.25	9.08
61	11.07	10.56	10.13	9.96
62	12.23	11.65	11.17	10.98
63	13.60	12.94	12.40	12.19
64	15.19	14.45	13.83	13.60
#65	17.04	16.21	15.50	15.25
#66	19.17	18.22	17.43	17.15
#67	21.60	20.54	19.64	19.32
#68	24.33	23.14	22.13	21.76
#69	27.31	25.98	24.84	24.42
70	30.46	28.98	27.71	27.22
+71	33.94	32.26	30.84	30.28
+72	37.78	35.88	34.29	33.64
+73	42.07	39.91	38.15	37.40
+74	46.57	44.15	42.30	41.38
+75	50.41	47.80	45.80	44.70
+76	54.30	51.51	49.59	48.37
+77	59.01	56.01	54.17	52.84
+78	64.58	61.33	59.57	58.11
+79	71.11	67.57	65.89	64.31
+80	78.74	74.85	73.25	71.55
+81	85.75	81.59	80.09	78.32
+82	94.06	89.58	88.08	86.23
+83	103.85	99.00	97.38	95.47
+84	114.97	109.73	108.01	106.07
+85	127.37	121.73	119.93	117.99
+86	140.35	134.36	132.42	130.32
+87	154.01	147.72	145.71	143.80
+88	167.72	161.20	158.92	157.23
+89	184.68	177.88	172.83	171.36
+90	203.33	196.29	187.61	186.08
+91	222.60	215.42	202.72	202.15
+92	241.63	234.44	220.47	218.88
+93	257.51	250.52	238.90	237.06
+94	288.44	281.37	265.87	264.01
+95	343.66	336.17	320.57	318.50
+96	444.62	436.18	420.56	418.14
+97	547.55	538.79	523.68	520.17
+98	649.93	641.54	630.19	624.52
+99	755.05	747.69	740.33	731.16

# Renewals only for New York non-business market.  
+ Renewals only for non-New York market.

Source: Equitable Life Insurance Rate Book (MC 623, Box 514.12, NOW LDEF Records).

**Figure 2: Risk Classification (Auto Insurance)**

<b>YOUTHFUL OPERATOR</b>						
<b>Not eligible for Good Student Credit</b>						
<b>AGE</b>			<b>UNMARRIED FEMALE</b>		<b>MARRIED MALE</b>	
			<b>Pleasure Use or Farm Use</b>	<b>Drive to Work or Business Use</b>	<b>Pleasure Use or Farm Use</b>	<b>Drive to Work or Business Use</b>
<b>WITHOUT DRIVER TRAINING</b>	<b>17 or Less</b>	<b>Factor Code</b>	<b>1.75</b> 8211--	<b>2.00</b> 8212--	<b>1.95</b> 8311--	<b>2.20</b> 8312--
	<b>18</b>	<b>Factor Code</b>	<b>1.60</b> 8221--	<b>1.85</b> 8222--	<b>1.85</b> 8321--	<b>2.10</b> 8322--
	<b>19</b>	<b>Factor Code</b>	<b>1.50</b> 8231--	<b>1.75</b> 8232--	<b>1.75</b> 8331--	<b>2.00</b> 8332--
	<b>20</b>	<b>Factor Code</b>	<b>1.25</b> 8241--	<b>1.50</b> 8242--	<b>1.65</b> 8341--	<b>1.90</b> 8342--
<b>WITH DRIVER TRAINING</b>	<b>17 or Less</b>	<b>Factor Code</b>	<b>1.60</b> 8261--	<b>1.85</b> 8262--	<b>1.70</b> 8361--	<b>1.95</b> 8362--
	<b>18</b>	<b>Factor Code</b>	<b>1.50</b> 8271--	<b>1.75</b> 8272--	<b>1.65</b> 8371--	<b>1.90</b> 8372--
	<b>19</b>	<b>Factor Code</b>	<b>1.40</b> 8281--	<b>1.65</b> 8282--	<b>1.60</b> 8381--	<b>1.85</b> 8382--
	<b>20</b>	<b>Factor Code</b>	<b>1.20</b> 8291--	<b>1.45</b> 8292--	<b>1.55</b> 8391--	<b>1.80</b> 8392--

Source: Government Accounting Office (1979)

## Appendix 2: Data Sources

### Archival Materials

Schlesinger Library, Radcliffe Institute, Harvard University, Cambridge, Massachusetts

- 496 Records of the National Organization for Women, 1959-2002.
- 623 Records of the NOW Legal Defense and Education Fund, 1968-2008.
- 663 Papers of NOW officer Patricia Ireland, 1972-2005.
- 666 Additional Records of the National Organization for Women, 1970-2011.

Minnesota Historical Society, St. Paul, Minnesota

- 143 David Durenberger Senatorial Files, 1954-1994

### Interviews

Martha Davis Lead Attorney, NOW LDEF, interviewed in Boston, Massachusetts, February 10, 2017.

Deborah Ellis Attorney, NOW LDEF, interviewed in Newark, New Jersey, February 7, 2017.

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