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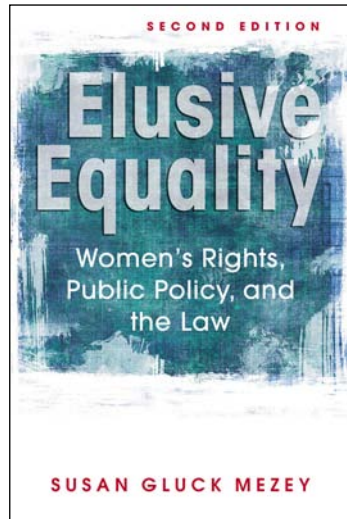
**Elusive Equality:
Women's Rights,
Public Policy, and the Law**

SECOND EDITION

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Introduction: Women and Equality

My aim in writing this edition of *Elusive Equality: Women's Rights, Public Policy, and the Law* is to examine the current status of gender equality in the United States, specifically to determine whether the nation has become more egalitarian since the first edition was published.

The first edition showed that a number of contentious legal issues remained to be resolved and that women's struggles for equal opportunity were far from over. This edition, recognizing that society has made significant advances in gender equality, began with a sense of optimism, for it is no longer unusual to see women holding positions of prestige and authority. Today women are, among other things, lawyers, surgeons, judges, public officials, politicians, CEOs, scientists, investment bankers, professors, astronauts, physicians, generals, and admirals. There is also evidence that women are earning higher incomes and have higher levels of education than ever before.

At the same time, there are troubling signs that a good deal of this progress is ephemeral and not evenly distributed throughout society, with lower-income women, less educated women, gay women, and women of color not receiving their share of the gains. And women, no matter what their race, education, or age, continue to lag behind men in corporate executive positions, law partnerships, high-ranking military offices, prestigious university professorships, and as high-salaried sports figures. Moreover, disturbing signs of women's continued inequality are reflected in the persistence of pay inequity, the ongoing difficulties of managing work and family, and the continuous efforts to restrict reproductive freedom. At a minimum, an egalitarian society requires that women are paid according to their worth, have control over their reproductive decisionmaking, and receive assistance in balancing the responsibilities of work and family.

Law as an Instrument of Social Change

This book updates the story of the continuing struggle for gender equality in the United States, focusing on public policy issues affecting women's rights. Like the first edition, it is written from the perspective of liberal feminism—the prevailing paradigm of the modern U.S. women's movement. Focusing on federal court decisionmaking, it reflects the belief that removing the legal constraints that impede women's rights and opportunities is crucial to furthering the objectives of the women's movement and advancing gender equality. An essential component of social change, legal action plays an important role in eliminating many of the constraints that society imposes on the basis of gender, and thus the courts are an integral part of the struggle for gender equality.

Waves of Feminism

The first wave of feminism grew out of the abolitionist movement in the mid-1800s and subsided with the passage of the Nineteenth Amendment in 1920. In part, the successful conclusion of the struggle for the right to vote left the leaders of the woman suffrage movement uncertain about the direction of future movement activity. The upheaval of two world wars and the Great Depression, and perhaps also an awareness of the enormity of their tasks, frustrated their efforts to mount new battles to achieve a more equal and just society.

Women's rights advocacy reasserted itself in the latter part of the twentieth century, when women began to rally under the banner of feminism, an ideology seeking to empower women in their public and private lives. In the 1960s, the feminist movement, also known as the women's rights movement or the women's liberation movement, began the slow—and as yet incomplete—task of transforming society to end women's subordination to men. This second wave of feminism sprang from women's participation in the civil rights and antiwar movements of the early 1960s. Equally committed with men to bringing about an end to racial discrimination and the war in Vietnam, women discovered that their voices were often unheard and they were expected to remain silent while the men made the important decisions and took credit for successful collective actions. Women vowed that they would no longer accept their unequal status, and while continuing to fight for racial equality and peace, they began to call attention to the imbalance of power in the workplace and in the home. During this second wave of feminism, the success of women's rights advocacy was evident in the passage of a

panoply of federal laws banning pay disparity between the sexes and prohibiting discrimination on the basis of sex in employment, education, credit, and housing. Following in the steps of earlier social movements, feminists turned to the courts for assistance in enforcing their legislative gains. At the same time, women also mounted legal challenges against state and federal laws based on traditional and stereotypical notions of men and women's roles. Concomitant with these actions, women engaged in efforts to expand reproductive rights—again, largely through the courts—as part of a broader movement to enhance individual rights of privacy. Their multifaceted litigation efforts transformed most attacks on inequality into legal challenges, many of which succeeded in bringing about important societal changes.

More recently, in the early 1990s, a new type of feminism, known as third-wave feminism, emerged. Although adherents of this viewpoint do not always agree on the proper analysis of society's deficiencies, the appearance of the new wave indicated dissatisfaction with many of the premises of the 1960s brand of feminism and concern about the limits of its goals, methods, and achievements. Many of the third-wave feminists are the daughters of the second wave, seeking to forge their own images and beliefs, in part accepting the former generation's accomplishments and in part demanding a new approach that displays greater concern about inequalities based on class, race, ethnicity, cultural identity, and sexual orientation. Although some third-wave adherents acknowledge the contributions of the second-wave feminists and may even agree with many of their goals (such as reproductive freedom), third-wave feminists typically reject the significance of legal change and do not view litigation as a key feminist strategy. Rather, their strategies are based on the multiplicity of women's characteristics, concern with the role of the media and its portrayals of women, greater awareness of a global perspective, and increased acceptance of femininity and sexuality.

These waves of feminism, reflecting generational differences as well as different beliefs about the important issues of the moment, represent divergent views on the meaning of feminism and social change. Taken together, however, their supporters are all committed to the goal of greater egalitarianism and have important things to say about how to achieve it.

The Plan of the Book

In assessing the progress the women's movement has made in eliminating barriers to equal opportunity in the United States, this book bridges the gap between law and public policy. It presents women in their roles as citizens,

workers, students, wives, and mothers, discussing the role of legal change in reforming social, economic, and political institutions. It does so by exploring a wide array of policy issues affecting women and men, including sex-based legal classifications, the Equal Rights Amendment (ERA), single-sex education, women's participation in sports, employment discrimination, equal pay and comparable worth, fetal protection policies, the preferential status of pregnancy in the workplace, family leave, sexual harassment at work and in school, the balance between family and work, and women's reproductive autonomy. The chapters deal with constitutional sex equality; educational equity; women and employment, including sex discrimination, pay equity, sexual harassment, and pregnancy policies; and abortion rights.

Emphasizing the effect of the role of law on societal change, the book provides a comprehensive analysis of how women's rights are closely tied to the courts and public policy decisionmaking.