

# ESSAY

## LIFE'S WORK

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*In this Essay, Professor Schultz develops a vision of social justice grounded in the redistribution and restructuring of paid work. Work is a site of deep self-formation offering rich opportunities for human flourishing or devastation. Although society has been slow to understand the significance of paid work to women, research suggests that women who work for a living are better off than other women in many ways. Currently, however, transformations in the structure of work are increasing insecurity and deepening inequality for all but those at the top; many once privileged workers now face conditions akin to those that women and disadvantaged men have long confronted. These trends demand political attention. Professor Schultz urges that we remake law and culture to create a world in which everyone has the right to participate meaningfully in life-sustaining work, with the social support necessary to do so. She calls upon feminists to forego narrow identity politics in favor of joining with a broad array of other groups to fashion a social order in which work provides a foundation for egalitarian conceptions of citizenship and care.*

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#### INTRODUCTION

When I was a girl, I dreamed of being a writer, an actress, or a missionary. I took it for granted that I would have a child along with my career one day. Not everyone shared this assumption. In college, I was shocked when my mother suggested I couldn't go to law school, because I would soon marry and have a baby; working families like ours couldn't afford to waste such an expensive education on a woman. But, I recall asking, why couldn't I still be a lawyer if I had a family? Wasn't my brother planning to have both a career and a family? If he could find a wife who would help him raise his children, couldn't I find a partner who would do the same? Couldn't we find people to help us while our children were young, people who saw nurturing children as their calling just as I was beginning to see cause lawyering as mine? After all, I dared, hadn't mom worked while we were growing up, just like dad—not simply because we needed the money, but also because she needed to do something she could call her own in the wider world, something that made her feel like she was more than just somebody's wife, somebody's mother? And hadn't she, in fact, reaped those rewards from working, even if some people had looked down on her work?

The answer to all these questions turned out to be yes, not only for me and my mother, but for most women of our era. When I went to law school, I discovered feminism and realized that there was a language—an entire social movement—devoted to providing women with affirmative answers to these questions. Yet even though almost all women are now combining careers with raising families or caring for others (like many men), not everyone has access to equal work, and not all working people have access to the good life. All my adult life I have been part of the

feminist movement, at both the professional and the most deeply personal levels, because I believe it is imperative to create a world in which all women and men can pursue their chosen callings and all working people can live with justice, equality, and dignity. I have been privileged to call this my life's work.

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In this Essay, I elaborate on the concept of a "life's work" to describe some of the central elements of a utopian vision in which women and men from all walks of life can stand alongside each other as equals, pursuing our chosen projects and forging connected lives. In the process, we come to view each other as equal citizens and human beings, each entitled to equal respect and a claim on society's resources because of our shared commitments and contributions. As individuals, our work provides us with a forum to realize at least some of our aspirations, to form bonds with others, to serve society, and to project ourselves into the larger world beyond our own families and friends. It also provides us with the wherewithal to sustain ourselves, economically and socially, so that we may enter into intimate relationships with the security that permits us to love (and leave) freely, without need of recompense. This world of equal citizenship, stable community, and a strong, secure selfhood for everyone is the world I believe feminism was born to bring into being.

Recently, however, a number of feminists and liberals have begun to move away from such a vision; some even associate an emphasis on equal work with conservatism. Some feminist legal scholars now advocate paying women to care for their own families in their own households; many seem to have given up on achieving genuine gender integration of the work done in both households and workplaces. Some liberal thinkers urge that we provide everyone a guaranteed income or capital allotment; they believe tying the distribution of social goods to work interferes with individual freedom and choice. The presence of these discourses has moved me to articulate a feminist vision of the significance of paid work to the good life, to equality, and to women. I agree that it is vitally important to create society-wide mechanisms for allocating the costs of household labor and for allowing people to realize their preferences. But, unless we pay attention to the institutional contexts through which housework is valued and individual choice realized, stubborn patterns of gender inequality will continue to reassert themselves—including the gender-based distribution of work that is at the root of women's disadvantage. In the search for social justice, separatism simply won't suffice.

In my view, a robust conception of equality can be best achieved *through* paid work, rather than *despite* it. Work is a site of deep self-formation that offers rich opportunities for human flourishing (or devastation). To a large extent, it is through our work—how it is defined, distributed, characterized, and controlled—that we develop into the "men" and "women" we see ourselves and others see us as being. Because law's domain includes work and its connection to other spheres of existence,

the prospect of who we become as a society, and as individuals, is shaped profoundly by the laws that create and control the institutions that govern our experiences as workers. I believe that it is only by recognizing the formative power of such forces that we can imagine and invent ourselves as full human agents.

This subject is enormous and I cannot hope to do it justice here. I will sketch, in a very preliminary way, four key themes. Part I discusses a theme to which I have already alluded: the notion that people are shaped deeply by our work. Our historical conception of citizenship, our sense of community, and our sense that we are of value to the world all depend importantly on the work we do for a living and how it is organized and understood by the larger society. In everyday language, we are what we do for a living.

As I show in Part II, our society has been slow to understand this fundamental feature of socialization to be true for women (although we believe it is true for men). Our views of women have been distorted by family-wage ideology, "the sex/gender/family system that prescribes earning as the sole responsibility of husbands and unpaid domestic labor as the only proper long-term occupation for women."<sup>1</sup> Family-wage thinking has left us with a mythologized but misleading image of women as creatures of domesticity—and not of paid work. This view inhabits labor economics, anti-discrimination law, and even some strands of feminist thought. In policy terms, it finds expression in the proposition that it is women's position within families, rather than the workworld, that is the primary cause of women's economic disadvantage, and hence should be the primary locus for redistributive efforts.<sup>2</sup> This view is both empirically inaccurate and theoretically counterproductive; it reifies gender-based patterns of labor and perpetuates class bias. I will argue that we must move beyond family-wage thinking and instead adopt strategies that promote gender integration across both paid and unpaid work in order to improve the lives of women, men, and children from all social and economic walks of life.

As Part III shows, social justice now demands our deepest attention to work, because the conditions of work are changing profoundly in ways that threaten the social and political order for all but those at the very top. At risk are the conditions that allow people to form stable lives and identities through their work. As multinational corporations seek more flexible forms of production and labor around the globe, more and more people face greater insecurity and reduced opportunities to shape their lives around a coherent narrative involving steady, life-sustaining work. Many white men now confront some of the same problems women (and marginalized men) have long faced.

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1. Linda Gordon, *Pitied But Not Entitled: Single Mothers and the History of Welfare 1890–1935*, at 53 (1994).

2. See *id.* at 53–59.

These trends present deep challenges, but they also provide us with the opportunity to reshape social life by democratizing work. Some have suggested that we should abandon our historic emphasis on work and create alternative paths to the good life. But, as I shall argue in Part IV, paid work is the only institution that can be sufficiently widely distributed to provide a stable foundation for a democratic order. It is also one of the few arenas in which diverse groups of citizens can come together and develop respect for each other due to shared experience. Ordinary citizens understand the significance of work very well. Over the past thirty years, people from all walks of life—racial and ethnic minorities, the poor, women of all races, the aging, and people of all different physical abilities and sexualities, to name but a few—have demanded equal work, for themselves and for the sake of their children.

But employment discrimination law alone will not get us where we need to go. Despite some considerable achievements, this body of law is simply not capable of generating the structural transformations necessary to create the conditions in which work can provide the basis for equal citizenship for all. To move forward, we must craft a new language that expresses ordinary people's understandings of why work matters. We must remake our laws and culture to create a world in which everyone has the right to participate in the public world of work, with all the social support that that entails; we must also demand conditions for work that are sustainable over the course of a lifetime. Along with life, liberty, and the pursuit of happiness, it is time to insist: "We have a right to a life's work."

This project will require a more ambitious reimagining of the relationship between the state and the market—and a more ambitious set of politics—than feminists sometimes propose. Paid work has the potential to become the universal platform for equal citizenship it has been imagined to be, but only if we ensure meaningful participation in the workforce by attending to the specific needs of various social groups and individuals. In the past, legal efforts to achieve equality focused on protecting people from identity-based discrimination; we have tended to take the number and quality of jobs, job-holding services, wages, and working conditions produced by the market as a neutral baseline to which no one is to be denied access because of group status. But in order to make paid work the basis for equal citizenship, we will have to take steps to ensure that what the market produces is both substantively adequate and universally available for everyone. This means that, in the future, we will have to supplement employment discrimination law with measures like job-creation programs, wage subsidies, universal child care and health care programs, enhanced employee representation, and a reduced workweek for everyone. To achieve such reforms, feminists must move beyond an identity politics that presses for cultural recognition and revaluation of "women's experience." We must join forces with a broad array of groups—including the labor movement—not simply to advance each other's inter-

ests, but to fashion a shared interest in creating a social order in which work is consistent with egalitarian conceptions of citizenship and care.

### 1. THE IMPORTANCE OF WORK<sup>3</sup>

In the United States (perhaps even more than in other Western democracies), work has been fundamental to our conception of the good life.<sup>4</sup> It has been constitutive of citizenship, community, and even personal identity.<sup>5</sup>

#### A. *Citizenship*

At least since the Industrial Revolution, work has been a central foundation for our notion of citizenship. Historically and theoretically, what we have called for in citizens is the perceived capacity for “independ-

3. There are, of course, many controversies about how to define work. For an overview of definitions and controversies in historical development, see generally Keith Thomas, Introduction to *The Oxford Book of Work* at xiii–xxiii (Keith Thomas ed., 1999) (providing an historical overview of how and why society developed various definitions of work). In this Essay, I sidestep these controversies and focus on work performed for pay. That does not mean I believe this is the only or even the truest definition of “work” in a more abstract sense. Feminists have insisted that unpaid housework and child care is “work,” and I agree. But, part of my purpose here is to emphasize the value of paid work to women and to feminism—indeed, to the project of securing a more robust conception of equal citizenship generally—and to link that point to the changing plight of workers in the new economy for purposes of proposing a direction for a forward-thinking feminist politics.

4. Placing value on work has deep roots in Western civilization. See Anthony Kronman, *Meaningful Work* 15–20 (Feb. 1995) (unpublished manuscript, on file with the *Columbia Law Review*). According to Kronman, the idea that work can possess intrinsic value was made possible by the Judeo-Christian tradition. With the story of divine creation and humankind’s fall from paradise, the realm of necessity—work—became imbued with a spiritual significance that was unimaginable for the ancient Greeks. In Kronman’s account, the Judeo-Christian belief in the historicity of the world made possible the idea of human agency—the view that people could act upon the world, by working on it, to complete God’s work. See *id.* This concept of human agency through work had radical implications, for “it implied that all human labor—not just the holy labor of monks but the most mundane activities of ordinary men and women too—might be viewed as possessing a spiritual value of its own.” *Id.* at 24. This understanding brought a new possibility for egalitarianism, for if we are all capable of working for the glory of God, then, “[w]hy should some . . . be freed from the necessity of work by arranging things so that they are able to live off the work of others?” *Id.* at 18. Despite its religious foundations, Kronman emphasizes, the notion of work as meaningful still retains its force in the political societies of the West. See *id.* at 27.

5. After I had substantially completed this Essay, I discovered Kenneth L. Karst’s wonderful piece, *The Coming Crisis of Work in Constitutional Perspective*, 82 *Cornell L. Rev.* 523 (1997). Karst powerfully describes the importance of work to personal identity, to the creation of communities, and to the prospect of a united and equal citizenry—just as I aspire to do here. See *id.* at 530–33. Karst also proposes recognizing a set of rights to work, see *id.* at 553–59, although we part ways somewhat with respect to how to deal with the gendered allocation of labor as will become clear below, see *id.* at 566–70 (arguing in favor of government payments for women to care for their own families rather than collectivizing household labor).

dence."<sup>6</sup> This, in turn, has been linked to the capacity to earn one's own living.<sup>7</sup> With the transition from an agricultural to an industrial economy, the conditions for securing a living changed, and so did the material basis for independence. As America transformed from a nation of small proprietors to a nation of wage earners, the image of a rights-bearing citizen changed from one who owned a farm or family business to one who went out to work for someone else.<sup>8</sup> This shift entailed a transvaluation of both citizenship and labor: With the enfranchisement of propertyless men, the independence associated with political virtue no longer resided in owning productive property, but instead in owning the right to sell one's own labor.<sup>9</sup>

This shift created a complex legacy. On the one hand, the abolition of slavery and the establishment of paid work as the foundation for citizenship reinforced the market-oriented definition of self-ownership that became the cornerstone of laissez-faire ideology.<sup>10</sup> Freedom of labor became associated with freedom of contract, an association that limited rights for working people.<sup>11</sup> In addition, the "independence" of newly-enfranchised wage earners drew on an image of "dependence," not only of slaves but of all women, whose work in the home freed men to participate in wage work for the hours demanded by the new industrial order.<sup>12</sup>

At the same time, the shift to wage labor created a public rhetoric that acknowledged the dignity of labor and, by extension, of all working people. As "freedom to work" became a more important cultural ideal than "freedom from work," even a menial laborer could feel equal (if not superior) to patrician nonproducers.<sup>13</sup> Thus, even as it fed on a market definition of free labor, the turn toward wage labor carried a subversive potential for a more expansive conception of rights. Because, at least theoretically, anyone could work for wages—including women—paid work opened up the possibility of a more universal platform for political rights. Furthermore, if women and youth could work in factories, earn-

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6. See Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* at xii–xiii (1995); Alice Kessler-Harris, *A Woman's Wage: Historical Meanings and Social Consequences* 31–32 (1990); Carole Pateman, *The Patriarchal Welfare State*, in *Democracy and the Welfare State* 231, 238 (Amy Gutmann ed., 1988).

7. See Judith N. Shklar, *American Citizenship: The Quest for Inclusion* 64 (1991).

8. See Foner, *supra* note 6, at xii–xvii.

9. See *id.*; William E. Forbath, *Caste, Class and Equal Citizenship*, 98 *Mich. L. Rev.* 1, 19–21 (1999) [hereinafter Forbath, *Equal Citizenship*].

10. See Foner, *supra* note 6, at xii–xvii; Forbath, *Equal Citizenship*, *supra* note 9, at 18–20.

11. See Foner, *supra* note 6, at xvi–xvii; cf. *Lochner v. New York*, 198 U.S. 45 (1905) (associating freedom of labor with freedom of contract).

12. See Amy Dru Stanley, *From Bondage to Contract: Wage, Labor, Marriage, and the Market in the Age of Slave Emancipation* 175–217 (1998); Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 *Signs* 309, 314–19 (1994).

13. Foner, *supra* note 6, at xxiii–xxiv.

ing and keeping their own wages, over time this might erode the patriarchal authority of the male head-of-household in both the home and the polity. Finally, of course, for both men and women, working for someone other than one's kin freed people to organize collectively to improve their situation. "Free labor was wage labor," insisted Samuel Gompers, "and should organize as such, seeking security of employment and favorable wages and working conditions, not the utopian dream of economic autonomy."<sup>14</sup> As the corporation replaced the independent producer as the driving force of the economy, independence came to mean control over the conditions and compensation for work rather than self-employment, and paid work became the foundation for citizenship.

The promise of equal citizenship grounded in paid work has not been realized. Still, diverse social movements have struggled continuously to make good on that promise. At crucial times in our history, including the New Deal, the labor movement, the civil rights movement, and strands of the women's movement have championed an affirmative conception of the right to work as the basis for a robust, equal social citizenship.<sup>15</sup>

### B. *Community*

Just as paid work has been a crucial component of citizenship, it has also been an important building block for community. Working for a living provides people with a sense of belonging and contributing something of value to a group larger than ourselves or our loved ones: The rhythms, social relationships, and institutions of work provide important foundations for community stability. For the privileged among us, it is easy to take for granted—indeed, not to notice—the shoring up of our neighborhoods and networks that flows from the fact that we and our friends and fellow residents go to work each day. The work of social scientists such as William Julius Wilson has begun to make this process visible. "When work disappears," the neighborhood institutions that sus-

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14. *Id.* at xxxviii.

15. See Gordon, *supra* note 1, at 209–51; Shklar, *supra* note 7, at 79–88; Forbath, *Equal Citizenship*, *supra* note 9, at 25–60, 85–89. Some scholars have argued that a universal right to work was an important part of the New Deal—although much of that agenda went unrealized. See Philip Harvey, *Securing the Right to Employment: Social Welfare Policy and the Unemployed in the United States* 3–4, 18–20, 99–117 (1989). Indeed, President Franklin D. Roosevelt's 1944 State of the Union address called upon Congress to create an "economic bill of rights." *Id.* at 4. The first two items on the agenda were (1) "[t]he right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;" and (2) "[t]he right to earn enough to provide adequate food and clothing and recreation." Franklin D. Roosevelt, *Message to the Congress on the State of the Union* (Jan. 11, 1944), in 13 *The Public Papers and Addresses of Franklin D. Roosevelt* 32, 41 (Samuel I. Rosenman ed., 1950).

tain social integration and strengthen the capacity to socialize children also tend to crumble.<sup>16</sup>

Wilson shows that, like the residents of Marienthal, Austria, who were studied in 1930 when their factory shut down, many inner-city residents who lack access to steady jobs have become politically and socially inactive as they have lost a sense that they can be efficacious in the world. This does not mean that the unemployed no longer believe in the values of work and discipline. With the loss of opportunity for stable employment and community institutions, they have difficulty holding on to the belief that they can realize those values in their own lives.<sup>17</sup>

Poor inner-city people are not the only ones who withdraw from community life when they lose their jobs. In sociologist Richard Sennett's new book, *The Corrosion of Character*, middle-aged, affluent white men who were "downsized" from their jobs as IBM programmers similarly withdrew from civic life:

Formerly town aldermen and school board members, they have now dropped out from pursuing these offices. They aren't afraid of holding up their heads in the community, since so many people in . . . town have been dismissed by IBM or suffered financially as shop owners and tradesmen from the shake-up. They've just lost interest in civic affairs.<sup>18</sup>

Having lost their place in the workworld, these men are lost to the larger world. Nor is such a loss of self simply a male phenomenon. Amartya Sen cites evidence that unemployment is particularly hard on young women, who may experience even more severe self-esteem and demoralization problems (as well as more difficulty reentering the labor market) than their male counterparts.<sup>19</sup> There is also extensive evidence that ma-

16. William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* 61–65 (1996). As Wilson puts it:

[W]ork is not simply a way to make a living and support one's family. It also constitutes a framework for daily behavior and patterns of interaction because it imposes disciplines and regularities. Thus, in the absence of regular employment, a person lacks not only a place in which to work and the receipt of regular income but also a coherent organization of the present—that is, a system of concrete expectations and goals. Regular employment provides the anchor for the spatial and temporal aspects of daily life. It determines where you are going to be and when you are going to be there. In the absence of regular employment, life, including family life, becomes less coherent.

Id. at 73.

17. See id. at 73–78; Jay MacLeod, *Ain't No Makin' It: Aspirations and Attainment in a Low-Income Neighborhood* 217–31 (1995) (noting how inner-city unemployment corrodes family and neighborhood networks).

18. Richard Sennett, *The Corrosion of Character: The Personal Consequences of Work in the New Capitalism* 130 (1998); see also Susan Faludi, *Stiffed: The Betrayal of the American Man* 61–66 (1999) (describing unemployment's social and psychological impact on white, middle-aged, college-educated men).

19. See Amartya Sen, *The Penalties of Unemployment* 14 (Banca D'Italia, Working Paper No. 307, 1997) (on file with the *Columbia Law Review*); see also Arthur H. Goldsmith et al., *The Psychological Impact of Unemployment and Joblessness*, 25 *J. Soc-Econ.* 333,

ture women who are not employed suffer greater problems with low self-esteem—as well as higher levels of depression and other serious health problems—than do working women.<sup>20</sup>

### C. Identity

All of this underscores the third point, which is the importance of work to our behavior, aspirations, and identity. Rosabeth Moss Kanter opens her classic book, *Men and Women of the Corporation*, by noting:

The most distinguished advocate and the most distinguished critic of modern capitalism were in agreement on one essential point: the job makes the person. Adam Smith and Karl Marx both recognized the extent to which people's attitudes and behaviors take shape out of the experiences they have in their work.<sup>21</sup>

Kanter shows, in brilliant detail, how jobs create people.<sup>22</sup> In her account, people adapt their actions—indeed, even their hopes and dreams and values—to function as well as possible within the parameters established by their work roles. There is the manager whose need for trust in an organization that cannot eliminate uncertainty leads him to hire others just like him; yet exercising such social conformity in the selection process undermines the very idea of a meritocracy on which the corporation and the manager's own legitimacy is founded.<sup>23</sup> There is the secretary whose higher-ups reward her for loyalty and “love” rather than performance; yet, exhibiting the very traits and behaviors expected of such a loyal subject—timidity, emotionality, parochialism, and praise addiction—undermines the secretary's perceived professionalism and, hence, her ability to move upward within the organization.<sup>24</sup>

The process of adapting ourselves to our work roles does not stop at the office door or factory gate. As human beings, we are not purely instrumental, and we cannot easily compartmentalize the selves we learn to become during working hours. In fact, most of us spend more time working than doing anything else. So, it should not be surprising that the strategies we use to succeed as workers become infused into our behavior,

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349 (1996) (arguing that young females suffer more psychological scarring than males from unemployment).

20. See Rosalind C. Barnett & Caryl Rivers, *She Works, He Works: How Two-Income Families Are Happy, Healthy and Thriving* 28–29 (1996); *infra* notes 98–101 and accompanying text.

21. Rosabeth Moss Kanter, *Men and Women of the Corporation* 3 (1977) [hereinafter *Kanter, Men and Women*].

22. See also Karst, *supra* note 5, at 530–33 (providing examples of how jobs shape people's senses of ourselves, our habits, and other people's evaluations of us).

23. See *Kanter, Men and Women*, *supra* note 21, at 5.

24. See *id.*

thoughts, feelings, and senses of ourselves—our very beings—with real spillover effects in our so-called “private” lives.<sup>25</sup>

Consider one of my favorite films, *The Remains of the Day*.<sup>26</sup> Anthony Hopkins plays Mr. Stevens, the head butler to an English nobleman, Lord Darlington. Mr. Stevens's tragedy is that he so faithfully adheres to the ethic of steadfast, loyal service to his master (and, he believes, his nation) that he cannot even question, let alone condemn, the lord's deepening collaboration with the Nazis—a collaboration which ultimately disgraces the estate. At the same time, Mr. Stevens's self-effacing, dignified service as a butler so suffuses his sense of self that he cannot bring himself to even feel, let alone express, his growing love for the house's headmistress. A great butler, he is caught in a dilemma of duty that tragically undermines his capacity to serve his master, or even his own heart, in a deeper, fuller way.

Although there is tragedy in this account of work's influence, there is also reason for hope. If people's lives can be constrained in negative ways by their conception of their occupational roles, they can also be reshaped along more empowering lines by changing work or the way it is structured or understood. The literature is filled with examples of people whose lives have been transformed in positive ways through their work. One powerful set of stories comes from women who entered the skilled trades in the 1970s, when affirmative action opened nontraditional careers to women for the first time. When these women were stuck in low-paying, dead-end jobs, they showed no real commitment to work. But when new lines of work opened up to them, many women aspired for the first time to take up jobs they had never previously dreamed of doing.<sup>27</sup> Although many of the women took their new jobs out of financial need, the jobs quickly became more than a paycheck; the women felt they had come into their own at last.<sup>28</sup> For many, the positive effects of their new

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25. The influence of the “public” industrial order on our innermost “private” selves is, of course, one of the themes of the sociological classics. See generally C. Wright Mills, *White Collar* at ix–xx (1953) (showing how the shift to white-collar occupations profoundly influenced twentieth-century personality); William H. Whyte Jr., *The Organization Man* (1956) (showing how the ideology of belonging to the corporation captured middle-class managers and reshaped social life in the 1950s).

26. *The Remains of the Day* (Columbia Pictures Corp. 1993).

27. For a fuller elaboration of this point, see Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Defense*, 103 *Harv. L. Rev.* 1749, 1829–32 (1990) [hereinafter Schultz, *Telling Stories*] and sources cited therein; see also Susan Eisenberg, *Electrician*, in *Hard-Hatted Women: Stories of Struggle and Success in the Trades* 216, 224 (Molly Martin ed., 1988) (“Whenever I have strong thoughts about giving up the work, though, I realize it is more than the high pay that keeps me there. There's something about the work and the culture that has crept into my bones.”).

28. See Mary Walshok, *Blue-Collar Women: Pioneers on the Male Frontier* 140–48 (1981).

work roles on their self-esteem permeated their identities, and they found the courage to change and grow in other aspects of their lives.<sup>29</sup>

As these examples suggest, it is not only academics and filmmakers who have stressed how important our work is to our identity. Ordinary folks have said so in their own words, as Studs Terkel's marvelous oral history of working people confirms.<sup>30</sup> As he notes in his introduction: "This book, being about work, is, by its very nature, about violence—to the spirit as well as to the body. . . . It is, above all (or beneath all), about daily humiliations."<sup>31</sup> Yet, work also provides a foundation for our dreams: "It is about a search, too, for daily meaning as well as daily bread, for recognition as well as cash, for astonishment rather than torpor; in short, for a sort of life rather than a Monday through Friday sort of dying."<sup>32</sup>

For better or worse, the people in Terkel's book—like people everywhere—testify that work matters. Whether they feel beaten down by it, bored by it, or inspired by it, it affects who they are profoundly. They ask someone, "Who are you?," and they answer, "I'm an autoworker," or "a nurse." Most fundamentally, they define ourselves in terms of the work they do for a living.<sup>33</sup>

## II. WOMEN AS INAUTHENTIC WORKERS

The idea that work shapes identity may not be controversial when applied to men who work in high-status occupations. We understand that "the job makes the man." However, we almost never assume that the same is true of women. Despite women's presence in the paid labor force in overwhelming numbers, we still tend to see women as inauthentic workers. It is not simply conservative dogma, but also anti-discrimination law and even some strands of feminism that have embraced this view.

In the conventional conception of femininity, women are first and foremost committed to domesticity—as wives, mothers, daughters, sisters, general nurturers, and providers of care and cleanup. Sometimes, this connection is portrayed as natural and essential, either biologically endowed or so deeply ingrained in our psyches that it would be almost impossible to change. In other theories, it is learned through early childhood socialization or constructed through mass culture (such as the

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29. As machinist Sue Doro put it, "Being in the trades taught me to be stronger. . . . [I]t gave me a sense of self-worth. Working with machinery also gave me a feeling of power that I had never experienced before." Sue Doro, *Machinist*, in *Hard-Hatted Women: Stories of Struggle and Success in the Trades*, *supra* note 27, at 254, 261.

30. See Studs Terkel, *Working: People Talk About What They Do All Day and How They Feel About What They Do* (1974).

31. *Id.* at xi.

32. *Id.*

33. Or the lack thereof. As Carol Sanger pointed out to me, even the desperate (or defiant) response "just a housewife" reveals the significance of paid work to our sense of ourselves and our understanding of how others see us.

media). But even in the versions in which women's attachment to home and hearth is seen as acquired rather than given, that attachment is seen as fixed firmly in place long before women ever begin working (or searching for work). If women's domestic orientation is fixed by the time we enter the labor force, then women's actions, aspirations, and self-understandings cannot and will not change much in response to our experiences in the world of paid work.<sup>34</sup> Thus, in the conventional view, paid work neither creates nor offers any hope of relief from the material and other disadvantages that mark women's lives.

#### A. *Human Capital Theory*

The starkest example of this conventional thought is found in human capital theory in economics. In Gary Becker's work, for example, women's disadvantaged position in the workplace stems not from discrimination, but from women's alleged "comparative advantage" at housework and child care.<sup>35</sup> Because women are better than men at these tasks, Becker and other human capital theorists contend, we look for jobs which more easily accommodate "our" responsibility to perform them.<sup>36</sup> In the face of embarrassing evidence that traditionally female jobs do not penalize women less for discontinuing or dropping in and out of the labor market than do traditionally male jobs—indeed, Paula England's work suggests that women's jobs pay less at every stage of the life cycle than men's do<sup>37</sup>—human capital theory was in danger of being discredited. Then, Becker added a more refined explanation: In order to con-

34. See Schultz, *Telling Stories*, supra note 27, at 1817.

35. Gary Becker, *A Treatise on the Family* 22 (1981) [hereinafter Becker, *Treatise*] ("If women have a comparative advantage over men in the household sector when they make the same investments in human capital, an efficient household with both sexes would allocate the time of women mainly to the household sector and the time of men mainly to the market sector.").

36. In some early versions of human capital theory, this implied that women looked for jobs with lower depreciation of human capital during childbearing years, so that they would suffer a lesser penalty for dropping out of the workforce to raise young children. See Jacob Mincer & Solomon Polachek, *Family Investments in Human Capital: Earnings of Women*, 82 *J. Pol. Econ.* S76, S94 (1974); Solomon William Polachek, *Occupational Self-Selection: A Human Capital Approach to Sex Differences in Occupational Structure*, 63 *Rev. Econ. & Stat.* 60, 62–63 (1981). Alternatively, it implied that women looked for jobs with higher starting wages, but lower rates of appreciation, so that they could earn relatively more in their early years of working before they dropped out of the workforce to care for their families. See Harriet Zellner, *The Determinants of Occupational Segregation*, in *Sex, Discrimination, and the Division of Labor* 125, 133–43 (Cynthia B. Lloyd ed., 1975); cf. Becker, *Treatise*, supra note 35, at 25 (arguing that "the market wage rates of married men will exceed those of married women, partly because women spend more time in the household and invest more in household human capital"); Victor R. Fuchs, *Women's Quest for Economic Equality* 4 (1988) (arguing that "[w]omen's weaker economic position results primarily from conflicts between career and family, conflicts that are stronger for women than for men").

37. See Paula England, *Comparable Worth: Theories and Evidence* 25, 52 (1992) [hereinafter England, *Comparable Worth*]; Paula England, *The Failure of Human Capital*

serve energy for our family duties, women look for jobs that require less effort. Because such jobs are overcrowded or because those who do them are less productive, the jobs pay less. As a result, women earn lower wages than men, which only increases the incentive for a couple to invest more in developing the man's skill in connection with paid work, while allowing the woman's human capital to stagnate as she becomes more embroiled in running the household.<sup>38</sup>

There are a number of problems with human capital theory, not least of which is a lack of empirical support.<sup>39</sup> Sociological research suggests that women's lower pay is due mainly to the fact that we are segregated into separate-but-less-remunerative occupations, firms, and jobs<sup>40</sup> (and even to the fact that we are often paid less than men in the same

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Theory to Explain Occupational Sex Segregation, 17 *J. Hum. Resources* 358, 369 (1982) [hereinafter England, Failure of Human Capital Theory].

38. See Gary S. Becker, Human Capital, Effort, and the Sexual Division of Labor, 3 *J. Lab. Econ.* S33, S52 (1985) [hereinafter Becker, Human Capital] (claiming occupational segregation by sex and the accompanying wage disparities occur because "married women seek occupations and jobs that are less effort intensive and otherwise are more compatible with the demands of their home responsibilities"); see also Fuchs, *supra* note 36, at 60 (arguing that women's wages are lower because "women who devote a great deal of time and energy to child care and associated housework are often less able to devote maximum effort to market work").

39. For recent reviews of empirical evidence casting doubt on human capital theory, see Samuel Cohn, Race and Gender Discrimination at Work 80-88, 122-26 (2000); Jerry A. Jacobs, Revolving Doors: Sex Segregation and Women's Careers 39-44, 58-60, 148-50, 169-74 (1989); Donald Tomaskovic-Devey, Gender & Racial Inequality at Work 50-51, 132-34 (1993); Michael Selmi, Family Leave and the Gender Wage Gap, 78 *N.C. L. Rev.* 707, 718-34 (2000).

40. "Sex segregation in employment has come to represent the dominant . . . explanation in the sociological literature for the male-female earnings gap." Tomaskovic-Devey, *supra* note 39, at 111. For estimates of the degree of the male-female wage gap attributable to segregation, see *id.* at 121, 123 (estimating from a 1989 random sample of North Carolina workers and jobs that 77% of all women would have to change to sex-atypical jobs to achieve sex integration, and that at least 56% of the male-female earnings gap was attributable to such sex segregation of jobs); see also *Women, Work and Wages: Equal Pay for Jobs of Equal Value* 33-37 (Donald J. Treiman & Heidi I. Hartmann eds., 1981) (citing estimates showing that between 30% and 71% of the wage gap is attributable to the segregation of occupations, depending on the level of detail of the occupational classification used in the analysis). It is well known that estimates that are based on the use of occupation-level data (such as Treiman & Hartmann's) are biased downward, because even many apparently-integrated occupations remain highly segregated at the firm level, and especially at the job level. See, e.g., Francine D. Blau, *Equal Pay in the Office* 73 (1977) (reporting substantial sex segregation among firms even within the same occupation); William T. Bielby & James N. Baron, Men and Women at Work: Sex Segregation and Statistical Discrimination, 91 *Am. J. Soc.* 759, 775-77 (1986) (reporting that among workers in a large sample of California firms, only 36.5% of women workers would have to switch to a sex-atypical situation to achieve sex integration if aggregate occupational data were used, but 75% would have to do so if the 645 detailed occupations were used, and an overwhelming 96% would have to do so if job-level data within firms were used).

jobs)<sup>41</sup>—not to the fact that we have more family responsibilities. Women do bear a heavier family load, but this family load does not account for women's job segregation and the accompanying wage gap: Research shows that a woman's likelihood of moving in or out of a male-dominated as opposed to a female-dominated field,<sup>42</sup> or holding a job in such a field at any given time,<sup>43</sup> does not vary significantly based on such family-related characteristics as marital status, parental status, or number of children. Thus, contrary to the predictions of human capital theory, women are not selecting female-dominated fields to accommodate family responsibilities. In fact, female-dominated jobs are not on the whole more family-friendly than male jobs; this is part of the myth that justifies paying women lower wages, an inaccuracy that pay equity advocates have been struggling for so long to dispel.<sup>44</sup>

Nor, as Becker has more recently suggested, is women's lower pay explained by the fact that we look for jobs that require less effort in order to conserve energy for "our" family responsibilities. In fact, Denise Bielby and William Bielby have found that, on average, women report working *harder* than men (despite women's general tendency to underestimate

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41. See Kimberly Bayard et al., *New Evidence on Sex Segregation and Sex Differences in Wages from Matched Employee-Employer Data 40–41* (National Bureau of Econ. Research Working Paper No. 7003, 1999) (on file with the *Columbia Law Review*) (finding that contrary to previous studies, a substantial portion of the wage gap is attributable to pay differences between men and women in the same jobs that may violate the Equal Pay Act).

42. See Jacobs, *supra* note 39, at 148–50 (finding that women's probability of moving across sex-typed occupational boundaries does not vary significantly by age, marital status, parental status, or number and ages of children); Rachel A. Rosenfeld, *Job Changing and Occupational Sex Segregation: Sex and Race Comparisons, in Sex Segregation in the Workplace: Trends, Explanations, Remedies* 56, 72–77 (Barbara F. Reskin ed., 1984) (confirming that, for both black and white women, the likelihood of changing the sex-type of their occupations was independent of marital status and whether they had interrupted their careers to care for children).

43. See Tomaskovic-Devey, *supra* note 39, at 43, 50–51 (reporting that women's probability of holding a female-dominated job is not significantly associated with the presence of children and, in fact, "women with children are slightly more likely to be in gender-balanced jobs"); Andrea H. Beller, *Occupational Segregation by Sex: Determinants and Changes*, 17 *J. Hum. Resources* 371, 383 (1982) (finding that sex-type of employment does not vary according to marital status or number of children); Mary Corcoran et al., *Work Experience, Job Segregation, and Wages, in Sex Segregation in the Workplace: Trends, Explanations, Remedies, supra* note 42, at 171, 188 (reporting that sex-type of employment is not significantly related to continuity of labor force participation); England, *Failure of Human Capital Theory, supra* note 37, at 367–68 (1982) (finding that sex-type of employment does not vary according to marital status or continuity of labor force participation).

44. See England, *Comparable Worth, supra* note 37, at 14; see also Selmi, *supra* note 39, at 731–32 (noting that female-dominated jobs are not necessarily more compatible with family responsibilities than other jobs). Indeed, one study finds that as the percentage of women in a field rises, the jobs have *less* flexibility and fewer unsupervised breaks. See Jennifer Glass, *The Impact of Occupational Segregation on Working Conditions*, 68 *Soc. Forces* 779, 780 (1990).

their achievements or degree of effort).<sup>45</sup> Women with preschool-age children do work less hard than other *women* at their paid jobs, but they still work as hard as men without children—who earn considerably more.<sup>46</sup> More recent analyses confirm these results and report that, overall, the impact of household and family arrangements on work effort and work commitment is nonexistent or small.<sup>47</sup> Thus, women's heavier family obligations are not what is driving job segregation; many single mothers really need the higher income associated with male jobs. Indeed, causation may well run in the reverse direction: Women may take on more housework and childcare *because* we are segregated into lower-paying, lower-status jobs—a position which deprives us of the ability to obtain more egalitarian arrangements for household labor.<sup>48</sup>

These empirical problems point to fundamental theoretical problems with human capital theory. The theory centers around the claim that a gender-based division of labor is more efficient than one in which household partners share both roles,<sup>49</sup> but the theory says nothing

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45. See Denise D. Bielby & William T. Bielby, *She Works Hard for the Money: Household Responsibilities and the Allocation of Work Effort*, 93 *Am. J. Soc.* 1031, 1034–35, 1043, 1055, 1057 (1988) [hereinafter Bielby & Bielby, *She Works Hard*]; see also William T. Bielby & Denise D. Bielby, *Telling Stories About Gender and Effort: Social Science Narratives About Who Works Hard for the Money*, in *Economic Sociology at the Millennium 3–4* (Mauro F. Guillen et al. eds., forthcoming 2001) (on file with the *Columbia Law Review*) (citing empirical research showing that employed women work at their jobs as hard as or even harder than men).

46. See Bielby & Bielby, *She Works Hard*, *supra* note 45, at 1048.

47. See Peter V. Marsden et al., *Gender Differences in Organizational Commitment: Influences of Work Positions and Family Roles*, 20 *Work & Occupations* 368, 384 (1993); William T. Bielby et al., *Who Works Hard for the Money? "Efficiency Wages," Work Organization, and Gender Differences in the Allocation of Work Effort 2* (Aug. 1995) (unpublished manuscript, on file with the *Columbia Law Review*).

48. Cf. Cynthia Cockburn, *Machinery of Dominance: Women, Men, and Technical Know-How 230–31* (1985) (arguing that the nature of workplaces and work relations perpetuates the sex-based division of labor, which benefits men by eliminating women as workplace competitors, thus ensuring that they will provide domestic services at home); Juliet B. Schor, *The Overworked American 84, 94–99* (1992) (arguing that women's exclusion from the labor market and society's failure to collectivize housework have artificially devalued homemakers' time, an inefficiency which along with the sex segregation of work has kept the level of household labor performed by women artificially high); Schultz, *Telling Stories*, *supra* note 27, at 1816 (arguing that sex segregation does not result because women's commitment to family life leads them to choose marginalized female-dominated jobs, but rather because labor markets and workplaces are structured in ways that disempower women from aspiring to the higher-paying jobs that would raise the opportunity cost of time spent on housework).

49. As feminist economists have pointed out, the assumption of joint utility obscures the skill and power differentials that result over time in traditional relationships. Is it really better, in the long run, for the one sacrificing the development of job market potential (and the cultural capital, political influence, and marital bargaining power that so often accompanies it) to specialize in a form of labor—caring for one's own children—that will become obsolete over time? See Marianne A. Ferber & Bonnie G. Birnbaum, *The "New Home Economics": Retrospects and Prospects*, 4 *J. Consumer Res.* 19, 24 (1977). The theory is also suspect on efficiency grounds. For example, there is evidence that some

about why it should be women rather than men who specialize in housework. Becker simply appeals to women's alleged comparative advantage. But beyond nursing babies (a temporary phenomenon that many women cannot do or decline to do anyway), it is difficult to see why women have any inherent advantages at housework or even child care, unless one appeals to unproven notions that they are simply more relational or nurturing than men, and as a result, better at caring for others.<sup>50</sup> So the theory ends up being circular: To explain why women earn lower wages, the theory claims it is because we specialize in housework. Yet, there is nothing to explain why they specialize in housework other than the fact that they are female.

Even if women were somehow naturally better than men at caring for others (a proposition which there is great reason to doubt), human capital theory would still need to explain why women should ply that skill in the home rather than in the paid workplace. After all, many forms of care can be (and are) bought and sold in the marketplace, just like other services. Women's specialization in unpaid, home-based care only makes sense if the men with whom they share resources can make more money selling something other than the care Becker assumes women are better at providing. Imagine a world, for example, in which women were superior at child care, but child care was organized as market work and paid more highly than any other field. Under Becker's theory, wouldn't we expect to see women out earning the big bucks by providing child care for other people's children (in addition, perhaps, to their own), while in heterosexual relationships, male partners stayed home and specialized in less marketized forms of household work (perhaps odd jobs)? The point is, once again, that Becker's theory is circular: It sets out to explain why women earn lower wages, but ends up assuming the very gendered wage structure it purports to explain. The theory asserts that women earn lower wages because we specialize in housework. But there is nothing to

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households—including lesbian ones—do not allocate labor along gendered lines. See M.V. Lee Badgett, *Gender, Sexuality, and Sexual Orientation: All in the Feminist Family?*, 1 *Feminist Econ.* 121, 131 (1995); Lawrence A. Kurdek, *The Allocation of Household Labor in Gay, Lesbian, and Heterosexual Married Couples*, 49 *J. Soc. Issues* 127, 135–36 (1993). Are lesbians really more inefficient than traditional straight couples, as Becker contends? See Becker, *Treatise*, supra note 35, at 22–23 (claiming that “households with only men or only women are less efficient because they are unable to profit from the sexual difference in comparative advantage”). Or is there perhaps more motivation to share household tasks more equitably so that both partners can develop their job potential when there is often no need for either partner to fulfill a masculine breadwinner identity, and no higher male wage to rely on?

50. Indeed, Becker suggests that just such a sociobiological advantage exists. See Becker, *Human Capital*, supra note 38, at 21. For a review of the sociobiology literature and a critique of the fashion in which it is sometimes used, see generally Gillian K. Hadfield, *Flirting With Science: Richard Posner on the Bioeconomics of Sexual Man*, 106 *Harv. L. Rev.* 479 (1992) (reviewing Richard A. Posner, *Sex and Reason* (1992) and noting its use of “out-dated” notions of biological difference between genders).

explain why housework is organized as unpaid labor as opposed to highly paid market work other than the fact that it is women who do it.

### B. *Employment Discrimination Law*

This circular, sexist line of reasoning is not confined to economics: It is also invoked regularly in legal discourse. Indeed, this image of women as inauthentic workers pervades and constantly subverts women's gains from employment discrimination law—the body of law that was supposed to guarantee gender equality at work. In cases in which working women seek to challenge their place in low-paying, dead-end jobs—such as the infamous *EEOC v. Sears, Roebuck & Co.*<sup>51</sup> case—employers argue, and courts all too often accept as an excuse for job segregation, that women “lack interest” in the higher-paying, more desirable positions held by men.<sup>52</sup> Sometimes this lack of interest argument draws explicitly on human capital theory; sometimes it draws on less formalized notions that women have been hard-wired by nature or programmed through nurture to prefer “feminine” forms of work that are more consistent with motherhood.<sup>53</sup> Whatever the causal mechanism, women's work preferences—our understanding of ourselves and our place in the world as women—are seen as fixed by forces that are ontologically and temporally prior to our experiences in the world of paid work. Thus, as in human capital theory, women's unequal place in the workplace has nothing to do with the workings of labor markets or firms; employers simply honor our own preexisting preferences.<sup>54</sup>

As I have shown in more recent work, even sex harassment law centers around a stereotype of women as inauthentic workers.<sup>55</sup> In my view, some men harass women because they see us as workplace rivals. They intimidate and isolate us as a means of appropriating the best forms of work for themselves; doing so ensures their superiority in politics, the household, and other spheres of life. This theory takes seriously women's position and potential power as workers, and shows how men seek to control it in order to promote their own advantage elsewhere. But this is not

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51. 628 F. Supp. 1264 (N.D. Ill. 1986).

52. See Schultz, *Telling Stories*, supra note 27, at 1776–1815 (analyzing courts' acceptance of the lack of interest defense and the evidentiary and ideological factors that contribute to judges' willingness to do so); see also Vicki Schultz & Stephen Petterson, *Race, Gender, Work, and Choice: An Empirical Study of the Lack of Interest Defense in Title VII Cases Challenging Job Segregation*, 59 U. Chi. L. Rev. 1073, 1095–1135 (1992) (comparing judicial treatment of the lack of interest defense in race and sex discrimination cases).

53. See Sandi E. Cooper, *Women's History Goes on Trial: EEOC v. Sears, Roebuck & Co.*, Introduction to the Documents, 11 Signs 753, 757–66 (1986) (reprinting offer of proof submitted by historian Rosalind Rosenberg in the *EEOC v. Sears, Roebuck & Co.* case).

54. See Schultz, *Telling Stories*, supra note 27, at 1800–05.

55. See Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 Yale L.J. 1683 (1998) [hereinafter Schultz, *Reconceptualizing Harassment*].

the conventional legal understanding of harassment.<sup>56</sup> In the conventional view, men harass women because they see us as sexual or domestic subordinates, a habit they allegedly acquired in the inegalitarian domestic sphere that “spilled over” inappropriately into the neutral, ungendered world of work.<sup>57</sup> Once again, in the usual view, gender is created in the domestic sphere; the workworld is merely a passive reflector of inequalities already formed elsewhere.<sup>58</sup>

### C. *Feminist Legal Thought*

This failure to take women seriously as workers is such a deep part of our history that it permeates our culture, our institutions, and our thought—including feminist thought. In fact, a good deal of contemporary feminist thought conceives of gender in terms of male-female relations constructed primarily (if not exclusively) through traditional heterosexual family and sexual relations.<sup>59</sup> To the extent that work enters into the analysis, it is secondary. Patriarchal family and sexual arrangements are understood to overflow into the realm of paid work by burdening women with special family obligations or unique sexual vulnerabilities that constrain our full commitment to working life.

1. *Family-Based Strategies for Valuing Housework and Caregiving.* — Consider, for example, the current movement among legal feminists to assign

56. See *id.* at 1692–1710 (showing that sex harassment law as it has evolved in the lower courts is based on a sexual paradigm that treats harassment as an expression of men’s sexual desire or dominance).

57. See, e.g., Catharine A. MacKinnon, *Sexual Harassment of Working Women* 220–21 (1977) (arguing that workplace sexual harassment is an expression of men’s eroticization of women’s subordination); Barbara A. Gutek, *Understanding Sexual Harassment at Work*, 6 *Notre Dame J.L. Ethics & Pub. Pol’y* 335, 352–57 (1992) (theorizing that workplace sexual harassment reflects the “sex-role spillover” of inegalitarian views of women formed in the domestic sphere).

58. See Schultz, *Reconceptualizing Harassment*, *supra* note 55, at 1761 n.409 (1998) (summarizing and explaining the assumptions that underlie conventional understandings of harassment).

59. For an analysis of such traditional heterosexist tendencies within feminist thought and how they limit historical analysis, see Joan Wallach Scott, *Gender and the Politics of History* (1988). For some classic examples of heterosexist tendencies within feminism, see Kathleen Barry, *Female Sexual Slavery* 164–65 (1979) (“*Sex is power* is the foundation of patriarchy. . . . Institutionalized sexism and misogyny—from discrimination in employment, to exploitation throughout the welfare system, to dehumanization in pornography—stem from the primary sexual exploitation of women in one-to-one situations.”); Nancy Chodorow, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* 169, 166 (1979) (tracing gender identity to the sexual division of labor in the family); Mary O’Brien, *The Politics of Reproduction* 8–18 (1981) (arguing that the source of male domination lies in men’s desire to transcend their alienation from women’s primary role in reproduction); Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 *Signs* 515, 531–33 (1982) (“Women and men are divided by gender, made into the sexes as we know them, by the social requirements of heterosexuality, which institutionalizes male sexual dominance and female sexual submission. If this is true, sexuality is the linchpin of gender inequality.”).

economic value to housework, child care, and other labor that people provide for their families (or other loved ones) in their own homes.<sup>60</sup> This is a movement motivated by good intentions, including the feminist impulse to honor and value what women do. Feminists in this movement do not wish to naturalize the gender-based division of labor; their stated goal is to expose and remedy it. Yet, in the service of such worthy goals, some in this movement promote analyses and policies that reproduce the very gender-based patterns of labor that create women's disadvantage. Following human capital theorists, for example, some feminist scholars argue that women's economic disadvantage arises from their primary commitment to their families—rather than from sexist dynamics in labor markets and firms. From there, the feminists propose reforms to value “women's” domestic labor, just as we do “men's” wage labor, in an effort to compensate women for child care and housework.<sup>61</sup>

No self-respecting feminist could be against “valuing housework,” and I'm no exception. But that slogan obscures a host of troubling institutional questions about how this should be done. It is vitally important to acknowledge the hidden labor that is performed in households, and to create society-wide mechanisms for allocating its costs rather than continuing to impose them on individual family members (too often, women).<sup>62</sup> One method of doing so is already being implemented on a massive scale: collectivizing housework by converting it into employment.

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60. For examples of work in this tradition, see Joan Williams, *Unbending Gender* 124–27 (2000) (advocating that wives receive a greater portion of husbands' income after divorce as a way of recognizing women's greater contributions to housework and child care); Martha M. Ertman, *Commercializing Marriage: A Proposal for Valuing Women's Work through Premarital Security Agreements*, 77 *Tex. L. Rev.* 17, 41–46 (1998) (proposing premarital “security agreements” as a way of doing the same); Katharine B. Silbaugh, *Marriage Contracts and the Family Economy*, 93 *Nw. U. L. Rev.* 65, 67 (1998) [hereinafter Silbaugh, *Marriage Contracts*] (arguing that a homemaker's nonmonetary contributions should be seen as part of a marital exchange with the husband's monetary contributions and hence treated equally by judges in premarital contract cases); Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 *Nw. U. L. Rev.* 1 (1996) [hereinafter Silbaugh, *Labor into Love*] (arguing that the legal system's failure to assign economic value to housework harms the women who do it and that therefore housework should be treated the same as paid work); see also Linda R. Hirshman & Jane E. Larson, *Hard Bargains: The Politics of Sex* 280–83 (1998) (proposing the creation of a “concubinage” contract that would compensate women for their unmarried sexual relationships with men, which would extend the economic valuation of women's household work to include sexual relations).

61. See Williams, *supra* note 60, at 124–31; Ertman, *supra* note 60, at 39–46; Silbaugh, *Marriage Contracts*, *supra* note 60, at 108–09.

62. See Martha Albertson Fineman, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies* 161–64, 231–33 (1995) [hereinafter Fineman, *The Neutered Mother*] (arguing that the cost of supporting the work of caregivers should not be allocated to private families, but should be borne instead by society as a whole); Eva Feder Kittay, *Love's Labor: Essays on Women, Equality, and Dependency* 140–46 (1999) (arguing that dependency work should not be underwritten by private family providers, but should be supported instead by “public provision” that recognizes the indispensable role of dependency workers and the importance of their participation as full citizens);

A great deal of work once performed in private households has been handed over to day-care providers, cleaning services, home health aides, landscapers, and the like.<sup>63</sup> Feminists could think creatively about how to capitalize on this trend by supporting efforts to upgrade the pay, promotional prospects, and working conditions associated with work once performed by at-home spouses. Compared to marriage and intimate relationships, labor markets and workplaces are spaces in which it is easier for workers to mobilize to obtain public accountability and protection. By transforming at least some forms of household work into paid employment, we could more easily protect those who do the work from discrimination, unfair labor practices, wage and hour violations, adverse working conditions, health and safety threats, and other problems on the job.<sup>64</sup> We could also make it easier for those who perform household labor to engage in collective action to improve their situation. The recent victory of 70,000 California home health care workers in organizing a union, for example, holds promise for highlighting—and upgrading—the value of service work.<sup>65</sup> Such victories continue the work started by the comparable worth campaigns of the 1980s.<sup>66</sup>

Converting household work into paid employment not only provides jobs for many people who need them, it also frees those who provide unpaid family labor to pursue more fully for pay the work that suits them best. Countless middle- and working-class families buy time or convenience by purchasing such things as child care, cleaning services, dinners from McDonald's, lawn mowing, haircuts, car repair, and other services

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Martha Albertson Fineman, *The Nature of Dependencies and Welfare "Reform,"* 36 Santa Clara L. Rev. 287, 290, 308–09 (1996) [hereinafter Fineman, Dependencies].

Although not all forms of household work create resources that benefit society as a whole (such as those associated with elite forms of consumerism or "keeping up with the Joneses"), some clearly do. Good child care, for example, creates a resource that is essential to a well-functioning democracy: children who have the developmental capacity to become adults who will engage in the rational, deliberative thought we hope will characterize an informed citizenry. See Susan Moller Okin, *Justice, Gender, and the Family* 99–100 (1989); Anne C. Dailey, *Constitutional Privacy and the Just Family*, 67 Tul. L. Rev. 955, 1021–25 (1993).

63. See Schor, *supra* note 48, at 85.

64. Of course, domestic workers are one of the two groups most frequently excluded from labor law's protection; the other group is farmworkers. See Marc Linder, *Farm Workers and the Fair Labor Standards Act: Racial Discrimination in the New Deal*, 65 Tex. L. Rev. 1335, 1335–93 (1987) (discussing the exclusion of farm work from the Fair Labor Standards Act); Peggie R. Smith, *Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform*, 48 Am. U. L. Rev. 851, 854 & n.13 (1999). Nonetheless, it still seems more promising to organize paid domestic workers than unpaid spouses. For a recent set of creative proposals for doing so, see Peggie R. Smith, *Organizing the Unorganizable: Private Paid Household Workers and New Approaches to Employee Representation* (1999) (unpublished manuscript, on file with the *Columbia Law Review*).

65. See Vincent J. Schodolski, *Union Signals a Health Trend: 75,000 Home-Care Workers Organize in L.A.*, Chi. Trib., Feb. 26, 1999, at 3.

66. See Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* 3–4 (1994) (discussing comparable worth and other work rights campaigns).

that should count as commercialized forms of household labor.<sup>67</sup> There may, of course, be some forms of household labor that cannot or should not be commodified.<sup>68</sup> There may also be some services that average- or low-income people cannot afford. But, there is no reason why a commercialization strategy must be limited to pure market forces. Some services could be subsidized for those who cannot afford them, or even made available for free to everyone (like public schooling, a now universal service that was once provided exclusively within the family setting).

Despite the fact that converting household labor into paid work collectivizes it and renders it more visible and publicly accountable, feminists in the movement to value housework tend to shun this approach.<sup>69</sup> Instead, these feminists are proposing schemes to compensate women for performing household labor in private homes. Some legal feminists argue that (heterosexual) women's household labor provides their male partners with the time and resources to specialize in market work, and thus the men should compensate the women.<sup>70</sup> These feminists propose marriage-based "joint property" schemes that redistribute income from husbands (or sometimes higher wage-earners, assumed to be husbands) to wives (or lower wage-earners, assumed to be wives) at divorce.<sup>71</sup> Other feminists promote state-based "welfare" strategies in which the government pays caregiver stipends that are not tied to paid employment, but are instead intended to permit women to choose full-time or near full-time homemaking and child care.<sup>72</sup> In joint property proposals the

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67. See Schor, *supra* note 48, at 85.

68. See generally Margaret Jane Radin, *Market Inalienability*, 100 *Harv. L. Rev.* 1849, 1885 (1987) (arguing that commodification can do violence to some relationships). Consciously or unconsciously, some feminists may be motivated to seek compensation for people who care for our own kin on the ground that contracting with outsiders to do such work corrupts family relationships. But to the extent that concerns about commodification are justified, we should be equally concerned about the possibility that paying family members (such as spouses or relatives) to perform such labors will corrupt those same intimate relationships.

69. Indeed, some feminists in this movement consider market-based strategies for valuing household labor reprehensible. See, e.g., Williams, *supra* note 60, at 40–48 (associating the "full commodification strategy" with careerism, misogyny against homemakers, classism, and the decline of feminism).

70. See *id.* at 124–31.

71. I draw here on a term that has become popular in the literature. See Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850–1880*, 103 *Yale L.J.* 1073, 1076 (1994) (defining "joint property" claims as "wives' claims to marital assets to which husbands otherwise had title"); see also Williams, *supra* note 60, at 124–27 (advocating a joint property strategy). For a sympathetic account of the historical origins of joint property strategies, see Siegel, *supra*, at 1112–88 (describing nineteenth-century joint property demands).

72. Economist Barbara Bergmann has coined the term "full welfare strategy" to refer to such proposals. Barbara Bergmann, *Saving Our Children from Poverty: What the United States Can Learn from France* 123–24 (1996) [hereinafter Bergmann, *Saving Our Children*]. Here I will simply use the term "welfare" to refer to both the relatively utopian, generous versions of state compensation for housework and dependent care proposed by

source of funding is the husband, while in welfare approaches it is the state. But both strategies channel funds through the family unit to pay women to keep house and care for our own kin.

Wittingly or unwittingly, advocates of these family-based approaches replicate some of the same conservative assumptions that have been used traditionally to justify women's disadvantage. Indeed, feminists in this movement tend to rely on the human capital literature to assert that it is women's disproportionate responsibility for housework and child care that accounts for our lower wages and our inferior position in the workforce.<sup>73</sup> Unfortunately, many of these feminists seem unaware of (or uninformed about) the body of sociological work that casts doubt on the validity of human capital theory.<sup>74</sup> Within the social sciences, the debate

some feminists, as well as the stingier version that has traditionally been available in the United States.

73. See, e.g., Mary Becker, *Maternal Feelings: Myth, Taboo and Child Custody*, 1 *Rev. L. & Women's Stud.* 135, 157 & n.99 (1992) [hereinafter *Mary Becker, Maternal Feelings*] (citing Fuchs and Becker for the proposition that women's economic disadvantage is partly attributable to women's greater commitment to children); Ertman, *supra* note 60, at 19 n.6, 41 n.94 (citing economist Victor Fuchs for the proposition that many women participate in the workforce in marginalized ways in order to accommodate child care and other homemaking needs, and citing Gary Becker to suggest that married women invest in child care and homemaking while husbands invest in market work). Although some feminists are critical of some aspects of human capital theory, many end up relying explicitly or implicitly on the human capital proposition that women's lower status in paid work is attributable mainly to our greater involvement in housework and child care. Compare Williams, *supra* note 60, at 14 (criticizing human capital theory for using the language of "choice" to describe women's lower position in the labor force), with *id.* at 14 (positing that women's lower status is a result of women's "choice to marginalize" at work because they cannot satisfy employers' demanding work schedules and simultaneously meet the demands of domesticity). See also *id.* at 82 (advocating the human capital position that "[c]hoosing" women's work typically allows workers to preserve dependable amounts of time for family life, to be able to leave market work completely without jeopardizing their ability to return, and to follow husbands without loss of investment in human capital"); Gillian Hadfield, *Households at Work: Beyond Labor Market Policies to Remedy the Gender Gap*, 82 *Geo. L.J.* 89, 89-96 (1993) (criticizing economists for assuming that women's greater housework burden is normatively justified, but accepting and even urging the legal system to act on the human capital assumption that housework accounts for women's labor market disadvantage).

74. Most feminist scholars in the movement to value housework do not even cite the relevant sociological literature. Others appear to misunderstand its implications. For example, Joan Williams has argued:

[I]f one reads studies by labor economists and lawyers, on one hand, and by family law scholars, on the other, a striking pattern emerges. The labor literature often minimizes the impact of women's family work on their market work, while the family-related literature documents it in detail. Both use accurate data; they just focus on different groups. Labor economists focus on women who perform as ideal workers, often in traditionally male jobs. These women's workforce participation often is not affected by their "second shift" of family work. The family literature focuses on homemakers and women who work part-time, whose workforce participation clearly has been affected by the division of labor at home.

Williams, *supra* note 60, at 15. This analysis is flawed. The research that shows that sex segregation in employment is not attributable to women's family responsibilities is not

is between conventional economists—who pin women’s plight on our family roles—and feminist sociologists (and sociologically-inclined economists)—who have produced evidence that discriminatory workplace dynamics are a more fundamental cause.<sup>75</sup> The sociological literature points toward a more contextual approach that rejects static family-based conceptions of women’s difference; it shows instead that socially-constructed features of the workworld help create the very gender differences (manifested in work aspirations, employment patterns, and familial divisions of labor) that human capital theory attributes to women themselves.<sup>76</sup> Such an approach creates greater possibilities for change. If the sources of women’s disadvantage lie not in sociobiological forces that

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limited to a study of women who work in male dominated jobs. The research that Williams refers to as the “labor” literature is *not*—and *could* not be—limited to a study of women in male-dominated jobs. The very point of the research is to determine the validity of the human capital prediction that women with family responsibilities are more likely than those without to occupy (or move into) female-dominated fields. This could not be accomplished by studying only women in male-dominated fields. See *supra* notes 42–43; Schultz, *Telling Stories*, *supra* note 27, at 1819–20 nn.256–262. Nor is the research limited to “women who perform as ideal workers.” In addition to capturing women’s level of family responsibilities through such family-related characteristics as marital status and presence and number of children, some of the studies include measures of the number of weeks or hours worked or continuity of labor force participation. See Jacobs, *supra* note 39, at 149–50 (testing for weeks employed and hours worked per week); Beller, *supra* note 43, at 385 (finding that, even if women had been identical to men in terms of a number of personal characteristics—such as marital status, number of children, number of weeks worked, part-time versus full-time status, and whether the reason for working part-time was “home specialization”—the probability that a woman would have worked in a male-dominated occupation would have increased by only 1.1%); Corcoran et al., *supra* note 43, at 187 (testing for extensive time out and frequent interruptions). Thus, the studies include women working part-time or interrupting their employment, who are not Williams’ “ideal workers.” See Williams, *supra* note 60, at 15.

75. See, e.g., Barbara Bergmann, *The Economic Emergence of Women* 88–114 (1986) (arguing against the human capital theories of “conservative economists” and articulating alternative explanations for sex-segregation of employment); Jacobs, *supra* note 39, at 169–73 (explaining how his findings cast doubt on human capital explanations for sex segregation); Bielby & Bielby, *She Works Hard*, *supra* note 45, at 1055–56 (noting how their findings discredit human capital theory); England, *Failure of Human Capital Theory*, *supra* note 37, at 365–67 (analyzing national longitudinal survey data that refute human capital theory predictions).

76. See, e.g., Cockburn, *supra* note 48, at 167–97, 229–35 (arguing that male supremacy rests on men’s appropriation of new technology and sex-segregating of technological fields through informal workplace culture); Kanter, *Men and Women*, *supra* note 21, at 151–59, 260–64 (arguing that jobs gender people and showing how work organizations reward women for attitudes and orientations that block their progress, while at the same time justifying women’s low status as the result of preexisting gender traits); Schultz, *Telling Stories*, *supra* note 27, at 1824–39 (reviewing sociological evidence showing that structural features of labor markets and work organizations disempower women, and demonstrating how Title VII law solidifies these tendencies); see also Nancy Fraser, *Justice Interruptus: Critical Reflections on the “Postsocialist” Condition* 27–33 (1997) (arguing that the best way to address gender problems is to combine a broad social democratic politics of redistribution with a feminist politics of dismantling existing gender differences).

commit women more heavily to child care and housework but instead in the political economy of paid work, we can challenge the sex bias in allegedly gender-neutral forces in labor markets and work places. We can create more empowering gender arrangements by demanding work and working conditions that will give women more economic security, more political clout, more household bargaining power, and perhaps even more personal strength with which to pursue our dreams.

By contrast, in the movement to value home-based labor, some of the literature tends to reify traditional male-breadwinner, female-homemaker patterns in a way that closes down, rather than opens up, strategies for change. Much of the literature assumes that housework is, and will continue to be, "women's work."<sup>77</sup> To explain why housework remains largely in the hands of women, it is sometimes posited that women care more about children and associated housework,<sup>78</sup> or that because of cultural standards that work against us in the marriage market, women find it almost impossible to obtain the bargaining power necessary to enlist men in a more egalitarian division of labor in the home.<sup>79</sup> Although such arguments may be intended to avoid the biological reductionism implicit in Gary Becker's notion of comparative advantage, they still end up serving the same essentializing function. By making traditional gender-based arrangements for household labor appear inevitable, these arguments make it seem impossible to reshape social life to structure family life in more egalitarian ways. Indeed, in this literature, efforts to facilitate greater male involvement in housework are sometimes rejected as liberal escapism.<sup>80</sup> Some feminists in this camp even go so far as to re-characterize the traditional male breadwinner, female homemaker form of marriage as "egalitarian," while dismissing alternative arrangements grounded in the gender integration of work.<sup>81</sup> Instead, the only viable

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77. See, e.g., Ertman, *supra* note 60, at 82 (noting that despite differences in several legal feminists' approaches "to valuing women's work in the home," they all "assume that women (or those who are gendered female) likely will continue to do most of the homemaking and tailor their proposals accordingly"); Silbaugh, *Marriage Contracts*, *supra* note 60, at 98 (citing studies showing that even employed women do more housework than their male partners and arguing that it is unrealistic to believe feminists can redistribute housework more equally between women and men); see also Siegel, *supra* note 71, at 1214 ("Today, as in the nineteenth century, it is women who perform the work of the family, women who seek to escape the work, and women who eke out a living performing the work—for other women."). This assumption begins to border on a normative assumption as scholars decry the fact that one group of women is pawing "their" housework onto another group of women, without even considering the possibility that men might bear their fair share.

78. See Mary Becker, *Maternal Feelings*, *supra* note 73, at 142–53 (arguing that mothers have stronger emotional attachments to children than fathers).

79. See Amy L. Wax, *Bargaining in the Shadow of the Market: Is there a Future for Egalitarian Marriage?*, 84 *Va. L. Rev.* 509, 546–49 (1998).

80. See Silbaugh, *Marriage Contracts*, *supra* note 60, at 98–99.

81. Wax, *supra* note 79, at 519 (arguing that "traditional marriage is probably the least likely to provide persuasive evidence of marital inequality").

approach becomes the separate-but-equal one of paying women to do housework, while leaving unexamined the broader economic and political forces which deprive women of the bargaining power necessary to obtain a more egalitarian sharing of labor in their households, and which prevent us from building a political system that provides the public support necessary for women and men to lead more balanced lives.

Rather than simply assuming that housework will remain in the hands of women, a more dynamic approach would investigate whether there have been shifts toward greater male involvement over time, or in some households; and, if so, what factors have made the difference. There is some evidence that households in which women are employed have a more equitable division of labor than those in which women are not employed.<sup>82</sup> Studies have found that the greater the number of hours a woman works at her job, and the higher her earnings are relative to her husband's, the more likely it is that they will share household labor more equally.<sup>83</sup> Contrary to popular stereotype, moreover, working-class husbands do not do less housework relative to their spouses in comparison with their better-educated, middle-class counterparts.<sup>84</sup> For many heterosexual women, regardless of social class, throwing oneself into paid work and choosing a partner who works at a job for reasonable, flexible hours might be a way to achieve a more equitable division of household labor.<sup>85</sup>

In fact, some of the sociological literature provides evidence that things are starting to move in a generally more egalitarian direction.<sup>86</sup> There is evidence that variation among couples is increasing, with some

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82. Although the evidence is mixed, some studies do find that when wives enter the labor force, their husbands modestly increase the amount of housework they do. More studies suggest that employed women reduce the time they spend on housework considerably, a reduction which results in more equal division of labor. See Beth Anne Shelton & Daphne John, *The Division of Household Labor*, 22 *Ann. Rev. Soc.* 299, 307-08 (1996); Erik Olin Wright et al., *The Non-Effects of Class on the Gender Division of Labor in the Home: A Comparative Study of Sweden and the United States*, 6 *Gender & Soc'y* 252, 260 & n.11 (1992) (citing such research).

83. See, e.g., Francine M. Deutsch et al., *Husbands at Home: Predictors of Paternal Participation in Child Care and Housework*, 65 *J. Personality & Soc. Psychol.* 1154, 1158 (1993); Shelton & John, *supra* note 82, at 304-09; Myra H. Strober & Agnes Miling Kaneko Chan, *Husbands, Wives, and Housework: Graduates of Stanford and Tokyo Universities*, 4 *Feminist Econ.* 97, 121-23 (1998).

84. See Wright et al., *supra* note 82, at 268-75.

85. See Rhona Mahoney, *Kidding Ourselves: Breadwinning, Babies, and Bargaining Power* 139-48, 218-21 (1995). Although Mahoney has referred to this strategy as "marrying *down*," see *id.* (emphasis added), I think feminists might refer to it more appropriately as "coupling up."

86. According to one researcher:

Recent studies have . . . begun to identify specific areas, such as child care, for which men's contributions have increased substantially. A few studies have even found that the total number of hours spent on all paid and unpaid labor (not including child care) is now about equal between husbands and wives. . . . In general, American women are likely to spend fewer hours than men on the job,

men now making larger contributions to family work.<sup>87</sup> Thus, focusing exclusively on traditional tendencies may mask variation and change. In recent decades, it seems clear that many men have become committed to leading more balanced lives that include active care for their homes and families, despite the fact that employers may penalize men more than women for doing so. A recent study found that among Stanford graduates, for example, men who did fifty percent or more of the household work suffered a substantial earnings penalty, compared to other working men.<sup>88</sup> By contrast, among women who did half or more of the housework, only those who worked part-time encountered an earnings penalty. Contrary to human capital predictions, women who worked full-time experienced no earnings penalty for doing most of the housework or for being mothers.

Despite the wage penalty they encountered, the Stanford husbands who shared housework equally were happy with their household division of labor. Perhaps surprisingly, the men who shared family tasks equally with their wives were just as satisfied with their arrangements as the men whose wives did all or more than half those tasks (about 85% of each group, even among couples who had children). The wives of egalitarian husbands were also significantly happier than their more overburdened counterparts. Among couples with children, for example, 94% of the women who shared tasks equally with their husbands were satisfied with their arrangements, compared to only 47% of the women who did more than half the household work.<sup>89</sup> These findings are consistent with more recent research, which suggests that it is not so much the absolute amount of housework, but the inequity in the division of labor that contributes the most to women's unhappiness.<sup>90</sup>

2. *Joint Property Proposals.* — Such research casts doubt on the wisdom of family-based strategies that promote the continuation of a traditional division of labor. Feminist joint property proposals, for example, share with human capital theory the assumption that the home and the workplace *are* separate realms in which people can invest their energies,

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and American men are likely to put in fewer hours than women on domestic labor, but the total number of hours is converging. . . .

Scott Coltrane, *Family Man: Fatherhood, Housework, and Gender Equity* 52 (1996) (internal citations omitted); see also Schor, *supra* note 48, at 103–04 (citing evidence that at least in some households, “there are signs that men are doing more”).

87. See Coltrane, *supra* note 86, at 199–207. In one recent study, a quarter of the men spent more time in household tasks than their wives, and an equal number of the women spent more time working for pay than their husbands. See Barnett & Rivers, *supra* note 20, at 178.

88. See Strober and Chan, *supra* note 83, at 108.

89. See *id.* Even among mothers who were full-time homemakers, and who might be expected to be content with more traditional arrangements, fully 40% said they would prefer to change their arrangement.

90. See Chloe Bird, *Gender, Household Labor, and Psychological Distress: The Impact of the Amount and Division of Housework*, 40 *J. Health & Soc. Behav.* 32, 42 (1999).

and that most women have male partners who can and will “support” us adequately through wage work while we specialize in home production. But this is fantasy.<sup>91</sup> The majority of married women work for a living;<sup>92</sup> their paid work is indispensable to their families’ well-being. Families headed by one adult are also on the rise, with female-headed households representing almost a quarter of all families with children.<sup>93</sup> In addition, same-sex marriages have become more visible (if not more prevalent).<sup>94</sup> Today, in the United States, more women (and men) live outside the bonds of traditional marriage than at any previous time in American history.<sup>95</sup> Indeed, there is some evidence that marriage has become a luxury that low-income people cannot afford.<sup>96</sup>

In the face of these trends, it is futile to attempt to revive the family-wage system by trying to get individual men to pay their partners for taking care of the house and children. Nor should feminists desire such a revival. As Martha Fineman has emphasized, this strategy privileges the traditional heterosexual family, a declining family form that feminists should be wary of reviving.<sup>97</sup> Women receive plenty of pressure to marry and serve their husbands in mainstream culture: Why should feminists provide even more encouragement for women to invest in patriarchal relationships? The truth is that women cannot afford to specialize in homemaking at the expense of paid employment. The overwhelming majority of women need—and want—to have jobs and children at the same time. This is not an irrational choice or one made simply out of financial need. A large body of literature shows that working women are better off than full-time homemakers, as measured by a woman’s physical and psychological well-being. For women, time spent on housework, and

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91. See Roberta Spalter-Roth & Heidi Hartmann, Gauging the Consequences for Gender Relations, Pay Equity, and the Public Purse, in *Contingent Workers: From Entitlement to Privilege* 69, 71 (Kathleen Barker & Kathleen Christensen eds., 1998).

92. See Arne L. Kalleberg et al., *Nonstandard Work, Substandard Jobs: Flexible Work Arrangements in the U.S.* 4 (1997) (noting that in two-thirds of married couples with children, both parents are employed).

93. See *id.* at 4–5. Single mothers are even more likely than other women to be employed year-round, full-time. See *id.* at 49–50 (showing that 72.1% of all single mothers work in regular full-time jobs, compared to 65.7% of all women).

94. See Steve Friess, *Gay Couples Aim to Be Counted: “Unmarried Partners” to Be Used in Census*, Sun-Sentinel (Fort Lauderdale), Mar. 6, 2000, at 1B.

95. See Heidi I. Hartmann, *Changes in Women’s Economic and Family Roles in Post-World War II United States*, in *Women, Households, and the Economy* 33, 37–39 (Lourdes Benería & Catharine R. Stimpson eds., 1987); David Popenoe & Barbara Dafoe Whitehead, *The State of Our Unions: The Social Health of Marriage in America* (June 1999) <<http://marriage.rutgers.edu/>> (on file with the *Columbia Law Review*).

96. See Popenoe & Whitehead, *supra* note 95 (noting that unmarried cohabitation, as an alternative to marriage, is more common among the “disadvantaged”).

97. See Fineman, *Dependencies*, *supra* note 62, at 299–304 (explaining why policies involving traditional family structures do not meet women’s needs).

an unequal division of household labor are associated with higher levels of depression,<sup>98</sup> anxiety, and other symptoms of psychological distress.<sup>99</sup>

In addition to the evidence that full-time homemaking can be detrimental, there is also affirmative evidence that paid work has positive health effects on women (as on men). Rosalind Barnett and Caryl Rivers review this literature in their book, *She Works, He Works*.<sup>100</sup> They cite a national longitudinal study which found that women who participated in paid work reported better physical health and fewer emotional problems than non-employed women.<sup>101</sup> According to Barnett and Rivers:

The research is proving conclusively that paid work is good for women. In scientific research, the more that findings can be replicated, the more reliable they are; and these findings dovetail with many other studies, including the one that was the basis for our previous book, *Lifeprints*. Funded by the National Science Foundation, it studied 300 adult women and showed that working women are significantly higher in well-being than nonemployed women. Research clearly shows that work offers women a chance for heightened self-esteem, a buffer against depression, and enhanced mental and physical health. And this isn't just true for women in high-powered jobs. Working-class women get the emotional and physical benefits of working, according to psychologists Sandra Scarr and Deborah Phillips of the University of Virginia and Kathleen McCartney of the University of New Hampshire: 'Surveys of working class mothers, with jobs as waitresses, factory workers and domestics, show that these women are quite committed to their jobs, satisfied with their diverse roles, and would not leave the labor force even if they did not need the money.'

Work, they say, offers these women adult companionship, social contacts, and connection with the wider world that they cannot get at home.<sup>102</sup>

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98. See Bird, *supra* note 90, at 41; Shelton & John, *supra* note 82, at 315-16.

99. See Barnett & Rivers, *supra* note 20, at 34-38; Grace K. Baruch, The Psychological Well-Being of Women in the Middle Years, *in* *Women in Midlife* 161, 170-73 (Grace Baruch & Jeanne Brooks-Gunn eds., 1984); Nancy E. Betz & Louise F. Fitzgerald, *The Career Psychology of Women* 192-93 (1987).

100. See Barnett & Rivers, *supra* note 20, at 29.

101. See Ingrid Waldron & Jerry A. Jacobs, Effects of Labor Force Participation on Women's Health: New Evidence from a Longitudinal Study, 30 *J. Occupational Med.* 977, 981-82 (1988); see also Elaine Wethington & Ronald C. Kessler, Employment, Parental Responsibility, and Psychological Distress, 10 *J. Fam. Issues* 527, 532 (1989) (finding in a 3-year study of 745 married women that those who engaged in paid work had better emotional health than women who were not employed).

102. Barnett & Rivers, *supra* note 20, at 29; see also Carol Sanger, Separating from Children, 96 *Colum. L. Rev.* 375, 481-83 (1996) ("It appears that mothers work for many of the same reasons as fathers do: to provide or supplement family income, to achieve a sense of self-worth and financial independence, to accomplish a goal in a chosen area of interest, and for the satisfactions of adult contact and interaction.").

Sociologist Myra Marx Ferree, a leading researcher in this area, confirms these results for working-class women. She has found that even "among working-class women, being employed is associated with greater happiness."<sup>103</sup> According to Ferree, "[w]orking-class women are not 'more satisfied' with full-time housework," whether they are compared to working-class employed women or to middle-class housewives.<sup>104</sup> Thus, contrary to an argument that is sometimes made by legal feminists in the movement to value housework,<sup>105</sup> "[t]he inference that the demonstrably less attractive jobs potentially open to a working-class woman make her *more* likely to appreciate staying home is clearly undermined by [the] data."<sup>106</sup>

For those of us who study work, such findings are not surprising. Housework may offer those who do it some autonomy. But, at least as housework is presently organized, that autonomy is offset by isolation from peers, the inherent monotony and repetitious quality of some aspects of the work, and a lack of control that comes from feeling that one is always "on call."<sup>107</sup> If one compares housework to paid work, it becomes apparent that full-time homemaking is the only job in which the worker is expected to be on duty twenty-four hours a day. Our labor laws limit working hours for all other forms of work, and with good reason: People need relief not only from sheer overwork, but also from the pressure that comes from having no other activity with which to "buffer" ourselves from the stress of any endeavor. Some of this research suggests that the greatest benefits accrue to women (as well as men) who combine paid work with family commitments.<sup>108</sup> Indeed, buried beneath the arguments decrying women's "double day" lies a vibrant literature that emphasizes the pleasure and power of multiple roles.<sup>109</sup> Acknowledging the benefits of multiple roles does not mean denying that many women (and

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103. Myra Marx Ferree, *Class, Housework, and Happiness: Women's Work and Life Satisfaction*, 11 *Sex Roles* 1057, 1068 (1984) [hereinafter Ferree, *Class, Housework, and Happiness*].

104. *Id.* at 1073.

105. See Joan Williams, *Implementing Antiessentialism: How Gender Wars Turn into Race and Class Conflict*, 15 *Harv. BlackLetter J.* 41, 49-50, 55-57 (1999).

106. Ferree, *Class, Housework, and Happiness*, *supra* note 103, at 1068.

107. Barnett & Rivers, *supra* note 20, at 34-38.

108. See *id.* at 111-12; Baruch, *supra* note 99, at 170-78 (concluding that women with the highest level of well-being were employed, married, and had children); Faye J. Crosby, *Juggling: The Unexpected Advantages of Balancing Career and Home for Women and Their Families* 86-87 (1991); cf. David L. Chambers, *Accommodation and Satisfaction: Women and Men Lawyers and the Balance of Work and Family*, 14 *L. & Soc. Inquiry* 251, 252 (1989) (finding that of all female lawyers, married women with children were most satisfied).

109. See, e.g., Stephen R. Marks, *Multiple Roles and Role Strain: Some Notes on Human Energy, Time and Commitment*, 42 *Am. Soc. Rev.* 921, 921-36 (1977) (proposing a theory that takes into account the energy-producing as well as energy-consuming aspects of multiple roles); Peggy A. Thoits, *Multiple Identities and Psychological Well-Being: A Reformulation and Test of the Social Isolation Hypothesis*, 48 *Am. Soc. Rev.* 174, 174-79 (1983) (concluding that social isolation decreases psychological well-being, whereas multiple roles or "identities" provide an actor with "purpose, meaning, direction, and

men) may experience an overload, but it does suggest that feminists should not focus exclusively on the hardships associated with juggling work and family: We should also be mindful of the rewards.<sup>110</sup>

It also suggests that feminists should be wary of paths to "valuing housework" that encourage women to concentrate on housework and child care at the expense of a deep commitment to paid work. In light of the importance of wage earning to citizenship in our history, solutions that focus on spousal income-sharing inevitably cast the husband (or higher-earning spouse) as the "boss," and the homemaker (or the lower-earning spouse who is presumed to do most of the housework) as the employee<sup>111</sup>—a dependency relation that is difficult enough to transpose into the family, but made even worse by the fact that in this context, the "employee" is stripped of the social recognition, the peer solidarity, and the potential for collective organizing that have characterized most employees in traditional paid workplaces.<sup>112</sup> As Rhona Mahoney has emphasized, women are better off if we bring to our intimate relationships an independent means of economic wherewithal and social support that can provide us with an external source of bargaining power, an alternative avenue for self-esteem and solidarity, and a credible (and real) potential for exit.<sup>113</sup>

Although some feminists oppose a collectivization strategy because they believe it promotes class bias,<sup>114</sup> joint property proposals merely introduce a different—and more problematic—form of class bias. As Martha Fineman has emphasized, such marriage-based approaches fail to provide for those who perform housework outside the bounds of the traditional heterosexual family,<sup>115</sup> such as never-married mothers and gay and lesbian partners, who are a growing proportion of all families. Although this is obviously a heterosexist omission, it is a class-based omission as well: Never-married mothers face perhaps the highest burdens of care and have the lowest level of resources of all demographic groups;

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guidance"); see also Crosby, *supra* note 108, at 84–110 (explaining the practical and psychological benefits of combining paid work and parenting).

110. See Crosby, *supra* note 108, at 59–110.

111. Cf. Siegel, *supra* note 71, at 1192–93 (arguing that after the Civil War, as industrialization and wage work took greater hold in the economy, feminists began to articulate joint property proposals in terms of the market idiom of compensation from the husband/boss to the wife/employee).

112. See Kittay, *supra* note 62, at 141–43 (arguing that a family-based system, such as a joint property proposal, requires one spouse wealthy enough to compensate the caregiving spouse while placing that spouse at an extreme disadvantage with respect to bargaining power and exit options).

113. See Mahoney, *supra* note 85, at 44–45.

114. See, e.g., Williams, *supra* note 60, at 162–63 (apparently assuming that a collectivization strategy must involve moneyed women hiring private nannies and housekeepers, and arguing that there is race and class bias implicit in such arrangements).

115. See Fineman, *Dependencies*, *supra* note 62, at 300, 302–04.

lesbian couples, too, earn less than their heterosexual married counterparts (due to sex discrimination in earnings).<sup>116</sup>

In addition, although joint property proponents often argue that housework should be placed on an equal footing with wage work,<sup>117</sup> they do not actually propose that homemakers be treated the same as those who perform such services for a living. For example, some feminists in this tradition consider it inappropriate (perhaps even offensive) to pay a homemaker-spouse the same wage as a paid housekeeper.<sup>118</sup> Instead, joint property feminists tie homemakers' pay to their spouses' income—a methodology that introduces severe class bias. The wife of a high-level executive who gets one-half his earnings for caring for the house and kids is paid much more than the wife of a janitor, for example, even though both wives may be doing essentially the same work.<sup>119</sup> The executive's wife would also earn a considerably higher wage than her own hired

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116. See Marieka M. Klawitter and Victor Flatt, *The Effects of State and Local Antidiscrimination Policies on Earnings for Gays and Lesbians*, 17 *J. of Pol'y Analysis and Mgmt.* 658, 662 (1998) ("Gender still has a large impact on earnings, and its effects are doubly felt within same-sex couples."); *id.* at 670 (showing how female same-sex couples earn less than married couples); see also M. V. Lee Badgett, *The Wage Effects of Sexual Orientation Discrimination*, 48 *Indus. & Lab. Rel. Rev.* 726, 737 (1995) (showing that lesbian and bisexual women earn 12% to 30% less than heterosexual women, although this number declines "greatly in size and significance when occupation and a selection bias correction are taken into account").

117. See Williams, *supra* note 60, at 231 (arguing that "[e]qual-parenting policies should . . . focus as much on entitlements for caregivers as on entitlements for workers" and should "avoid eliminating entitlements for caregivers in the name of equal-parenting goals"); Silbaugh, *Marriage Contracts*, *supra* note 60, at 70 (arguing that we should put "home labor on an equal footing with wage labor").

118. Reva Siegel's piece contains some wonderful historical illustrations of this attitude. See Siegel, *supra* note 71. She relates, for example, how Anna Howard Shaw, then president of the National American Woman Suffrage Association, drew on joint property advocacy to argue for the economic value of a wife's household labor. Shaw not only argued that a wife's labor was worth more than a hired housekeeper's; she defended that view by suggesting that a "wife who presided over a complex of servants did no more manual labor than the 'president of an insurance company,' but her work of superintendence was as valuable as his." *Id.* at 1207. It is obvious that Shaw is drawing on the class conventions of the day, in which wives were viewed as the superiors of the servants they supervised. What may be less obvious is the irony involved. Typically, joint property advocates argued that wives should be paid more than housekeepers on the ground that the labor market embodied sex-discrimination against the latter—an anti-market view. See *id.* at 1127–35. Yet, Shaw drew on the very market valuation that joint property advocates condemned in arguing that a wife should be paid a manager's salary rather than a servant's. In addition to the deep gender and class bias embedded in this comparison, it probably also drew on emergent Taylorist notions of the superiority of mental as opposed to manual labor. See *infra* note 287.

119. Indeed, there is evidence that poor wives and mothers have to work much harder to care for their families, because they have to stretch their meager resources so thin. See Martha Minow, *The Welfare of Single Mothers and Their Children*, 26 *Conn. L. Rev.* 817, 829–30 (1994); Silbaugh, *Labor into Love*, *supra* note 60, at 71. In addition, they have to protect their children from crime and other hazards that plague impoverished neighborhoods. See Fineman, *Dependencies*, *supra* note 62, at 305.

household workers, who do just as much work as she does. Joint property proponents sometimes defend higher payments for spouses on the ground that domestic workers are underpaid (which of course they are).<sup>120</sup> But the answer to this problem lies in collective solutions such as unionization, affirmative action, pay equity, and wage subsidies for low-wage workers—not in legitimating the class differential between domestic workers and homemakers by paying the latter more for the same services.

Ultimately, then, despite the concern for working-class and poor women expressed by joint property proponents,<sup>121</sup> marriage-based solutions for “valuing housework” tend to replicate the same old class-based, family-wage system upheld by conservatives and human capital theorists. Joint property proponents argue that collectivizing housework creates class divisions between the women who hire out child care and household work and the women who do such work for a living.<sup>122</sup> But, in reality, the collectivization strategy may promote solidarity among high- and low-income women, as working for a living provides both groups of women with a common set of experiences that can bridge class differences and allow women to identify with each other as working women.<sup>123</sup> At times in our

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120. See, e.g., Ertman, *supra* note 60, at 21 (noting that feminists have criticized proposals to value housework through replacement cost and even opportunity cost models on the ground that such proposals fail to account for the benefits primary wage earners reap from their spouses' services); Katharine Silbaugh, *Commodification and Women's Household Labor*, *Yale J.L. & Feminism* 81, 120 (1997) (arguing that “there is a concrete risk that the deflated wages of the paid domestic worker will be used to estimate the value of unpaid work” by homemakers); cf. Siegel, *supra* note 71, at 1127–35 (documenting how nineteenth-century joint property proponents used the fact that the labor market discriminatorily depressed working women's wages as an argument for why homemakers should not be paid a market wage).

121. See, e.g., Williams, *supra* note 60, at 150–76 (arguing that the “full-commodification model” benefits privileged white women over white working-class women and women of color); Ertman, *supra* note 60, at 54, 87 (arguing that proposed premarital security agreements could benefit low-income women by reducing the marital debt allocated to primary homemakers). But see *id.* at 21 n.13 (acknowledging that feminists of color have criticized the assumption of an ideal worker-primary homemaker family as a “white, middle- or upper-middle class template”).

122. See Williams, *supra* note 60, at 162–63; cf. Siegel, *supra* note 71, at 1190 (characterizing nineteenth-century feminists' call to enable two-career marriage by collectivizing housework as a move that introduced class distinctions among women).

123. Although there are many obvious differences in their situations, women from all socioeconomic backgrounds experience many of the same forms of sex discrimination on the job. For example, women from across the occupational and educational spectrum experience gender-based limits on hiring and promotional opportunity and discriminatory wages and working conditions (including harassment). See generally Jacobs, *supra* note 39, at 41 (showing that sex segregation affects women at all educational levels even though it has declined the most in recent years among well-educated women); Schultz, *Reconceptualizing Harassment*, *supra* note 55, at 1722–29 (documenting sex discrimination and harassment against women who work in both low- and high-status occupations). Furthermore, there is evidence that working for a living creates shared interests among women, who unite across class boundaries to hold feminist views that are significantly less likely to be held by homemakers. See *infra* text accompanying notes

history, such cross-class alliances between women (and men) have occurred.<sup>124</sup> In contrast, the family-wage system upon which joint property proposals build was characterized by striking divisions among women. The ideology of domesticity reconciled middle- and upper-class homemakers to their position by encouraging them to make class- and gender-based distinctions between themselves and working women—who were not considered “true women.” At the same time, it obscured the conditions of women in the marketplace and justified the exploitation of immigrant, African-American, and white working-class women as the predictable, even deserved, fate of those who dared to venture out of the proper feminine sphere into the world of wage labor.<sup>125</sup> By encouraging middle-class women to create identities based primarily in motherhood and domesticity at the expense of paid work, contemporary joint property proposals harken back to such nineteenth-century ideologies.

3. *Traditional Welfare Strategies.* — Joint-property approaches are not alone in reproducing harmful gender- and class-based dynamics; traditional welfare strategies can be detrimental to women as well. Joint property approaches rely on individual breadwinners to fund household labor, while welfare strategies rely on the state. State funding is advantageous for women,<sup>126</sup> because it frees them from serving individual men and sheds class bias by funding household work at a uniform level regardless of the earnings of the family members who support it. None-

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319–320 (citing evidence that working women have been more likely than homemakers to support a variety of feminist causes, including the Equal Rights Amendment).

124. Early in the twentieth century, for example, professional women united with their working-class sisters to support labor struggles and other rights designed to promote women’s capacity for economic improvement and independence from men. See Nancy F. Cott, *The Grounding of Modern Feminism* 23–36 (1987) (describing alliances between labor movement, working-class women and more elite women activists in the suffrage movement, who saw “wage-earners (especially trade unionists) [as] exemplars of independent womanhood”). These same groups also worked together across class boundaries to support women’s sexual freedom and freedom of expression. See Christine Stansell, *American Moderns: Bohemian New York and the Creation of a New Century* 73–144, 225–46 (2000) (describing similar cross-class alliances among feminists and bohemians in Greenwich Village in the 1910s, who actively supported labor struggles, free speech campaigns, birth control, and other campaigns to promote women’s sexual freedom and the freedom to pursue paid work); see also *infra* note 192 and accompanying text (documenting cross-class alliances among women in Second Wave feminist movements that emerged in the 1960s).

125. See Jonathan A. Glickstein, *Concepts of Free Labor in Antebellum America* 182–84 (1991) (noting that “the cult of domesticity” obscured the deplorable labor conditions faced by many women and strengthened public inertia and apathy toward such conditions by rationalizing labor exploitation of immigrant and free black women who confirmed their lack of respectability by leaving their natural domestic sphere); Alice Kessler-Harris, *Women, Work and the Social Order*, in *Liberating Women’s History* 330, 333–37 (Berenice A. Carroll ed., 1976) (emphasizing that the ideology of separate spheres legitimated the relegation of working-class women to low-paying menial jobs).

126. See, e.g., Fineman, *Dependencies*, *supra* note 62, at 299–304 (arguing that caretaking should not be supported economically by husbands within traditional marriage).

theless, by paying women to stay home with their children rather than providing real support for parents (especially single parents) to work at paid jobs, welfare strategies still encourage women to invest in homemaking and caregiving to the exclusion of their job skills—which may harm women and their families in the long run. For this reason, in the wake of changes to the traditional Aid to Families with Dependent Children (AFDC) system,<sup>127</sup> a number of feminists are proposing alternatives designed to enable low-income mothers and fathers—along with their middle-class counterparts—to participate in parenting and paid work at the same time, and to improve the status of the work they do.

Feminist economist Barbara Bergmann, for example, has criticized the traditional AFDC program for creating a disincentive to employment that hurts women in the long run.<sup>128</sup> She advocates a system more like the French system, which eliminates this disincentive by providing single parents with better support for working at a job while parenting. In France, according to Bergmann, a single mother who takes a job can do far better than her American counterpart—and better, too, than her French counterpart who stays home full-time to care for her children. In addition to receiving a comparatively higher wage than in the U.S. (due to a higher minimum wage), the French mother who goes to work will not lose her health insurance, and she will pay little or nothing for high-quality child care that is coveted even by the middle classes. In France, says Bergmann, “[a] single mother and her children do not have to live in poverty. With a job, she can support them at a decent standard.”<sup>129</sup>

Bergmann’s analysis shows that, despite its facial neutrality, the traditional American welfare approach has harmful class and gender effects. Single mothers are likely to remain poor no matter what they do, whether they work at paid jobs or not. In addition, Bergmann points out, paying single mothers to care for their children raises demands to support married middle-class women’s homemaking, which only exacerbates class differentials and further reinforces the gender-based division of labor.<sup>130</sup> To move the United States in a more promising direction, Bergmann has proposed a program called “Help for Working Parents,” which would provide low-income parents (single or married) the resources to combine paid work with parenting. The program would provide universal health insurance (on a sliding scale), child care vouchers (for public or private forms of child care), food stamps, and expanded housing assistance for

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127. See *infra* note 203.

128. In the United States, under AFDC, according to Bergmann, a low-skilled single parent had no incentive to leave AFDC for a paid job. After paying for child care, the mother would earn no more—and might even earn less—than she did on welfare. In addition, if she went out to work, she would lose her health insurance, and her job would not be likely to provide it. The result is a real risk that a serious illness would place her family in financial ruin. See Bergmann, *Saving Our Children*, *supra* note 72, at 12–13, 91–94.

129. *Id.* at 12.

130. See *id.* at 123–24.

high-cost areas. Perhaps most importantly, it would also provide government subsidies to bring individual earnings above the poverty level.<sup>131</sup> The proposal contemplates that, like most fathers, mothers will engage in full-time work; however, full-time work is defined as thirty hours a week—a substantial reduction from the current norm for American men and women.<sup>132</sup>

Feminist political theorist Nancy Fraser has also criticized the welfare model for reasons that are remarkably similar to Bergmann's, despite their different points of departure.<sup>133</sup> Fraser even takes issue with a remarkably utopian version of the welfare approach—one more generous than we have come close to achieving in the United States—that she calls a "Caregiver Parity" model.<sup>134</sup> As Fraser describes the model:

The point is to enable women with significant domestic responsibilities to support themselves and their families either through carework alone or through carework plus part-time employment. . . . Thus, childbearing, child rearing, and informal domestic labor are to be elevated to parity with formal paid labor. . . .

To this end, several major new programs are necessary. One is a program of caregiver allowances to compensate childbearing, child rearing, housework, and other forms of socially necessary domestic labor; the allowances must be sufficiently generous at the full-time rate to support a family . . . . Also required is a program of workplace reforms [to] facilitate the possibility of combining supported carework with part-time employment and of making transitions between different life-states.<sup>135</sup>

Like Bergmann, Fraser condemns even such a well-intentioned model on the ground that it reinforces the gender-based division of labor in ways that harm poor women the most, but ultimately hurt all women. "Although the system of allowances-plus-wages provides the equivalent of a basic minimum breadwinner wage, it also institutes a 'mommy track' in employment—a market in flexible, noncontinuous full- and/or part-time

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131. See *id.* at 124–30.

132. See *id.* Bergmann's program was developed jointly with feminist Heidi Hartmann, the head of the Women's Public Policy Institute. See Barbara Bergmann & Heidi Hartmann, *A Welfare Reform Based on Help for Working Parents* 1 *Feminist Econ.* 85 (1995).

133. Fraser criticizes what she calls a "Universal Breadwinner" model, which encourages women to work the same full-time hours as men, on the ground that it reinforces androcentric breadwinner norms and reduces time for leisure and civic activities for everyone. See Fraser, *supra* note 76, at 51–55. Bergmann does not advance a similar critique; her work might even be said to embody Fraser's Universal Breadwinner approach. As I try to make clear in the text, however, I think Fraser and Bergmann are closer to each other than they are to many other feminists. Both understand the significance of paid work to women's lives; and both take seriously the need to dismantle gender-based patterns of paid work in order to achieve a more egalitarian society.

134. See *id.* at 55.

135. *Id.* at 55–56.

jobs [which] will pay considerably less even at the full-time rate than comparable breadwinner-track jobs."<sup>136</sup> As a result, Fraser concludes, the model will perpetuate current patterns of income inequality. Even though the model, according to Fraser, aims to "make difference costless,"<sup>137</sup> the model actually promotes women's marginalization by reproducing the link between caregiving and femininity, on the one hand, and breadwinning and masculinity, on the other.<sup>138</sup>

Thus, both political theorist Nancy Fraser and economist Barbara Bergmann are concerned that even a generous welfare model would replicate the undesirable features of the old family-wage system. Both believe we can do better by creating social systems that enable people to combine paid work with caregiving and improve and desegregate low-wage work. Like Bergmann, Fraser advocates vigorous steps to eliminate the gender segregation of jobs and to provide generous social support for job-holding. Her vision is similar to Bergmann's, except that Fraser argues explicitly for reducing the amount of time both men and women devote to paid work so that we can all be more active participants in family life, political activity, and civic endeavors. Fraser quotes approvingly from the Swedish Ministry of Labor: "To make it possible for both men and women to combine parenthood and gainful employment, a new view of the male role and a radical change in the organization of working life are required."<sup>139</sup> In such a world, the "employment sector would not be divided into two different tracks; all jobs would be designed for workers who are caregivers, too; all would have a shorter workweek than full-time jobs have now; and all would have the support of employment-enabling services."<sup>140</sup> Creating such a world would require us to dismantle the gendered association of men with paid work and women with child care and housework. It would require us to fully envision men as committed caregivers and women as authentic workers—something which even some feminists, let alone many other men and women, have not yet been able to do.

This is unsurprising, for family-wage ideology is such a deeply-ingrained part of our heritage that it remains difficult to recast women's (and men's) roles as workers and citizens in such transformative terms. As historian Linda Gordon has shown, even most late nineteenth and

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136. *Id.* at 57.

137. *Id.* at 55.

138. As Fraser puts it:

By supporting women's informal carework, it reinforces the view of such work as women's work and consolidates the gender division of domestic labor. By consolidating dual labor markets for breadwinners and caregivers, moreover, the model marginalizes women within the employment sector. By reinforcing the association of caregiving with femininity, finally, it may also impede women's participation in other spheres of life, such as politics and civil society.

*Id.* at 58.

139. *Id.* at 62.

140. *Id.* at 61.

early twentieth-century women's rights activists who were instrumental in creating the modern welfare state were "maternalists" who based their approach on the family-wage system.<sup>141</sup> These feminists' acceptance of a gendered system of labor limited their vision of "welfare" to a system that paid women to stay home and take care of children (such a system was understood to be temporary, anyway, since the beneficiaries were imagined to be widows who would eventually remarry), rather than a system that enabled both women—and men—to take care of their families while at the same time engaging in paid work. Some reformers understood that the family wage was a myth, and that "mothers' aid would be only a poor substitute for insisting on decent wages" for working women.<sup>142</sup> But the most prominent activists' adherence to family-wage ideology blinded them to the need for broader governmental policies that would enable women to work to support families on our own, such as better jobs and job training, wage subsidies, and collectivized child care. It was left to less mainstream activists to call for these and other measures that envisioned wage work as an important component of women's lives and identities, and, more radical still, of their independence from men.<sup>143</sup>

4. *The Legacy of Family-Wage Thinking.* — Because of the close links between work, citizenship, and identity, our historic failure to take women seriously as workers has prevented us from incorporating women as full citizens or human beings. Even when we enact laws that recognize and seek to equalize women's work roles, the remnants of family-wage ideology creep into the law and deplete much of its transformative potential. This is not to say that legal reforms have not helped: They have, just not enough. After thirty-five years of civil rights enforcement, many women are still scrambling for low-paying, often temporary or part-time, jobs that don't come close to providing a living wage or decent benefits.<sup>144</sup> We are left to patch together care for our children, catch as catch-can, with little or no help from our employers or our government. Whether we work in the highest echelons of the professions or the lowest levels of service provision, our place toward the bottom of the hierarchy is rationalized by denying our capacity for agency as workers. Highly-trained professionals who are discriminatorily relegated to second-class status or driven out of their fields altogether are labeled "mommy trackers," who decline the legitimate demands of the professions to fulfill their

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141. See Gordon, *supra* note 1, at 53–59; see also Sonya Michel, *The Limits of Maternalism: Policies Toward American Wage-Earning Mothers During the Progressive Era*, in *Mothers of a New World: Maternalist Politics and the Origins of Welfare States* 277, 277–78 (Seth Koven & Sonya Michel eds., 1993) (discussing maternalist political activism).

142. Gordon, *supra* note 1, at 62.

143. See *id.* at 135–37, 142, 236–38.

144. See Kalleberg et al., *supra* note 92, at 1–3.

natural domestic roles.<sup>145</sup> Less privileged women (particularly women of color) are not only described, but denigrated, as creatures of an inferior culture—a characterization which serves to legitimate their low position in the labor force.<sup>146</sup>

Whether women's lack of agency as workers is romanticized as the expression of middle-class domesticity or denigrated as the product of an inferior culture,<sup>147</sup> the stereotype of women as inauthentic workers suppresses all the ways in which women's lives are fundamentally shaped—and can be reshaped in more transformative ways—in connection with our work.

### III. CHANGES IN THE MAKING

Meanwhile, the organization and structure of work is changing in dramatic, world-rupturing ways. We are living through a time when working life—and along with it, the rest of social life—is undergoing great changes that are comparable in magnitude to the shifts of the Industrial Revolution. As corporations seek more flexible forms of production and labor around the globe, more and more people face greater job insecurity and less ability to shape their lives through a coherent narrative involving a commitment to work performed in stable settings over the course of a lifetime. It isn't simply women, racial minorities, or other low-wage workers who are experiencing the new insecurities: The changes are affecting all but those at the very top. To put the point sharply, almost all workers are in danger of becoming "women," in the sense that they are experiencing the problems and dilemmas that women have traditionally faced with respect to paid work.

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145. Cynthia Fuchs Epstein et al., *The Part-Time Paradox: Time Norms, Professional Lives, Family, and Gender* 83, 86–87 (1999) [hereinafter, Epstein, *Part-Time Paradox*]; Fraser, *supra* note 76, at 57.

146. As Patricia Zavella has shown, for example, Chicana women are often depicted as traditional and family-oriented, a characterization that draws on an essentialized notion of Mexican-American culture and women's position within it in order to legitimate their menial position in the labor force. See Patricia Zavella, *Women's Work and Chicano Families: Cannery Workers of the Santa Clara Valley* 15 (1987) (noting that "the ideology of family reinforce[s] Chicanas' subordination").

147. When it suits corporate interests, poor women are objectified as things, fit only for the most menial types of labor. Mexican women in places like the Maquiladora plants are reified as "nimble fingers," fit (indeed, made) for repetitive, mind-numbing, body-destroying work, as recent work by Alicia Schmidt Camacho makes clear. Alicia Schmidt Camacho, *On the Borders of Solidarity: Race and Gender Contradictions in Contestations to Global Capitalism* 8–9 (Dec. 15, 1998) (unpublished manuscript, on file with the *Columbia Law Review*). Essentializing poor women of color as extensions of the machine or expressions of the machine or the mop and pail is another way of suppressing their agency as workers so as to deny room for empowerment.

*A. New Trends*

The changes are too complex to describe fully here; and, of course, to some extent, different things are happening in various sectors of the economy. Nonetheless, some general trends are emerging.<sup>148</sup> In the transition to a global, service-based economy, the old large-scale bureaucratic institution that gave people the chance to move up on internal career ladders, as they accumulated experience and seniority, is dying. In its place, we are witnessing an emergence of newer organizations that are transforming production and personhood along with it. The hallmark of the new order is flexibility—the capacity to change quickly to new product demands and changing business conditions. Corporations are going “from fat to lean,” as “assumptions have shifted away from ‘big is better’ to ‘smaller is beautiful’—and more flexible.”<sup>149</sup> Many organizations have eliminated middle-management and nonessential workers, subcontracted out a variety of internal services, and begun to rely on overtime and contingent workers instead of adding new full-time staff.<sup>150</sup> “In place of organizations as pyramids, management wants now to think of organizations as networks.”<sup>151</sup>

In the abstract, at least some of these changes have the potential to be empowering. As the classic critiques of modern, large-scale organizations made clear, life in the bureaucratic office and Fordist factory could be stultifying. At the top, the high degree of uncertainty made trust a crucial component of managerial jobs. The need for trust bred discriminatory pressures toward social homogeneity—as opposed to merit—in hiring and promotion, and deadening pressures toward conformity—as opposed to creativity—in performance. At the bottom, many people stuck in dead-end jobs became dispirited and adjusted their aspirations downward, which only served to rationalize their situation. Along the way, the pyramid squeeze produced more qualified candidates than openings, which permitted companies to bypass controversial candidates, particularly those marked by gender, race, or class difference. The powerless were caught in “highly routinized, rules-bound jobs,” located “at

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148. See Eileen Appelbaum & Rosemary Batt, *The New American Workplace: Transforming Work Systems in the United States* (1994) (surveying innovations in management methods and forms of work organization through 1994); Bennett Harrison, *Lean and Mean: The Changing Landscape of Corporate Power in the Age of Flexibility* (1994) (documenting new organization of firms, suppliers, and customers, and showing that the new economy is not dominated by small firms); Rosabeth Moss Kanter, *When Giants Learn to Dance: Mastering the Challenge of Strategy, Management, and Careers in the 1990s* (1989) (discussing strategies to face these trends); Sennett, *supra* note 18 (arguing that the decline of stable employment threatens people’s ability to form coherent narratives for their lives).

149. Kanter, *Men and Women*, *supra* note 21, at 290.

150. See *id.*

151. Sennett, *supra* note 18, at 23.

the periphery, in backwater positions not seen as critical for solving relevant problems."<sup>152</sup>

If this picture of the traditional corporation looks reactionary, the Fordist factory looks even more retrograde. By subdividing the production process into smaller and smaller units that required little thought or judgment, managers learned that they could extract more and more productivity out of those who did the work. In addition to forcing workers' bodies into conformity with the discipline of the governing machinery (whether through the line or through the operating system), management could also impose the discipline of de-skilling by eroding the craftworker's integrated knowledge of the production process as a whole.<sup>153</sup>

From this vantage point, it might appear liberating to kill off the traditional hierarchical corporation, and replace it with decentralized institutions. In an ideal world, managers, once stripped of the formal authority that their old hierarchical positions gave them, would have to earn the respect of those they supervise in order to have influence and leadership. Line-level workers would also face new incentives: Rather than moving up along an internal career ladder mechanistically with the accumulation of seniority and minimally satisfactory performance, promotions would depend on working harmoniously and productively with their peers to produce better results. In fact, the reward for good performance would not lie always in moving "upward," but instead in moving outward, horizontally, to acquire deeper and richer knowledge of the business. Through the experience of working together in teams and making lateral enrichment moves, employees could regain the craft knowledge, collectively, that management once stole from them. Rather than being drones beholden to one organization or one narrow notion of vocation, people would be free to become nomadic entrepreneurs, who move from firm to firm and even position to position in order to exploit good opportunities as they come along and diversify their "human capital" portfolio. Even better, in this brave new world, both managers and workers would have to shed themselves of prejudice and intolerance, for working harmoniously with diverse groups of people would be a premium.

### B. *New Threats*

Despite these rosy predictions, there are reasons to be concerned—even alarmed—about the changes that are actually occurring. Among those who are informed, powerful voices warn that the new trends harbor some profoundly negative consequences for social and individual life. Bennett Harrison and Richard Sennett, for example, have emphasized

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152. Kanter, *Men and Women*, supra note 21, at 293.

153. See Harry Braverman, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* (1974); Katherine Stone, *The Origins of Job Structures in the Steel Industry*, 6 *Rev. Radical Pol. Econ.* 113, 115–23 (1974).

the dark side of flexible capitalism, which they see as committed above all else to the idea of reducing fixed labor costs in the name of facilitating newness and change: "No long term."<sup>154</sup> Harrison's work shows that, contrary to popular pronouncement, there is no renaissance of small firms that can be celebrated under the rubric, "Small is beautiful." Instead, large firms are reorganizing by cutting their own core production functions to the bone and organizing decentralized networks that they dominate—a phenomenon he calls "concentration without centralization."<sup>155</sup>

In Sennett's view, this shift toward decentralization has not meant greater freedom and autonomy for most workers, but simply a different, and perhaps more debilitating, form of power and discipline. Many of the commands people once negotiated with their immediate supervisors have been embedded into systems technology or are simply handed down in the form of directives from on high. In a reverse spin on the traditional trend toward ever finer divisions of labor, top management now loads onto small work groups an ever-increasing, diverse set of tasks, instructing workers to meet unattainable goals without providing anyone to train or supervise them in how to do so.

Nor does decentralization necessarily restore the craft element by allowing workers to regain integrated knowledge of the process. All too often, according to Sennett, even teamwork promotes a kind of "demeaning superficiality" as people are encouraged to develop "soft skills" that remain on the surface of experience, rather than acquiring substantive knowledge that deepens with accumulated engagement.<sup>156</sup> In some environments, management's promises to take workers and their ideas seriously have proven to be empty. At Subaru-Isuzu, for example, management's egalitarian rhetoric was largely a facade.<sup>157</sup> Calling the workers by the same title and having them all wear the same clothes and eat in the same lunchroom did not produce equality. Team leaders often ruled dictatorially and, on matters like work scheduling, associates' input was completely disregarded. Associates who attempted to provide input on such issues were told that "[t]he company only takes input from Associates on subjects the company chooses."<sup>158</sup> Although the company was supposed to provide a formal forum for discussing associates' suggestions, the time was actually used by managers to announce productivity statistics from the previous day—a practice that employees resented bitterly.<sup>159</sup>

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154. Sennett, *supra* note 18, at 22; see Harrison, *supra* note 148, at 8.

155. Harrison, *supra* note 148, at 9.

156. Sennett, *supra* note 18, at 98–99.

157. See Laurie Graham, *On the Line at Subaru-Isuzu: The Japanese Model and the American Worker* 58–61 (1995).

158. *Id.*

159. See *id.* at 59–60. Ruth Milkman has documented similar dynamics at the General Motors (GM) plant in Linden, New Jersey. See Ruth Milkman, *Farewell to the Factory: Auto Workers in the Late Twentieth Century* (1997). After a major reorganization that eliminated the jobs of many workers, GM promised a new company

Some of the new forms of work organization can also have negative consequences for employee solidarity. Rather than being a bottom-up initiative that allows workers to participate more fully in production decisions, teamwork is often part of a larger system designed to indoctrinate workers into a carefully orchestrated, top-down organizational culture in which workers compete with each other for management's favor. One researcher found that "[p]eer pressure from other workers . . . took the place of bosses cracking the whip . . . ; the fiction of cooperating employees served the company's relentless drive for ever greater productivity."<sup>160</sup> Despite a benign image of teamwork as something that fosters harmonious relations among co-workers, teamwork can actually foster cut-throat competition among teams and among individuals within teams—without the traditional safeguards against harassment and discrimination that accompany more formal work structures.

More systematic empirical research documents other negative consequences of the new forms of organization. Paul Osterman has studied large private firms that adopted high performance practices such as self-managed work teams, job rotation, quality circles (or other off-line problem-solving groups), and total quality management. Consistent with expectations, Osterman found that these practices had spread quickly in the 1990s.<sup>161</sup> Among economists and management experts, there was widespread anticipation that these trends would prove to be win-win for both

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culture in which workers would be treated with a new-found respect and would have a major role in ensuring improved production. Despite the employees' excitement and cooperation, these promises were quickly betrayed. The GM Employee Involvement Groups, which brought together management and line workers in weekly, half-hour meetings to discuss the worker's suggestions, were canceled after a short time. Even more disappointing, workers found themselves being reprimanded if they dared to stop the assembly line—despite the fact that the new training program had emphasized that they should stop the line if they discovered an error or were unable to complete their assigned task properly in their own work station. Shop-floor management found it difficult to shed their autocratic ways, and most foremen went back to their old practices of humiliation and abuse. See *id.* at 170–77.

160. Sennett, *supra* note 18, at 113. For example, Laurie Graham and her colleagues at Subaru-Isuzu quickly discovered that internalizing the responsibilities of team membership meant pushing oneself beyond all limits to keep up one's end of the bargain. Resentment against slower workers was common and was implicitly encouraged by the company's policies. Whenever a particular team had to stop the assembly line, for instance, everyone in the plant was notified about which team had done so by a series of musical notes that designated that team. See Graham, *supra* note 157, at 98–101. This system created pressure to harass one's own team members into falling into line. During the course of her observation, Graham even found herself participating in a scheme with her co-workers to humiliate a fellow team member into carrying his weight in the production process. See *id.*

161. In 1992, about 25% of all firms had involved at least half their core employees in two or more of these practices; by 1997 this figure had grown to 38% (with the use of all practices increasing, except teams, which remained stable). See Paul Osterman, *Work Reorganization in an Era of Restructuring: Trends in Diffusion and Impacts on Employee Welfare* 8 (April 1999) (unpublished manuscript, on file with the *Columbia Law Review*).

management and employees.<sup>162</sup> Contrary to these predictions, however, the productivity and quality gains associated with these innovations did not rebound to the benefit of employees. Firms that had implemented high performance practices in 1992 produced no wage gains for employees by 1997. Furthermore, the presence of these practices in 1992 was actually associated with a higher probability of layoff for both workers and managers in later years.<sup>163</sup> Thus, the firms did not provide job security as a way of reciprocating the high degree of employee effort demanded by the new work systems. To the contrary, such effort was met with restructuring that harmed, rather than helped, incumbent workers.

In fact, according to many commentators, declining job security is one of the hallmarks of the new economic order. Both job stability (the tendency of workers to form long-term bonds with their employers) and job security (workers' ability to remain in their jobs so long as their performance is satisfactory) apparently have declined over the last two decades.<sup>164</sup> Many employees now feel more insecure about their jobs, and for good reason: Involuntary job loss increased in the 1990s and impacted roughly ten percent of the population.<sup>165</sup> Job displacement is not limited to low-skilled workers. The 1990s saw a significant increase in the risk of job loss for white-collar workers—including managers, whose rate of job loss due to "position abolished" more than doubled.<sup>166</sup> Even in today's red-hot economy, displaced workers face a hard time finding new jobs. In a recent Economic Policy Institute study, more than one-third of displaced workers were still out of work when interviewed one to three years later.<sup>167</sup> Those who did manage to find new jobs earned less and were less likely to retain health insurance.<sup>168</sup>

The new economy forces everyone—even many once-secure workers—to live with increased insecurity and inestimable risk. In such a climate, the cultural imperative is to keep moving and taking risks: Those afraid to leap are said to deserve to be stuck. In this new organizational/

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162. See Edward E. Lawler III et al., *Employee Involvement and Total Quality Management: Practices and Results in Fortune 1000 Companies* 9–11 (1992).

163. See Osterman, *supra* note 161, at 11–13.

164. According to a recent study by the Economic Policy Institute, "[t]he share of workers in 'long-term jobs' (those lasting at least 10 years) fell sharply between 1979 and 1996," from 41% to 35.4% (with most of the decline attributable to men; women's situation remained fairly stable). Lawrence Mishel et al., *The State of Working America, 1998–99*, at 7 (1999). For a sophisticated discussion of the literature on contingent work that also documents this change, see Katherine V. W. Stone, *The New Psychological Contract* 15–24 (Jan. 31, 2000) (unpublished manuscript, on file with the *Columbia Law Review*).

165. The fact that this job loss rate was higher in the economic recovery years of 1993–95 than in the slump period of 1991–93, "suggests that the underlying structural rate of job loss . . . accelerated in the 1990s." Mishel et al., *supra* note 164, at 235.

166. *Id.* at 236.

167. See *id.*

168. Displaced workers who did manage to find new jobs earned, on average, 14% less; they were also 14% less likely to retain health insurance. See *id.* at 238–39 tbl.4.12.

cultural economy, advancing age is associated with fearfulness and fixity. Management argues that "older workers have inflexible mindsets and are risk-averse, as well as lacking in the sheer physical energy needed to cope with the demands of life in the flexible workplace."<sup>169</sup> The notion that young workers are flexible, while older workers are rigid, provides an ideological justification for targeting older workers for devaluation and dismissal. Accumulated experience is no longer seen as something that deserves respect and value. Instead, it is a sign of worthlessness which will mark even well-off workers with the passage of time.

In addition to downsizing and eliminating clear internal career trajectories, many corporations have turned to various forms of nonstandard (sometimes called contingent) work. Many companies have converted full-time positions into part-time, temporary, contract, or on-call jobs, or outsourced them to "temp" agencies or subcontractors that offer lower wages and no benefits, and other firms are creating these forms of employment at rapid rates.<sup>170</sup> Although some highly-educated workers may enjoy the flexibility that such forms of contracting entail, it is a return to Lochnerian formalism to refer to most of these contingent workers as free agents or entrepreneurs. As two recent studies by the Economic Policy Institute show, most forms of employment that do not involve full-time, year-round jobs are inferior to such standard jobs.<sup>171</sup> Nonstandard jobs are significantly less likely to provide health insurance or a pension; they are more likely to be temporary, and they do not typically lead to regular employment, at least with the same firm.<sup>172</sup>

Furthermore, most people who work in nonstandard jobs earn less than regular full-time workers.<sup>173</sup> Both men and women in all types of nonstandard work (except contracting) are more likely to receive poverty-level hourly wages than workers with similar personal and job characteristics employed in regular full-time jobs.<sup>174</sup> Although most people who work in nonstandard job arrangements are worse off than standard job-

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169. Sennett, *supra* note 18, at 93.

170. In 1997, almost 30% of all workers "were employed in situations that were *not* regular full-time jobs." Mishel et al., *supra* note 164, at 8.

171. See Kalleberg et al., *supra* note 92, at 6; Mishel et al., *supra* note 164, at 246–47. Indeed, in one study, over half of on-call workers, company contract employees, and wage-and-salary independent contractors surveyed in 1995 said they had worked for their current employer in a different work arrangement immediately prior to their current jobs—which suggests that they may have been victims of downsizing or other forms of restructuring. See Kalleberg et al., *supra* note 92, at 41.

172. See Kalleberg et al., *supra* note 92, at 6; Mishel et al., *supra* note 164, at 246–47.

173. See Mishel et al., *supra* note 164, at 242–47. In the labor force as a whole, for example, 35% of all women workers and 21% of men receive only poverty-level wages (currently \$7.63 an hour). Among nonstandard workers, 52% of all women and 33% of all men earn such wages—evidence that the working poor are concentrated disproportionately among nonstandard workers. See Kalleberg et al., *supra* note 92, at 16.

174. See Kalleberg et al., *supra* note 92, at 18–19 tbl.9.

holders on a variety of dimensions, women of all races and minority men tend to occupy the lowest-paying types of nonstandard jobs.<sup>175</sup>

A second major characteristic of the new economic order is increasing wage inequality. Despite some initial controversy about its existence, the growth in the earnings gap between the highest- and lowest-paid workers has by now been well-documented.<sup>176</sup> Between 1979 and 1990, there was a sharp increase in the likelihood that a year-round, full-time worker would have annual earnings below the poverty-level;<sup>177</sup> the same trend also held for all workers.<sup>178</sup> This widening wage distribution occurred throughout the economy—at least among men—in virtually every occupation and industry and in both the manufacturing and service sectors. Among women, the picture was more complicated: For better-educated women, wages increased, as discrimination and job segregation by sex decreased. For less-skilled women, wages declined, although not as steeply as for their male counterparts (who had farther to fall).<sup>179</sup>

According to recent research, the dramatic growth in wage inequality has continued into the 1990s, but its character has shifted. In the 1980s, there was a growing separation between top and middle earners versus middle and bottom earners. But in the 1990s, the inequality was generated by a divergence between the top and everyone else.<sup>180</sup> The status of those in the middle deteriorated. According to the Economic Policy Institute study, male white-collar wages have stagnated or declined.<sup>181</sup> Even “[w]omen workers in the middle and upper-middle part

175. For example, only 28% of the white men who work in nonstandard jobs work in those types where people earn less, on average, than similar full-time workers. However, fully 81% of all women do, including nearly identical shares of whites, blacks, and Latinos. Men of color do a bit better than white women, but not nearly as well as white men: 53% of black and 43% of Latino nonstandard male workers hold the lowest-paying types of nonstandard jobs. See *id.* at 44.

176. See Harrison, *supra* note 148, at 189–91.

177. See U.S. Bureau of the Census, *Workers with Low Earnings: 1964 to 1990, Current Population Reports, Consumer Income*, series P-60, no. 178, at 5, 8 (1992).

178. See Lawrence Mishel & Jared Bernstein, *The State of Working America*, 1992, at 137 (1993). According to one exhaustive review:

Nineteen-hundred-seventy-three marked the end of rapid real earnings growth and the beginning of slower growth bordering on stagnation. Nineteen-hundred-seventy-nine marked the beginning of a sharp acceleration in the growth of earnings inequality, particularly among men. . . .

[T]he male annual earnings distribution has hollowed out, leaving larger percentages of workers at the top and bottom of the distribution, and a smaller percentage in the middle.

Harrison, *supra* note 148, at 193–94 (quoting Frank Levy & Richard Murnane, *U.S. Earnings Levels and Earnings Inequality: A Review of Recent Trends and Proposed Explanations*, 30 *J. Econ. Literature* 1333, 1371 (1992)).

179. See Rebecca M. Blank, *It Takes a Nation: A New Agenda for Fighting Poverty* 61 (1997).

180. See Mishel et al., *supra* note 164, at 149.

181. According to the Economic Policy Institute study:

Many [relatively] big-wage workers, particularly men, failed to see real wage improvements in the 1989–97 period. Male white-collar wages, including those

of the wage distribution, who saw real wages rise significantly in the 1980s, have experienced a sharp deceleration in the 1990s."<sup>182</sup> Although a tight economy brought wage increases in the last few years of the 1990s, as of 1999, the improvements of 1997–98 had still left wage trends in the 1990s no better than they were for most workers in the 1980s. "To the extent that the typical American family has been able to hold its ground, the most important factor has been the large increase in the hours worked by family members."<sup>183</sup>

Like other concerned scholars and activists, I believe these changes threaten the social order. Richard Sennett argues that a commitment to work performed over the course of a life is a precondition to a stable society and strong sense of self, and I think he is right. As the notion of a career that progresses through a few institutions is eroding, as the marshaling even of a single bundle of skills through the course of a life is declining, as more and more people work harder and harder to have fleeting associations with strangers in short-term jobs in new locations, something vital is lost (and it is not simply wages). Working with one's peers in pursuit of common goals is the structure upon which a vibrant civic life rests. Stable work is the experience through which we create coherent life stories. We need work to sustain ourselves and our loved ones. We need to live free of the anxiety produced by not knowing when one's next project—and paycheck—are coming, or whether they will come at all.

In fact, when I read Sennett's new book, my reaction was: He's exactly right. It is profoundly disheartening when people don't have work they can count on to sustain a life. If we want to know what happens to people who do not have access to steady work suited to their education and abilities, all we have to do is look at the experience of women in the era before the laws against employment discrimination were enforced. Moving from one dead-end job to the next, they kept trying different types of work as teenagers try on outfits, hoping one would finally allow them to express their deepest selves. Even when women found work they loved, it rarely paid enough to allow them to support themselves (let alone their families). Sennett is simply telling us that many working people now face the difficult circumstances women traditionally have encountered in connection with work.

The bad news is that these changes now threaten most Americans. Even those who were not supposed to fail are falling victim to the new insecurities. Yet, in another sense, this is also the good news. That these

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for managers and technical workers, have been stagnant or have declined, and the wages of male college graduates have stagnated and remain below their level of the mid-1980s or early 1970s.

Id. at 119–20.

182. Id. at 1.

183. Id. at 2.

changes affect so many middle-class people creates a greater possibility for political change. The question is, what should we do?

#### IV. LIFE'S WORK

The changes we are witnessing present deep challenges, but they also provide us with an opportunity to reshape social life by focusing on work. There are many viable directions for change; but, from the vantage point I have been describing, they all begin with paid work. Paid work is a central social good, which must be reshaped and redistributed in order to create more empowering life prospects and more egalitarian relations throughout social life.<sup>184</sup> For me, the most promising point of entry is to ask: What would it take to make available to everyone full and equal participation in decently-paid, life-sustaining, participatory forms of work in which women and men from all walks of life can stand together as equals?

I realize that work alone is no panacea. It is the platform on which equal citizenship should be built, not the entire edifice. Still, the importance of work to the future cannot be overemphasized; abandoning work as a political and cultural ideal would be a serious mistake. People need more than money or property: We need life projects. We need goals and activities to which we can commit our hearts, minds, and bodies. We need to struggle with our capacities and our limits, in sustained ways in stable settings. We need to work alongside others in pursuit of common goals. We need to feel that we are contributing to something larger than ourselves and our own families. Most of us even need something that requires regular rhythms and structure, and provides a mechanism for deferring gratification. We need to feel that we are earning our keep—that we have a source of wherewithal that is our own. We also need public recognition for our labors. It is difficult to imagine any single activity that can fulfill all these purposes for the vast majority of people other than working. We have seen what happens to people when they don't have work to give life structure and meaning, and it is not exemplary. There is a reason why democratic societies have organized themselves as employment societies.<sup>185</sup> Paid work is the only institution that can be sufficiently widely distributed to provide a stable foundation for a democratic order. It is also one of the few arenas—perhaps the only one—in which diverse groups of people can come together and develop respect for each other through shared experience.<sup>186</sup> Can we think of a society

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184. For other expressions of the importance of work to equal citizenship, see Forbath, *Equal Citizenship*, *supra* note 9, at 90; William E. Forbath, *Why is This Rights Talk Different From All Other Rights Talk? Demoting the Court and Reimagining the Constitution*, 46 *Stan. L. Rev.* 1771, 1783–85, 1793–1805 (1994) [hereinafter Forbath, *Rights Talk*]; Karst, *supra* note 5, at 548–53.

185. See Pateman, *supra* note 6, at 258–59.

186. Professor Cynthia L. Estlund has long emphasized this theme. See Cynthia L. Estlund, *Working Together: The Workplace, Civil Society, and the Law* 3, 7–21 (Mar. 2000) (unpublished manuscript, on file with the *Columbia Law Review*); Cynthia Estlund,

anywhere in the world we would want to emulate in which most people do not work for a living?

In contrast to such a work-centered approach, some important thinkers have proposed that we abandon our historic emphasis on work and create alternative paths to the good life. Bruce Ackerman and Anne Alstott envision a "stakeholder society," for example, in which investment rather than working becomes the means of securing the good life. Rather than making sure that each citizen has access to a decent job, they would distribute to each citizen a sum of money to invest. They believe it is property that is crucial to citizenship, so it doesn't really matter whether people have a vocation to which they can devote themselves, or something else, such as a hobby, so long as they have an income and a stake in the polity that provides it.<sup>187</sup> Indeed, in rhetoric that harkens back to nineteenth-century characterizations of paid work as wage slavery, Ackerman and Alstott even hint that work is inconsistent with liberal notions of freedom.<sup>188</sup>

Other thinkers have gone so far as to celebrate the end of work. Feminist Carole Pateman has hinted, for example, that in the future, democratic citizenship will not be premised on paid work. This is a good thing, she suggests, for it alleviates the gender dilemma in that equation, given that women have been associated with domesticity as opposed to wage work and hence seen as incapable of equal citizenship. Rather than addressing this predicament by democratizing work, Pateman suggests that we resolve it by eroding men's attachment to wage work (as women's attachment is presumed to have been), and basing citizenship on something like our common dependency, rather than on the notion that work can ever make any of us "independent."<sup>189</sup>

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Free Speech and Due Process in the Workplace, 71 *Ind. L.J.* 101, 112 (1995); see also Karst, *supra* note 5, at 550–51 (arguing that the workplace has been a major institutional site of social integration of various racial and ethnic groups).

187. See Bruce Ackerman & Anne Alstott, *The Stakeholder Society* 11 (1999).

188. Their sharpest criticism is reserved for those who advocate wage subsidies, which they see as interfering with the freedom *not* to work. See *id.* at 207; see also Anne L. Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies*, 108 *Yale L.J.* 967, 971 (1999) (arguing that "[t]he case for employment subsidies rests on mistaken or morally dubious claims about the intrinsic or instrumental value of paid work").

In my view, the claim that work interferes with freedom is mistaken. There is no irreconcilable contradiction between Ackerman and Alstott's proposal to democratize access to capital and a focus on democratizing access to paid work; measures to universalize and improve the status of work could be supplemented with the central features of the Ackerman/Alstott stake. In fact, I believe the stake would work very well as a supplement to the work-centered measures I propose here. People could use their stakes to invest in the education and training that would prepare them for the work they really want to do; or they could use it to start their own businesses as a path to their life's work. Furthermore, as Lucie White pointed out to me, the stake (like any other unconditional cash grant) might function to increase workers' ability to leave undesirable jobs and to create their own alternative institutions—both of which may be needed to give workers the bargaining power to leverage the sorts of changes in working conditions I advocate.

189. See Pateman, *supra* note 6, at 258–59.

Even though work alone can never make us independent, that does not mean we can do without it. Ordinary people understand the significance of work and have demanded access to work in broad, inclusive terms. Indeed, over the past forty years, all the major social movements have focused on obtaining equal access to work for those excluded from its rewards. The civil rights movement's demand for jobs (along with peace and freedom) found expression in Title VII of the Civil Rights Act of 1964, which promised to integrate African-Americans into all the best forms of work in our economy. William Julius Wilson's current emphasis on jobs for the dispossessed<sup>190</sup> resonates with the language of the 1968 Kerner Commission Report, which pronounced unemployment one of the most significant problems facing poor black communities.<sup>191</sup> The Kerner report emphasized male unemployment, but, even at the time, women (of all races) were demanding to be taken seriously as workers. The emphasis on work has been crucial to Second Wave feminism, which was born in part out of the recognition that even relatively well-off, white middle-class women were united with their minority, poor, and working-class sisters in the experience of being marginalized in the world of work—which in turn disempowered them in politics and in private life.<sup>192</sup>

Older Americans have also demanded recognition as valid workers, and they won it in the Age Discrimination in Employment Act (ADEA).<sup>193</sup> The ADEA protects their right to work for as long as they are able, without being dismissed as less competent. Gay men, lesbians, bisexuals, and transgendered-people have also been demanding equality as workers. They have protested the ways in which they are all too often driven out of their jobs once people discover or even suspect that they are sexual minorities, a painful process that forces them to give up the occupational identity they have worked so hard to achieve and has become so much a part of them.<sup>194</sup> Gays and lesbians have won protection against job discrimination in many states and cities, and they have come very close to achieving federal protection through legislation such as the Employment Non-Discrimination Act (ENDA).<sup>195</sup>

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190. See Wilson, *supra* note 16, at 228–35.

191. See United States Kerner Comm'n, Report of the National Advisory Commission on Civil Disorders 219–35, 251–65 (1968).

192. For accounts of Second Wave feminism, see Sara Evans, *Personal Politics: The Roots of Women's Liberation in the Civil Rights Movement and the New Left* (1980); Jo Freeman, *The Politics of Women's Liberation: A Case Study of an Emerging Social Movement and its Relation to the Policy Process* (1975); Judith Hole & Ellen Levine, *Rebirth of Feminism* (1971); Jane J. Mansbridge, *Why We Lost the ERA* (1986); Jane Sherron De Hart, *The New Feminism and the Dynamics of Social Change*, in *Women's America: Refocusing the Past* 493 (Linda K. Kerber & Jane Sherron De Hart eds., 3d ed. 1991).

193. 29 U.S.C. §§ 621–634 (1994); see also *EEOC v. Wyoming*, 460 U.S. 226, 228–34 (1983) (providing a history of the development of the ADEA).

194. See Stephen Leinen, *Gay Cops* 200–01 (1993).

195. See Thomas H. Barnard & Timothy J. Downing, *Emerging Law on Sexual Orientation and Employment*, 29 U. Mem. L. Rev. 555, 557 (1999).

Although women, racial and ethnic minorities, older people, and sexual minorities are often characterized as “special interests,” many of the rights and remedies for which these groups have struggled have extended the benefits of work more broadly to other people as well. For example, racial minorities’ challenges to pencil and paper tests have benefited disadvantaged whites, too, due to the strong correlation between success on these tests and socioeconomic class.<sup>196</sup> Similarly, women’s challenges to height requirements have benefited many nonwhite men who are shorter than the average white Anglo-Saxon Protestant male, just as mothers’ efforts to win more flexible work schedules to accommodate parenting have benefited everyone who provides care—male and female, father and mother, son and daughter. Gay men’s efforts to challenge the workplace harassment their heterosexual counterparts direct at them also helps many women, too, because such challenges make it easier to see that harassment can be motivated not simply by sexual desire, but by a desire to exclude anyone who undermines the dominant composition and image of the work.<sup>197</sup>

The disability rights movement has also emphasized access to work, and they won an important victory with the Americans with Disabilities Act (ADA).<sup>198</sup> At least potentially, the ADA represents an expansion of the traditional civil rights paradigm: It recasts the demand for a “level” playing field into a call for an “accessible” one.<sup>199</sup> At the core of the ADA is a revolutionary idea: People who have disabilities (or who are perceived to have them) have the right to participate in the workforce just like everyone else; and they must be considered for any jobs they can do with reasonable modification or support from the employer. Disabled people now reject the older, custodial stance “typically expressed in policies of segregation and shelter, of special treatment and separate institutions.”<sup>200</sup> Like other Americans, they want the right to work, and they are demanding that work-related organizations make way for them.

Once again, making way for “them” helps make way for all of us. The ADA requires both structural transformations—such as building

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196. See Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 Cal. L. Rev. 953, 956–57 (1996).

197. See generally Schultz, *Reconceptualizing Harassment*, *supra* note 55, at 1774–89 (showing how male-on-male harassment fits into a larger understanding of workplace harassment as a mechanism to protect the masculine image of the work projected onto it by the dominant group).

198. 42 U.S.C. §§ 12111–12117 (1994); see also 42 U.S.C. §§ 12101(a)(9) (1994) (“[T]he continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.”).

199. Paul Steven Miller, *Disability Civil Rights and a New Paradigm for the Twenty-First Century: The Expansion of Civil Rights Beyond Race, Gender, and Age*, 1 U. Pa. J. Lab. & Employment L. 511, 514 (1998).

200. *Id.* at 520 n.44 (internal citations omitted).

ramps—and individual accommodation—such as allowing employees to work around their treatment schedules. These changes can benefit all of us, not simply those of us who meet the legal definition of “persons with disabilities.”<sup>201</sup> People who push baby strollers or ride bicycles appreciate ramps along with people in wheelchairs; and almost everyone can benefit from flexibility in scheduling. Furthermore, the very notion of “them” and “us” is an illusion when it comes to disability. If “disability” is defined sufficiently broadly, as it should be,<sup>202</sup> most of us will be disabled at some point in our lives.

We can also view the transition from welfare to work as part of this trend.<sup>203</sup> I realize that the impetus for welfare-to-work programs has come from the political right, who may not have the best interests of poor people at heart.<sup>204</sup> But it would be a mistake to attribute all of the new

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201. 42 U.S.C. §§ 12111–12117. But see *Sutton v. United Airlines Inc.*, 527 U.S. 471, 488–89 (1999) (limiting the definition of disability). For an interpretation of *Sutton* and other recent Supreme Court decisions that attempts to protect a broad vision of disability rights while shielding employers from frivolous lawsuits, see Lauren J. McGarity, Note, *Disabling Corrections and Correctable Disabilities: Why Side Effects Might Be the Saving Grace of Sutton*, 109 *Yale L.J.* 1161 (2000).

202. See Iris Marion Young, *Disability and the Definition of Work*, in *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions* (Leslie Francis & Anita Silvers eds., forthcoming 2000) (manuscript at 9, on file with the *Columbia Law Review*) (arguing that many workers who do not identify as disabled would benefit if they joined with disabled people to demand more humane workplaces).

203. As most readers are undoubtedly aware, much of the traditional AFDC system is in the process of being dismantled and replaced with a system that encourages, or even requires, single parents to engage in paid work in order to collect benefits for their children. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.), repealed the AFDC program and replaced it with a block grant program called Temporary Assistance to Needy Families (TANF) that gives wide discretion to the individual states to design and administer their own welfare programs. Under TANF, states are allowed to determine the standards for who is eligible for assistance, what type of assistance will be given, how long assistance will be given, and the terms and conditions under which assistance will be provided. For a description of new programs, see Blank, *supra* note 179, at 83–132 (1997) (reviewing contemporary anti-poverty programs); Mark Greenberg, *Welfare Restructuring and Working-Poor Family Policy: The New Context*, in *Hard Labor: Women and Work in the Post-Welfare Era* 24, 24–47 (Joel F. Handler & Lucie White eds., 1999) (same); see also Jonathan Zasloff, *Children, Families, and Bureaucrats: A Prehistory of Welfare Reform*, 14 *J.L. & Pol.* 225, 295–306 (1998) (analyzing the politics of some of the failures of recent welfare reforms). The literature distinguishes between “work-fare” programs, in which those who have drawn welfare are forced to work at jobs created for that purpose if they cannot find other employment, and “welfare-to-work” programs, in which the state provides job search assistance and other support services in an effort to help those who have collected welfare transition into steady jobs. See Judith M. Gueron & Edward Pauly, *From Welfare to Work* 7–21, 97 (1991) (outlining the main conclusions and policy implications of completed welfare-to-work studies from the 1980s). Here I will be emphasizing welfare-to-work programs, which are less punitive in nature.

204. See, e.g., Ellen Goodman, *Applying the Brakes to the Antiwelfare Juggernaut*, *The Boston Globe*, Nov. 16, 1995, at 19 (describing the then-pending welfare reform bill as more concerned with budget cuts than welfare improvements).

emphasis on work to conservatives alone. Some of the demand has come from members of the working poor who do not receive welfare, and who do not have the luxury of keeping a parent at home to take care of their own children. They may understandably resent the fact that their hard-earned tax dollars are used to support other parents who are not much worse off than they are.<sup>205</sup> In this sense, welfare entitlements have divided the welfare class from other members of the working classes.

But even this view is too simplistic. It is not only resentful taxpayers, but welfare recipients themselves who focus attention on work. Poor single parents have long expressed a desire for work that will allow them to support their children; they know that a decent job is the only path that provides real hope for their empowerment in the long run.<sup>206</sup> Most people who receive welfare payments have been working for pay all along, as they must in order to ensure the survival of their families.<sup>207</sup> But, partly because so many of them are women and racial minorities, single parents have not been perceived as "authentic" workers who have the capacity to contribute to productive endeavors beyond raising their own children. Women who draw on welfare are overrepresented among classic contingent workers, who fare worse on a variety of dimensions than people in more permanent employment.<sup>208</sup> This is the legacy of the fact that our welfare system has been based on a family-wage model that sees women as

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205. See Katherine S. Newman, *No Shame in My Game: The Working Poor in the Inner City* 98 (1999); Lillian B. Rubin, *Families on the Fault Line: America's Working Class Speaks About the Family, the Economy, Race, and Ethnicity* 197-99 (1994).

206. See Newman, *supra* note 205, at 98-100; Wilson, *supra* note 16, at 67; United States General Accounting Office, *Welfare Reform: Information on Former Recipients' Status*, GAO/HEHS-99-48, at 24 (1999) (noting that studies of former welfare recipients in two states showed that while former recipients "were more likely to experience some deprivations after leaving welfare than while on welfare," a majority (76% and 68%) "disagreed or strongly disagreed with the statement that 'life was better when you were getting welfare'").

207. See Kathryn Edin & Laura Lein, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* 6-7 (1997); Joel F. Handler & Yeheskel Hasenfeld, *We the Poor People: Work, Poverty, and Welfare* 47-48 (1997).

208. See, e.g., Spalter-Roth & Hartmann, *supra* note 91, at 92-93 (showing that in 1990 14% of women who worked in contingent arrangements, compared to 3% of all women in permanent full-time work and 6% of women in permanent part-time work, relied on income from means-tested welfare benefits to supplement their earnings); *id.* at 85 (documenting a median hourly wage of \$5.15 for contingent workers, compared to \$10.85 for full-time, year-round workers, and \$8.74 for all workers in the sample); see also *supra* note 173 and accompanying text (documenting similar results for nonstandard workers). Note that unlike Kalleberg et al., who include regular part-time workers in their definition of "nonstandard" employment, see Kalleberg et al., *supra* note 92, at 8, 71, Spalter-Roth & Hartmann exclude them from their definition of "contingent" workers, on the ground that part-timers who work for one employer are more likely to be involved in stable jobs and less likely to face the "tenuousness" they see as the essence of contingent employment. See Spalter-Roth & Hartmann, *supra* note 91, at 74-75. For a discussion of methodological issues in measuring contingent work, see Stone, *supra* note 164, at 17-24.

inauthentic workers and cannot imagine mothers in economically-powerful provider roles.<sup>209</sup>

Even if many welfare-to-work programs have been adopted for the wrong reasons, their existence does provide a political opening to turn things around.<sup>210</sup> Not only is paid work important to people's ability to get ahead and their sense of community and self-esteem; it is also a more easily politicized setting than the privatized home. By creating social systems that allow poor (and other) parents to combine caregiving with stable employment, we enable them to move into the workforce—a space in which they can more easily engage in collective action to improve their situation.<sup>211</sup> Perhaps this is why, all over the country, poor single parents and their advocates are seeking to convert the duty to work into a *right* to work, with all the social support necessary to make steady employment possible.<sup>212</sup> For instance, in one Wisconsin program, the state (or one of the agencies with which it contracts) provides a remarkable array of services designed to facilitate welfare mothers' successful transition to paid work.<sup>213</sup> Everyone in the program who can work receives a job: Although the ultimate goal is private-sector employment, the program provides a series of subsidized private- and public-sector jobs for those who are not "job ready."<sup>214</sup> Clients receive job search assistance and job training. Those who land jobs are not abandoned; they continue to receive job retention assistance and support.<sup>215</sup> They also continue to receive payments for child care and health care,<sup>216</sup> and caseworkers help with transportation.<sup>217</sup> Perhaps most importantly, the program provides sizable wage subsidies to ensure that those who hold down a job earn more than they did on AFDC.<sup>218</sup> The provision of such services can be seen as an expanded version of the Americans with Disabilities Act's call for accessibility: In order for paid work to be truly "accessible" to single par-

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209. See *supra* notes 142–147 and accompanying text.

210. See Forbath, *Equal Citizenship*, *supra* note 9, at 11; see also Handler & Hasenfeld, *supra* note 207, at 11–12.

211. See *supra* note 64 and accompanying text.

212. Martha Fineman has already planted the idea that women and mothers have a "right to work." Fineman, *Dependencies*, *supra* note 62, at 308–09; see Forbath, *Rights Talk*, *supra* note 184, at 1804–05 (arguing for a right to work); Karst, *supra* note 5, at 529, 557–58 (same).

213. See Jason DeParle, *Getting Opal Caples to Work*, *N.Y. Times*, Aug. 24, 1997, (Magazine), at 33 [hereinafter DeParle, *Opal Caples*].

214. *Id.* at 35–36.

215. See *id.* at 35.

216. See *id.* at 33, 35.

217. See Jason DeParle, *Symbol of Welfare Reform, Still Struggling*, *N.Y. Times*, Apr. 20, 1999, at A1 [hereinafter DeParle, *Symbol of Welfare Reform*].

218. Under AFDC, a mother with two children received \$9,456 a year in cash and food stamps. Under the plan, in 1999, a community-service job paid \$11,168 a year. See DeParle, *Opal Caples*, *supra* note 213. Once food stamps and tax credits are added in, and co-payments for child care and health care are taken out, a minimum-wage job netted \$16,524, a wage above the poverty line of \$13,330 a year. See *id.*

ents, they need a variety of services that help them prepare for, locate, and hold down jobs. And, of course, they need jobs—jobs that will pay well enough to support themselves and their children.

Viewed from this perspective, the best welfare-to-work programs push in the direction of a more expansive set of social programs that guarantee and support a right to work for everyone. If work is to provide the foundation for citizenship (as welfare-to-work programs imply), then everyone must have access to a suitable job, as well as the training and education needed to do the job. There is no reason to find or create jobs exclusively for people who have drawn on welfare, when so many others are struggling to find jobs, often under fiercely competitive conditions. The goal should be to ensure that everyone—mothers on welfare, fathers struggling to pay child support, poor women and men without children, people with disabilities, middle-class homemakers or divorcees, people in temporary jobs who want steady employment, older people, youth who are trying to finance continuing education, and, yes, even well-educated displaced workers—has work.

Yet, it is not simply a lack of jobs, but a lack of jobs that pay a decent wage that discourages many people.<sup>219</sup> As we pursue welfare-to-work strategies and other policies that remove work disincentives for various groups of people who have not traditionally held steady employment, we must find ways to counteract the even greater downward pressure on wages that will come as increasing numbers of low-skill workers enter the labor market. The old craft unionism strategy of excluding the disfavored as a way of keeping wages high is no longer viable; we can no longer afford to raise wages for some by excluding others.<sup>220</sup> Like the Milwaukee program, some welfare-to-work programs subsidize the wages of clients who find jobs in an effort to bring them up to a level that no longer discourages, but instead actively encourages, steady employment.<sup>221</sup> But, we cannot raise wages only for people who have drawn on welfare, when so many others face jobs with pay so low that they cannot support themselves—let alone their children. We must ensure that everyone has a pathway to sustaining work.

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219. See Edmund S. Phelps, *Rewarding Work: How to Restore Participation and Self-Support to Free Enterprise* 14–15 (1997).

220. I am grateful to Stanley Aronowitz for this point. Stanley Aronowitz, *Remarks at Workplace Theory and Policy workshop at Yale Law School* (Mar. 1, 2000). Traditionally, mothers have been one of the main groups upon whose exclusion strategies for full employment have been based. Barbara Bergmann has powerfully described how sexism allows us to feel that we are helping welfare recipients by justifying their exclusion from the labor market when we protest job-based strategies by saying, “There are no jobs out there for these people.” Bergmann, *Saving Our Children*, *supra* note 69, at 133. As Bergmann points out, nobody says, “We can’t allow the current crop of high school seniors to graduate because there are no jobs out there for them.” *Id.*

221. See DeParle, *Opal Caples*, *supra* note 213; DeParle, *Symbol of Welfare Reform*, *supra* note 217.

In addition to decent-paying jobs, people must have access to all the services that facilitate finding and keeping employment that. We cannot provide these sought-after services only to people on welfare without re-creating some of the same unfairness and resentment that led to the call to change the welfare system in the first place. As anthropologist Katherine Newman has observed, providing such things as health care and coveted child care slots to welfare recipients may be a worthy goal, but it "leaves the working poor, whose lives have little impact on [cities'] bottom line, out in the cold."<sup>222</sup> We all need health care, for ourselves and our children. And, in an age of dual-career couples and single-parent households, almost everyone needs high-quality, affordable child care in order to work effectively. The Americans with Disabilities Act<sup>223</sup> and the Family and Medical Leave Act (FMLA)<sup>224</sup> move us in the right direction, but not nearly far enough. The only answer is a massive public investment in day-care, preschool, and after-school programs, which in turn could create many new jobs for other people as this form of housework is collectivized and turned into paid employment.

To even imagine a society that enables everyone to participate equally in working life, we will have to think seriously about how to structure work and the workweek so that everyone can combine a genuine commitment to work with an active involvement in family and civic life. Family life makes constant demands: One single parent working forty hours a week, or even two parents doing so, simply cannot get everything done. Parents need scheduling flexibility to attend to day-to-day commitments: We also need leaves from our jobs from time to time to attend to long-term issues in our families, communities, and our lives. Some people advocate unpaid leave or more part-time jobs, especially for women, to allow us to balance "our" family responsibilities with working.<sup>225</sup> But these family-wage-based strategies further entrench patterns of gender segregation and class bias. Only people with partners who earn enough

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222. Newman, *supra* note 205, at 58.

223. 42 U.S.C. §§ 12111–12117, discussed *supra* notes 198–202 and accompanying text.

224. Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified at 5 U.S.C. §§ 6381–6387 & 29 U.S.C. §§ 2601–2654 (1994)). For a recent critique of this approach, see Selmi, *supra* note 39, at 759–68.

225. See, e.g., Edward J. McCaffery, *Slouching Towards Equality: Gender Discrimination, Market Efficiency, and Social Change*, 103 *Yale L.J.* 595, 602, 626, 653, 671 (1993) (arguing for the repeal of statutory equal pay provisions and the adoption of tax reforms designed to make more flexible, part-time job opportunities available to women). McCaffery even blames Title VII for achieving progress that has made women unhappy:

Women do not necessarily need more money. They do not necessarily need more education. . . . The terms of traditional regulatory intervention are themselves influenced by a patriarchic social order, so that the antidiscrimination laws may even be consciously trying to squeeze women into a male pattern of work and family life—Title VII may actually be a cause of the paradox of better paid but less happy women.

*Id.* at 671.

to support the family can take advantage of them. They benefit middle-class women in traditional marriages, but exclude the single parents and caregivers, and even the higher-earning husbands and nontraditional wives and partners, who should be able to take advantage of such reforms. If we want to help everyone, we cannot limit ourselves to approaches such as unpaid leaves, or the expansion of part-time “mommy-track” jobs that can be used only by those who have access to a breadwinner’s wage.<sup>226</sup>

For these reasons, those of us who believe in gender integration must call for reforms that encourage men and women to work similar—and saner—hours that will allow both to participate more fully in all life’s experiences.<sup>227</sup> People who have children or others to care for need shorter hours, but not in the form of stigmatizing special accommodations. In fact, there is no reason to limit collective policy solutions to parenting or other family demands, when there is so much important community work to be done. Once again, we are pushed to consider universal structural solutions, such as a reduced workweek for everyone and paid sabbaticals to cover both caregiving commitments and community service projects.

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Notice that something remarkable has happened: To underscore the importance of paid work as a political and cultural ideal, I began talking about how many different people, from many different walks of life have been demanding equal access to work. I drew from examples of groups who have sought to use anti-discrimination law as a wedge into the mainstream of work. Yet, as I began discussing these people’s demands for equal participation in working life, the discussion moved in a more inclusive direction. The effort to enable those who traditionally have been excluded from the workforce to participate on equal terms led to broader proposals that would transform the social landscape for everyone. In the process, the conversation shifted from one that emphasized work-related rights for *some people* as members of particular demographic groups (racial and ethnic minorities, women, the elderly, gays and lesbians, people with disabilities, welfare mothers, the working poor, and so on) into one that emphasized work-related rights for *all people* as mem-

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226. See Fraser, *supra* note 76, at 57–62 (arguing against a model that creates flexible jobs for women on the ground that it promotes gender inequality); Jerry A. Jacobs & Kathleen Gerson, *Toward a Family-Friendly, Gender-Equitable Work Week*, 1 U. Pa. J. Lab. & Employment L. 457, 465–66 (1998) [hereinafter Jacobs & Gerson, *Gender-Equitable Work Week*] (pointing out problems with reforms aimed at achieving flexibility for women, such as unpaid leave and nonstandard jobs).

227. See *infra* notes 299–306 and accompanying text; see also Kathryn Abrams, *Cross-Dressing in the Master’s Clothes*, 109 Yale L.J. 745, 759 (2000) (criticizing Joan Williams for proposing reforms designed to alleviate work/family conflict for women that buy into the gendered status quo, rather than broader structural reforms such as a reduced workweek for everyone).

bers of the broad community of citizens. This transformation powerfully conveys how a focus on work can unite us across differences and provide a common foundation for equal citizenship for all.

Employment discrimination law has allowed us to change working life in the name of "women," or "African-Americans," or "people with disabilities." This body of law is tremendously important. It has prompted employers to restructure labor markets, firms, and jobs in ways that permitted many of us to aspire to become workers—and people—we never imagined we could be. The difference between the life my mother had available to her and the one I now have is a difference worth dying for. The difference turns, in large part, on the different types of work to which we could aspire (and the differences in political, cultural, and family-based power that flowed from our opportunities).

But the world is changing, and a new set of conditions confronts us all. The employment discrimination laws are not capable of generating the structural transformations necessary to create the conditions in which work can provide equal citizenship for all. It is time to pull together the efforts so many people have made through anti-discrimination law into a broad, inclusive campaign to make the benefits of work available to everyone. We must remake our laws—indeed, all our social institutions—to create a world in which everyone has the right to participate in paid work, with all the social support that is necessary to make that possible; we must also demand the conditions for work that are sustainable over the course of a lifetime. In addition to life, liberty, and the pursuit of happiness, it is time to insist: We have the right to pursue a life's work.

Providing universal access to a life's work is a revolutionary project that has never been realized in this country:<sup>228</sup> Someone has always been excluded from the labor market in order to benefit someone else. Paid work has the potential to become the universal platform for equal citizenship it has traditionally been imagined to be, but only by attending to the specific needs of various social groups and individuals to ensure participation parity. A universal approach does not mean we can, or should, pretend that everyone is the same. If we are to make sure everyone can participate in work, we cannot reduce anyone down to the lowest common denominator—an abstract dehumanized category of "worker." To do so calls to mind a history to which we should not want to return, a history in which "worker" meant "man," an equation that suppressed the rich diversity of working people.<sup>229</sup> Instead, we must strive to invest the meaning of "worker" with all the demographic and individual diversity real working people embody, along axes we have acknowledged (such as race, gender, age, disability, and sexual orientation) and others to which we have not

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228. It bears repeating that a universal set of rights to work has been imagined, and fought for, at various times in our history. See *supra* note 15.

229. See Kessler-Harris, *supra* note 6, at 7–12; Scott, *supra* note 59, at 71–79; Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 *Gender & Soc'y* 139, 150 (1990).

devoted our attention or perhaps even discovered (such as socioeconomic class, educational history, mental health, appearance, and less visible forms of "outsiderness").

In my vision, paid work should serve as a foundation that secures to women and men from all walks of life a source of equal citizenship, economic wherewithal, social ties, and personal identity. Everyone would have a right to train for and pursue work of their own choosing, and each of us would earn a living wage by doing that work (our wages supplemented by the state, if necessary). Individual adults, rather than families (however defined), would be the unit of analysis for purposes of wages and other state subsidies, guaranteeing that no adult would have to depend on another for basic economic support. No one would have to work the death-and-disability-dealing hours that many of us do now. Everyone would work saner, and more similar hours, so that all of us would have an opportunity to participate fully in family, friendship, politics, and civic life. Following current trends, a great deal of housework and caregiving would be converted into bundles of services that some people would do for a living—and a living wage. Most of us would continue to do a fair amount of housework and caregiving on our own, both in households that are not necessarily heterosexual or even nuclear in form, as well as in collective, community-based arrangements with friends, neighbors, and newcomers. To supplement such private initiatives, we would create and publicly finance a variety of different child care arrangements—including well-respected, state-financed child care programs that are so good for children that everyone, including the middle-classes—would use them.<sup>230</sup> In addition to child care, all adults would have access to the basic services they need to engage in suitable work, including health care, transportation, and continuing training. We would also have periodic sabbaticals, in which some portion of our wages is paid by the state, to allow us to fulfill our caregiving commitments and to perform public service work needed by the community or nation. Because everyone—men and women alike—would have access to work that provides economic security, social ties, and a strong source of selfhood, no one would be forced to stay in an intimate relationship that is not supportive or satisfying. Over time, the family would be reconstituted as a primarily affective realm in which adults come (and stay) together mainly for love rather than economic need.<sup>231</sup>

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230. For a description of the French system, see Bergmann, *Saving our Children*, *supra* note 72, at 27–44; cf. *id.* at 108–14 (describing the “disjointed and miserly qualities of U.S. child care efforts” in comparison to the French system).

231. Here, I mean to invoke a feminist tradition that is not drawn upon very often in the contemporary feminist legal literature—that of feminist free love advocates from the early twentieth century. See generally Cott, *supra* note 124, at 23–50 (1987) (describing the origins of modern feminism in women’s movements that emerged in the 1910s and emphasized the link between women’s freedom to pursue equal work and sexual freedom and intimacy). For a fascinating history of feminist radicals and other fellow travelers who congregated in Greenwich Village in the early twentieth century, see Stansell, *supra* note

This, to me, is a forward-thinking vision that builds on current trends and age-old aspirations to enable women and men of all walks of life to become full citizens—and fuller human beings—in the twenty-first century. This is what it means to secure the right to pursue a life's work.

This project will require a more ambitious reimagining of the relationship between the state and the market—and a more expansive set of politics—than feminists sometimes propose. By securing the right to pursue a life's work, I do not mean to suggest that we should create a constitutionally-enforceable right to a paid job. Like others who have considered the issue, I do not believe a judicially-enforced guarantee of employment is a realistic or even an ideal approach.<sup>232</sup> Instead, I envision an affirmative set of legislatively-created rights that build upon the fundamental premise that every adult citizen is entitled to safe employment that pays her or him a living wage, and to the basic social support necessary to pursue such employment. Such a program does not necessarily entail *more* state intervention than we have now, but it does require a different type of intervention.

In my view, the government should harness the power of firms and labor markets to create work that our society finds valuable. Markets can be powerful engines of creativity and change, and we should take advantage of those dynamics. But the state must step in to ensure the adequacy of market outcomes. Our traditional employment discrimination-centered approach takes such things as the number and quality of jobs and job-holding services, wage levels, and working conditions the market produces as a neutral baseline. The government's role is to ensure that no one is denied access to that baseline because of identity-based discrimination. To achieve universal access to life-sustaining work, however, the

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124. As Stansell makes clear, these feminists linked economic independence and sexual liberty with freedom of expression. They pursued careers (often in the male-dominated arts), staged and supported labor struggles, promoted and practiced free speech (particularly sexual speech), and sought love and sex outside the confines of marriage. *Id.* at 120–44, 225–72. Then, as now, there were barriers to realizing such a vision. Yet, in my view, it is still a vision to which we should aspire, rather than one that deserves feminist condemnation. But see Hirshman & Larson, *supra* note 60, at 223–303 (condemning those who advocate such a vision as sexual libertines).

232. For scholars who have rejected pursuing a judicially-created constitutional right to employment in favor of creating an affirmative set of legislative programs to ensure a “right” to paid work, see Harvey, *supra* note 15, at 1–8 (building upon the uncompleted New Deal agenda to propose an ambitious “employment assurance program” and analyzing its economic, administrative, and political feasibility); Forbath, *Rights Talk*, *supra* note 184, at 1790–92 (arguing for Congress, rather than the courts, to recognize a constitutional right to work, and providing a powerful description of the moral force and sophistication of those who advocated such a right in the nineteenth century); Karst, *supra* note 5, at 553–59 (providing a detailed analysis of why a constitutional right to work would not be judicially-enforceable, and following Forbath in calling for a legislatively-created and morally-recognized right instead). For a contrasting view, see Jon Elster, *Is There (or Should There Be) a Right to Work?*, in *Democracy and the Welfare State* 53, 77 (Amy Gutmann ed., 1988) (concluding that “any right to work that could feasibly be created is not a right to work that is worth having”).

state must become more proactively engaged in bringing what the market produces up to a more adequate baseline for everyone. This would mean, at a minimum, that the state sustains suitable work for everyone: providing jobs, guaranteeing a living wage, cultivating empowering working conditions and relations, restructuring working time, and providing the job-holding services necessary to allow people to pursue paid work along with broader care commitments and civic activities. Such measures need not always be accomplished through employer mandates (such as a minimum wage); much of the time, the government could instead supplement what employers provide (through such measures as wage subsidies).<sup>233</sup> Nonetheless, accomplishing such goals will be difficult. It requires an expansive new politics to mobilize popular support strong enough to overcome many concentrated interests.<sup>234</sup> For feminists, it means moving beyond forms of identity politics that press for essentialist forms of recognition<sup>235</sup> and reevaluating "women's experience."<sup>236</sup> Feminists must join forces with the labor movement and with a broad array of other groups—including white middle-class heterosexual men—not simply to advance each other's interests, but to create a *common* interest in remaking social life so that paid work becomes the cornerstone for our best conceptions of citizenship and care.

This is a collective project of enormous scale and scope; I have neither the space nor the imagination to elaborate it fully here. All I can do here is suggest a general approach and sketch a few of the key elements in the hope that others will be inspired to pursue the project in more detail.

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233. This does not necessarily entail direct state command over what firms do. The government can create incentives for firms to produce these desired results on their own; it can change the resources or framework within which workers or others (such as consumers) bargain for those results; or the state can simply supplement firms' end-product. If the wages the market produces are too low, for example, the state can adopt policies to stimulate the creation of higher-paying jobs; it can make it easier for workers to organize and bargain collectively for higher wages; or, it can supplement wages itself through such measures as the Earned Income Tax Credit. See Earned Income Tax Credit, Rev. Proc. 97-57, 1997-2 C.B. Similarly, if the market does not produce decent working conditions, the state can try to mandate them, it can create legal frameworks that empower workers to be in a better position to obtain them, or it can foster the creation of alternative institutions that provide models for what should be achieved.

234. For an analysis of the political roadblocks that confronted the Roosevelt administration when it sought to implement a version of the right to work and of the political impediments that would be encountered today, see Harvey, *supra* note 15, at 18-20, 99-117.

235. Cf. Fraser, *supra* note 76, at 28-31 (discussing problems with a cultural feminist politics of seeking recognition for women's differences).

236. Cf. Scott, *supra* note 59, at 197 (arguing that feminists should problematize the category of "women's experience" rather than treating it as a fixed phenomenon).

### A. *Ensuring Everyone Employment*

If work is to provide a cornerstone for equal citizenship, then everyone must have access to a job; or better yet, a range of jobs from which to choose. People also need education and training for suitable jobs (preferably company-based training linked directly to the skills needed for a particular job).<sup>237</sup> For this reason, a number of concerned scholars and policymakers have recommended measures to ensure full employment. Some economists recommend ways to fine-tune the economy, to ensure continued growth while producing a more adequate supply of decent jobs.<sup>238</sup> In addition, scholars and commentators from across the political spectrum have proposed job creation and training measures designed to ensure universal access to work.<sup>239</sup> While it is true that the national unemployment rate has dropped to a new low in recent years, some areas and some populations remain hard-hit. In some communities, there is fierce competition even for low-skill jobs.<sup>240</sup> For these reasons, making a national commitment to universal access to work makes sense, even in a low-unemployment economy. Taking a universal approach does not mean that localities and groups with particular needs cannot be served; to the contrary, it means addressing such needs to ensure that no one who wants a job is left without one.

### B. *Celebrating Work's Value*

In addition to democratizing access to jobs, we must create a grass roots language for expressing ordinary women's and men's understandings of why paid work matters. We need a language that speaks to many different audiences—political, corporate, union, academic, activist, and average American. It takes courage: In some circles, to talk about the value of work risks getting oneself labeled illiberal, anti-feminist, or right-wing. Traditionally, in the name of facilitating choice, liberal discourse

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237. See Richard B. Freeman, *Lessons for the United States, in Working under Different Rules* 223, 225 (Richard B. Freeman ed., 1994) ("Evidence . . . suggests that company-based training has a high payoff . . . because it is linked directly to the skills needed at a particular workplace.").

238. See, e.g., Barry Bluestone & Bennett Harrison, *Growing Prosperity: The Battle for Growth with Equity in the Twenty-first Century* 205–63 (2000) (proposing policies designed to promote economic growth and foster greater income equality at the same time).

239. See Blank, *supra* note 179, at 257; Harvey, *supra* note 15, at 11–20; Mickey Kaus, *The End of Equality* 136–48 (1992); Wilson, *supra* note 16, at 232; Bergmann & Hartmann, *supra* note 132, at 85.

240. In central Harlem, for example, there were 14 applicants per person hired for fast food jobs. See Newman, *supra* note 205, at 62. Even in the "red-hot" Boston economy studied by economists Barry Bluestone and Mary Huff Stevenson, some people (notably African-American and Latino men) had difficulty gaining access to more than sporadic employment. As a result, their earnings fell far below that of other groups. See Barry Bluestone & Mary Huff Stevenson, *The Boston Renaissance: Race, Space, and Economic Change in An American Metropolis* 222–25 (2000).

has focused on solutions that provide people income with few or no strings attached.<sup>241</sup> Unfortunately, all too often, these liberal strategies ignore the need to reshape the underlying social institutions (like employment) that facilitate genuine choice and realize liberal freedoms.<sup>242</sup> In the name of valuing women's work, as we have seen, some prominent strands of feminist thought focus on securing compensation for caregiving and homemaking. As previously discussed, however, some of these proposals replicate gender-based and class-biased assumptions that are the legacy of a family-wage system that no longer describes most Americans' reality. Even more troubling, there is a history of conservative rhetoric that emphasizes the value of the work ethic without an accompanying emphasis on ensuring the conditions under which people can form and realize their ambitions equally;<sup>243</sup> this is the tradition from which those on the right who emphasize the need for poor people to take "personal responsibility" draw.<sup>244</sup>

Yet, the presence of these alternative discourses cannot halt the endeavor. In my view, their presence makes all the more imperative the task of creating a new forward-thinking feminist politics by articulating why work matters so much to women as well as to men. This vision must convey the most poorly-paid, low-status workers' understanding that all work has intrinsic value.<sup>245</sup> We should reject the idea that a job must satisfy some substantive criteria of meaningfulness if it is to confer respect on its occupant.<sup>246</sup> All too often, those who are engaged in high-status,

241. See generally Ackerman & Alstott, *supra* note 187, at 207–09 (arguing against wage subsidies in favor of a universal cash grant on the ground that the grant better promotes individual freedom); Forbath, *Equal Citizenship*, *supra* note 9, at 12–15 (describing Sunstein and Michelman as favoring welfare entitlements over rights to work for this reason); see also Kronman, *supra* note 4, at 4 (acknowledging that modern liberal theories of distributive justice do not focus on work in its normative dimension but instead "focus mainly on the fairness of the distribution of resources that work produces—on who gets what share of the fruits of the work process—and tend, as a result, to view this process itself in an instrumental light").

242. For a similar critique, see Forbath, *Equal Citizenship*, *supra* note 9, at 89–91 (stating that the arguments behind liberal constitutional strategies support a broader concept of equality than that enshrined in law).

243. See Glickstein, *supra* note 125, at 220–22, 257–58.

244. See, e.g., Bryan Sierra, *House Passes GOP Welfare Plan*, *United Press Int'l*, Mar. 24, 1995, at 1–2, available in LEXIS, News Library, Wire Service Stories file (describing the 1995 passage of the Personal Responsibility Act, a series of punitive welfare measures that were part of the GOP's Contract with America engineered by Newt Gingrich).

245. See Newman, *supra* note 205, at xv ("[Less-affluent Americans] work hard at jobs the rest of us would not want because they believe in the dignity of work."); see Terkel, *supra* note 30, at xii (quoting a waitress who remarked: "When someone says, 'How come you're just a waitress?' I say 'Don't you think you deserve being served by me?'").

246. See Kronman, *supra* note 4, at 6–7, 31–34. Kronman traces these attitudes to the tradition of aristocratic professionalism, which treats professional work as inherently meaningful and distinguishes it sharply from instrumental forms of labor, which it regards as necessarily deadening or degrading. See *id.* at 32. According to Kronman, the meaningful/instrumental distinction rests, in turn, on a higher valuation of mental as opposed to manual labor:

creative endeavors they love claim that only their jobs are meaningful (or even that their jobs do not involve “working”). But simply because people are lucky enough to do for pay what they would want to do even in their off-hours does not mean that what they do is not work, or that only work that is not performed for instrumental reasons can be valuable. Such a view implies that work done out of necessity is necessarily deadening or degrading, an elitist view. Even forms of work that some privileged people consider menial require much more skill and yield more satisfaction than people who have never done them realize.<sup>247</sup>

To combat the elitist view that manual labor is degrading,<sup>248</sup> we should revitalize the radical labor tradition that emphasizes the inherent dignity of all forms of work.<sup>249</sup> Accepting this proposition in no way commits us to preserving low-paid jobs in their present form. To the contrary, it provides leverage for organizing the job in a way that promotes the autonomy and control of those who do it, since they are entitled to respect. Cleaning up after others, whether in public settings or private homes, is work that confers dignity. So is work in factories and on farms. Any work that serves the larger community makes a contribution. As Mike LeFevre, a Chicago steelworker, so eloquently expressed it,

Somebody built the pyramids. . . . Pyramids, Empire State Building—these things just don’t happen. There’s hard work behind it. I would like to see a building, say, the Empire State, I would like to see on one side of it a foot-wide strip from top to bottom with the name of every bricklayer, the name of every electrician, with all the names. So when a gny walked by, he could take his son and say, “See, that’s me over there on the forty-fifth floor, I

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The assembly line worker who makes shoes or automobiles is more likely to be stunted than developed by the repetitive and unchallenging tasks he performs. By contrast, the work of doctors and lawyers and teachers—which is not only varied but requires a constant flow of subtle judgments about human beings and their requirements—promotes the development of skills, capacities, etc., which more routine and thoughtless forms of labor do not.

Id. at 33–34. Understood in this context, the class bias embedded in the notion that those of us who do what we love for a living are not really “working” becomes obvious. Carol Sanger suggested to me that some intellectuals’ resistance to honoring *all* forms of paid work—however “low-skilled” from our vantage point—may reflect a subconscious desire to maintain the privileged view of our own work. I am grateful to her for this insight.

247. See, e.g., Carol Stack, Address at Workplace Theory and Policy Seminar at Yale Law School (Feb. 5, 1999) (unpublished manuscript, on file with the *Columbia Law Review*) (showing that fast-food jobs demand skills that may not be obvious, but which come to be appreciated by most who do them).

248. See generally Glickstein, *supra* note 125, at 95–96 (describing antebellum view that “[manual] work itself must lack dignity for anyone qualified by native attributes or social circumstances for more civilized activities”).

249. See generally Forbath, *Equal Citizenship*, *supra* note 9, at 19–20 (discussing early labor movements’ emphasis on the dignity of working people); James Gray Pope, *Labor’s Constitution of Freedom*, 106 *Yale L.J.* 941, 968 (1997) (describing Kansas United Mine Workers leader Alexander Howat’s conception of the “‘miner’s freedom,’ a work culture of autonomy, dignity and solidarity”).

put the steel beam in." Picasso can point to a painting, what can I point to? A writer can point to a book. Everybody should have something to point to.<sup>250</sup>

### C. *Earning a Living Wage*

Aside from the rewards gained from serving others, people benefit from the sense of autonomy and pride that comes from "being paid an earned reward for one's labor."<sup>251</sup> This is one reason working for a living is important to people, and why paid work differs from volunteer activities and time spent caring for one's own family or friends. We may wish it weren't so, but in a market economy, people who are paid for what they do receive more respect from others, have more bargaining power in their relationships, and have a stronger sense of their value and place in the world than those who are not paid. This is part of the historical legacy of emphasizing "independence" as a source of citizenship and character; as we have seen, making citizenship available to people through paid work was a democratizing move that created more opportunity for propertyless white men. This same vision can and should be expanded to extend the benefits of equal work to men of color, women of all races, and everyone else who has been excluded or marginalized.

Market forces shape our world more profoundly than ever before, and with that marketization comes an even greater emphasis on wage work, money, and other forms of exchange. It seems unlikely that we could reverse the trend toward marketization even if we wanted to; so why not build on the tradition that emphasizes the virtues of wage-earning as a foundation for independence by demanding that every citizen who works for a living earn wages—coupled with appropriate wage subsidies if

250. Terkel, *supra* note 30, at xxxii. Publicly recognizing work's value can also be powerfully important to a child, as a wonderful essay (despite the sexism of the time she is describing) by Candy Schulman conveys:

Growing up in Brooklyn in the 1950s, I relished my trips to Manhattan to visit the Planetarium and the adjoining Museum of Natural History. But there was something even more exciting than the dinosaurs or the chance to weigh myself on the moon. The highlight was standing outside and watching my mother point to the Planetarium's green dome. Each time she'd proudly tell me, "Your father built that."

Not singlehandedly of course. But my father was an engineer on the team that designed the dome, under which we'd later sit, necks arched to the sky, and travel to faraway galaxies. . . .

My father left engineering for a civil servant's job before I was born. In kindergarten, my teacher asked each of us what our fathers did for a living. Everyone boasted of interesting careers—doctor, lawyer, Indian chief kind of professions—but I meekly said, "My father works in an office in the city."

"What kind of office?" the teacher prodded.

I shrugged, embarrassed. "But," I added eagerly, "he also built the dome of the Planetarium!" "Really?" the children echoed. "Wow!"

Candy Schulman, *Daddy's Dome*, *N.Y. Times*, Jan. 12, 1997, at C15.

251. Shklar, *supra* note 7, at 1–3; see Karst, *supra* note 5, at 530–38.

necessary—that allow her to meet life’s material needs on her own? It resonates deeply with most Americans’ sense of fairness and justice that, if people work for a living, they should earn enough to pull themselves and their children out of poverty.<sup>252</sup> The growing gap between rich and poor threatens democracy. It is no answer to say, “Let them acquire human capital.” Although we should expand people’s ability to acquire the education and training they need to do the work to which they aspire, not everyone will have the inclination to pursue higher education. That alone is no cause for alarm: In a service economy, we will always need people to perform services that do not require higher forms of training. Nonetheless, if work is to provide a foundation for citizenship, then all who work must have social recognition and economic security. Without such a guarantee, our emphasis on work becomes empty (even shameful) rhetoric.

We must do more than simply make paid work more available; we must ensure also all jobs a decent wage. As Edmund Phelps and Philip Harvey have argued, it isn’t simply a lack of jobs, but a lack of jobs that pay enough to live on that plagues many poor communities.<sup>253</sup> In recognition of this fact, a variety of efforts are underway to increase wages for the working poor. The Clinton administration has passed sizable minimum wage increases and expanded the Earned Income Tax Credit.<sup>254</sup> At the grass-roots level, municipal workers around the country have launched campaigns for a “living wage,” and have succeeded in passing living wage ordinances in several localities.<sup>255</sup> In addition, the labor movement is placing emphasis on organizing low-paid service workers, who stand to benefit most from the wage increases that trade unions traditionally have been able to win.<sup>256</sup>

Yet even some of these laudable approaches raise concerns we have seen before: Why should we increase wages only for municipal or unionized workers, when so many others face jobs with pay so low that they cannot support themselves or their children? Increasing the minimum

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252. See generally Zasloff, *supra* note 203, at 261–62 nn.118–123 (documenting Americans’ support for social programs supporting, or even guaranteeing, a right to employment); see also Harvey, *supra* note 15, at 4–5 (showing similar support during the Roosevelt and Reagan eras).

253. See Phelps, *supra* note 219, at 103–04; Harvey, *supra* note 15, at 16–24.

254. See Rev. Proc. 97-57, 1997-2 C.B. 586; see also Rebecca M. Blank et al., Financial Incentives for Increasing Work and Income Among Low-Income Families, 34–35, 42 (National Bureau of Research Working Paper No. 6998, Mar. 1999) (visited Sept. 9, 2000) <<http://www.nber.org/papers/w6998>> (on file with the *Columbia Law Review*) (noting that the 1994 increases to the Earned Income Tax Credit make it the largest federal expenditure for any supplemental income program).

255. See, e.g., Selmi, *supra* note 39, at 776 & n.253 (describing efforts by various municipalities to require all city contractors to pay a living wage).

256. As noted previously, the recent victory of 75,000 California home health care workers in organizing themselves into the Service Employees International Union (SEIU), for example, holds promise for upgrading—and highlighting—the value of such work. See Schodolski, *supra* note 65, at 3.

wage is a more universal strategy, but some economists worry that doing so will dampen job creation and harm the very low-skill workers the wage increase aims to help.<sup>257</sup> For this reason, many policymakers prefer further expansion of the Earned Income Tax Credit (EITC)—a tax credit that operates as a refund for families with children who earn less than a certain guaranteed amount. But because it is based on family rather than individual earnings, the EITC raises concerns of its own. Although it is said to encourage labor force participation—and it does among single parents—there is evidence that the EITC actually reduces low-income married women's labor force participation.<sup>258</sup> In effect, one pair of researchers concluded, the EITC subsidizes married mothers to stay at home—a result that is counterproductive to the goal of breaking down the gender-based division of labor and perhaps also that of alleviating poverty, if they could earn more by working. For this reason, some researchers have suggested that the EITC should be based on individual as opposed to family earnings.<sup>259</sup> Historically, the credit has been available only to people with dependent children,<sup>260</sup> which means that many low-income people—childless young women, men who lack the earnings to support children, and older men and women whose children have left home, for example—were excluded.

To alleviate these problems, Edmund Phelps has proposed an ambitious but simple program of graduated wage subsidies for individual low-wage workers.<sup>261</sup> His goal is to recognize that working yields a social dividend—beyond the benefit to the firm—reflected in a market wage. In his plan, the government would supplement the hourly wage provided by employers to bring workers up to an established rate, with the subsidy declining as the hourly wage increases.<sup>262</sup> Phelps' plan pays the subsidy to employers, who then pass it along to workers. Although there are disadvantages to this design (the risk of employer fraud and churning, for example),<sup>263</sup> there is no reason why the same graduated wage subsidy could not be paid directly to workers.<sup>264</sup> Experts in institutional design

257. See Alstott, *supra* note 188, at 1008. But see David Card & Alan B. Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* 21 (1995) (suggesting that minimum-wage increases in New Jersey and Texas restaurants actually spurred job creation).

258. See Nada Eissa & Hilary Williamson Hoynes, *The Earned Income Tax Credit and the Labor Supply of Married Couples* 55–56 (University of Wisconsin-Madison Inst. for Research on Poverty Discussion Paper No. 1194-99, 1999).

259. See *id.*

260. See Phelps, *supra* note 219, at 133–34; Eissa & Hoynes, *supra* note 258, at 55–56.

261. Phelps, *supra* note 219, at 103–21.

262. Specifically, people earning \$4.00 an hour would be brought up to \$7.00; those earning \$6.00 an hour would be brought up to \$7.65, and so on, with subsidies ending at \$12.06—a wage well above the \$10 an hour that was the median wage for full-time workers at the time of Phelps' proposal. See *id.* at 113.

263. See Alstott, *supra* note 188, at 1043–45.

264. For a different proposal that guarantees everyone a job at an above-poverty-level wage, see Harvey, *supra* note 15, at 11–20. Harvey's book contains a detailed analysis of

could work out the details, but the point is to agree on the need to supplement low wages. Like Bergmann and Hartmann, I believe such policies should be designed to eliminate the current incentives for gender segregation and inequality. Wage subsidies should be structured to permit women (as well as men) to combine parenting with work that pays a living wage on terms that do not lead to women's marginalization.<sup>265</sup>

#### D. *Cultivating Empowering Work Conditions and Relations*

Work is important not simply because it gives people a vehicle for serving society and for earning their own keep, but also because it allows diverse groups of people to come together with others to pursue common goals, under conditions that are at least partly of their own choosing and which allow for some measure of self-realization.<sup>266</sup>

This is a tall order and I cannot say much about it here. At a minimum, we should protect working people from harassment and abuse at the hands of their supervisors and co-workers. These forms of hostility poison the workplace and undermine one of the major motivations for working, which is the feeling of being connected to others through shared experiences.<sup>267</sup> We must also look for creative, systematic ways to encourage workers to relate to one another empathetically across race, gender, age, and other demographic categories. We should, of course, pay attention to structural features of workgroups such as numerical balance: Research suggests that when women are fully integrated into jobs at all different levels of authority, they are less likely to experience their

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the economic effects and administrative feasibility of such a program. See *id.* at 21–50, 66–78.

265. Like Bergmann & Hartmann, I lean toward the view that this benefit should be aimed at those who work full-time. See Bergmann & Hartmann, *supra* note 132, at 86. But, as stated below, I support measures designed to eliminate the distinction between full-time and part-time work by reducing the standard workweek substantially for everyone. See *infra* notes 302–304 and accompanying text. Unlike Phelps, however, my reason for doing so is to not to promote a greater breadwinning capacity by men so that they can resume head-of-household status, but rather to avoid yet another incentive for employers to create substandard part-time and temporary jobs to be filled disproportionately by women. See Phelps, *supra* note 219, at 96.

266. See Elster, *supra* note 232, at 62–63 (discussing self-realization through work); see also Mark Barenberg, *Democracy and Domination in the Law of Workplace Cooperation: From Bureaucratic to Flexible Production*, 94 *Colum. L. Rev.* 753, 893–904 (1994) (discussing the noninstrumental benefits of work).

267. See Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 *Stan. L. Rev.* 1, 18–25 (1988) (describing the ways in which women and minority employees are mistreated or harassed at work); cf. Rosa Ehrenreich, *Dignity and Discrimination: Toward a Pluralistic Understanding of Workplace Harassment*, 88 *Geo. L.J.* 1, 16–22 (1999) (discussing the dignitary harm resulting from workplace harassment). See generally Schultz, *Reconceptualizing Harassment*, *supra* note 55, at 1687–89 (describing how gender-based harassment excludes and marginalizes women in debilitating ways).

workplaces as hostile or alienating.<sup>268</sup> We should also look for ways to reward members of dominant groups who reach across boundaries of race, gender, or other difference to support newcomers in solidarity and friendship—such as white men who oppose harassment and discrimination against women and people of color.<sup>269</sup>

But it is not only members of historically-disadvantaged groups, but all workers who deserve empowering working conditions. Although there has been far too little systematic research on how new forms of work organization are actually operating in American workplaces,<sup>270</sup> some commentators have suggested ways to implement the new collaborative forms of work so that diverse groups of workers—and not simply management—will reap the benefits. Law professor Susan Sturm argues that structural features of workplace organizations determine the quality of intermediate-level worker interactions. By paying attention to those structures, firms can control the pressures toward in-group preference and discrimination that flow from the increased salience of interpersonal dynamics in team-based decisionmaking.<sup>271</sup> To deal with such pressures, she argues, organizations must craft structures that offer constructive methods for resolving conflict, create processes that develop workable goals and standards, and adopt mechanisms of accountability that allow the firm to experiment and learn from mistakes.<sup>272</sup> Sturm's approach finds support in the sociological literature, which has long emphasized the need for structures of accountability to counteract the discriminatory dynamics of discretionary employment systems.<sup>273</sup>

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268. See Barbara A. Gutek, *Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men, and Organizations* 143 (1985); Kanter, *Men and Women*, supra note 21, at 242, 281–84; Schultz, *Reconceptualizing Harassment*, supra note 55, at 1759.

269. For illuminating analyses of how anti-discrimination law treats the distribution of resources as a zero-sum game in a way that divides, rather than uniting Americans across the boundaries of race, gender, and other differences, see Clark Freshman, *Whatever Happened to Anti-Semitism?: How Social Science Theories Identify Discrimination and Promote Coalitions Between "Different" Minorities*, 85 *Cornell L. Rev.* 313, 333–59, 410–26 (2000); Noah Zatz, *Beyond the Zero-Sum Game: Toward Title VII Protection for Inter-group Solidarity* (Dec. 21, 1999) (unpublished manuscript, on file with the *Columbia Law Review*). Zatz proposes a new cause of action that would permit whites, men or others who occupy privileged positions in the workplace to claim that they have been discriminated against when they are required to participate or acquiesce in harassment or discrimination against others. The theory is intended to allow privileged workers to claim identities as whites or men that do not depend on excluding others.

270. See Appelbaum & Batt, supra note 148, at 58.

271. See Susan Sturm, *Race, Gender, and the Law in the Twenty-First Century Workplace: Some Preliminary Observations*, 1 *U. Pa. J. Lab. & Employment L.* 639, 663–65 (1998).

272. See *id.* at 647.

273. See generally Barbara Reskin, *The Proximate Causes of Employment Discrimination*, 29 *Contemp. Soc.* 319, 325 (2000) (arguing that the impact of stereotypes and other cognitive distortions on evaluative judgments are reduced when decisionmakers know they will be held accountable for the criteria they use).

Like Sturm, law professor Mark Barenberg seeks to harness the positive potential in new collaborative work forms. He focuses less on enhancing organizational effectiveness and resolving ingroup/outgroup problems among workers, and more on developing the potential for workers as a whole to become more actively involved in production and governance issues in ways that will enhance their autonomy and self-realization.<sup>274</sup> Barenberg emphasizes that ground-up initiatives will yield more effective worker participation. According to Barenberg, the emerging theoretical and empirical literatures suggest that the most important feature of organizations that are relatively free of “structural coercion, distorted communication, and psychological manipulation” is the *combination* of “effective team participation and strategic labor representation.”<sup>275</sup> Indeed, he says, these two processes are synergistic and are mutually reinforcing.<sup>276</sup>

Such research suggests that along with teams and other coordinated forms of work that are proliferating, we should make it a priority to create mechanisms that promote employer accountability *and* employee representation. For those who doubt that employees really care about their roles as workers,<sup>277</sup> there is recent, systematic evidence to the contrary. In the most extensive analysis of U.S. workers’ attitudes toward workplace relationships in more than twenty years, Richard Freeman and Joel Rogers have found that most Americans want significantly more influence over, and input into, their work roles.<sup>278</sup> The desire for increased influence over workplace decisions is shared equally by diverse groups of employees—“[m]en and women, union and nonunion workers, professionals and laborers” alike.<sup>279</sup> Employees feel that increased participation will both improve the quality of their own working lives and increase workplace efficiency. Interestingly, many managers agree that problems would be solved more effectively if employees had more input.<sup>280</sup> Many

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274. See Barenberg, *supra* note 266, at 893–96.

275. *Id.* at 921.

276. See *id.* According to Barenberg: “[M]eaningful representation . . . frees workers to contribute continuous improvements and creative initiative with the assurance that the costs and benefits will be fairly distributed among stakeholders.” *Id.* at 923. Yet it is not simply management that front-line workers need to hold responsible—it is also their own representatives. Employee participation in high-discretion teams helps on this front, according to Barenberg, because “[e]mployee representatives are more likely to be held accountable by rank and file employees who have broad knowledge of the sociotechnical system and who feel challenged to participate actively in workplace problem-solving.” *Id.* at 925–26.

277. See, e.g., Ackerman & Alstott, *supra* note 187, at 207 (noting that most Americans see themselves as citizens and not workers).

278. An overwhelming 63% of all workers surveyed say they want more influence at the workplace, while only 35% want to keep things as they are. See Richard B. Freeman & Joel Rogers, *What Workers Want* 41–42 (1999).

279. *Id.* at 52.

280. For example, 87% of employees say they would like their jobs better if they had more authority over decisions about production and operations. In addition, 79% of the

companies employ some sort of employee-involvement program, but the vast majority of participant workers believe that the programs would be more effective if employees had more say, and many managers agree.<sup>281</sup> Although organized workers support their unions (and about one-third of nonunion workers would support a union if given the opportunity), most workers prefer cooperative management-labor relations in which management participates and workers retain strong levels of influence. According to Freeman and Rogers, “[t]he majority of workers . . . want an institutional form that does not effectively exist in the United States: joint employee-management committees that discuss and resolve workplace problems.”<sup>282</sup>

Democratic principles demand that people have more input into how their work is structured. I have argued that all forms of work deserve dignity, even the most routinized. But this recognition does not require blinding ourselves to the fact that many people do work that can dull the mind or wreck the body and spirit. To the extent that the workplace can be structured efficiently in more than one fashion (which is often the case), we should create mechanisms that allow workers to arrange their work in a way that maximizes their sense of challenge and their intrinsic satisfaction.<sup>283</sup> As Nora Watson, an editor, explained:

Jobs are not big enough for people. It's not just the assembly line worker whose job is too small for his spirit, you know? . . . Here, . . . where I had expected to put the energy and enthusiasm and gifts that I may have to work—it isn't happening. They expect less than you can offer. . . . It's so demeaning to be here and not be challenged.<sup>284</sup>

Some jobs will remain tedious or onerous in content. But even those jobs can be structured in more satisfying ways by giving workers more autonomy and a greater sense of control over the pace, rhythms, or social possibilities of the job. It is one thing to pick up trash in a demeaning uniform, working under an autocratic supervisor's nose, or on a piece-work system that forces one to rush constantly in order to survive. It may be quite another thing to do the same work dressed in comfortable clothing of one's choice, working at a reasonable pace alongside a colleague whose companionship one enjoys, and earning a living wage.

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employees believed that the quality of the firm's product or services would improve if they made more decisions about production and operations. See *id.* at 42–43. 58% of all managers agreed. See *id.* at 42.

281. See *id.* at 43.

282. *Id.* at 152; see also Alan Hyde, *Employee Caucus: A Key Institution in the Emerging System of Employment Law*, 69 *Chi.-Kent L. Rev.* 149, 187–90 (1993) (arguing for establishing joint employee-management committees to address workplace concerns if such committees are endorsed by the majority through secret ballots).

283. In the Freeman and Rogers survey, the one area in which workers most want more influence is input into how to do their jobs and organize their work: 76% of all workers said this was important to them. See Freeman & Rogers, *supra* note 278, at 48–49.

284. Terkel, *supra* note 30, at 521, 523.

To the extent that some work cannot be reorganized along more satisfying, healthful lines, we should create clear paths for moving upward, sideways, and even out—and elsewhere—before lasting damage is done. As Dave Stribling, a steelworker, put it,

Where you have to eat all that dust and smoke, you can't work hard and live a long life. You shouldn't be made to work till sixty-two or sixty-five to reap any benefit. We're paying social security, and most of us will never realize a penny from it. That's why they should give it to him at a younger age to let him enjoy a few years of the life he ruined workin' in the factory.<sup>285</sup>

People are now living longer, with better health. If we allowed people who do damaging work that benefits the rest of us to leave with pensions before they destroy their health, they could use the money to retrain themselves for different employment or to support themselves while engaging in the civic work that many younger people no longer have time to do. Indeed, such retraining rights may prove to be necessary for almost everyone in the new economy, where the fast pace of technology renders many jobs obsolete in a few years time. To give everyone access to a life's work, we must create retraining and retirement options that sustain rather than destroy life, and that allow people to reshape their skills to meet life's evolving demands.

#### *E. Positioning Work As a Cornerstone for Family and Civic Life*

We must do still more. As I suggested earlier, we must rethink the relationship between working life and family and civic life. Our existing models are woefully inadequate. On the one hand, we have "productionist" models in which work, harnessed to the end of productivity, overtakes everything else. As an alternative, we have only gendered "accommodationist" models in which the job remains the realm of men, but the family retains the fealty of women.

From the right end of the spectrum, productionist models depict working life and working people exclusively in narrow efficiency terms.<sup>286</sup> In these models, firms appear only as rational, task-oriented institutions with definable rules and procedures that harness all human drive to the end of productivity. Managers and the firm are considered the repositories of rationality, while employees—as the embodiment of the "outside" world of affective life—are seen as the repositories of emotion. Management's goal is to drive out of the organization the nonrational, "emotional" side of life that cannot be subordinated to production. Working people are a threat, precisely because they represent that messy, "outside"

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285. Terkel, *supra* note 30, at 720.

286. See Kanter, *Men and Women*, *supra* note 21, at 18–23 (discussing the history of management theory, which developed rationality and efficiency as the driving forces of organizational life); Cynthia Fuchs Epstein, *On the Non-Work Aspects of Work*, 49 *Antioch Rev.* 46, 47–50 (1991) (discussing efficiency-based models in similar terms) [hereinafter, Epstein, *Non-Work Aspects of Work*].

stuff of life—sex, reproduction, disability, disease, even playfulness and passion—and threaten to bring it into, and thereby corrupt, the firm. To contain the threat, the “worker” must be conceptualized as an abstract category—an “input” of production that is efficient only to the extent that he or she is stripped of the layers of experience that do not serve the production function. Taylor’s scientific management was an early example of such an approach: By separating mental from manual labor, Taylorism justified management control over workers, whose physicality was to be disciplined through task specialization and machinery in order to serve the ends of production.<sup>287</sup>

The human capital model provides another example of a productionist approach. In an analogy to machines (physical capital), working people are valued for (and even referred to as) human capital, a term describing the investments people make in acquiring education or skills that will make money for the firm. In this model, workers are paid in accordance with their productivity, which is thought to correspond to their education and training and, in Becker’s more recent model, the stocks of “energy” they invest in their jobs.<sup>288</sup> These investments are viewed as exogenous “inputs” to the production process; that is, they are acquired *outside* the workplace, which is conceived as a self-contained sphere. Thus, in human capital theory, inequality *within* the workplace is rationalized as a product of what happens outside it—most notably, in the mythical white middle-class heterosexual family, where women allegedly choose their roles as happy homemakers.<sup>289</sup> In human capital theory, therefore, the fact that women earn less and have less desirable jobs than men is a product of their encumbrances in these “other” spheres of life, which leaves them looking less like the tooled-up, high-energy machines that the model envisions as the essence of a competent worker.

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287. For a description of Taylorism and its historical development, see Stone, *supra* note 164, at 7–11. For a stunning biography of Taylor himself, see Robert Kanigel, *The One Best Way: Frederick Winslow Taylor and the Enigma of Efficiency* (1997).

288. See Becker, *Human Capital*, *supra* note 38, at 25–26; *supra* note 38 and accompanying text.

289. In my view, this is parallel to neo-conservative reasoning that attributes African-Americans’ and other disadvantaged racial minorities’ lower status within the labor market to what happens outside it. Here, as black feminists have pointed out, the myth is that poor single mothers of color raise their children to lack the work ethic and initiative needed to succeed in neutral, competitive labor markets. See, e.g., Patricia Hill Collins, *A Comparison of Two Works on Black Family Life*, 14 *Signs* 875, 875–78 (1989) (criticizing Daniel Patrick Moynihan and Bill Moyers for attributing black poverty to pathological culture created by female-headed households, as opposed to racism and classism in larger structural forces); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, in *Feminist Legal Theory: Readings in Law and Gender* 57, 71–72 (Katharine T. Bartlett & Roseanne Kennedy eds., 1991) (criticizing Bill Moyers for blaming black poverty on female-headed households and arguing that William Julius Wilson’s analysis is incomplete because it “incorporates no analysis of the way the structure of the economy and the workforce subordinates the interest of women, especially childbearing Black women”).

Like Taylorism, human capital theory is a rationalizing model, which reduces work to its flattest dimensions, while at the same time legitimating inequality.

In these productionist models, work has a narrow definition that relates exclusively to serving the ends of production. There is no room for the concept of work as a vocation or a life's project, something to which people can commit their hearts and souls. There is no room for the concept of work as community, the glue that holds people together as they struggle to accomplish common ends. There is no room for integrating working life with family and civic life in a multi-faceted, meaningful way. The sole purpose of work is making profit for the firm. Life experiences like parenting, aging, sickness, sexuality, or even solidarity are simply not conceived as part of the workplace landscape.<sup>290</sup>

To the apparent left of productionist models, we have "accommodationist" models that turn out to be no more than the gendered complements of their productionist counterparts: As we have seen, important strands of contemporary feminism replicate the gender-based division of labor by assuming a productionist model for men while positing precisely the opposite for women. Men are imagined to be the workers firms want them to be; women are assumed to be paragons of domesticity, who undertake paid work only insofar as it comports with their family roles. Joint property proposals assume that men are breadwinners-domestic absentees while women are primary caretaker-secondary earners. Welfare approaches assume women will engage in full-time or near full-time homemaking and caregiving. To paraphrase sociologists Roslyn Feldberg and Evelyn Glenn, such strategies envision a "job model" for men and a "gender model" for women.<sup>291</sup>

Work-family accommodation models build on similar conceptual foundations. Accommodationists assume that women are more committed to family relations than men, so if we want to ensure that women can participate in the workplace, we must acknowledge this difference and provide special accommodation for women's domestic roles. Accommodationists therefore typically seek policies that make work more "flexible"—such as maternity leave, family leave, more part-time or temporary jobs, and tax and benefit reforms designed to encourage such intermittent workplace participation<sup>292</sup>—in order to allow women to balance

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290. See, e.g., Epstein, *Non-Work Aspects of Work*, *supra* note 286, at 47–50 (criticizing productionist models of work for excluding such experiences as well as the non-instrumental aspects of work itself).

291. See Roslyn L. Feldberg & Evelyn Nakano Glenn, *Male and Female: Job Versus Gender Models in the Sociology of Work*, 26 *Soc. Probs.* 524, 524–27 (1979) (criticizing earlier sociology of work tradition for assuming a "job model" for men, who are primarily committed to paid work, while positing a "gender model" for women, who are presumed to be primarily committed to family life).

292. See, e.g., McCaffery, *supra* note 225, at 602, 626, 653, 671 (arguing for the repeal of Title VII and the adoption of reforms that allow women to shape different work/family patterns from men's).

paid work with "our" family responsibilities. Like joint property proponents, accommodationists appear to be relatively untroubled by the segregationist implications of this line of thought.<sup>293</sup> It would not concern them greatly if women ended up holding part-time, or even temporary or contingent jobs, more frequently than men. In fact, feminists from this tradition sometimes deride long working hours, unhampered by family constraints, as a "male model" that they believe women should reject.<sup>294</sup>

Yet, there is rarely an attempt to question whether overwork is harmful to men too, or whether most men have chosen such long hours. Nor is there an effort to examine whether some women would prefer or benefit from a deeper connection to paid work, in which case the "male" work pattern might turn out to harbor deep female longings.<sup>295</sup> Often, there is even a failure to come to terms with a realistic appraisal of what these forms of accommodation might mean for women. Part-time jobs and other nonstandard forms of employment have well-known disadvantages, including lower pay, lack of benefits, and less promotional opportunity;<sup>296</sup> and at least so long as they are part of a segregated "mommy track," such arrangements are also deeply stigmatizing, even to highly-paid professional workers.<sup>297</sup>

Contrary to productionist and accommodationist views, work isn't just something people do to service corporations or even to serve our families. We need a new model that envisions the deep connections between work and other realms of life, without conflating them. We need an anti-productionist, beyond-accommodationist vision that treats work as a cornerstone—but not a substitute—for family, politics, and civic life. As Nancy Fraser puts it: "The trick is to imagine a social world in which citizens' lives integrate wage earning, caregiving, community activism, political participation, and involvement in the associational life of civil society—while also leaving time for some fun."<sup>298</sup>

Not only must we renew our efforts to dismantle sex- and race-based segregation and hierarchy on the job through vigorous anti-discrimination, affirmative action, anti-harassment, and pay equity measures: We

293. See, e.g., Silbaugh, *Marriage Contracts*, supra note 60, at 98 n.122 (arguing that "the unequal division of labor within the home cannot be said to be inherently problematic or unproblematic without accounting for many differences among women," and what is "problematic is the disparate legal treatment of labor inside versus outside the home").

294. See, e.g., Christine A. Littleton, *Reconstructing Sexual Equality*, 75 *Cal L. Rev.* 1279, 1292 (1987) (criticizing "assimilation" models which "[insist] that women who enter time-demanding professions such as the practice of law sacrifice relationships (especially with their children) to the same extent that male lawyers have been forced to do").

295. See Arlie Russel Hochschild, *The Time Bind: When Work Becomes Home and Home Becomes Work* 12 (1997).

296. See Kalleberg et al., supra note 92, at 6; Arne L. Kalleberg & Barbara F. Reskin, *Gender Differences in Promotion in the United States and Norway*, 14 *Res. Soc. Stratification & Mobility* 237, 255 (1995).

297. See Epstein, *Part-Time Paradox*, supra note 145, at 29–37.

298. Fraser, supra note 76, at 62.

must also restructure working time so as to eliminate the gender disparity associated with full-time and nonstandard work. This means abandoning proposals to create part-time or other nonstandard jobs *for women*, and redefining what is "standard" in a way that will encourage *men and women* from all walks of life to work at a livable pace. In this regard, it is useful to consider class, as well as gender, to better understand current patterns of working time. As sociologists Jerry Jacobs and Kathleen Gerson have shown, the labor market is currently stratified: Managerial and professional employees typically work very long hours at a single job, while less-skilled workers often have trouble finding one job that will provide them with enough hours to make a living.<sup>299</sup>

Jacobs and Gerson propose legal reforms they hope will alleviate both problems at once. They advocate requiring employers to pay proportional benefits. Under such a system, *all* workers would receive benefits (such as pension contributions) that vary with the number of hours they work. To deal with the problem of substandard jobs, they would include those who work less than full-time in their proposal. By forcing employers to pay benefits tagged to the number of hours worked in such jobs, they hope to remove the current incentive for employers to create part-time and other nonstandard jobs simply to avoid paying benefits to full-time workers; instead, they hope, firms would create nonstandard jobs only when there are genuine efficiency reasons for doing so. At the other end of the spectrum, Jacobs and Gerson would also include those who work overtime in their proposal, including managerial and professional workers. By doing so, they hope to remove the current incentive for employers to require overly long hours from their current employees—rather than hiring new workers—simply to avoid paying the benefits they would pay newly hired workers. Again, firms should require long hours from incumbents only when there are efficiency reasons for doing so. Ultimately, by making both part-time and overtime jobs more costly compared to those in the current regime, Jacobs and Gerson hope to stimulate convergence toward a new mean in which most employees work neither too little nor too long.<sup>300</sup>

But our current mean is too high. As I argued above, and as numerous other scholars have urged, we must consider legislative measures to

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299. See Jacobs & Gerson, *Gender-Equitable Work Week*, *supra* note 226, at 462 ("While well-educated and highly trained employees who are paid on a salaried basis . . . may be facing increased pressure to put in long hours at the office, those with less secure jobs . . . may have a difficult time getting the amount of work they desire."); Jerry A. Jacobs & Kathleen Gerson, *The Endless Day or the Flexible Office?*, Report to the Alfred P. Sloan Foundation 12–16 (June 1997) (unpublished manuscript, on file with the *Columbia Law Review*) [hereinafter Jacobs & Gerson, *Endless Day*] (providing evidence that such a bifurcated pattern of working time has occurred).

300. See Jacobs & Gerson, *Gender-Equitable Work Week*, *supra* note 226, at 466–67; Jacobs & Gerson, *Endless Day*, *supra* note 299, at 45–46.

reduce the standard full-time workweek for everyone.<sup>301</sup> American men and women work at paid jobs among the longest hours in the industrial world.<sup>302</sup> On average, men work forty-five hours per week, while women work forty hours per week at their jobs. Contrary to some popular explanations, these long hours are not always chosen: Almost half of each group say they would like to work fewer hours than they do.<sup>303</sup> That most Americans would prefer to work fewer hours is not surprising, given the prevalence of single-parent and dual-earner families and the fast pace of contemporary life. In the face of these trends, we should consider amending the Fair Labor Standards Act to reduce the standard workweek to thirty-five or even thirty hours per week for everyone—including the upper-level workers who are currently exempted—as a way to create a new cultural ideal that would allow both women and men more time for home, community, and nation.<sup>304</sup> A reduced workweek should alleviate work-family conflict for everyone and help promote greater sharing of employment and housework among men and women.<sup>305</sup> It also encourages work-sharing in a way that furthers the goal of making standard jobs available to everyone,<sup>306</sup> while mitigating the downward pressure on wages.

This is not simply a utopian—but wildly unrealistic—proposal. Among industry and the intelligentsia, especially in the international arena, there has been a dramatic surge of interest in working time. A number of European nations have reduced the standard workweek in an effort to promote work-sharing. France, for example, currently mandates a thirty-five-hour workweek;<sup>307</sup> Germany has also reduced the standard workweek.<sup>308</sup> Although such programs have had mixed success at reducing unemployment levels in Europe, there is evidence that national legis-

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301. See also Jacobs & Gerson, *Gender-Equitable Work Week*, *supra* note 226, at 468–69 (urging a 35-hour workweek); Jerry A. Jacobs & Kathleen Gerson, *Who Are the Overworked Americans?*, 56 *Rev. Soc. Econ.* 442, 457 (1998) [hereinafter Jacobs & Gerson, *Overworked Americans*] (same).

302. See Jacobs & Gerson, *Overworked Americans*, *supra* note 301, at 448–50.

303. See *id.* at 452.

304. See *id.* at 457; see also Fraser, *supra* note 76, at 62 (noting the need for men and women to have time to integrate all aspects of life).

305. For example, instead of one spouse working 60 hours a week while the other stays at home to care for the house and children, or one person working 40 hours a week while her domestic partner combines a 20-hour-a-week job with after-school care of the children, changing the workweek—and the definition of “full time”—to 30 hours could help create a new norm in which each partner worked a standard, 30-hour job and divided the household labor equally.

306. For a historical examination of the original Fair Labor Standards Act that describes work-spreading as one of its central purposes, see Deborah C. Malamud, *Engineering the Middle Classes: Class Line-Drawing in the New Deal Hours Legislation*, 96 *Mich. L. Rev.* 2212, 2285–86 (1998).

307. See David Woodruff, *In France, Working Long Hours Becomes A Crime: Inspectors Enforce Shorter Workweek*, *Wall St. J.*, June 15, 1999, at A15.

308. See Jennifer Hunt, *Has Work-Sharing Worked in Germany?*, 114 *Q.J. Econ.* 117, 119–21 (1999). According to Kathryn Abrams, a 30-hour standard workweek has also been

lation can change norms around working time in the United States. When the forty-hour workweek was first implemented, the proportion of men and women working in retail and wholesale trade more than forty hours a week declined substantially in the North and by even greater amounts in the South (where the greater effectiveness of minimum wage laws precluded employers from avoiding overtime penalties by adjusting straight-time wages).<sup>309</sup> More recently, some states have begun to revive these sorts of historical initiatives: Maine enacted a law that limits the amount of overtime employers can demand.<sup>310</sup> Some trade unions have bargained for private sector reductions in working hours—such as the deal struck at IG Metall, which reduced the workweek to thirty-five hours in exchange for the employer's power to allocate hours more flexibly.<sup>311</sup> Some firms have even begun to reduce the workweek voluntarily, in response to high turnover costs and low productivity rates caused by worker burnout.<sup>312</sup> Some economists have voiced concerns that many professionals' long, intense hours reduce welfare and merit correction.<sup>313</sup> Communitarians too should support the reduction of the workweek, in the hope of freeing Americans to participate more actively in civic life.<sup>314</sup>

Just as we must create conditions under which all people can work without sacrificing other important activities, so too must we create work-related organizations that can incorporate the full range of people's experiences and emotional lives. Sexuality and reproduction are a part of life, for example, as are disability and aging. The workplace is not hermetically sealed from these foundational courses of life, and we should

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actively advanced in Sweden by both feminists in the Social Democratic Party and by two smaller parties. See Abrams, *supra* note 227, at 759 n.61 (internal citation omitted).

309. See Dora L. Costa, *Hours of Work and the Fair Labor Standards Act: A Study of Retail and Wholesale Trade, 1938–1950*, 54 *Indus. & Lab. Rel. Rev.* (forthcoming 2000) (manuscript at 2, on file with the *Columbia Law Review*) (explaining that the proportionate decline was 18% for both men and women in the North, and—owing to more effective minimum wage laws—23% for men and 43% for women in the South).

310. Maine recently enacted legislation limiting the amount of mandatory overtime worked by most private and public employees to not more than 80 hours in any consecutive two-week period. See 2000 Me. Legis. Serv. 750 (West). I am grateful to Jennifer Wiggins for pointing out this legislation to me.

311. See Richard B. Freeman, *Work-Sharing to Full Employment: Serious Option or Populist Fallacy*, in *Generating Jobs: How to Increase Demand for Less-Skilled Workers* 195, 209 (Richard B. Freeman & Peter Gottschalk eds., 1998).

312. SAS Institute Inc., a computer firm in North Carolina, has successfully reduced its workweek to 35 hours, and Sun Microsystems has even gone so far as hiring counselors to advise their employees how to “get a life” beyond the job. See Leslie Kaufman, *Some Companies Derail the ‘Burnout’ Track*, *N.Y. Times*, May 4, 1999, at A1.

313. See, e.g., Fredrik Andersson, *Career Concerns, Contracts, and Effort Distortions* (Oct. 1999) (unpublished manuscript, on file with the *Columbia Law Review*) (contending that many professionals' long hours and extreme hard work represent a market distortion).

314. Cf. Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community* 15–28 (2000) (documenting Americans' widespread withdrawal from civic life).

not seek to make it so; such a strategy only lends legitimacy to the Taylorist insistence that we suspend our humanity while we are at work. Sex harassment law offers one opportunity for such an inclusive approach. Instead of conceptualizing the workplace as a sex-free zone, we should strive to create the space in which women, sexual minorities, and our allies have the power to insist that sex, solidarity, and competence coexist—a world in which neither the demands of production nor political correctness outstrip the aspiration to combine work and citizenship with the practice of being fully human.<sup>315</sup>

Perhaps most essentially, a rejection of Taylorism means acknowledging that people are enriched and rejuvenated at work when they are able to participate fully and deeply in other spheres of life and vice versa. Broad experience in family and civic affairs enhances people's ability to contribute to organizational life, rather than detracting from it. We recognize that this is true for some professionals, such as teachers, lawyers, police officers, even college presidents. We have also tended to believe it is true for middle-class women. But particularly in a service economy, the same could be said for almost all workers. Women and men alike could benefit from participating in family and civic life in order to bring breadth of learning, extra-work social connections, and relational skills to the work-a-day world.

By the same token, it is not only men, but also women who need to participate in working life to expand ourselves in our roles as family members and citizens. Instead of seeing the family as the primary sphere of importance and identity (at least for women), and advocating that

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315. I have argued elsewhere that sexual harassment law should not aim to banish sexual conduct from the workplace. The mere presence of sexual activity in the workplace does not inherently discriminate against or disadvantage women. See Schultz, *Reconceptualizing Harassment*, supra note 55, at 1794 & n.568. Indeed, in sex-integrated settings where men and women work alongside each other in equal roles, there is evidence that flirting and other sexual conduct continues, but it is not experienced as harassment. See Gutek, supra note 268, at 143 tbl.2. The attempt to purge sexuality from the workplace can have drastic harmful consequences for sexual minorities, however. See Schultz, *Reconceptualizing Harassment*, supra note 55, at 1785 (showing that some lower courts have held gay supervisors' sexual advances toward other men as actionable harassment, while simultaneously refusing to protect gay men from sex-based harassment at the hands of men perceived to be heterosexual); id. at 1789 (predicting that courts will be more likely to suppress benign sexual expression that does not undermine gender equality where the sexuality involved is perceived as deviant); cf. Janet E. Halley, *Sexuality Harassment 2-4* (Jan. 13, 2000) (unpublished manuscript, on file with the *Columbia Law Review*) (criticizing conventional sexual harassment theories from a queer theory perspective). Gay men and lesbians, bisexuals, transsexuals, and other sexual minorities must be free to express their identities in a workplace culture that invites support rather than disapproval—let alone sexual harassment claims. See *Fair v. Guiding Eyes for the Blind, Inc.*, 742 F. Supp. 151, 152-57 (S.D.N.Y. 1990) (involving a sex harassment claim against a gay male supervisor for simply talking about homosexuality in a way that offended a heterosexual woman who worked in the office). For a discussion of *Fair* and other worrisome harassment claims targeted at gays and lesbians, see Schultz, *Reconceptualizing Harassment*, supra note 55, at 1790, 1793.

work be shrunk or made more flexible so that preconceived family roles can be fulfilled, we should recognize the fluidity of experience and consciousness that occurs across these and other realms. Work is not inherently in conflict with family or civic life. In fact, working can make us *better* parents and citizens by expanding the knowledge and experience we bring to those roles.

There is research suggesting, for example, that women who work for a living are more likely to believe that women are entitled to be equal citizens—and perhaps even better able to marshal support for this position—than are women who are not employed. Sociologist Myra Marx Ferree found in 1980, for example, that working-class, married women who work for a living were more likely to hold feminist attitudes than those who did not work.<sup>316</sup> This was true even of women who worked at least partly out of economic necessity, rather than free choice. Although the employed women and the homemakers were almost equally likely to report that their husbands favored egalitarian sex roles, the majority of the employed women married to men with traditional views nonetheless held gender-egalitarian attitudes, while only one-third of the housewives married to traditional-minded men held views that differed from their husbands' opinions.<sup>317</sup>

Ferree's findings comport with a larger literature that suggests that women who work for a living are more likely than full-time homemakers to support egalitarian gender roles. In her classic study of the Equal Rights Amendment (ERA), for example, Jane Mansbridge found that in the 1974 to 1982 period, women in the labor force were significantly more likely than homemakers to favor the ERA, were more approving of interracial marriage, abortion, sex education, and birth control for teenagers, and were less willing to condemn homosexuality as always wrong.<sup>318</sup> Working women were also more likely to approve of a married woman earning money in business or industry even if she has a husband capable of supporting her, and were less likely to believe that "[m]ost men are better suited for politics than most women" or that "[w]omen should take care of running their homes and leave running the country up to men."<sup>319</sup>

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316. See Myra Marx Ferree, *Working Class Feminism: a Consideration of the Consequences of Employment*, 21 *Soc. Q.* 173, 175 (1980).

317. See *id.* at 181.

318. See Mansbridge, *supra* note 192, at 216 tbl.a(9).

319. *Id.*; see also Kristin Luker, *Abortion and the Politics of Motherhood* 110–21 (1984) (showing that working women were more likely than full-time homemakers to support abortion rights). Mansbridge also found that over time the gap between the views of employed women and homemakers had further diverged, a trend which she attributed to the "growing liberalism of women in the labor force" as well as to "the higher rates of conservative attitudes among the shrinking group who remained at home." See Mansbridge, *supra* note 192, at 204, 217.

Taken as a whole,<sup>320</sup> this literature suggests that there is something about the experience of working that transforms consciousness, and enlarges the way one sees oneself—and one's rights—as a citizen (and probably also how one is seen by others). Perhaps this is why early Second Wave feminists fought so hard for the full inclusion of women in working life.<sup>321</sup> Independence from a husband's economic support, and the day-to-day experience of struggle and triumph in the work-a-day world, bring a sense of inclusion and entitlement that can profoundly affect women's consciousness (and the way others see us).

If working enlarges the way we see ourselves as citizens, it can also enrich the way we define ourselves and our obligations as parents. Most of us work to provide better opportunities for our children than we had for ourselves. This of course includes economic opportunities—working to pay for decent clothing, secure housing, good schools, or even a college education. But it also means much more: It means working to create a world in which one's children—and other people's children—will have better life chances. For many parents, just going to work each day and holding down a job that promises some measure of economic stability is a powerful gift to their children. Surely Michelle Crawford represented many poor mothers who have made the transition from welfare to work when she explained how this shift had transformed her life: "Today, I'm working as a machine operator, [earning \$8.20 an hour], providing for my family. Now, I tell my kids that this is what you get when you do your homework."<sup>322</sup> Even amidst the toil and trouble that her life still entails, Ms. Crawford has found comfort in going to work: "I like getting up in the morning, going to my job. I just feel good about myself," she said.<sup>323</sup> Ms. Crawford emphasizes the role-modeling effect, but she also hints of something more, the gift of having a mother who takes care of

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320. Consistent with Mansbridge and Luker's findings, there is historical research suggesting that women who worked at paid jobs may have found it easier to marshal political support for women's suffrage among their male counterparts. Elinor Lerner reports that in New York City in the early twentieth century, male support for the Nineteenth Amendment was higher in Jewish and in some Italian neighborhoods, where women and men from the community and frequently from the same household tended to work together in the same trades and occupations (including in the heavily-unionized garment industry). Male support was also higher in white Anglo-Saxon middle class communities, where working women did not necessarily live with but did share the same professional and artistic callings as neighborhood men, than it was in Irish neighborhoods, where women were less likely to work at paid jobs, or if they did, worked in separate occupations from the neighborhood men. See Elinor Lerner, *Family Structure, Occupational Patterns, and Support for Women's Suffrage*, in *Women in Culture and Politics: A Century of Change* 223, 234 (Judith Friedlander et al. eds., 1986).

321. See Betty Friedan, *The Feminine Mystique* 344–57 (1963); Cynthia Fuchs Epstein, *The Major Myth of the Women's Movement*, *Dissent*, Fall 1999, at 83, 83–86; *supra* note 192.

322. DeParle, *Symbol of Welfare Reform*, *supra* note 217, at A1.

323. *Id.*

herself: "I thought I would always be on welfare," she said, but now "my kids see a difference in me."<sup>324</sup>

If parents like Michelle Crawford feel that they are doing something positive for their children by working, there is evidence that their children see things the same way as they come of age. One of the most moving experiences I have had recently was reading a story about Barnard College's contest for high school girls to write essays on the topic, "A Woman I Admire."<sup>325</sup> A substantial number of the contestants, many of whom were the daughters of immigrants, wrote about their own mothers' work:

It used to anger Po Lin Ho that her mother had to sit hunched over a sewing machine 12 hours a day, 6 days a week, in a dimly lighted factory in Chinatown. As Po Lin, 16, a junior . . . on the Lower East Side, put it, the family had an easier time in Hong Kong. Now, after six years in New York City, Po Lin says she is proud and grateful for her mother's work. . . .

"One day, sometime last year," she wrote, "I overhear my mom talking on the phone with my grandmother. Mom is crying. 'Oh, how I wish I didn't leave Hong Kong,' she tells my grandmother. 'I miss you so much. But I wanted what is best for my children. I know that in Hong Kong it would be almost impossible for them to get into college. But they hate it here, especially Po Lin. Not a day goes by that she doesn't berate me for leaving Hong Kong. Was I so wrong to want the best for my children?'

"At that moment I understand why we had to come to America. Mom just wants the best for my brothers and me. . . . The things she's done for me are so great."<sup>326</sup>

Another young student, Selena, wrote about her mother, a 54-year-old farm worker from Alabama who has worked in New York as a housekeeper, and then as a foster parent: "I'm proud that my mother uses her time to try to help homeless children gain some equanimity in their lives."<sup>327</sup>

These young women are writing about different values that their mothers' work conveyed to them: love, discipline, and self-sacrifice, but also self-respect and agency, the sense that their mothers (and by example, their daughters) could act to create a better world, for themselves, for their own children, and perhaps for others, too. It isn't just poor young immigrant women who testify to such gifts. In a recent interview, Mary Travers, a singer in the famed folk trio Peter, Paul, and Mary, credited her mother with being the person who had influenced her life the most. When asked why, she said:

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324. *Id.*

325. Lynette Holloway, *Contest Essays Find Heroes Near Home*, N.Y. Times, Mar. 25, 1999, at B5.

326. *Id.*

327. *Id.*

My mother was a marvelous woman: bright, beautiful, dry wit. She was the head of public relations at Danbury Hospital for years. She wrote a couple of books. One was on Margaret Sanger for children, a cookbook, one about the children's crusades. . . .

I was surrounded by a very committed community growing up in Greenwich Village. Most of my mother's friends were writers and artists, people who by nature are committed and, also many of them were committed in what I call the ethical-political sense. So I grew up listening to Paul Robeson and Pete Seeger, believing that inequality was an evil, that women had the right to be anything they want to be and should work.

Feminism wasn't something I discovered in the 60's. It was something I had generational input into. The women who had been the most vibrant in my life all worked. And were responsible for themselves as well as for and to other people.<sup>328</sup>

#### V. REPRISE

Lately I have begun to reflect on how, as my generation enters middle age, our work begins to call forth all the parts of our lives and our selves, pulling from every sphere of our existence, going all the way back to our experiences as children. This is a deep calling, one that demands our attention, even as we may wish to turn away from the difficult and often painful confrontations between past and present, inner and outer, work and worth, family and fear, diligence and disability that it evokes. But there comes a point, for some of us, when we must explore these things—we must expose them to the light of consciousness, somehow—or we cannot go on, we cannot do our work.

Part of my work is writing. Lately, I find that I cannot write well, perhaps I cannot do my work at all, unless I wade through my dead mother's work—her life—and examine what it means to be the child of this vibrant, smart, outspoken, beautiful, energetic woman; a woman married at sixteen, with a child at seventeen and another at twenty-one; a teenage bride who moved far away from her family, who waited tables and did hair and sold service contracts over the phone, for me; a woman who was fired from her final job by an employer who couldn't appreciate her strength, and who, in her middle fifties, couldn't find another one that would begin to use her talents and energies. Increasingly, I find that I cannot write well, perhaps I cannot do my work at all, unless I begin to sift through what my mother's life and my own life mean for my daughter, my fiercely independent four-year old who is the image of my mother, a girl who loves insects with a passion equal only to her adoration of her father, who speaks in full paragraphs and feeds her stuffed-animal "children" every day before she heads off to her "work," a girl who refers

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328. Nancy Polk, *When Life Is a Song, and Also a Cause*, N.Y. Times, Apr. 18, 1999, § 14, at 3.

to Yale as "your Law School" even on the days when I feel that the place is anything but mine.

As I have tried to suggest, this is not just my story. And it is not just the story of people, like me, who are privileged enough to work at writing, or teaching, or the arts, or something else that our society sees as a medium for expressing the whole person. That's an elitist view. For every woman and every man, from all walks of life, work calls us to incorporate all the strands of our experience, to reach across time and place, into the depths of our hearts and psyches, for the self-understanding that will enable us to love and work more fully, to do whatever it is we are on earth to do. This is the meaning of a life's work.