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CONTEMPORARY CHALLENGES TO GENDER EQUALITY

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CONTEMPORARY CHALLENGES TO GENDER EQUALITY

DEBORAH RAMIREZ

We hope to address some common themes and fundamental issues in today's panel. One common theme, of course, is the empowerment of women. We do not mean to address merely the economic or legal discrimination barriers women face. Rather, we hope to begin a discussion that will address a myriad of concerns that impede women from fulfilling their dreams.

How should institutions that have been shaped by history and by a predominantly male model of how the world works be transformed and structured? We will ask how these institutions, whether they be political, corporate, or judicial, can be transformed so that women's voices and concerns begin to animate them.

We recognize that one critical piece of that transformation process is to build an alliance among and between all women—an alliance that transcends our differences, be they of race, class, wealth, or sexual orientation.

We plan to address these issues by presenting our panelists followed by open discussion. Martha Davis, who is Legal Director of the NOW Legal Defense and Education Fund, will speak about the challenges that feminism faces in addressing the needs of an increasingly multicultural, multiethnic, multiracial female population. Women do not belong to a single homogenous unitary category. Women are divided by race, class, ethnicity, and sexual orientation. How can we advance the goals of feminism for all women without allowing these differences to divide us?

MARTHA DAVIS

Thank you. I want to join the other panelists in thanking the Brennan Center and the *Harvard Civil Rights-Civil Liberties Law Review* for staging this great conference. It is fun for me to be here with so many professors, because I feel like I am learning and thinking about things I do not usually see in my everyday practice.

As a practitioner, I have a slightly different orientation in looking at the question that was posed to this panel. This morning there was a significant focus on the courts and on litigation, and I think that is natural given that those panels were about Justice Brennan's legacy. But in the

near future the challenge for people interested in gender equality is to influence the hearts and minds of the public, and, first, of women themselves, rather than to focus on the courts. The challenge for organizations like mine and others is to create a social movement or social consciousness that will support changes in the law to promote women's equality and women's happiness. That social consciousness will form a basis from which to move the kinds of ideas mentioned in Brennan's dissents into the majority.

Recently I came across a description of "happiness quotient" put together by a think tank. They had surveyed individuals to determine who was the happiest in the United States. White men were the happiest, followed by white women, then black men. Black women were the least happy.

These results highlight the lack of gender neutral laws. Despite those laws, white men are still getting most of the happiness. As a result, one challenge is to spread out the happiness and thereby equalize that quotient.

I only met Justice Brennan twice. The first occasion was when I interviewed him for my book¹ about *Goldberg v. Kelly*,² which was one of his favorite cases. *Goldberg* grew out of the welfare rights movement of the 1960s. That movement consisted primarily of low-income women and women of color. Of course, when we talk about class, we are often really talking about race.

The National Welfare Rights Organization that mounted many of those challenges to punitive welfare laws was led by women, by and large. That movement was never fully embraced by the more middle class, more white, feminist movement. In fact, the National Welfare Rights Organization itself only became overtly feminist at the end of the welfare rights movement. There was definitely not a great deal of organizing around issues affecting low-income women at that time.

Unfortunately, *Goldberg* represented the high point of the legal success of that movement, and some of the subsequent cases—*Dandridge v. Williams*,³ for example—rejected heightened scrutiny for government

1. See MARTHA F. DAVIS, BRUTAL NEED; LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960-1973 (1993).

2. 397 U.S. 254 (1970).

3. 397 U.S. 471 (1970).

actions that affected the poor.⁴

Brennan's dissents were on the "right" side of many of those later cases after *Goldberg*, for example, in *Bowen v. Gilliard*,⁵ and *Harris v. McRae*.⁶ In those cases, he specifically underscored the "pervasiveness of modern government" in people's lives, urging that excessive deference to the government was not appropriate.

Many of those cases such as *Dandridge*⁷ and *Wyman v. James*,⁸ which dealt with privacy, did not specifically pose gender issues. In each of those cases, however, and more often than not in others, it was women who were being affected and whose reproductive rights or privacy were being ignored. Indeed, government is pervasively present in women's lives. Women, particularly women of color, are disproportionately poor. Similarly, the government's interest in reproduction gives it a role in women's reproductive decisions that is somewhat unique in jurisprudence. Nevertheless, a narrow review of the gender-identified cases in the Court might lead one to conclude that women have won equality. The Court just issued a unanimous ruling on sexual harassment, written by Justice Scalia, that seems to address the discriminatory nature of sexual harassment and evinces a fairly sophisticated understanding of that issue.⁹ In *VMI*,¹⁰ Ruth Bader Ginsburg, the Thurgood Marshall of the women's movement, began defining a "skeptical scrutiny" and maybe edging up a stricter scrutiny for gender discrimination. So, the groups we call the faux feminists, the Independent Women's Forum, asked rhetorically, what do those feminists want?

Despite the best efforts of Justice Brennan and of others, the courts have not provided protection for poor women from government control of their lives and have not provided basic fairness for women in lower socio-economic classes. While we have made headway in other areas of discrimination, such as in the wage gap, non-traditional employment, or the glass ceiling, we are actually losing ground when it comes to poor women.

4. *See id.* at 486.

5. 483 U.S. 587 (1987).

6. 448 U.S. 297 (1980).

7. *Dandridge*, 397 U.S. at 471.

8. 400 U.S. 309 (1971).

9. *See Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998).

10. *United States v. Virginia*, 518 U.S. 515 (1996).

A good example is the welfare bill signed in 1996.¹¹ The welfare law under the prior system was not perfect, but the new version is certainly less sensitive to women's lives and to the realities that poor women face. Of the provisions in the welfare bill that directly affect women, many cannot be easily attacked in court even though they are devastating for women. In a recent challenge, the Court of Appeals for the Third Circuit upheld the family cap, which denies welfare benefits to women who have children while they are on welfare.¹² There is currently a challenge in state court, but it will be a difficult case to win.

Another provision of the welfare bill, the illegitimacy ratio, provides bonuses to states that cut illegitimacy rates while reducing abortion rates.¹³ The bonuses give states an incentive to manipulate the availability of abortion and people's ability to make decisions about when and under what circumstances to have children. The provision is not really susceptible to a court challenge, yet it gives states both the permission and an incentive to get more involved in those types of decisions.

The fact that the courts really cannot address this problem places the issue back in the legislative arena and, of course, success in the legislative arena requires organizing. That brings us back to what I started out discussing—the 1960s and the failure of the welfare rights and women's rights movements to reach a common agenda. We are at another point now where that is critical.

During the recent welfare reform bill debate, women's advocates in Washington, D.C., were very outspoken about opposing the punitive measures in the bill, even though we did not read so much about that in the press.¹⁴ But Congress did not hear the same concerns from constituents. When members of Congress went back home to their constituencies, they spoke to women who were very antagonistic toward poor women. It was not so much that the women's movement failed to understand these issues, but that the women's movement was not able or failed

11. See 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.).

12. See *C.K. v. New Jersey Dep't of Health and Human Servs.*, 92 F.3d 171 (3d Cir. 1996).

13. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, 2231-33 (1996).

14. See Derrick Z. Jackson, *Skimming the Surface; Media's Irresponsible Welfare Coverage*, CHI. TRIB., May 5, 1998, at 15.

to mobilize its constituency.

A few years ago, the NOW Legal Defense Fund sent out some direct mail on welfare, an issue that we do not usually address in these mailings. It was an experiment to see what kind of result we would get, and we focused on the child exclusion-family cap issue. The direct mail was sent to what we considered to be a safe list—people who had contributed to the National Organization of Women and people who considered themselves to be feminists in some way. After we sent out that mailing, we received hate mail, which rarely occurs with that list. Such animosity was the last thing we expected.

We have recently been sponsoring focus groups around the country to see what interests women. Again, the antagonism between middle class and poor women surfaced. For example, one of the focus groups discussed middle class women as being independent and women on welfare as being dependent, and one woman said, "I just don't have respect for women that keep having babies while they're on welfare. Those women do not deserve respect." Those types of comments most often came from white, college-educated women over thirty.

In another focus group, one woman said angrily, "I don't have anything in common with women who sit on their butts, collecting public assistance, while the rest of us are out there busting our butts." She was a black, non-college-educated woman in her twenties.

These sorts of comments came up repeatedly in very stark ways, and I was surprised at the level of anger. The challenges for those concerned about gender equality are to articulate the issues facing poor women and to mobilize women across class and race lines. This is possible because many of the issues facing poor women are indistinguishable from those facing all women. Can the women who have sent us hate mail, many of whom consider themselves feminists, be reached in a way that allows us to work collectively on issues across class lines?

At the NOW Legal Defense Fund, in our Economic Justice Program, we have focused on several issues that we hope will appeal to women across class lines: child care; domestic violence; and reproductive rights and work.

It remains to be seen whether we will be successful. A common challenge that people interested in gender equality face is trying to bridge those gaps as we move into the twenty-first century.

DEBORAH RAMIREZ

Thank you. Our last panelist is Professor Lucie White of Harvard Law School. Professor White teaches civil procedure, social welfare policy, and community-based advocacy. Both as a lawyer and law professor, her focus has been on empowering those people who face profound poverty. Her work has taken her to the places where the poorest people work, live, and make their homes. In various countries she has explored the ways in which participatory development can assist poor people in creating their ability to assess their own assets and needs, and to develop appropriate direct action plans.

Her work acknowledges the struggles of poor women and focuses on the barriers that they face day to day. She will discuss how we can enhance the voices of lower-income women as we build this coalition among and between women that cuts across class lines.

LUCIE WHITE

I want to echo the words of the other panelists, who commended the *CR-CL Law Review* for putting this wonderful event together.

I want to start by summarizing an article from the *New York Times* from June 26, 1997.¹⁵ On a Tuesday afternoon in late June of 1997, Lori-Ann Williamston, a thirty-three year old African-American Navy veteran, left her two daughters, Kiyah, age three, and Lacey, eight months, alone in their double stroller in a playground in New York City's Central Park. She left the stroller packed with a case of baby formula and extra clothing for the children.

At the time of this incident, Ms. Williamston and her children were renting space in the Harlem apartment of her old friend Valarie Grant. Grant and her teen-age son, Cori, occupied the apartment's two bedrooms. The Williamstons slept in the living room near the dining room table and an aquarium.

Williamston had extensive job experience and a high school equivalency diploma. Nonetheless, since her discharge from the Navy, she had been unable to find steady employment. She was making ends meet with income from temporary jobs, such as collating paper in a warehouse for about five dollars an hour. She was also receiving a public assistance stipend of about one hundred dollars a month, which was likely to be

15. See Dan Barry, *Mother Left Her Children out of Despair, Police Say*, N.Y. TIMES, June 26, 1997, at B3.

terminated at some point under welfare reform.

After she left her children, Ms. Williamston returned to Ms. Grant's apartment. A few hours later, the police tracked her down on the basis of a tip from her roommate and arrested her for abandoning her children. At the time of her arrest, she explained to the officers that she had been depressed about her situation and knew that if she left the children in the park, the police would take care of them. The police concluded that Ms. Williamston's actions seemed to have been motivated by despair.

In the United States, the numbers do not work out to enable "self-sufficiency" among women, like Ms. Williamston, whose work opportunities are at the low end of the waged labor market. Yet, welfare reform is premised in women's capacity to balance their household budgets on poverty-level wages. The big innovation of "welfare reform" is to require states to end a family's federally funded benefits after a fixed period of time, leaving them on their own in the low-wage labor market. Yet, the best that a single mother can do in the low-wage labor market—even if she is in a position like Ms. Williamston, who is a veteran with a high school diploma and prior job experience—will not cover the costs of basic necessities: food, shelter, housing, and child care. Two thousand single mothers are facing the termination of their welfare benefits in the metropolitan Boston area starting at the end of the year.¹⁶ The best budgets that the members of my social welfare law class have been able to produce for a hypothetical Boston-area single mother working a full-time minimum wage job would put her between \$5,000 and \$20,000 in the red, even after she had received her earned income credit.

One source of hope on this bleak landscape is that a convergence of forces, in this country and internationally, seem to be sparking a new wave of women's political activism across income, ethnic, and religious differences. These new movements are beginning to come together around gender-linked injustices that recur in different forms across every contemporary society: gender-motivated violence; the devaluation of care; limited educational options for girls and women; persistent discrimination against women in waged work; and political cultures that bar women's voices.

The great risk that I see to this new women's movement is that it will follow the same course as women's movements of the past. It will hold

16. See generally Hilary Sargent & Judith Gaines, *Sit-In at State House Urges Repeal of Benefits Cutoff*, BOSTON GLOBE, Dec. 1, 1998, at B4.

itself together across wealth and status differences with the brittle glue of coalition—the opportunistic overlapping of fixed interests among differently situated women, rather than through the difficult process of conflict and conversation—the hard kinds of interaction among women that open up, challenge, and change the preconceived self-interests of all of its individual participants, particularly those who come into the interaction with greater wealth and power.

These practices of conflict and conversation are not easy to bring into the day-to-day political activities of women around bread-and-butter issues like child care, workplace discrimination, and sex-linked violence. Once the big differences of wealth and status start to surface, the alliance starts to fracture. We are not accustomed, as women, to listen and work together on common visions across the divisions produced by race privilege and wealth inequality. We are not used to seeking transformative power differences in the interest of gender equality.¹⁷

How can the law help to enable the kind of women's movement partnership that will not fracture when narrowly defined interests begin to diverge? First, it can help to prepare the soil for this new women's movement by providing legal rights like freedom from workplace sexual harassment, which can help women challenge entrenched wealth and status inequalities. But more importantly, it can help by endorsing and supporting programs, projects, and practices that work to strengthen the individual and collective political agency of less advantaged women. Indeed, one can imagine a social welfare system designed explicitly to enhance the sense of personhood of lower-income women, thereby enabling them to participate in civic projects and political movements in more robust and equal ways.

It is an understatement to say that the social welfare system in this country has never worked very well to further that goal. Indeed, in my years of ground-level work with low-income women who use public assistance, I have repeatedly heard from women that our social welfare system works in the opposite way. Let me quote one woman with whom I talked at great length while working in a Head Start Program in a public housing development in Los Angeles in 1992.

17. I want to stress that such a new women's movement would not be restricted to people whose biological gender has been defined as female. Rather it is a movement of all persons: around basic social and economic justice for women, no matter what their position in hierarchies of household, workplace, race, and caste.

The welfare? They treat you like dirt. They don't even know you, and they treat you like dirt. The first time I applied, this woman had never met me. She didn't know me, and she treated me like I was somebody on crack—like a dog, like I was nothing. And I don't like being treated that way.

Our laws of social welfare do not have to work this way. Our laws do not have to create and endorse systems of social provisions that murder the spirit of the people for whom those laws purport to provide. A decade ago I was drawn into research on Head Start,¹⁸ because I had found, through my own practice, that this program was an example of a law-based social welfare program that sometimes worked to *enhance* rather than *undermine* the self-agency, dignity, and political voice of lower-income women. When I began to research that program's legislative history, I found that over the course of its history literally hundreds of women had made the trip to Washington to testify before Congress about how that program was working for them. They testified that their participation in the program gave them a sense of hope, safety, voice, and power. Let me read some of that testimony.

I felt a sense of despair with little self-esteem. I thought my life was without meaning. One day I heard there was a Head Start class down the street at a time when I had lost all hope of ever being anything but an outcast. I learned that I was not the only young mother or dropout. I started putting time in at the class. I remember picking up a book to read to the children and the fear I felt. I realized that I needed a Head Start.

Another woman:

Starting to work with Head Start made me find my place. I have a place to go. It's a place to get together, gossip, and

18. Head Start is a federal matching grant program that aims to improve the learning skills, social skills, and health status of poor children so that they can begin schooling on an equal footing with their more advantaged peers. See JANET CURRIE & DUNCAN THOMAS, DOES HEAD START MAKE A DIFFERENCE? 1 (National Bureau of Econ. Research Working Paper No. 4406, 1993).

lose your tensions. You find out that other people have the same tensions as you. You can get together and talk.

Another woman:

Twenty years ago, without speaking English, with a four-year old child, I walked into a small classroom, and immediately I felt very welcome. There's not a language barrier. It doesn't matter if we don't speak the language, or we have an accent. There's always a place for us. These are the kinds of programs we need, programs that don't judge us, programs that have the opportunity to educate ourselves.

Another woman:

I began writing poetry. I was never interested in writing before, but the frustration of a bad marriage, a house full of babies, needed a mode of expression. The staff at Head Start found out about my poems, and I gave them permission to print them in the Head Start parent newsletter. Head Start was there once again, providing outlets for my frustrated creative urges. Having a voice is one thing, but being able to express that voice is another, and having someone to listen when you express your opinion is the greatest success of Head Start. They listen.

And yet another woman:

If it had not been for Head Start, I might still be a maid. Head Start gave me the first job I ever had that did not include pushing a mop.

The themes of this testimony were echoed in the work of United Nations observer Fauzia Ahmed¹⁹ when she commented on what low-income women seem to want from law-supported development projects across the economic South. I quote from a report that she wrote to the United Nations:

19. See FAUZIA E. AHMED, BEYOND BEIJING '95: BUILDING THE ROAD AS YOU WALK 18-19 (Radcliffe Pub. Policy Inst. Working Paper, 1996).

Today, as I visit projects that deal with women's empowerment, I can see that the sense of belonging created by group formation is the key to empowerment. Women want more than material comforts. In a workshop discussion, rural women in Bihar, India, gave the following list of desires, which were startling in their simple wisdom: self-identity, leisure and time to dream, recognition and respect, love, affirmation and freedom. My own experiences with rural women in South Asia have confirmed these findings. Women have talked about the necessity not only of finding their own identities, but of loving themselves. In . . . Bangladesh, women asked what is the use of skills training and development if there is no love at home . . . They want affection and respect at home and from the community, a kind of social change that is about much more than increased income.²⁰

How can the law intersect with low income women's lives in ways that respect and acknowledge these desires and give them the social space and material resources that enable them to pursue and achieve them? I believe that we must focus on this question first if we are serious about sustaining a new women's movement in which lower income women can challenge elite women to reconsider their notions of their own desires, values, and aspirations. Only through such challenge can the hard issues of violence, workplace discrimination, and care be addressed in a mutually transformative partnership, rather than a brittle, interest-driven coalition.

DEBORAH RAMIREZ

Thank you very much.

We hope to address some common themes in the discussion that we are going to open up.

One of the common themes we tried to discuss here was how to move beyond the last waves of the feminist equal justice movement. We tried to focus on moving beyond just economic development or equal pay, to the myriad of ideas that Professor White encountered when talking to women about what they want, what their dreams are, what would

20. *Id.*

make them happy.

In trying to transform institutions, we are trying not merely to make them gender neutral, but rather to make sure that they accommodate gender differences. To make such an accommodation, our challenge as men and women is to create a coalition that is not focused solely on privileged women, but one that is inclusive of all women.

To do this, we need to develop common ground, a common agenda, which in its inclusiveness allows us to include those who are the poorest among us. Such coalition building is difficult, especially when, as Martha Davis said, the women's movement now is divided by class, ethnicity, and race. When Professor White spoke about coalition building in the civil rights movement, she raised some important issues. Who do we ally ourselves with? What does this alliance look like? What is its common agenda? The quote from Martin Luther King, Jr., teaches us that we must listen, that we must educate ourselves, and that we must engage in dialogue to create this coalition with real glue, not glue that will last only for the moment.

To do that, we must listen to one another. It is a struggle, but a struggle worth embracing, because it is only by embracing the struggle that we are going to truly galvanize the energy to transform institutions for women in the twenty-first century.

Finally, we must consider whether the women's movement really stands for all women. Will those who attack the poorest among us find that the women's movement will fight for them, because an attack on our poorest is an attack on us all?

That, at least, is the common vision and theme of the panel. We now open up the discussion to the floor.

AUDIENCE MEMBER ONE

Most people believe that women who decide to have children should take into account the economic consequences of that choice, particularly those who are on the brink of poverty. It seems that this sort of thinking has been a source of division.

UNKNOWN SPEAKER

I want to make sure that everybody on the panel gets to respond, but I will just respond quickly.

First of all, women do not decide to have children. People have children, not just women. But as far as having children can be seen as a con-

sumption decision, I agree with you that many people see it that way, but I disagree with that characterization. Part of understanding what it means to have families is to transform the notion that having children is a consumption decision.

In other words, I would not exactly disagree that having children is correlated with poverty. I would not argue with you that if you have children when very young in our society, it is likely to mean that you are going to be in poverty. I just challenge why you should be in poverty.

In regard to children being classified as a consumer good, there are many general commodification concerns with that classification. But I will also add that the world is dependent on reproduction. Reproduction is not a private issue. Economists recognize that children produce positive externalities beyond the families who have them. Children are needed to grow into the future economy. They are good for everyone. They are not a private consumptive good like, for example, television.

UNKNOWN SPEAKER

You have articulated very forcefully a view that contributes to the difficulty of creating a "class-class" coalition. One source of my genuine despair is that if we look back at the history of social welfare states, there is a correlation between those states that have not produced the kind of negative results I characterize as spirit-murdering results, and periods in history when there was a societal consensus favoring population expansion across the board.

A serious global question is whether there is a consensus that children coming from all sectors of society is actually a public good. That is a dark secret in some of the discourse that is afloat, and it feeds some of the division. However, we cannot just assume that people will understand the last statement you said. Rather, it has to be actively worked at to get people to appreciate. That is certainly true when we look at other parts of the world.

MARTHA DAVIS

Just to continue the answer, poor people have children for the same reasons that other people have children. All the data shows that people have children because they want companionship or because children are valued in society. It is one of the reasons that the birth rates of women on welfare have not been responsive to the child exclusion programs that deny benefits to children while they are on welfare. If the goal is really

to deter women from having children they cannot support, the best way to accomplish that goal is through public education and by providing more opportunities. It is not an economic decision.

The other answer we put out in response to those kinds of questions is to look at the tax system. One question is why are people so angry about women on welfare having children who they supposedly cannot support, but there is not the same anger against single people having children who claim tax exemptions and child care deductions. Those types of tax subsidies are seen as acceptable, whereas the subsidies provided through the welfare system create animosity.

AUDIENCE MEMBER TWO

One area where women have lost ground is in the privacy sphere. I am not sure to what extent that issue has arisen in the equality cases, but that seems like an area in which these concerns might be addressed in the future.

UNKNOWN SPEAKER

I have some concerns about privacy in general. I do not take the position that privacy issues have been a huge trap, but I think that characterizing women's issues as private has led us to effectively leave women with women's burdens.

Accordingly, we are talking about institutional restructurings. Part of that is to make issues that are part of women's lives, part of public life. From my perspective that includes family care. The question of distribution of family care is not a privacy question, but rather an equality issue.

If you are saying that privacy provides better litigation issues, better litigation grounds, then maybe. In the reproductive rights cases, there has been a lot more discussion recently about equality. Also, some of the issues in reproductive rights cases now have to do as much with being able to have children as with being able to prevent having children—in other words, with some of the eugenic concerns associated with welfare reform.

To understand why that is an important issue, we must move away from the privacy realm and focus on understanding what raising children entails.

UNKNOWN SPEAKER

There are certainly ways in which just the idea that the caretaking of children should be a private issue has undermined efforts to establish day care in the United States. That has been mostly an issue of public consciousness and to some degree an issue that has affected legislation.

It is intriguing whether litigation strategies could be developed that would help to loosen the sense that caring for children under six is something that has to happen within privatized homes. One way people are getting around the issue is by relating early child care to education. They see good child care starting from age zero as part of a continuum of education, an area where there is a powerful public tradition and strong, even constitutional law about rights.

Much more work could be put into consciously trying to enhance the traditions in legal doctrine that would establish public support for child care. If we look at the message President Nixon wrote to veto a very generous federal child care statute that had passed Congress, he pitched his veto in Cold War terms, by arguing that to have government-funded public day care would move the country in the direction of communism.²¹ In the American legal culture that has been an idea that has burdened efforts to improve child care from very early on.

MARTHA DAVIS

In the litigation area, our focus in terms of substantive rights is on state constitutions. What we really want to do is a better job of marrying litigation with organizing. Even if we are successful in court, which we are less likely to be if we have not done a good job of organizing, we are not going to be able to complete the enforcement and follow-through we need to effectuate change in the long term without that organization and public support.

The state constitutional due process and equal protection provisions lend themselves to working on both reproductive rights issues and child care issues. Sixteen states also have equal rights amendments²² (ERAs). There has been very little litigation under those ERAs, and there is much headway that could be made, particularly on child care issues.

21. See Veto of the Economic Opportunity Amendments of 1971, PUB. PAPERS 387 (Dec. 10, 1971).

22. Beth Gammie, Note, *State ERAs: Problems and Possibilities*, 1989 U. ILL. L. REV. 1123, 1125 (1989).

One area we are looking at along the lines of what Professor White mentioned is the provisions in state constitutions that deal with education and the fact that there are new studies and literature that emphasize the importance of education during a child's pre-kindergarten years.²³ These state constitutional rights to education should not be limited to kindergarten through twelfth grade, but should, in light of this new research, create a government obligation to create educational opportunities before that.

These are all nascent ideas, but they can be married with an organizing strategy to move either the legislatures or the courts in the direction of providing more of those rights.

UNKNOWN SPEAKER

Interestingly, some of those doctrines that we can draw on are in the educational context. Part of what makes Head Start an interesting precedent is the notion that education should be a partnership between the parent and the state rather than something either within a private sphere or within a bureaucratized public sphere.

UNKNOWN SPEAKER

There are two paths of connection that come to mind as we link these insights so as to envision what a flourishing notion of well-being for women would look like.

One is very pragmatic and basically calls for coalition organizing. There is a good deal of attention being paid to the undervaluation of leisure and well being in our culture. In Boston there is an interesting cross-class, cross-race, and cross-gender coalition of various organizations that is working on issues of well-being at work that relate to levels of stress, intensity, and the length of time people work for wages.

There are emerging political movements working in different ways around the notion that one's work life should be supportive of one's development. These are concrete, "here-and-now" political movements that work with state legislatures, unions, and health care providers. Health Maintenance Organizations are part of these movements because

23. See Angie Chuang, *A Background for Learning*, HARTFORD COURANT, Apr. 5, 1999, at B1 ("As public officials and educators become increasingly concerned about early literacy, addressing learning disabilities and ending social promotion, preschool can pay dividends down the line.").

they are able to translate aspirations into material for political coalition work.

The other theme is coming from a very different place—feminist jurisprudence. Tracy Higgins just published an article in which she looks at the conditions that one would have to put in place to support the capacity of citizens to participate in a democracy fully and with a robust voice.²⁴ Much legal theory addresses the concept of the constricted agency of women and the different kinds of measures the law could take to address the notion that to participate equally as a citizen in a democracy one must have a voice.

Feminist jurisprudence comes from a very different direction, but that is an area in which we can link some ideas in abstract legal theory that feminist scholars are writing about.

MARTHA DAVIS

Professor White's remarks reminded me of the community action programs from the 1960s that required the "maximum feasible participation" of the constituents they were serving. There was actually a legal requirement that people have a voice.

UNKNOWN SPEAKER

That was Head Start.

MARTHA DAVIS

Right. It reminded me that we really have not been attentive to that issue.

In the most recent welfare bill there are two instances that come to mind. First, the National Governors' Association is required to be consulted in developing performance standards. Why should the National Governors' Association, a private entity, be consulted in developing federal standards and not others who are equally affected? No one has focused on this question.

Second, in New York State's legislation, there is a requirement that the state consult with domestic violence advocates in developing their criteria for the family violence option. This is something that we could have pushed harder on and expanded.

24. See Tracy E. Higgins, *Democracy and Feminism*, 110 HARV. L. REV. 1657 (1997).

DEBORAH RAMIREZ

I thank everyone for attending and thank the panelists for raising these issues.