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SAMENESS FEMINISM AND THE WORK/FAMILY CONFLICT*

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While I was reading in preparation for today, I was struck by a passage in Cynthia Fuchs Epstein's 1981 book, *Women in Law*.[1] In a chapter entitled "So Many Hours in the Day," she documents the time conflicts of women lawyers in a distinctly upbeat tone.[2] She rejects the analysis that mothers' work and family obligations involve "role strain."[3] She states:

> I found in my investigations of the lives of women lawyers that when faced with numerous demands, many did not feel a sense of strain or negative stress. Rather, these women found their lives exciting and dramatic. They developed greater energy when the demands proliferated, rather than feeling drained, and often did not define their situation as problematic.[4]

It is important to place this passage in historical context. It represents a classic expression of "sameness" feminism: the conviction that, since men and women are basically the same, women will do just as well as men if only they are given the chance.[5] Epstein's findings reflect the positive view of wage labor traditional to sameness feminism: feminists throughout the twentieth century have celebrated wage labor as a key road to self-realization and autonomy.[6]

Sameness feminism predominated when Epstein wrote *Women in Law*. Shortly thereafter, symbolized and in substantial part created by Carol

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1. C. EPSTEIN, WOMEN IN LAW (1981).

2. *Id.* at 315-26.

3. Role strain refers to the pressure women lawyers may experience resulting from balancing the demands of work with the desire to devote time and attention to family. *Id.* at 323.

4. *Id.*

5. Sameness feminism focuses on the fundamental similarity of men and women, and thus, their essential equality. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 798 (1989).

6. *See, e.g.*, N. COTT, THE GROUNDING OF MODERN FEMINISM 119-20 (1987) (linkage of feminism and wage labor); B. FRIEDAN, THE FEMININE MYSTIQUE 338-78 (1963) (arguing that "The only way for a woman, as for a man, to find herself . . . is by creative work of her own."). *Id.* at 344.

Gilligan's 1982 publication of *In A Different Voice*,[7] difference feminism exploded onto the American scene. While sameness feminists focus on the similarities between men and women, Gilligan and her followers focus on difference. Gilligan argues that women resolve moral conflicts differently from men and that women's different voice is characterized by caring, connection, and contextualized thinking.[8] Gilligan contrasts women's voice with mainstream morality, which she represents as a hierarchical ladder of abstract rights and responsibilities.[9]

Epstein's current article shows her disapproval of Gilligan and her continued advocacy of a sameness position.[10] Epstein has not lost her sensitivity to the dangers of generalizing about all men and all women, an uneasiness I share.[11] I have argued that Gilligan's "rediscovery" of the Victorian tenet that women "naturally" focus on relationships helps to perpetuate the marginalization of women.[12] It does so by providing an updated version of the traditional view that women "naturally" define their adult lives in terms of the caregiving responsibilities they are traditionally expected to shoulder.[13]

Despite its limitations, difference feminism has served to highlight the

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7. C. GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982). Gilligan interviewed women and men to explore existing theories of moral development, and identify two separate modes of moral reasoning. *Id.* at 1-4.

8. *Id.* at 100. From Gilligan's viewpoint, responsibility and care are central to a woman's understanding of morality. *Id.* at 105.

9. Gilligan notes that the development of both sexes entails an integration of rights and responsibilities. For women, the integration of these rights and responsibilities takes place through an understanding of the psychological logic of relationships. For men, this integration appears as an injunction to respect the rights of others and to protect the rights to life and self-fulfillment from interference. *Id.* at 100.

10. Epstein, *Faulty Framework: Consequences of the Difference Model for Women in the Law*, 35 N.Y.L. SCH. L. REV. 309 (1990). Epstein proposes that focusing on gender differences inevitably perpetuates notions of social inequality and results in women's exclusion from decision-making positions. *Id.* at 310-11. Epstein believes that "[m]any [gender] differences are merely assumed, and either do not exist or are so superficial that they change as opportunities and views change." *Id.* at 310.

11. *Id.* at 321-23 (cautioning against attribution of particular characteristics to either males or females because such characteristics attributed to women tend to be devalued).

12. Williams, *supra* note 5, at 807.

13. These caregiving roles range from caring for children to caring for the poor and the sick. A goal of Gilligan and other relational feminists is to remedy the way caregiving roles are marginalized in a capitalistic society that celebrates individual autonomy and freedom through the pursuit of self-interest. I have argued that the feminization of caregiving as a part of *women's* voice sets up an ideological dynamic that ensures the continued marginalization of values other than the pursuit of self-interest. *See* Williams, *Domesticity as the Dangerous Supplement of Liberalism*, 2 J. WOMEN'S HIST. 69 (1991).

limitations of key assumptions of sameness feminists. The experience of women in the legal profession illustrates those limitations. The assumption that women will perform "the same" as men if only they are given the opportunity, for example, has proved false. Women lawyers as a group have not achieved the same levels of power and responsibility as have male lawyers as a group. Although the number of female lawyers has swelled from three percent in the early 1960s to fourteen percent in the mid-1980s,[14] once in the profession, female lawyers' performance has been disappointing. Women are not reaching positions of prominence in the same proportions as are men. Female lawyers in the mid-1980s were less than half as likely as males to be partners in law firms, earned about forty percent less, and practiced disproportionately in low-prestige specialties.[15] Salary differentials were even more pronounced for minority women.[16] Surveys of women professionals, including lawyers, have shown that women are disproportionately likely to drop out of the work force, work fewer hours, and specialize in fields requiring the shortest and most predictable work schedules.[17]

This statistical evidence is reinforced by anecdotal evidence. In the media, story after story reports women "opting out" of the rat race in favor of a kinder, gentler existence.[18] Often these stories focus on lawyers: the term "mommy track" was originally used to describe female attorneys.[19]

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14. Rhode, *Perspectives on Professional Women,* 40 STAN. L. REV. 1163, 1178 (1988).

15. *Id.* at 1179. Examples of low-prestige specialties are domestic relations work, women's and juveniles' legal problems, and probate work.

16. *Id.*

17. *Id.* at 1181; U.S. BUREAU OF THE CENSUS, 1970 CENSUS OF THE POPULATION, OCCUPATIONAL CHARACTERISTICS, Table 45, at 747 (1971) (*reprinted in* C. EPSTEIN, *supra* note 1, at 316). The attrition of female lawyers is part of a larger pattern of high attrition of women from male-dominated jobs. *See* Schultz, *Telling Stories About Women and Work: Judicial Interpretation of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument,* 103 HARV. L. REV. 1749, 1825-26 (1990).

18. *See, e.g.,* Kantrowitz, *Moms Move to Part-Time Careers,* NEWSWEEK, Aug. 15, 1988, at 64; Taylor, *Why Women Managers Are Bailing Out,* FORTUNE, Aug. 18, 1986, at 16.

19. Women on the "mommy track" curtail their work hours in deference to their child care obligations. *See, e.g.,* Ehrlich, *The Mommy Track,* BUS. WK., Mar. 20, 1989, at 126 (detailed look at the mommy track phenomenon). In the process, the "mommies" often curtail their chances for advancement, lose access to the most challenging and prestigious work assignments, and lose bonuses, perks and benefits. Felice N. Schwartz sparked a flood of controversy when she declared that gender differences make "employing women . . . more costly than employing men" and advocated the establishment of an alternative employment track in corporations. Schwartz, *Executives and Organizations: Management Women and the New Facts of Life,* 67 HARV. BUS. REV., Jan.-Feb. 1989, at 65. Other

I find the mommy track a pervasive phenomenon among both my friends and my students. A colleague informed me recently that she was the only mother of her daughter's friends who was still working full-time. Time and again I talk to female students with top credentials who are turning down prestigious offers in favor of lower paid, less prestigious jobs with more limited opportunities for advancement because of their children or their plans for children in the future. The persistent drone of these stories suggests that we are losing a generation of women lawyers to career marginalization.[20] The "hard" evidence cited above appears to confirm this impression.

This phenomenon presents an important challenge to the sameness feminism that pervades both *Women in Law* and *Faulty Framework*.[21] As feminist lawyers, we need to analyze the reasons behind the disappointing showing of women lawyers as a group. There are, no doubt, a variety of causes. The first and most obvious is overt discrimination of the sort experienced by Ann Hopkins at Price Waterhouse and Elizabeth Hishon at King & Spalding.[22] Vicki Schultz has argued persuasively that the treatment of Hopkins and others evidences a larger pattern of harassment of women in male-dominated professions.[23]

Though discrimination and harassment play important roles, feminists need to come to terms with the argument that women "choose" career marginalization because of their different voice. I have argued that some

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commentators view the mommy track as perpetuating gender bias and establishing women as second-class workers. *See, e.g.*, Bender, *Sex Discrimination or Gender Inequality?*, 57 FORDHAM L. REV. 941, 943-44, 944 n.10 (1989) (calling for the restructuring of legal institutions in a way that will allow for the differences between men and women without subordinating women; both genders should be treated equally and permitted to contribute and flourish); Lewin, *"Mommy Career Track" Sets Off a Furor*, N.Y. Times, Mar. 8, 1989, at 18, col. 1 (late city ed.) (Felice Schwartz' article calling for businesses to create separate career paths for women who choose to raise families criticized by feminists and applauded by the business world); Kingson, *Women in the Law Say Path Is Limited by "Mommy Track,"* N.Y. Times, Aug. 8, 1988, at 1, col. 5 (late city ed.) (because raising a family is viewed as incompatible with the long hours expected of law firm associates, some law firms have linked part-time work to a non-partnership track). Other commentators have emphasized the benefits of the mommy track. *See, e.g.*, Kaye, *"Mommy Track" in Practice*, Nat'l L.J., May 22, 1989, at 13, col. 1.

20. By career marginalization, I mean that women end up in jobs that pay less, are less prestigious, and offer less opportunity for advancement. *See* Williams, *supra* note 5, at 826-36.

21. C. EPSTEIN, *supra* note 1; Epstein, *supra* note 10.

22. *See* Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (accounting firm discriminated against female employee, resulting in her rejection for partnership); Hishon v. King & Spaulding, 467 U.S. 69 (1983) (law firm's refusal to grant partnership to female associate held discriminatory).

23. Schultz, *supra* note 17, at 1832-39.

of the interviews Gilligan interpreted as evidence of women's voice are better interpreted as evidence that privileged women feel a deep ambivalence about the lures of wage labor.[24] Many of Gilligan's informants who aspired to be doctors or other professionals clearly felt a sense of entitlement to "fulfilling careers" that can best be understood in relation to social class.[25] They share with same-class men a sense that self-fulfillment lies in a successful career—yet (unlike same-class men) they feel deeply ambivalent about whether they want successful careers nonetheless.

This ambivalence is well-expressed by Ruth, a woman interviewed by Gilligan, who felt that her second pregnancy conflicted with her desire for an advanced degree. She was ambitious, but distrusted that ambition because she knew it could lead her to ignore the perceived needs of her family. To her a decision to abort

> would be an acknowledgement to me that I am an ambitious person and that I want to have power and responsibility for others and that I want to have a life that extends from 9 to 5 every day and into the evenings and on weekends, because that is what the power and responsibility mean. It means that my family would necessarily come second. There would be such an incredible conflict about which is tops, and I don't want that for myself.[26]

This interview seems to suggest not that women speak in a voice dominated by caring,[27] but that privileged women are caught in a matrix of irresolvable conflicts of ideology and social role. On one hand, Ruth believes that successful motherhood is essential to her adult life. On the other hand, she believes that "success," i.e., success at work, is her birthright. The resulting internal conflict stems from her knowledge that success means performing as an "ideal worker,"[28] which, as a lifestyle, precludes the worker's ability to meet children's daily needs for care and affection.

The study of women in law provides a promising place to examine the process by which women translate the clash between their work and family roles into decisions to defer or abandon their initial aspiration to career

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24. Williams, *supra* note 13, at 74-75.

25. *See, e.g.*, C. GILLIGAN, *supra* note 7, at 89 (abortion choice precipitated by commitment to career, which is "where I derive the meaning of what I am").

26. *Id.* at 97.

27. Gilligan's interpretation of Ruth's interview as evidence of women's voice seems odd since Ruth apparently chose to abort, a choice (in Ruth's terms) of achievement over affiliation. *See id.* at 96 (Ruth viewed abortion as the "better" choice).

28. Williams, *supra* note 5, at 822-23.

success. In what sense do these decisions constitute the women's "choice" to "opt out of the rat race?"

This is an important question, and Epstein offers a promising approach. She argues that gender distinctions, such as men's and women's different work and family roles, result not from early socialization, but from the persistent and continuing effect of informal and formal social controls, kept in place by powerful decision makers and enforced through institutionalized norms.[29] Epstein's argument details the process through which gender functions as a system of power relations.[30]

The full range and variety of these gender-enforcing norms has yet to be explored. One important locus of such norms concerns women at work. I have focused on how the gendered structure of work reinforces and perpetuates gender distinctions that disempower and impoverish women.[31] To apply this analysis to the legal profession, start with the image of the ideal worker in an elite job at a top Wall Street firm.[32] Assume he (I use the pronoun advisedly) will work twelve hours a day, six days a week. Further assuming a one-hour commute, he will be gone from home between seven A.M. and nine P.M., a minimum of five, and more often six days a week.

We don't ordinarily think of this schedule as reflecting a system of gender privilege, but it does. Its incompatibility with raising children leaves women with three choices. Their first choice is to have no children. This is the solution of a large majority of women in management positions. Only thirty-five percent of such women have children, whereas ninety-five percent of their male counterparts do.[33] Women who do have children have only two options. One is to spend very little time with them—to conform to the life pattern of the typical workaholic father.[34]

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29. Epstein, *supra* note 10, at 310-22, 324-26. *See generally* C. EPSTEIN, DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER (1989).

30. *See* C. MACKINNON, FEMINISM UNMODIFIED 42 (1987); C. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 119-20 (1989). Although MacKinnon and Epstein both reject difference feminism, their approaches differ in many ways. Epstein advocates sameness feminism, see *supra* note 10 and accompanying text, while MacKinnon favors a "dominance" approach. *See* C. MACKINNON, FEMINISM UNMODIFIED, *supra*, at 44.

31. The current gender system results in female impoverishment because it forces on many mothers a choice between being an ideal worker and ensuring that their children receive high quality care. *See* Williams, *supra* note 5, at 823-36.

32. I am not the first to apply this analysis to lawyering. *See* Bender, *supra* note 19, at 943-44.

33. Sly, *Firms Look for Ways to Keep Moms on the Job,* Chic. Tribune, Mar. 19, 1989, zone C, at 1.

34. Williams, *supra* note 5, at 834-35. Under this option, a woman becomes an ideal worker.

The other option is to pursue a career while accommodating child care demands in ways that interfere with one's ability to perform as an ideal worker—in other words, to join the mommy track.[35] This appears to be the choice of a substantial proportion of women.

Each of these three options reflects not "free choice," but a deeply internalized system of gender privilege. Ideal-worker women remain childless in disproportionate numbers because they generally lack the option their male equivalents enjoy—to deflect their children's needs onto their spouses. Because ideal-worker women (unlike their male equivalents) generally cannot justify their long absences on the grounds that their children's needs are being met by their spouse, their only alternative is generally to entrust their children all but a few hours a day to a babysitter.[36] The third group of women, those on the "mommy track," react to their lack of access to their husband's domestic labor by abandoning their sense of entitlement to career "success."

A closer look at female lawyers' three options shows that men and women are not similarly situated with respect to work, a fact veiled by the notion (held widely by women as well as men) that women's different work patterns result from "choice." Women's different work patterns reflect not "choice" but a system of gender privilege in which men but not women generally have access to the domestic labor of their spouses to the extent the couple deems parental involvement necessary to meet their children's needs.[37]

Thus, the classic workaholic schedule of an elite American lawyer both reflects and reinforces a system of gender privilege that ensures that a disproportionate number of women will be effectively barred from elite jobs. This system of gender privilege is easiest to document if we examine the statistics on working mothers. These statistics show that women have gained the privilege of joining the labor force only by working two shifts, one at the office, and another at home.[38] Studies consistently show[39]

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35. *See* Nielsen, *The Balancing Act: Practical Solutions for Part-Time Attorneys*, 35 N.Y.L. SCH. L. REV. 369, 381-83 (1990). Apparently, a substantial portion of women "choose" the "mommy track." *See supra* notes 19-20 and accompanying text.

36. Here I assume a parent absent from the home twelve hours per day (10-hour workday; 2-hour commute), and a child awake 14 hours per day.

37. For a dramatic illustration of female lawyers' disproportionate child care responsibility, see *Project: Law Firms and Lawyers with Children: An Empirical Analysis of the Work/Family Conflict*, 34 STAN. L. REV. 1263, 1281 (1982) [hereinafter *Lawyers with Children*] (virtually no men interviewed expected to have more than 50% of child care responsibility and about 55% expected to have less; every single woman interviewed expected to have 50% or more of the responsibility, and half expected to have more than 50%).

38. *See* A. HOCHSCHILD (WITH A. MACHUNG), THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME 254-55 (1989). This domestic work comprises

that working wives continue to do a disproportionate amount of the child care[40] and virtually all of the housework.[41] As a result, working wives work an average of 144% of the hours housewives work.[42] One study showed that husbands of working wives spend only three-quarters of an hour longer each week with their kindergarten-aged children than did men married to housewives.[43] Another study shows that husbands in two-earner families barely contribute enough domestic labor to make up for the additional work their presence in the household creates.[44]

These grim facts lead us back to Epstein's imagery of women lawyers exhilarated by stress,[45] imagery that highlights the limitations of sameness feminism. A key limitation of sameness feminism is its failure to recognize that women will never be equal in the work force unless the rules of the game are changed. This is the message of the last decade, one that emerges clearly if Epstein's 1981 description is compared with Arlie Hochschild's 1989 description of working mothers in *The Second Shift*.[46] Hochschild rediscovered many of the same phenomena Epstein documented nearly a decade earlier—that working mothers get little sleep and have little or no time for leisure. But the exhilaration Epstein found is long gone.[47] Hochschild's description shows how the crushing strain

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the "second shift" explored by Hochschild. Women who work the second shift lack leisure time and become tired and ill more often than their husbands. *Id.* at 4.

39. *See* Berardo, Shehan & Leslie, *A Residue of Tradition: Jobs, Careers, and Spouses' Time in Housework*, 49 J. MARRIAGE & FAM. 381, 382 (1987) ("In a great number of studies using very different methods, the level of husbands' contributions of time to household labor consistently appears to be small."); Miller & Garrison, *Sex Roles: The Division of Labor at Home and in the Workplace*, 8 ANN. REV. SOC. 237, 240 (1982) ("All research confirms that husbands' contributions are modest and delimited. Wives' employment does not produce role equity in the household.").

40. *See* Barnett & Baruch, *Determinants of Fathers' Participation in Family Work*, 49 J. MARRIAGE & FAM. 29, 33 (1987) (113 of the 160 fathers surveyed reported having *no* child care responsibilities; fathers spent an average of 29.48 hours per week, while mothers spent an average of 44.45 hours per week).

41. *See id.* (150 of the 160 fathers surveyed reported they were not responsible for any traditionally feminine home chores); Berardo, Shehan & Leslie, *supra* note 39, at 388 (wives do 79% of the housework).

42. Heath & Ciscel, *Patriarchy, Family Structure and the Exploitation of Women's Labor*, 22 J. ECON. ISSUES 781, 787 (1988). This 1983 percentage has increased from 113% in 1969.

43. A. HOCHSCHILD, *supra* note 38, at 3 (citing to an earlier study).

44. *See* Heath & Ciscel, *supra* note 42, at 788. This is an average figure and, of course, does not describe each such husband.

45. *See* C. EPSTEIN, *supra* note 1, at 323.

46. *See supra* note 38 and accompanying text.

47. *See* A. HOCHSCHILD, *supra* note 38, at 8-10. Many of Hochschild and Machung's

of inconsistent demands is grinding down women's sense that they can control their lives and meet their responsibilities to others.

The Second Shift shows that equal access to jobs designed around fatherhood will not result in equal opportunity for women. To achieve more than formal equality, one of three structural changes must occur. One alternative is to insist that men change their behavior and give up their unquestioned claims to the domestic labor of women. This is Hochschild's solution.[48] While this is no doubt a necessary component, I do not think Hochschild comes to terms with its full implications. In families that adopt this strategy, the result is that neither parent can perform as an ideal worker and that both parents will have to rein in their professional ambitions. This would lead to the emergence of two groups of men. Those who continue to tap the domestic labor of their wives will reach the highest levels of their professions. Those who relinquish their traditional gender privilege will not. Instead, they will be stuck with the mommies in the pink collar ghetto. This focuses on an important question that Hochschild does not fully address. How many men, particularly professional men, can be persuaded to cede their sense of entitlement to perform as ideal workers when that concession will often mean they will jeopardize the job success that is a central part of their identity?[49]

A second alternative for women is to identify the lack of adequate child care as the central difficulty.[50] From my perspective there are two problems with this approach. The first is that it does not abolish, but only changes, the traditional system of gender privilege. It preserves intact fathers' ability to shift responsibility for filling their children's needs to women. The only difference is that the female caregivers are no longer the fathers' wives; instead they are less privileged women.[51]

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case studies document the strain and disillusionment of women trying to work the second shift alone, or unsuccessfully trying to enlist their husbands' help. *See, e.g., id.* at 33-58 (Nancy and Evan Holt), 110-27 (Seth and Jessica Stein).

48. Hochschild concludes that the best two-job marriages are those where the former role of housewife-mother is not loaded on the woman but instead is shared by the couple as a valuable part of family life. *Id.* at 270.

49. For an example of the crucial role career often plays in the professional's sense of identity, see R. BELLAH, R. MADSEN, W. SULLIVAN, A. SWIDLER & S. TIPTON, HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE 3-8 (1985).

50. I do not mean to sound negative about child care, which is an inevitable and desirable part of a more comprehensive solution. The United States is woefully behind other western democracies in the provision of adequate child care. *See* S. KAMERMAN, A. KAHN & P. KINGSTON, MATERNITY POLICIES AND WORKING WOMEN 31 (1983).

51. P. PALMER, DOMESTICITY AND DIRT: HOUSEWIVES AND DOMESTIC SERVANTS IN THE UNITED STATES, 1920-1945, at 67 (1989) (documenting relationships between higher class, predominantly white women and their lower class housekeepers, predominantly women of color).

A second, related problem is that, if we advocate more child care as the way to enable female workers to behave like male workers, we must change the traditional norms of parents' involvement with childrearing. We must decide that we are untroubled when parents see their children only a very limited number of hours a week. We must further decide that we are untroubled when both parents have a relationship with their children that many women would describe as inadequate, and equivalent to missing out on their children's childhoods. In short, we must redefine the ideal parent along the lines of traditional fatherhood.[52]

The final alternative, the one I advocate, is a direct challenge to the gendered structure of wage labor.[53] This is obviously a long-term project, but the legal profession may be a good place to begin. It is a dramatic example of the great American speed-up, the sharp increase in the number of hours Americans, particularly American professionals, are expected to work.[54] The inordinate time demands of many desirable legal jobs dramatize the inconsistency between the roles of ideal worker and responsible parent.[55] The legal context seems particularly promising as an educational tool because the time demands are often so excessive that even male lawyers see them as disfiguring the broader goals they have set for their lives.[56] This may make it easier to see women's childrearing aspirations as part of a larger pattern of aspiration in which work demands are balanced with other goals. The legal profession also illustrates the dynamic by which mothers are barred from elite positions of power and responsibility. This inaccessibility dramatizes how the structure of wage labor constantly recreates male gender privilege.

Although this is not the place to develop fully a new vision of wage labor, I would like to end with some preliminary thoughts. We are presented initially with two different approaches. One is a life-cycle strategy in which different standards of work commitment would be expected for nonparents and parents, particularly parents of young

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52. For a visionary redefinition of what an ideal parent would be (one that differs from both traditional motherhood and traditional fatherhood), see Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. (1991) (forthcoming).

53. *See* Williams, *supra* note 5, at 822.

54. Discussion at the symposium indicated that Wall Street associates are now typically expected to bill 2300-2600 hours per year. Nielsen, *supra* note 35, at 370. The average number of annual hours billed by lawyers has risen substantially, from about 1700 hours several years ago to 2300-2500 hours today. (Note that these are hours *billed*, not hours spent at the office). *See* Kingson, *supra* note 19.

55. Historically, this inconsistency has forced a predominant number of women professionals to sacrifice either family or career. *Lawyers with Children, supra* note 37, at 1274.

56. Nielsen, *supra* note 35, at 371 (today's lawyers work long hours and put aside other pursuits to fulfill the time commitments they feel they must make to their jobs).

children.[57] At a minimum, this would entail career tracks that would allow parents to "slow down" without sacrificing the opportunity for promotion. The second alternative is to restructure the entire society's work around the time commitments of responsible parenting.

Which solution makes more sense? The first has notable advantages. It is, of course, cheaper than the second. It also reflects that parenting demands do not continue throughout one's professional life; in fact, these demands will be a factor for only about one-third of the life of the normal worker.[58] Yet, allowing parents to "slow down" without penalty would require us to invert the present apprenticeship system.[59] In the legal profession, for example, the current apprenticeship system functions so that associates in their prime childbearing years often feel they have less choice about working twelve-hour days than do partners whose childrearing responsibilities have ended.[60]

Regardless of whether we pursue a life-cycle strategy or a complete restructuring of wage labor, sweeping changes will be required before men and women are similarly situated with respect to "choices" about work. Although it is daunting to recognize how deeply gender privilege is embedded in our way of life, we can begin to tackle the problem by doing some very concrete things.

One is to talk carefully. Here, I want to focus for a moment on a term used in the literature for Lawyers for Alternative Work Schedules (LAWS).[61] The importance of LAWS' mission cannot be overestimated. It not only provides invaluable services for lawyers who seek part-time work; its cry of "keep the faith, but not the hours"[62] promises to give attorneys a way to counter charges that any lawyer who wants a life

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57. Caring for young children is only one element of the nonpaid work currently performed by women. A related issue is the need to provide care for aging parents. Either responsibility (or their cumulative effect) can interfere with a woman's ability to function as an ideal worker. *See* Beck, Kantrowitz, Beachy, Hager, Gordon, Roberts & Hammill, *Trading Places*, NEWSWEEK, July 16, 1990, at 48, 49 (about 14% of caregivers to the elderly have switched from full-time to part-time jobs; 12% have left the work force; another 28% have considered quitting their jobs) [hereinafter Beck].

58. Beck, *supra* note 57, at 49. The average American woman will spend 17 years raising children. *Id.*

59. *See id.* These workers might include those who provide care to aging parents. American women spend 18 years helping aging parents, a time demand equivalent to that for child care. In addition, many baby boomers are sandwiched between child care and elder care; the latter demand often begins as the former ends. *Id.*

60. *See* Nielsen, *supra* note 35, at 371.

61. LAWS is a national nonprofit organization devoted to promoting alternate job options for attorneys.

62. Nielsen, *Part-Time Work: Keep the Faith, But Not the Hours*, OHIO LAW., July-Aug. 1989, at 14. This was written by Nielsen during her tenure as President of LAWS.

balanced between work and non-work-related commitments lacks seriousness—and so can be belittled, undervalued, and ultimately exploited—for example, through a permanent associate track.

Though LAWS has begun the process of dignifying part-time work as a responsible choice for lawyers committed to the practice of law, in a few places its language ultimately undercuts its mission. A notable example is the use of the term "lawyer-mom."[63] While I understand that the goal is to be accessible and informal, let's think through the implications of that term. It says there are two types of lawyers: "real" lawyers who can perform as ideal workers, and lawyer-moms, who cannot. The term "lawyer-mom" thus undercuts LAWS' message that people can be "real" lawyers while rejecting sixty-hour weeks. The term "lawyer-mom" also reinforces the deeply ingrained cultural assumption that the people who structure their work lives around the demands of responsible parenting will be, virtually exclusively, women. As I understand it, LAWS' experience shows this not to be the case. Only eighty percent of the attorneys LAWS counsels are lawyer-moms.[64] Fathers, as well as mothers, evidently reject mind-numbing working hours. This is an important point to make. Finally, the term "lawyer-mom" reinforces the cultural assumption that the only reason adults might not choose to work sixty hours a week is because of their goals as parents. In fact, as LAWS' experience again shows, adults rebel against that schedule for a variety of reasons.

LAWS is caught in a bind, as are others involved in job counselling for individual workers: how can it create "realistic" expectations in job seekers without reinforcing the message that committed parents should expect career marginalization as their due. As one part-time lawyer stated:

> In law school we were all really committed to the practice of law. We felt it outrageous to be asked what our childcare considerations were, or how childbearing would fit in with our work needs. We were wrong. It was unrealistic to think we might not want to change our work situation when we decide to have children.[65]

This lawyer-mom's work situation is then described:

> Brick's work assignments aren't as lucrative or as glamorous as they once were; she doesn't share in the firm's profits and no longer handles her own cases. "We can't have our cake and eat

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63. Nielsen, *supra* note 35, at 371-72, 381-83.

64. *Id.* at 372.

65. Feiden & Marks, *Working Part Time: A Work Option That Can Reap Unexpected Benefits*, 14 LEGAL ECON., July-Aug. 1988, at 27-32.

> it, too," she admits realistically. Someday, perhaps, she'll ask to be readmitted to the ranks of partnership, a request (her firm) is willing to consider, unwilling to guarantee. "The rewards, the sense of accomplishment, the chance to travel were all tremendously exciting. The time may come when I will miss that."[66]

What is an alternative to adopting this rhetoric of the lawyer-moms who must make "realistic choices?" To develop a new approach is not a task for individual job seekers or job counselors. It is a task for feminists, and should be a major issue on the current feminist agenda. Two positions need to be articulated. The first is that parents who work workaholic hours are irresponsible, regardless of whether they are men or women; the second is that employers who demand these hours are themselves being irresponsible. These points will not be heard without a cultural shift—a daunting proposition. Daunting, I think, but not impossible.

Two examples are needed to aid our imagination. One is the shift in the 1930s to the acceptance of a social security system.[67] Before the social security system was enacted, the burdens of the aging process were privatized onto the individual worker. When an employee aged and lost efficiency, the employer fired him or her. The fact that the human life makes it impossible for people to perform indefinitely as ideal workers was defined as the worker's problem, not the problem of the employer or the public. The aging process was defined as a private responsibility, much as the process of reproduction is privatized today.

Both aging and childrearing must be redefined as parts of human life that employers and society at large have to accept.[68] How does one achieve a cultural shift of this magnitude? Is it possible? When I get pessimistic, I think of how attitudes toward smoking have changed over the last fifteen years. The smoking of tobacco has been accepted in our culture for centuries. Yet, in a very short time, activists changed our attitudes in spite of powerful and well-financed opposition. While the

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66. *Id.*

67. *See generally* A. EPSTEIN, THE CHALLENGE OF THE AGED, at vii (1976); C. MEYER, SOCIAL SECURITY: A CRITIQUE OF RADICAL REFORM PROSPECTS 9 (1987). This collection of critical essays about social security deals primarily with the economic issues of factor supply, economic growth, income distribution, and market failure.

68. This redefinition should include not only childrearing but other caregiving. *See* Beck, *supra* note 57, at 50, 53. Congress passed the Family and Medical Leave Act requiring unpaid leave to care for newborn or adopted children or relatives who are seriously ill. Although President George Bush vetoed the bill, some employers have begun similar support programs. Stride Rite Corporation, for example, recently opened the nation's first on-site intergenerational day care center, providing subsidized child care and elder care which employees pay for according to income. *Id.* at 50, 52.

parallels are limited, the success of the antismoking campaign can give us heart to begin the process of redefining responsible work and family roles.