

Labor's Subjects

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I am deeply honored to be included in the anthology *Lives in the Law*. When Professors Austin Sarat, Lawrence Douglas, and Martha Umphrey invited me to participate, they sent a wonderfully evocative letter suggesting some themes such a collection might address. Their letter begins,

In an earlier age, it was common to say of a judge or lawyer, "He lived greatly in the law." This locution is striking, as it suggests more than the mere notion of physical habitation—it powerfully conjures what perhaps could be called an "ontology of law," the idea that legal practice was a form of being and that such being offered opportunities for . . . "ethical flourishing."

With characteristic eloquence, they go on to suggest some of the ways in which people live as "legal subjects," who exist, more or less self-consciously, within fields of possibility and constraint provided by law.

The locution, "He lived greatly in the law," is striking to me on a different level: as a description of one who was shaped powerfully by the law—or, legal practice—as a form of work. Taken in this sense, the expression conjures not an "ontology of law," but something more like an ontology of work: the idea that occupations and callings (such as legal practice) are the sites of deep self-formation and that such sites offer rich opportunities for human flourishing (or devastation). From this vantage point, people become visible not simply as legal subjects, but also as labor's subjects, who evolve into who we are in relation to our experiences in the world of work. Because law's domain includes the world of work and its connection to other spheres of existence, the

prospect of who we become—as a society, and as individuals—is influenced by the laws that control the institutions that shape and give meaning to our experiences as workers.

Indeed, the gendered character of the locution—not only was it “he” who lived in the law, but also “he” was one who so lived “greatly” (an observation not likely to have been made about one who was not “he”)—reminds us of what is at stake in this process. 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. Thus, labor’s subjects are also gendered subjects, shaped simultaneously by the same institutions into both the “workers” and the “men” or “women” we come to be. 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.

In light of work’s power, it is imperative that we mobilize law to imagine, and to structure, a world in which women and men from all walks of life can stand alongside one another as equals, pursuing their chosen projects and forging connected lives. 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. Many feminist legal scholars now advocate paying women to care for their own families in their own households; they 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 formed, 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.

This is an enormous subject, and I cannot hope to do it justice here. I will sketch, in a very preliminary way, four key themes.

1. The first is that we are shaped deeply by our work. Our perceived capacity for 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 understood by the larger society. In everyday language, we are what we do.

2. Yet our society has been slow to understand this fundamental feature of socialization to be true for women (as it is for men). Our view of women's needs and desires has been distorted by family-wage ideology, "the sex-gender system that prescribes earning as the sole responsibility of husbands and unpaid domestic labor as the only proper long-term occupation for women."¹ Family-wage thinking has left us with the mythologized but misleading image of women as creatures of domesticity—but not of paid work. Indeed, important strands of economics, antidiscrimination law, and feminist legal theory have perpetuated the view of women as inauthentic workers. Contrary to this view, I will argue that paid work is crucial to women, to equality, and to the feminist agenda. I believe it is time to move beyond family-wage thinking and invent a more egalitarian path for our future that builds on a foundation of equal work for everyone. We must push for strategies that promote gender integration across both paid and unpaid work in order to improve the lives of all women, men, and children.

3. Indeed, social justice now demands our 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 top. As multinational corporations seek more flexible forms of production and labor, more people than ever face greater job insecurity and less ability to shape their lives around a coherent narrative involving steady work. Many middle-class white men now confront problems similar to those women and less privileged men have long faced.

4. These trends present deep challenges, but they also provide

the opportunity to reshape social life by focusing on work. Some have suggested that we should abandon our historic emphasis on work and create alternative paths to the good life. But 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 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 minorities, the poor, women of all races, the aging, and people with disabilities—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. This body of law is simply not capable of generating the structural transformations necessary to create the conditions in which work can provide a basis for equal citizenship for all. To move forward, we must craft a new language for articulating why work matters. We must remake our laws and culture to create a world in which everyone has the right to participate meaningfully in paid work, with the social support necessary to do so. We must demand the conditions for work that is sustainable over the course of a lifetime and is consistent with egalitarian conceptions of care and civic commitment.

The Importance of Work

In the United States (as in most Western nations), work has been fundamental to our conception of the good life.²

Citizenship

Work has been central to our notion of citizenship. Theoretically and historically, what we have called for in citizens is the perceived capacity for “independence.”³ This, in turn, has been linked to the capacity to earn one’s own living.⁴ 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. This shift entailed a transvaluation of both citizenship and labor: With the

enfranchisement of men who lacked property, 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.⁵

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: Freedom of labor became associated with freedom of contract, an association that limited rights for working people.⁶ 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 in the hours demanded by the new industrial order.⁷

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 more important than "freedom from work" as a cultural ideal, even a menial laborer could feel equal (if not superior) to patrician nonproducers.⁸ 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. If women and youth could work in factories, earning 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."⁹ As the corporation replaced the independent producer as the driving force of the economy, independence came to mean control over the conditions and compensations for work rather than self-employment, and paid work became the foundation for citizenship.

Of course, the promise of equal citizenship grounded in paid work has not been realized. Still, diverse social movements have struggled 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

concept of the right to work as the basis for a robust, equal social citizenship.¹⁰

Community

Just as paid work has been a crucial component of citizenship, it has also been an important building block for community. Not only does working for a living provide people with the sense of belonging and contributing something of value to a group larger than ourselves or our loved ones; the rhythms, the social relationships, and institutions of work also 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 flow from the fact that we and our friends and fellow residents go to work each day. But social scientists such as William Julius Wilson have begun to make this process visible. When work disappears, the neighborhood institutions that sustain social integration and strengthen the capacity to socialize children also tend to crumble.¹¹ 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 discipline 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.¹²

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; it means only that 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.¹³

Poor inner-city people are not the only who withdraw from community life when they lose their jobs. In sociologist Richard Sennett's 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 or tradesmen from the shakeup. They've just lost interest in civic affairs."¹⁴ 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 problems of self-esteem and demoralization (as well as a more difficult time reentering the labor market) than their male counterparts.¹⁵ There is also extensive evidence that mature women who are not employed suffer greater problems with self-esteem—as well as higher levels of depression and other serious health problems—than do working women.¹⁶

Identity

All of this underscores the third point, which is the importance of work to our 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.¹⁷

Kanter goes on to show, in brilliant detail, how jobs create people. 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 uncer-

tainty 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. 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. There is the corporate wife who is expected to advance her husband's career and serve the corporation faithfully; yet, if she does so effectively and well, her increasing "public" visibility will threaten the insider/outsider distinction on which her exclusion from the formal paid workforce is premised, while at the same time compromising her ability to relate to people in the corporate circle in a "private" noninstrumental way.

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 don't easily compartmentalize—and file away until the next day—the selves we learn to become during working hours. In fact, most of us spend more time working than we do at anything else. So, it should not be surprising that the strategies we use to make it as workers become infused into our behavior, thoughts and feelings, and senses of ourselves—our very beings—with real spillover effects on our so-called private lives.¹⁸

Consider one of my favorite films, *The Remains of the Day*.¹⁹ Anthony Hopkins plays Mr. Stevens, the head butler to an English nobleman, Lord Darlington. 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, 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 in more empowering ways by changing work or the way it is structured or understood. 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.²⁰ 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.²¹ For many, the positive effects of their new work roles on their self-esteem permeated their identities, and they found the courage to change and grow in other aspects of their lives.²²

Thus, it isn't only business-school types 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 reveals. Terkel's subjects confirm that work takes a lot out of us. "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." Yet, work also provides the 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."²³

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. The truth of this insight is captured in everyday life. We ask someone, "Who are you?" and they answer, "I'm an autoworker" or "a nurse." Most fundamentally, people define themselves in terms of the work they do.

The Domestication of Women

That idea that work shapes identity may not be that controversial when applied to men who work in high-status occupations. As the saying goes, the job makes the man.

Yet 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. In the conventional conception of gender identity, women are first and foremost committed to domesticity—as wives, mothers, daughters, sisters, general nurturers and providers of care and cleanup. Some of the time, 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 media). But even in the versions in which women’s attachment to home and hearth is seen as acquired rather than given, the point is that it is firmly in place long before women ever begin working (or searching for work). Of course, 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.²⁴ Thus, in the conventional view, working neither creates—nor offers any hope of relief from—the material and other disadvantages that mark women’s lives.

Human Capital Theory

The starkest example of this thinking 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 the voluntary choices that flow from their alleged “comparative advantage” at housework and child care.²⁵ Because women are better than men at these tasks, Becker contends, women look for jobs that more easily accommodate “our” responsibility to perform them. In the older versions of human capital theory, this meant looking for jobs with lesser penalties for discontinuous employment, so that women could move in and out of the workforce to raise young children; or, looking for jobs with higher starting wages but lower rates of appreciation, so that women could earn relatively more in our early years of working, before they dropped out of the workforce altogether.²⁶ In the face of embarrassing evidence that traditionally female jobs do not penalize women less for discontinuing or dropping out of the labor market—indeed, Paula England’s work suggests that women’s jobs pay less than men’s do at every stage of the life cycle²⁷—Becker added another refinement. In order to conserve energy for family duties, he speculated, 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 the couple to invest more in the man's skill in connection with paid work, while allowing the woman's "human capital" to stagnate as she becomes more specialized in running the household.²⁸

There are a number of problems with this theory, not least of which is a lack of empirical support.²⁹ Sociological research suggests that the gender gap in pay is attributable to the fact that women work in separate-but-unequal fields, firms, and jobs³⁰ (and even to the fact that they are paid less than men in the same jobs)³¹—not to the fact that women have more family responsibilities. Women do bear a heavier family load, but this family load does not account for job segregation or the accompanying wage gap: Research shows that a woman's likelihood of moving in or out of a male-dominated or female-dominated field, or holding such a job at any given time, does not vary significantly based on her marital status, parental status, or number of children.³² Contrary to human capital predictions, 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-dominated 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.³³

Nor, as Becker has more recently suggested, is the gender gap in pay explained by the fact that women 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 their achievements or degree of effort). 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.³⁴ More recent analyses confirm these results and find that overall, the impact of household and family arrangements on work effort and work commitment is nonexistent or small.³⁵ Thus, women's heavier family obligations are not driving job segregation. Indeed, causation may well run in the reverse direction: Women may take on more housework and child care because they are segregated into lower-paying jobs—a position that deprives them of the ability to demand more egalitarian arrangements for household labor.³⁶

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 the partners share both roles, but the theory says nothing 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 unproved notions that they are more relational or nurturing than men and as a result are better at caring for others.³⁷ So the theory ends up being circular: To explain why women earn lower wages, the theory says it is because they 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 (which there is reason to doubt), that would still not 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 money providing child care for other people's children (in addition, perhaps, to their own), while in heterosexual partnerships, male partners specialized in less-marketized forms of household work (perhaps odd jobs)? The point is that, once again, 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 says women earn lower wages because they specialize in housework. But there is nothing to 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.

Employment Discrimination Law

This sexist line of reasoning is not confined to human capital theory: It is also invoked regularly in legal discourse. Indeed, it is precisely the underlying image of women as inauthentic workers that 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.*³⁸ 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 the men.³⁹ Sometimes this argument draws explicitly on human capital theory; sometimes, it draws on less formalized notions that women have been hardwired by nature or programmed through nurture to prefer “feminine” forms of work.⁴⁰ Whatever the causal mechanism, in this account, women's work preferences—their very understandings of themselves and their place in the world as women—are seen as fixed by forces that are ontologically and temporally prior to women's experiences in the world of paid work. Thus, women's unequal place in the workplace has nothing to do with the workings of labor markets or firms; employers simply honor women's own preconceived preferences.⁴¹

As I have shown in more recent work, even sex harassment law centers around a stereotype of women as people who are only secondarily workers.⁴² In my view, some men harass women because they see as workplace rivals. They intimidate and isolate women 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 the conventional legal understanding of sex harassment.⁴³ In the conventional view, men are understood to harass women because they see women as sexual subordinates, a habit they allegedly acquired in the inegalitarian domestic sphere but which “spilled over” inappropriately into the neutral, ungendered world of work.⁴⁴ Once again, in the usual view, gender is created in the domestic sphere; the workplace is merely a passive reflector of inequalities already formed elsewhere.⁴⁵ Constructed this way, women's disadvantage is domesticated.

Feminist Legal Thought

This failure to take women seriously as workers is such a deeply ingrained part of our history that it permeates our culture, our institutions, and our thought—including some strands of feminist thought.

Like employment discrimination law, a good deal of contemporary feminist legal thought has conceived of gender in terms of male-female relations constructed primarily (if not exclusively) through traditional heterosexual family and/or sexual relations. To the extent that work enters into the analysis, it is seen as secondary. Patriarchal family/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.

Consider, for example, the current movement among some legal feminists (mostly family law scholars) to assign economic value to housework, child care, and other labor that people provide for their loved ones in their own homes.⁴⁶ 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 women do “men's” wage labor, in an effort to compensate women for child care and housework.⁴⁷

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).⁴⁸ One method of doing so is already being implemented on a massive scale: sharing housework with others by converting it into employment. 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.⁴⁹ 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. By transforming at least some forms of household work into paid employ-

ment, 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.⁵⁰ We could also make it easier for those who perform household labor to engage in collective action to improve their situation.⁵¹

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 that should count as commercialized forms of household labor.⁵² There may, of course, be some forms of household labor that cannot or should not be commodified.⁵³ 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 spreads the work around and renders it more visible and publicly accountable, many legal feminists in the movement to value housework shun this approach.⁵⁴ Instead, they are proposing schemes to compensate women for performing household labor in their own homes. Some 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.⁵⁵ 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.⁵⁶ 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.⁵⁷ In joint-property proposals the 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.

These family-based approaches replicate many of the same conser-

vative assumptions that traditionally have justified women's disadvantage. In fact, many of these feminists adopt the human capital explanation for women's economic disadvantage. They assume it is women's disproportionate responsibility for housework and child care that accounts for our inferior position in the workforce.⁵⁸ Unfortunately, many feminists in this camp seem unaware of the sociological work that casts doubt on human capital theory.⁵⁹ Within the social sciences, the debate is between conservative economists—who pin women's plight on their own decisions to assume more traditional family roles, and feminist sociologists (and sociologically minded economists)—who have labored to show that discriminatory dynamics in the work world are a more fundamental cause.⁶⁰ Indeed, sociological work points toward a more deconstructionist approach that refuses static conceptions of women's family-based "difference" and shows instead how structural features of labor markets and workplaces (including discriminatory selection policies and wage scales, hostile work environments, sex stereotypes and in-group preferences, and exclusionary informal norms) create the very gender differences (in job aspirations and patterns of family labor) that human capital theory attributes to women themselves.

Thus, to characterize this struggle as one between equal-treatment and difference feminists, as some in this movement do,⁶¹ overlooks a more transformative feminist perspective that views gender difference as the product of structural influences in labor markets and firms—including social relations between men and women at work.⁶² This perspective opens up possibilities for change. If the sources of women's disadvantage lie not in sociobiological forces that 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 workplaces. 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.

In the movement to value home-based labor, by contrast, some of the literature tends to reify dominant male-female breadwinner-homemaker patterns in a way that closes down, rather than opens up, strategies for change. Much of the literature assumes that housework is now

and will continue to be largely “women’s work.”⁶³ To explain why this is so, scholars sometimes posit that women care more about domestic concerns,⁶⁴ or that, because of cultural standards that work against them 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.⁶⁵ Although these sorts of arguments may be intended to avoid the biological reductionism implicit in Gary Becker’s notion of comparative advantage, they still serve the same disturbing, essentializing function: By making traditional male-female patterns around housework seem inevitable, they make it seem impossible to reshape social life so that everyone could participate in households and other spheres of life in more egalitarian ways. Instead, the only viable approach becomes the separate-but-equal strategy of compensating women to do housework—while leaving unexamined the broader structures of political economy that deprive women of the bargaining power necessary to obtain a more egalitarian sharing of household labor in their private relationships, and that prevent both women *and* men from forcing the political system to provide the kinds of public support necessary for all of us to achieve more balanced lives.

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 seem to have made the difference. There is evidence, for example, that households in which women are employed have a more equitable division of labor than those in which women are not employed.⁶⁶ In addition, numerous 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.⁶⁷ Contrary to popular stereotype, moreover, working-class husbands do not do less housework than their more educated, middle-class counterparts.⁶⁸ Thus, for many women, throwing oneself into paid work and choosing a partner who works reasonable, flexible hours—a strategy that has been called “marrying down,” but which I think feminists might refer to more profitably as “coupling up”⁶⁹—might help achieve a more equitable division of household labor.

In fact, some of the sociological literature provides evidence that things are moving in a more egalitarian direction, at least in some households:

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 still likely to spend fewer hours than men on the job, and American men are likely to put in fewer hours than women on domestic labor, but the total number of hours is converging.⁷⁰

There is evidence that variation among heterosexual couples is increasing, with some men now making much larger contributions to family work.⁷¹ In one recent study, for example, 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.⁷² Thus, focusing exclusively on mainstream tendencies may mask significant variation and change. Over the past three decades, it seems clear, 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, working men who did 50 percent or more of the household work paid a substantial earnings penalty, compared to other working men.⁷³ By contrast, among women who did half or more of the housework, only women who worked part-time paid an earnings penalty. Contrary to human capital predictions, women who worked full-time paid no earnings penalty for doing most of the housework or for being mothers, compared to other women.

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 percent of each group, even among couples who had children). But the wives of egalitarian husbands were significantly happier than the wives who did more housework.⁷⁴ These findings are consistent with more recent research, which suggests that it is not the absolute amount of housework but the inequity in the division of labor that contributes the most to women's unhappiness.⁷⁵

This research casts doubt on the wisdom of family-based strategies that posit—or promote—the continuation of a traditional division of labor. 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, and that most women are heterosexuals who have male partners who will support them adequately through wage work while they specialize in home production. But these are mythical assumptions. Male-breadwinner families are now the province of a fairly small group of people.⁷⁶ In two-thirds of married-couple families with children, both the women and men work for a living.⁷⁷ And, of course, families headed by only one adult are on the rise, with female-headed households representing almost a quarter of all families with children in 1994.⁷⁸ In addition, same-sex couples have become more visible (if not more prevalent).⁷⁹ These changes mark the end of the traditional male-breadwinner/female-homemaker family. Today, at any given moment, more women (and men) live outside the bonds of traditional marriage than at any previous time in American history.⁸⁰

In the face of these trends, it is futile to attempt to revive the family-wage system by attempting to get individual men to pay their female partners for taking care of the house and children. Nor should feminists desire such a revival. The truth is that women cannot specialize in housework at the expense of paid employment. The overwhelming majority of women need and want to participate in both spheres at the same time. This is not an irrational choice or one made simply out of financial need. A large body of literature suggests that working women are better off than full-time homemakers in terms of physical and psychological well-being (to say nothing of economic well-being). For women, time spent on housework, and an unequal division of household labor, are associated with higher levels of depression,⁸¹ anxiety, and other symptoms of psychological distress.⁸²

Not only is there 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*.⁸³ They cite a national longitudinal study, for example, that found that women who participated in both paid work and family roles reported better physical health and fewer emotional problems than nonemployed women.⁸⁴ In the same vein, a three-year study of 745 married women

also found that working women had better emotional health than those who are not employed.⁸⁵ 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 non-employed 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 McCarney 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.⁸⁶

Sociologist Myra Max 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."⁸⁷ Indeed, "working-class women are not 'more satisfied' with full-time housework," whether they are compared to working-class employed women or to middle-class housewives.⁸⁸ Thus, contrary to an argument that is sometimes made by legal feminists,⁸⁹ "The inference that the demonstrably less attractive jobs potentially open to a working-class woman would make her more likely to appreciate staying home is clearly undermined by the data."⁹⁰

For those of us who study work, such findings are not surprising. Housework may offer some autonomy, but 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."⁹¹ Indeed, if one compares housework to

other jobs, 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 prohibit this for all other forms of work, and with good reason: All of us 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. This may explain the research showing that the greatest benefits accrue to women (as well as men) who combine paid work with family commitments.⁹² Acknowledging the benefits of multiple roles does not mean denying that most women (and many men) experience an overload associated with the double day. 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.⁹³

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 making a deep commitment to paid work. In light of the importance of earning to citizenship in women's history, solutions that focus on spousal income-sharing inevitably cast the higher-earning spouse as the "boss," and the homemaker (or the lower-earning spouse who does most of the housework) as the employee—a difficult enough dependency relation made 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 employees in traditional paid workplaces. As Rhona Mahoney has emphasized, women are better off if they bring to their private relationships an independent means of economic wherewithal and social support that can provide women with an external source of bargaining power, an alternative avenue for self-esteem and solidarity, and a credible (and real) potential for exit.⁹⁴

Although some feminists oppose a cooperative strategy because they believe it promotes class bias,⁹⁵ joint-property proposals merely introduce a different—and potentially more troubling—form of class bias. As Martha Fineman has emphasized, such marriage-based approaches fail to provide for those who perform housework outside the bonds of the traditional heterosexual family⁹⁶—never-married mothers, or gay and lesbian partners, for example—who are a growing proportion of all families. Although this is a heterosexist omission, it is a class-based omission, as well: Never-married mothers face the highest burdens of care and have among the lowest level of resources of all

demographic groups; lesbian couples, too, earn less than their heterosexual counterparts.⁹⁷ Even for the married women who are included in its scope, the joint-property proposal provides a class-biased compensation schedule. The wife of a high-level executive who gets one-half the executive's earnings for caring for the house and kids is paid much more than the wife of a minister, even though both wives may be doing essentially the same work. The executive's wife would also earn much more than her own paid household workers, who may do just as much work. Joint-property proponents sometimes defend that wives be paid at a rate higher than paid housekeepers on the ground that household workers are underpaid⁹⁸ (which, of course, they are). But the solution to this problem lies in collective measures such as unionization, affirmative action, pay equity, and wages 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, marriage-based solutions for valuing housework tend to replicate the same old class-based, family-wage system venerated by conservatives. Joint-property proponents argue that collectivizing housework creates class divisions between the women who hire out household work (and they do assume that it's women, not men, who do the hiring out) and the women who do such work for a living.⁹⁹ But, in reality, this strategy has the potential to promote solidarity among these two groups of women, because working for a living provides each group with a common set of experiences that may bridge class differences and allow them to identify with each other as working women.¹⁰⁰ At times in our history, such cross-class alliances between women (and men) have occurred and produced powerful results.¹⁰¹ By contrast, the family-wage system upon which joint-property proposals build was characterized by striking class-based divisions among women. As many historians have emphasized, the ideology of domesticity reconciled middle- and upper-class homemakers to their position by encouraging them to feel superior in class, race, and gender terms to women who worked for a living—who were not considered "true women." At the same time, the ideology of domesticity 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.¹⁰² By encouraging middle-class women to create identities based primarily in motherhood and domesticity at the expense of paid work,

contemporary joint-property proposals hark back to these nineteenth-century ideologies.

Joint-property proposals are not alone in risking the reproduction of the gender-based division of labor. Traditional welfare strategies, which are rooted in the same family-wage system as joint-property proposals, may also do so (depending on how they are framed). Joint-property approaches rely on individual breadwinners to fund household labor, while welfare strategies rely on the state. Shifting the locus of responsibility to the state is advantageous because it frees women from the demands of individual men and sheds the most obvious form of class bias by funding housework at a uniform level for all who do it. Nonetheless, 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 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 recent changes to the traditional Aid to Families with Dependent Children (AFDC) system, a number of feminists are proposing alternatives designed to enable low-income mothers and fathers 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.¹⁰³ She advocates a system more like the French one, which provides generous, high-quality child care that allows parents to work at paid jobs. In France, according to Bergmann, a single mother who takes a job can do far better than her American counterpart—or even 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 United States (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.”¹⁰⁴

Furthermore, as Bergmann points out, paying single mothers to care for their children raises increases political demands to support married middle-class women’s homemaking, which only exacerbates class differentials and further reinforces the gender-based division of

labor. To move the United States in a more promising direction, Bergmann has proposed a program called “Help for Working Parents,” which provides all low-income parents, whether single or coupled, with 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 high-cost areas. Perhaps most importantly, it would also provide wage subsidies to bring earnings up above the poverty level.¹⁰⁵ Bergmann’s program was developed jointly with feminist Heidi Hartmann, the head of the Women’s Public Policy Institute.¹⁰⁶ The proposal contemplates that parents will engage in full-time work; however, it defines full time as thirty hours per week—a substantial reduction from the current norm for American men and women.¹⁰⁷

Feminist political theorist Nancy Fraser has also criticized the traditional welfare approach for reasons that turn out to be remarkably similar to Bergmann’s, despite their different points of departure.¹⁰⁸ Fraser develops a thoughtful critique of even 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.¹⁰⁹ In such a utopian welfare 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.¹¹⁰

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 jobs [that] will pay considerably less even at the full-time rate than comparable breadwinner-track jobs."¹¹¹ 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,"¹¹² 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.¹¹³

To move beyond this system, Fraser argues for what she calls a "universal caregiver" model that would restructure our social institutions to allow women and men alike to combine an active and simultaneous commitment to paid work and family life. This would involve vigorous steps to eliminate the gender segregation of jobs, as well as generous social support for job holding. Fraser's vision is similar to Bergmann's, except that Fraser is explicit about the need to cut back on the amount of time we devote to paid work so that all of us can be more active participants in family life, political activity, and civic endeavors. She quotes approvingly from the Swedish Ministry of Labor: "To make it possible for both men and women to combine parenthood and gainful employment" and, Fraser would add, politics and civil society, "a new view of the male role and a radical change in the organization of working life are required."¹¹⁴ In such a world, "The employment sector would not be divided into two separate 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."¹¹⁵ Thus, to create this world would mean dismantling the gendered association of men with paid work and women with domesticity. It would require fully envisioning men as committed caregivers and women as authentic workers—something that even many feminists, let alone many other men and women, have not yet been able to do.

This is not surprising, 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 more transformative terms. As historian Linda Gordon has shown, even the late nineteenth and early twentieth centuries white women's rights activists who were instrumental in creating the modern welfare state were

“maternalists” who based their approach on the family-wage system.¹¹⁶ These feminists’ acceptance of this gendered system of labor limited their vision of welfare to a system that paid women to stay home and take care of their children (such a system was understood to be temporary, anyway, since they imagined the beneficiaries as widows who would eventually remarry), rather than a system that enabled women and men to take care of their families while engaging in paid work. Of course, even at the time, 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.¹¹⁷ But, the most prominent activists’ adherence to family-wage ideology blinded them to the need for broader government policies that would enable women to work to support families on their own, such as better jobs and job training, wage subsidies, and collectivized child care. It was left to African-American women and other 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.¹¹⁸

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. Even when we enact laws that recognize and seek to equalize women’s work roles, as I argued above, the remnants of family-wage ideology creep into the law and deplete much of its transformative potential. After thirty-five years of civil rights enforcement, many women are still left to scramble for low-paying, often temporary or part-time, jobs that don’t come close to providing a living wage or decent benefits.¹¹⁹ They are left to patch together care for their children with little or no help from their employers or government. And, whether women work in the highest echelons of the professions or the lowest levels of service provision, their place toward the bottom of the hierarchy is rationalized by denying their 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 in order to fulfill their natural domestic roles.¹²⁰ Less privileged women are not only described—but denigrated—as creatures of inferior culture, a characterization that serves to legitimate their low position in the labor force.¹²¹

Whether women’s lack of agency as workers is romanticized as the

expression of middle-class domesticity or denigrated as the product of cultural inferiority,¹²² 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.

Changes in the Making

Meanwhile, the organization and structure of work is changing in dramatic, world-rupturing ways. We are living through a time comparable to the Industrial Revolution in terms of magnitude of the shifts in working life—and, along with it, the rest of social life. 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.

New Trends

The changes are too complex to describe fully here, and, of course, to some extent, different things are happening in different sectors of the economy. Nonetheless, some general trends are emerging.¹²³ In the transition to a global 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 the 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 respond on a dime 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."¹²⁴ 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.¹²⁵ "In place of organizations as pyramids, management wants now to think of organizations as networks."¹²⁶ Unlike a pyramid, which is a firm, fixed structure, a network is a fluid one that constantly redefines its form and function.

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. Yet, pressures toward upward striving and tokenism created an atmosphere of competition in which it was difficult for the powerless to unite, solidaristically, with each other. The powerless were caught in "highly routinized, rules-bound jobs," located "at the periphery, in backwater positions not seen as critical for solving relevant problems."¹²⁷

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.¹²⁸ Of course, the ultimate logic of this process is replacing workers with robots; one need only visit a newer factory, in which only one or two people are employed to watch over a vast plant full of machinery, to realize that in the reductionist world of time-motion management, machines are more valuable than human beings. They perform repetitive motions quickly and without stress, they don't

need lunch or bathroom breaks, and they don't resist exploitation through acts of sabotage, as human workers sometimes do.

From this vantage point, it might look 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 enterprise. 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. Eliminating internal career ladders would remove the incentive to be loyal to the company or even to one kind of work. But that would be a good thing. 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 their prejudice and intolerance, for working harmoniously with others would be a premium.

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 the dark side of flexible capitalism, which, according to them, is committed above all else to the idea of reducing fixed labor costs in the name of facilitating newness and change: "No long term."¹²⁹ 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."¹³⁰

In Sennett's view, this shift toward more decentralization has not meant greater freedom and autonomy for most workers, but simply a different and perhaps more debilitating form of power and discipline. According to Sennett, the flattening out of the pyramidal structure through the elimination of middle management, widely touted as a form of "debureaucratization," has not left line-level workers in more control of their activities. Instead, 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.¹³¹ In some environments, management's promises to take workers and their ideas seriously have proven to be charades. At Subaru-Isuzu, for example, as Laurie Graham has documented, workers discovered that management's egalitarian rhetoric was largely a facade. 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 tried to provide input on such issues were told that "the company takes input from Associates on subjects that the company chooses."¹³² Although "kaizen time" 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.¹³³

These problems are not unique to Subaru-Isuzu; Ruth Milkman

has documented similar dynamics at the General Motors plant in Linden, New Jersey. After a major reorganization that eliminated the jobs of many workers, GM promised a new company culture in which workers would be treated with a newfound respect and would have a major role in ensuring improved production. Despite workers' excitement and cooperation, these promises were quickly betrayed. The GM Employee Involvement Groups, which brought together management and line workers in once-a-week, 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. Shop-floor management found it difficult to shed their autocratic ways, and most foreman went back to their old practices of humiliation and abuse.¹³⁴

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 "peer 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."¹³⁵ 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 companies' 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.¹³⁶ Graham even found herself participating in a scheme to humiliate a fellow team member into carrying his weight in the production process. Thus, despite a benign image of teamwork as something that fosters harmonious relations among coworkers, 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 also documents some 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.¹³⁷ Among economists and management experts, there was widespread anticipation that these trends would prove to be win-win for both management and employees.¹³⁸ Yet, contrary to these predictions, Osterman found that the productivity and quality gains associated with these innovations did not redound to the benefit of employees. In fact, firms that had implemented high-performance practices by 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.¹³⁹ 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, one of the hallmarks of the new economic order is declining job security. It appears that 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—have declined over the last two decades.¹⁴⁰ Many employees now feel more insecure about their jobs, and with good reason. Involuntary job loss (not for cause) increased in the 1990s, to roughly 10 percent of the population.¹⁴¹ 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" doubled.¹⁴² Even in the red-hot economy at the turn of the century, displaced workers faced a hard time finding new jobs. In the Economic Policy Institute study, more than one-third of displaced workers were out of work when interviewed one to three years later. Those who did manage to find new jobs earned less; they were also less likely to retain health insurance.¹⁴³

The new economy forces everyone—even many once-secure workers—to live with 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/cultural economy,

advancing age is associated with fearfulness and fixidity. Management argues that "older workers have inflexible mind-sets 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."¹⁴⁴ The notion that youth 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; other firms are creating these forms of employment at rapid rates.¹⁴⁵ 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. 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.¹⁴⁶

Furthermore, most people who work in nonstandard jobs earn less than full-time workers.¹⁴⁷ 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.¹⁴⁸ Although most people who work in nonstandard job arrangements are worse off than standard jobholders on a variety of dimensions, women and minority men tend to occupy the lowest-paying types of nonstandard jobs.¹⁴⁹

Indeed, 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.¹⁵⁰ 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;¹⁵¹ the same trend also held for all workers.¹⁵² This widen-

ing wage distribution occurred throughout the economy, in virtually every occupation and industry and in both the manufacturing and service sectors, at least among men. Among women the picture in the 1980s 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 much farther to fall).¹⁵³

According to recent sources, the dramatic growth in wage inequality continued in the 1990s, although its character 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.¹⁵⁴ The status of those in the middle deteriorated, as white-collar wages stagnated or declined.¹⁵⁵ Even “women workers in the middle and upper-middle part of the wage distribution, who saw real wages rise significantly in the 1980s, . . . experienced a sharp deceleration in the 1990s.”¹⁵⁶ Although a tight economy brought wage increases toward the end of the decade, the improvements of 1997–98 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.”¹⁵⁷

Like other concerned scholars and activists, I believe these changes in working 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 oneself, and he may be right. As the notion of a career that progresses step by step through a few institutions has eroded, as the marshaling even of a single bundle of skills through the course of a life has declined, as more and more people work harder and harder to have fleeting associations with strangers in short-term jobs in new locations, something vital has been lost—and it isn’t just a paycheck. Working with one’s peers in pursuit of common goals is the structure through the trust and commitment necessary to sustain a vibrant civic life are created. As Sennett argues, stable work is the experience through which a coherent narrative for a life is built. People need work, and we need work that pays enough to sustain ourselves and our children. We also need to be able to count on working—to live free of the anxiety produced by not knowing where one’s next project—and paycheck—are coming from, or whether they will come at all.

In fact, when I read Sennett's new book, my reaction was, he's 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 ability, all we have to do is take a look at the experience of women, especially in the era before the laws against employment discrimination were enforced. Moving from one dead-end job to the next, they kept trying on 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 never paid enough to allow them to support themselves (let alone their families). Sennett is telling us that many more working people are now being treated as women have always been treated: as though they don't need steady employment—let alone careers—but can be left to piece together fragments of experience acquired here and there, through happenstance, into the solid stuff of a life.

The bad news is that these changes now threaten most Americans. Even members of the once-solid middle class who were not supposed to fail, like Sennett's IBM programmers, are falling victim to the new insecurities. Yet, in another sense, this is also the good news. That these changes affect so many middle-class men and women creates the possibility for political change. The question is, what should we do?

Law's Work

The changes we are witnessing present deep challenges, but they also provide us with an opportunity to reshape social life. There are many viable directions for change, but, from the vantage point I have been describing, they all begin with paid work. 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 must be built, not the entire edifice. Still, the importance of work should not be underestimated. 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 other than employment that can fulfill all these purposes for the vast majority of people. 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.¹⁵⁸ 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.¹⁵⁹ Can we think of a society 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 are proposing 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.¹⁶⁰ In rhetoric that harks 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.¹⁶¹

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."¹⁶²

But simply because work alone can never make us independent does not mean we can do without it. Ordinary people understand the significance of work and have been demanding access to it in just such broad, inclusive terms. In fact, over the past forty years, all the major social movements have focused on obtaining equal access to work from those excluded from its blessings. The black 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 dispossessed¹⁶³ resonates with the language of the 1968 Kerner Commission report, which pronounced unemployment the most significant problem facing poor black communities.¹⁶⁴ The Kerner report emphasized male unemployment, but even at the time, women (of all races) were demanding to be taken seriously as workers. Indeed, the emphasis on work has been crucial to second-wave feminism, which was born in part of the recognition that even relatively well off, white middle-class women were united with their less privileged, 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.¹⁶⁵

Older Americans have also demanded recognition as valid workers, and they won it in the Age Discrimination in Employment Act,¹⁶⁶ which protects their right to work for as long as they are able, without being dismissed as less competent. Gay men, lesbians, and bisexuals 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've worked so hard to achieve and that has become so much a part of them.¹⁶⁷ 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 such legislation such as the Employment Non-Discrimination Act.¹⁶⁸

Although women and racial and ethnic minorities, older people, and gays and lesbians are often characterized as "special interests,"

many of the rights and remedies these groups have struggled for 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, because of the strong correlation between success on these tests and socioeconomic class.¹⁶⁹ Similarly, women's challenges to height requirements have benefited many non-white 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 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 masculine composition and image of the work.¹⁷⁰

The disability rights movement has also emphasized access to work, and they won an important victory in the Americans with Disabilities Act.¹⁷¹ 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.¹⁷² 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. There are, of course, limits on this idea (the person must be otherwise "qualified," the employer does not have to make changes that cause "undue hardship," and so on). The point is that disabled people now reject the older, custodial stance "typically expressed in policies of segregation and shelter, of special treatment and separate institutions."¹⁷³ 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 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."¹⁷⁴ 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” were defined sufficiently broadly, as it should be,¹⁷⁵ most of us would be among the disabled at least temporarily at some point in our lives.

We can also view the transition from welfare to work as part of this trend.¹⁷⁶ I realize that much of 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. But it would be a mistake to attribute all of the new emphasis on work to conservatives alone. Some of the demand has come from members of 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.¹⁷⁷ In this sense, welfare entitlements have divided the welfare class from other members of the working classes.

But, of course, even this view is too simplistic. Poor single parents themselves 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.¹⁷⁸ Indeed, most women who receive welfare payments have been working for pay all along, as they must to ensure the survival of their families.¹⁷⁹ But, partly because so many of them are women and racial minorities and partly because they are poor, poor single parents have not been seen as “authentic” workers who have the capacity to contribute to productive endeavors in a way that entitles them to full citizenship. They have been overrepresented among classic contingent workers—those who do menial jobs here or there, on a part-time or temporary basis, often in the informal economy, at the lowest of wages, without benefits, job protection, or social support.¹⁸⁰ This is the legacy of the fact that our welfare system has been based on a family-wage model that cannot envision women or mothers in economically powerful provider roles.

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.¹⁸¹ Not only is paid work important to people’s ability to get ahead and their sense of community and self-esteem; the workplace 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.¹⁸² 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.¹⁸³ 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.¹⁸⁴ 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."¹⁸⁵ Clients receive job search assistance and job training. Those who land jobs are not abandoned; they continue to receive job retention assistance and support.¹⁸⁶ They also continue to receive payments for child care and health care,¹⁸⁷ and caseworkers help with transportation.¹⁸⁸ Perhaps most important, the program provides sizable wage subsidies to ensure that those who hold down a job earn more than they did on AFDC.¹⁸⁹ 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 parents, 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 new set of universal entitlements 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 they need to do the job. 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 that will sustain them.

Of course, it isn't simply a lack of employment, but a lack of jobs that pay a decent wage that keeps many people in poverty.¹⁹⁰ As we pursue welfare-to-work strategies and other policies that remove work

disincentives for various groups of people who have not engaged in steady employment, there will be an even greater downward pressure on wages 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 keep wages high for some by excluding others.¹⁹¹ Like the Wisconsin 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.¹⁹² But, why should we raise wages only for people on welfare, when so many others face jobs with pay so low that they cannot support themselves or their children? We must ensure that everyone has a pathway to work with a decent wage.

In addition, people must have access to services that enable job holding if work is to provide a universal platform for citizenship. Single parents need a variety of services—most important, health care and child care—in order to hold down jobs. But single parents are not the only ones who need these services. As anthropologist Katherine Newman has observed, providing health insurance 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.”¹⁹³ 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 affordable, high-quality child care in order to work effectively. The Americans with Disabilities Act¹⁹⁴ and the Family and Medical Leave Act (FMLA)¹⁹⁵ move us in the right direction, but not nearly far enough. The only answer is massive public investment in high-quality forms of child care and other dependent care, which in turn could create many new jobs for other people as these forms of household labor are converted into paid jobs or community-based work.

To even imagine a society in which we can all commit ourselves to paid work, we will have to think seriously about how to structure work and working time 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; they also need leaves from their jobs from time to time, which

pay their full wages, to attend to long-term issues in their families, communities, and lives. Some people advocate unpaid leave or more part-time jobs, especially for women, to allow parents to balance “our” family responsibilities with working.¹⁹⁶ But these family-wage-based strategies further entrench patterns of gender segregation and class bias. Only people with partners who earn enough 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.¹⁹⁷ People who have caretaking commitments 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 periodic paid sabbaticals to cover both caregiving commitments and other important life projects.

*Beyond Identity Politics: Work as a
Common Foundation*

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 antidiscrimination 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 began to move in a more inclusive direction. The effort to look for ways to enable those who traditionally have been excluded from the workforce to participate on equal terms led to broader proposals to 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, older people, gays and lesbians, people with disabilities, welfare mothers and fathers, the working poor, and so on) into one that

emphasized work-related rights for *all people* as members of the broad community of citizens. This transformation conveys powerfully how a focus on work can serve to unite us across difference and to provide a common foundation for equal citizenship for all.

In my view, it time for this same transformation to begin occurring in the law. Law works indirectly, but powerfully, to shape our lives and our identities. It does so by shaping the structure and character of the institutions that mold our communities, our life prospects, and our aspirations and self-understandings. It does so, too, by creating the legal identities through which our efforts to change those institutions must be expressed.

Employment discrimination law has enabled us to push for changes in working life under the banner of being “women,” or “African Americans” or “people with disabilities.” This body of law has been 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 it was possible for us to be. The difference in the life my mother had available 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 work).

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 the basis for equal citizenship for everyone. It is time to pull together the efforts so many people have made through antidiscrimination law into a broad inclusive focus on making work work for 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 is sustainable over the course of a life. In addition to life, liberty, and the pursuit of happiness, we should insist on the right to a life's work.

Providing everyone access to a life's work is a revolutionary project that has never been done in this country; someone has always been excluded from the labor market in order to benefit someone else. This project demands creatively combining the levels of the universal and the specific: Paid work has the potential to become the universal plat-

form for equal citizenship it traditionally has 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. Indeed, if we are to make sure everyone can participate in work, we cannot reduce everyone to the lowest common denominator—an abstract dehumanized category of “worker.” To do so would call to mind a history to which we should not want to return, a history in which *worker* meant “man,” omitted women, and suppressed the rich diversity of working people.¹⁹⁸ 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 yet to devote ourselves or perhaps even to discover (such as socioeconomic class, educational history, mental health, appearance, and less visible forms of “outsiderness”).

This project will require a far more ambitious restructuring of the relationship between the state and the market—a more ambitious set of politics—than feminists sometimes propose. In my view, it is time to move beyond forms of identity politics that press for essentialist forms of recognition¹⁹⁹ and simple reevaluation of “women’s experience.”²⁰⁰ Instead, we should join forces with a broad array of groups (including white middle-class heterosexual men)—not simply for the purpose of advancing each other’s interests, but also for the purpose of envisioning and fashioning a shared interest in remaking work as a cornerstone for our best conceptions of citizenship and care.

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 our own choosing, and everyone would earn a living wage by doing that work (our wages supplemented by the state, if necessary). Individual adults, rather than families (however defined), should be the unit of analysis for purposes of wages and state support, so 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 fewer, saner, and similar hours, so that all of us would have a full opportunity to serve others and to expand ourselves by participat-

ing fully in family, politics, friendship, and civic life. Following current trends, a great deal of housework would continue to be converted into bundles of services (such as cleaning, meal preparation, laundry, yardwork, and home and automobile maintenance) 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 nuclear in form as well as in collective, community-based arrangements that we assemble with our partners, friends, neighbors, and newcomers. We would create and publicly finance a variety of different child care arrangements—including well-financed, state-financed day care, preschool and after-school programs that are so good for children that everyone, including the middle classes—would want to use them. In addition to child care, all adults would have access to the services they need to enable them to work, including health care, transportation, and continuing training. We would also have periodic sabbaticals, in which our wages are 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 would come (and stay) together mainly for love rather than economic need.²⁰¹

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. Obviously, this is a collective project of enormous scale and scope. I have neither the space nor the imagination to elaborate on all the necessary elements here. I will suggest a general approach and sketch a few of the key themes in the hope of inspiring others to pursue the project in more detail.

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 to choose from. People also need appropriate education and training for the jobs that

are available. For this reason, a number of concerned scholars and policymakers have recommended measures to ensure full employment. Some economists have recommended ways to fine-tune the economy to ensure continued growth while producing a more adequate supply of decent jobs.²⁰² In addition, scholars and commentators from across the political spectrum have proposed job creation and training measures designed to ensure universal access to work.²⁰³ Even when the national unemployment rate drops, some areas and some populations remain hard-hit.²⁰⁴ 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 needs a job is left behind.

Celebrating Everyone's Work

In addition to providing access to jobs, we must create a grassroots language for expressing ordinary women's and men's understandings of why work matters. We need a language that speaks to many different audiences—political, corporate, union, academic, activist, and average citizen. It takes courage: In some circles, to talk about the significance of employment risks getting oneself labeled illiberal, antifeminist, or even right-wing. Traditionally, in the name of facilitating choice, liberal discourse has focused on solutions that provide people income with few or no strings attached.²⁰⁵ Unfortunately, all too often, liberal strategies ignore the need to nourish and reshape in more egalitarian ways the underlying social institutions (such as employment) through which genuine choice can be facilitated and liberal freedoms realized.²⁰⁶ Similarly, in the name of valuing women's work, some strands of feminist thought now focus on securing economic support for caregiving and homemaking, rather than on restructuring paid work. Unfortunately, as we have seen, some of these discourses 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 for those who believe we should press an agenda centered on work, there is a history of conservative rhetoric that emphasizes the value of the work ethic without an accompanying emphasis on ensuring the conditions in which people can form and realize their work aspirations equally.²⁰⁷ This is the tradition on which right-wingers who empha-

size the need for poor people to take “personal responsibility”²⁰⁸ draw, and it is a tradition that lacks comprehension of the conditions poor people face.

But these discourses cannot halt the endeavor. In my view, their presence makes all the more imperative the task of articulating a new feminist politics by articulating why work matters so much to women as well as men. This vision must convey the most poorly paid, low-status workers’ understanding that all jobs have intrinsic value.²⁰⁹ All too often, those who are engaged in high-status, 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.²¹⁰ 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.²¹¹

To combat the historical tendency to view unskilled labor as degrading,²¹² we should revitalize the radical labor tradition that emphasizes the inherent dignity of all forms of work.²¹³ To accept this proposition in no way commits us to preserving low-paid jobs exactly as they are. To the contrary, it provides leverage for organizing the job in a way that promotes the autonomy and control of those who do it. Cleaning up after others, whether in public settings or private homes, is work that confers dignity. So is the most routinized factory work. 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, those things don’t just happen. There’s hard work behind it. I would like to see a building, say the Empire State, I would like to see 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 guy walked by, he could take his son and say, “See that’s me over there on the forty-fifth floor, I 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.²¹⁴

Earning a Living Wage

People also benefit from the sense of autonomy and pride that comes from “being paid an earned reward for one’s labor.”²¹⁵ This is one reason why working for a living matters so much, and why it means more to many people than volunteer activities or time spent caring for their family or friends. We may wish it weren’t so, but in a market economy, people who are paid for what they do get 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.

In an age of globalization, market forces shape our world more profoundly than ever before, and with 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 to demand that every citizen who works for a living earns wages (guaranteed through wage subsidies if necessary) that will allow her to meet life’s needs on her own? It resonates deeply with most people’s 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.²¹⁶ 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.

It is not simply a lack of jobs, but a lack of jobs that pay enough to live on that plagues many poor communities.²¹⁷ To alleviate this problem, Edmund Phelps has proposed an ambitious but simple program of graduated wage subsidies for individual low-wage workers. 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.²¹⁸ Phelps's plan pays the subsidy to employers, who then pass it along to workers,²¹⁹ but there is no reason why the same graduated wage subsidy could not be paid directly to individual workers (perhaps through an expansion of the earned income tax credit).²²⁰ Those skilled in institutional design could work out the details, but the point is to agree on the need to subsidize the wages of individual, low-paid workers to address the long-term discouragement that comes from the steep relative decline in pay that low-skill workers now face. Like Bergmann and Hartmann, I believe public policies should be designed in a way that eliminates the current incentives for gender inequality. Wage subsidies should be structured to encourage women as well as men to plan for or combine parenting with work that pays a living wage.²²¹

Cultivating Empowering Work Conditions

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 that allow for some measure of self-realization.²²²

At a minimum, we should protect working people from harassment and abuse at the hands of their supervisors and coworkers. 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.²²³ 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 work groups 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 workplaces as hostile or alienating.²²⁴ 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.²²⁵

Yet it is not simply 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,²²⁶ 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 decision making.²²⁷ 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.²²⁸ 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.²²⁹

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 in-group/out-group 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.²³⁰ 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."²³¹ Indeed, he says, these two processes are synergistic and are mutually reinforcing.²³²

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,²³³ 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.²³⁴ 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.²³⁵ Many 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.²³⁶ 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, "The 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."²³⁷

Democratic principles demand that people have more input into how their work is structured. 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.²³⁸ 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.²³⁹

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. 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 pay system that forces one to rush constantly in order to survive. It may be quite another thing to do the same work dressed in clothing of one's choice, working at a reasonable pace alongside a colleague whose companionship one enjoys, and earning a living wage.

If the work cannot be reorganized along more healthful lines, then 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.²⁴⁰

People are now living longer now, with better health. We should allow people who do damaging work that benefits the rest of us to leave such jobs and retrain for others before they destroy their health. 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.

Repositioning 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.²⁴¹ 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 are seen as the repositories of emotion. Working people are a threat, precisely because they embody that messy, "outside" stuff of life—sexuality and reproduction, disability and disease, jealousy and emotion, 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.²⁴²

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.²⁴³ 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.²⁴⁴ 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 render them less productive. Like Taylorism, human capital theory is a rationalizing model that 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 the concept of work as citizenship, the foundation of belongingness and security on which democracy depends. There is no room for integrating working life with family and civic life in a multifaceted, 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.²⁴⁵

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 and domestic absentees, while women are primary caretakers and 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.²⁴⁶

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 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 participation²⁴⁷—in order to allow women to balance 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.²⁴⁸ 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.²⁴⁹

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.²⁵⁰ 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;²⁵¹ 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.²⁵²

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 antiproductionist, 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."²⁵³

Not only must we renew our resolve to dismantle sex- and race-based segregation and hierarchy on the job through vigorous antidiscrimination, affirmative action, antiharassment, and pay equity measures: We 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.²⁵⁴

Jacobs and Gerson propose legal reforms they hope will alleviate both problems at once. They advocate requiring employers to pay pro-

portional 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.²⁵⁵

But our current mean is too high. As I argued above, and as numerous other scholars have urged, we must consider legislative measures to reduce the standard full-time workweek for everyone.²⁵⁶ American men and women work at paid jobs among the longest hours in the industrial world.²⁵⁷ 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.²⁵⁸ 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.²⁵⁹ A reduced workweek should alleviate work-family conflict for everyone and help promote greater sharing of employment and

housework among men and women.²⁶⁰ It also encourages work sharing in a way that furthers the goal of making standard jobs available to everyone,²⁶¹ while mitigating the downward pressure on wages.

This is not simply a utopian proposal. 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;²⁶² Germany has also reduced the standard workweek.²⁶³ Although such programs have had mixed success at reducing unemployment levels in Europe, there is evidence that national legislation 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).²⁶⁴ 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.²⁶⁵ 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.²⁶⁶ Some firms have even begun to reduce the workweek voluntarily, in response to high turnover costs and low productivity rates caused by worker burnout.²⁶⁷

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 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.²⁶⁸

Perhaps most foundationally, 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 all workers. By the same token, it is not only men, but also women whose participation in work enhances their value as family members and citizens. Work is not inherently in conflict with family or civic life. 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.²⁶⁹ 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.²⁷⁰

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.²⁷¹ 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.”²⁷²

Taken as a whole,²⁷³ 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.²⁷⁴ Independence from a husband’s (or father’s) economic support, and the day-to-day experience of struggle and triumph in the workaday world, bring a sense of inclusion and entitlement that can profoundly affect women’s consciousness.

If working enlarges the way people see themselves as citizens, it can also enrich the way they define themselves and our obligations as parents. People work to provide better opportunities for their children than they had for themselves. This of course includes economic opportunities—working to pay for decent clothing, secure housing, decent 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.” Even amidst the toil and trouble that her life still entails, Ms. Crawford has found comfort in the routine of going to work: “I like getting up in the morning, going to my job. I just feel good about myself,” she said, echoing William Julius Wilson’s remarks about the important of having a place to go every day that gives life structure and purpose. Like Wilson, Ms. Crawford emphasizes the role-modeling effect, but she also hints of something more—the gift of having a mother who takes care of herself: “I used to think I would always be on welfare,” she said, but now “my kids see a difference in me.”²⁷⁵

If parents like Michelle Crawford feel 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 things I have read is a story about Barnard College's contest for high school girls to write essays on the topic "A Woman I Admire." Many of the girls, particularly immigrants, wrote about their own mothers' work. To take one example:

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, a 16-year-old 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. I will never forget them."

Another young student, Selena, wrote about her mother, a fifty-four-year-old farmworker 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, [even though] we always feel the stress."²⁷⁶

These young women are writing about so many different things their mothers' work conveyed: love, discipline, and self-sacrifice, but also self-respect and agency, the sense that the 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 singer Mary Travers, of the famed folk trio Peter, Paul, and Mary, credited her mother with being the person who had influenced her life the most.

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.²⁷⁷

Conclusion

At the dawn of the twenty-first century, it is clear that a new era is upon us. The nature of work is changing dramatically in ways that affect us all. Many women and men are working harder and harder just to survive—all too often in fleeting, uncertain arrangements that leave them wondering where their next paycheck, circle of colleagues, and sense of self-worth is coming from. This is a fate that women and disadvantaged men have long confronted, but now the once-secure men of the middle classes are facing it as well.

What we do about this crisis will be a defining feature of our age. We could abandon any commitment to improving the conditions of work, leaving people to the mercies of the market. But that would be shortsighted, because work sustains democracy. Paid work has provided the historic foundation for democratic citizenship, and it remains difficult to see what other institution might ground the universal, equal citizenship to which most of us still aspire. We could sidestep the problems with work and provide people a guaranteed basic income. But, however meritorious such an approach, we should be clear that it would only lessen (and perhaps even obscure) the problems with work—it would not eliminate them. We cannot give everyone an income that is generous enough to support a decent lifestyle on its own, so, even with a guaranteed income, few people other than the indepen-

dently wealthy would be able to opt out of paid work. For the foreseeable future, it seems, work will be with us. As long as it is with us, it will affect us profoundly. Who we are—as individuals, as men and women, as a society, as a nation—will be tested and forged through what we do, or fail to do, to secure our common future as labor’s subjects.

NOTES

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1. Linda Gordon, *Pitied but Not Entitled: Single Mothers and the History of Welfare, 1890–1935* (New York: Free Press, 1994), 53.

2. See Kenneth L. Karst, “The Coming Crisis of Work in Constitutional Perspective,” *Cornell Law Review* 82 (1997): 530–33; Anthony Kronman, “Meaningful Work,” typescript, New Haven, February 1995, 15–20.

3. See Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1995), xii–xiii; Alice Kessler-Harris, *A Woman’s Wage: Historical Meanings and Social Consequences* (Lexington: University Press of Kentucky, 1990), 31–32; Carole Pateman, “The Patriarchal Welfare State,” in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton: Princeton University Press, 1988), 231, 238.

4. See Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1991), 64.

5. See Foner, *Free Soil*, xii–xvii.

6. See *Lochner v. New York*, 198 U.S. 45 (1905) (associating freedom of labor with freedom of contract).

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

8. See Foner, *Free Soil*, xxiii–xxiv.

9. *Ibid.*, xxxviii.

10. See Gordon, *Pitied but Not Entitled*, 209–51; Shklar, *American Citizenship*, 79–88; William E. Forbath, “Caste, Class, and Equal Citizenship,” *Michigan Law Review* 98 (1999): 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 (Princeton: Princeton University Press, 1989), 3–4, 18–20, 99–117. Indeed, President Franklin D. Roosevelt's 1944 State of the Union address called upon Congress to create an "economic bill of rights" (Harvey, 4). The first two items on the agenda were (1) "The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation"; and (2) "The 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, January 11, 1944, in *The Public Papers and Addresses of Franklin D. Roosevelt*, ed. Samuel I. Rosenman (New York: Random House, 1950), 13:32, 41.

11. William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Knopf, 1996), 61–65.

12. *Ibid.*, 73.

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

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

15. See Amartya Sen, "The Penalties of Unemployment," Banca D'Italia, Working Paper No. 307, 1997, 14; see also Arthur H. Goldsmith et al., "The Psychological Impact of Unemployment and Joblessness," *Journal of Socio-Economics* 25 (1996): 349 (arguing that young females suffer more psychological scarring than males from unemployment).

16. See Rosalind C. Barnett and Caryl Rivers, *She Works, He Works: How Two-Income Families Are Happy, Healthy, and Thriving* (Cambridge: Harvard University Press, 1996), 28–29.

17. Rosabeth Moss Kanter, *Men and Women of the Corporation* (New York: Basic Books, 1977), 3.

18. The influence of the industrial order on our innermost selves is, of course, one of the themes of the sociological classics. See generally William H. Whyte Jr., *The Organization Man* (New York: Simon and Schuster, 1956) (showing how the ideology of belonging to the corporation captured middle-class managers and reshaped social life in the 1950s); Herbert Marcuse, *One-Dimensional Man: Studies in the Ideology of Advanced Industrial Society* (Boston: Beacon Press, 1996), 8–12.

19. *The Remains of the Day*, Columbia Pictures Corp., 1993.

20. 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," *Harvard Law Review* 103 (1990): 1829–32 and sources cited therein; see also Susan Eisenberg, "Electrician," in *Hard-Hatted Women: Stories of Struggle and Success in the Trades*, ed. Molly Martin (Seattle: Seal Press, 1988), 216, 224.

21. See Mary Walshok, *Blue-Collar Women: Pioneers on the Male Frontier* (Garden City, N.Y.: Anchor, 1981), 140–48.

22. 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 Martin, *Hard-Hatted Women*, 261.

23. Studs Terkel, *Working: People Talk about What They Do All Day and How They Feel about What They Do* (New York: Pantheon, 1974).

24. See Schultz, “Telling Stories,” 1817, 1829–32.

25. Gary Becker, *A Treatise on the Family* (Cambridge: Harvard University Press, 1981), 22 (“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”).

26. See Jacob Mincer and Solomon W. Polachek, “Family Investments in Human Capital: Earnings of Women,” *Journal of Political Economy* 82 (1974): S94; Solomon W. Polachek, “Occupational Self-Selection: A Human Capital Approach to Sex Differences in Occupational Structure,” *Review of Economics and Statistics* 63 (1981): 62–63; Harriet Zellner, “The Determinants of Occupational Segregation,” in *Sex, Discrimination, and the Division of Labor*, ed. Cynthia B. Lloyd (New York: Columbia University Press, 1975), 133–43; cf. Becker, *Treatise on the Family*, 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* (Cambridge: Harvard University Press, 1988), 4 (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”).

27. See Paula England, *Comparable Worth: Theories and Evidence* (New York: Aldine de Gruyter, 1992), 25, 52; Paula England, “The Failure of Human Capital Theory to Explain Occupational Sex Segregation,” *Journal of Human Resources* 17 (1982): 369.

28. See Gary S. Becker, “Human Capital, Effort, and the Sexual Division of Labor,” *Journal of Labor Economics* 3 (1985): S52 (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”).

29. For recent reviews of empirical evidence casting doubt on human capital theory, see Samuel Cohn, *Race and Gender Discrimination at Work* (Boulder, Colo.: Westview, 2000), 80–88, 122–26; Jerry A. Jacobs, *Revolving Doors: Sex Segregation and Women’s Careers* (Stanford: Stanford University Press, 1989), 39–44, 58–60, 148–50, 169–74; Donald Tomaskovic-Devey, *Gender and Racial Inequality at Work* (Ithaca, N.Y.: ILR Press, 1993), 50–51, 132–34; Michael Selmi, “Family Leave and the Gender Wage Gap,” *North Carolina Law Review* 78 (2000): 707, 718–34.

30. "Sex segregation in employment [is] the dominant . . . explanation in the sociological literature for the male-female earnings gap" (Tomaskovic-Devey, *Gender and Racial Inequality*, 111). For estimates of the degree of the male-female wage gap attributable to segregation, see *ibid.*, 121, 123 (estimating from a 1989 random sample of North Carolina workers and jobs that 77 percent of all women would have to change to sex-atypical jobs to achieve sex integration, and that at least 56 percent of the male-female earnings gap was attributable to such sex segregation of jobs); see also Donald J. Treiman and Heidi I. Hartmann, eds., *Women, Work, and Wages: Equal Pay for Jobs of Equal Value* (Washington, D.C.: National Academy Press, 1981), 33–37 (citing estimates showing that between 30 percent and 71 percent 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 and Hartmann's) are biased downward, because even many apparently integrated occupations remain highly segregated at the firm level, and especially at the job level.

31. See Kimberly Bayard et al., "New Evidence on Sex Segregation and Sex Differences in Wages from Matched Employee-Employer Data," NBER Working Paper No. 7003, 1999, 40–41 (finding, contrary to previous studies, that 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).

32. For studies of women who change fields, see Jacobs, *Revolving Doors*, 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*, ed. Barbara F. Reskin (Washington, D.C.: National Academy Press, 1984), 72–77 (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). For studies of women likely to be in a field at any given time, see Tomaskovic-Devey, *Gender and Racial Inequality*, 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," *Journal of Human Resources* 17 (1982): 383 (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 Reskin, *Sex Segregation*, 188 (reporting that sex-type of employment is not significantly related to continuity of labor force participation); England, "Failure of Human Capital Theory," 367–68 (finding that sex-type of employment does not vary according to marital status or continuity of labor force participation).

33. See England, *Comparable Worth*, 14.

34. See Denise D. Bielby and William T. Bielby, "She Works Hard for the Money: Household Responsibilities and the Allocation of Work Effort," *American Journal of Sociology* 93 (1988): 1031, 1048, 1055–58; see also William T. Bielby and Denise D. Bielby, "Telling Stories about Gender and Effort: Social Science Narratives about Who Works Hard for the Money," in *Economic Sociology for the Millennium*, ed. Mauro F. Guillén et al. (forthcoming, 2001), 3–4 (citing empirical research showing that employed women work at their jobs as hard as or even harder than men).

35. See Peter V. Marsden et al., "Gender Differences in Organizational Commitment: Influences of Work Positions and Family Roles," *Work and Occupations* 20 (1993): 384; William T. Bielby et al., "Who Works Hard for the Money? 'Efficiency Wages,' Work Organization, and Gender Differences in the Allocation of Work Effort," typescript, Santa Barbara, Calif., August 1995, 2.

36. Cf. Cynthia Cockburn, *Machinery of Dominance: Women, Men, and Technical Know-How*, (Boston: Northeastern University Press, 1988), 230–31 (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 and ensuring that they will continue to provide domestic services at home); Juliet B. Schor, *The Overworked American: The Unexpected Decline of Leisure* (New York: Basic Books, 1992), 84, 94–99 (arguing that women's exclusion from the labor market and society's failure to collectivize housework have artificially devalued homemakers' time, an inefficiency that along with the sex segregation of work has kept the level of household labor performed by women artificially high); Schultz, "Telling Stories," 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 pursuing the higher-paying jobs that would raise the opportunity cost of time spent on housework).

37. See Becker, "Human Capital," 21.

38. 628 F. Supp. 1264 (N.D. Ill. 1986).

39. See Schultz, "Telling Stories," 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 and Stephen Petterson, "Race, Gender, Work, and Choice: An Empirical Study of the Lack of Interest Defense in Title VII Cases Challenging Job Segregation," *University of Chicago Law Review* 59 (1992): 1095–1135 (comparing judicial treatment of the lack-of-interest defense in race and sex discrimination cases).

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

41. See Schultz, "Telling Stories," 1800–1805.

42. See Vicki Schultz, "Reconceptualizing Sexual Harassment," *Yale Law Journal* 107 (1998): 1683.

43. See *ibid.*, 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).

44. See, e.g., Catharine A. MacKinnon, *Sexual Harassment of Working Women* (New Haven: Yale University Press, 1979), 220–21 (arguing that workplace sexual harassment is an expression of men's eroticization of women's subordination); Barbara A. Gutek, "Understanding Sexual Harassment at Work," *Notre Dame Journal of Law, Ethics, and Public Policy* 6 (1992): 352–57 (theorizing that workplace sexual harassment reflects the "sex-role spillover" of inegalitarian views of women formed in the domestic sphere).

45. See Schultz, "Reconceptualizing Sexual Harassment," 1761 n. 409 (summarizing and explaining the assumptions that underlie conventional understandings of harassment).

46. For examples of work in this tradition, see Joan Williams, *Unbending Gender* (New York: Oxford University Press, 2000); Martha M. Ertman, "Commercializing Marriage: A Proposal for Valuing Women's Work through Premarital Security Agreements," *Texas Law Review* 77 (1998): 41–46 (proposing premarital "security agreements" as a way of compensating spouses for household labor); Katharine B. Silbaugh, "Marriage Contracts and the Family Economy," *Northwestern University Law Review* 93 (1998): 67 (arguing that a homemaker's nonmonetary contributions should be treated equally with the husbands' monetary contributions in premarital contract cases); Katharine Silbaugh, "Turning Labor into Love: Housework and the Law," *Northwestern University Law Review* 91 (1996): 1 (arguing that the legal system should treat housework the same as paid work); see also Linda R. Hirshman and Jane E. Larson, *Hard Bargains: The Politics of Sex* (New York: Oxford University Press, 1998), 280–83 (proposing the creation of a "concubinage" contract that would compensate women for their unmarried sexual relationships with men, a proposal which would extend the economic valuation of women's household work to include sexual relations).

47. See Williams, *Unbending Gender*, 124–31; Ertman, "Commercializing Marriage," 39–46; Silbaugh, "Marriage Contracts," 108–9.

48. See Martha A. Fineman, *The Neutered Mother: The Sexual Family and Other Twentieth Century Tragedies* (New York: Routledge, 1995), 161–64, 231–33 (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* (New York: Routledge, 1999), 140–46 (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); Martha A. Fineman, "The Nature of Dependencies and Welfare 'Reform,'" *Santa Clara Law Review* 36 (1996): 290, 308–9.

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 that characterizes an informed citizenry. See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), 99–100; Anne C. Dailey, "Constitutional Privacy and the Just Family," *Tulane Law Review* 67 (1993): 1021–25.

49. See Schor, *The Overworked American*, 85.

50. 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," *Texas Law Review* 65 (1987): 1335–93 (discussing the exclusion of farmwork from the Fair Labor Standards Act); Peggie R. Smith, "Regulating Paid Household Work: Class, Gender, Race, and Agendas of Reform," *American University Law Review* 48 (1999): 854 and n. 13. 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," *North Carolina Law Review* 79 (2000): 45.

51. The recent victory of seventy thousand California home health care workers in organizing a union, for example, holds promise for highlighting—and upgrading—the value of service work. See Vincent J. Schodolski, "Union Signals a Health Trend: 75,000 Home-Care Workers Organize in L.A.," *Chicago Tribune*, February 26, 1999, 3. Such victories continue the work begun in the comparable-worth campaigns of the 1980s. See Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago Press, 1994), 3–4 (discussing comparable worth and other work rights campaigns).

52. See Schor, *The Overworked American*, 85.

53. See generally Margaret Jane Radin, "Market Inalienability," *Harvard Law Review* 100 (1987): 1885 (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 their own kin on the ground that contracting with *outsiders* to do such work corrupts family relationships. But to the extent that such 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 relationships.

54. Indeed, some feminists in this movement consider market-based strategies for valuing household labor reprehensible. See, e.g., Williams, *Unbending Gender*, 40–48 (associating the "full commodification strategy" with careerism, misogyny against homemakers, class bias, and the decline of feminism).

55. See *ibid.*, 124–31.

56. 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," *Yale Law Journal* 103 (1994): 1076 (defining "joint property" claims as "wives' claims to marital assets to which husbands otherwise had title"); see also Williams, *Unbending Gender*, 124–27 (advocating a joint property strategy). For a sympathetic account of the historical origins of joint property strategies, see Siegel, "Home as Work," 1112–88 (describing nineteenth-century joint property demands).

57. 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* (New York: Russell Sage Foundation, 1996), 123–24. 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 some feminists, as well as the stingier version that has traditionally been available in the United States.

58. See, e.g., Mary Becker, "Maternal Feelings: Myth, Taboo, and Child Custody," *Review of Law and Women's Studies* 1 (1992): 157 and n. 99 (citing Fuchs and Becker for the proposition that women's economic disadvantage is partly attributable to women's greater commitment to children); Ertman, "Commercializing Marriage," 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). See also Williams, *Unbending Gender*, 14 (positing that women's lower workforce status is a result of women's "choice to marginalize" at work because they cannot satisfy employers' demanding work schedules and the demands of domesticity simultaneously).

59. Most scholars in this tradition 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, *Unbending Gender*, 15. However, the research that Williams refers to as the "labor" literature is not limited to a study of women who work in male-dominated fields. The very point of the research is to determine the validity of

the human capital prediction that women with heavier family responsibilities are more likely than those with lesser ones to occupy (or move into) female-dominated fields. This could not be accomplished by studying only women who work in male-dominated fields. See Schultz, "Telling Stories," 1819–20 nn. 256–62. 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, *Revolving Doors*, 149–50 (testing for weeks employed and hours worked per week); Beller, "Occupational Segregation by Sex," 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 percent); Corcoran et al., "Work Experience," 187 (testing for extensive time out and frequent interruptions). Thus, the studies include women working part-time or interrupting their employment. See Williams, *Unbending Gender*, 15.

60. See, e.g., Barbara Bergmann, *The Economic Emergence of Women* (New York: Basic Books, 1986), 88–114 (arguing against the human capital theories of "conservative economists" and articulating alternative explanations for sex-segregation of employment); Jacobs, *Revolving Doors*, 169–73 (explaining that his findings cast doubt on human capital explanations for sex segregation); Bielby and Bielby, "She Works Hard," 1055–56 (noting that their findings discredit human capital theory); England, "Failure of Human Capital Theory," 365–67 (analyzing national longitudinal survey data that refute human capital theory predictions).

61. See Joan Williams, "Do Women Need Special Treatment? Do Feminists Need Equality?" *Journal of Contemporary Legal Issues* 9 (1998): 279–320.

62. See, e.g., Cockburn, *Machinery of Dominance*, 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*, 151–59, 260–64 (arguing that jobs gender people and showing that 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," 1824–39 (reviewing sociological evidence showing that structural features of labor markets and work organizations disempower women, and demonstrating that Title VII law solidifies these tendencies); see also Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (New York: Routledge, 1997), 27–33 (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).

63. See, e.g., Ertman, "Commercializing Marriage," 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," 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, "Home as Work," 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.").

64. See, e.g., Becker, "Maternal Feelings," 142–53 (arguing that mothers have stronger emotional attachments to children than fathers).

65. See Amy L. Wax, "Bargaining in the Shadow of the Market: Is there a Future for Egalitarian Marriage?" *Virginia Law Review* 84 (1998): 546–49.

66. 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. Other studies suggest that employed women reduce the time they spend on housework considerably, a reduction that results in more equal division of labor. See Beth Anne Shelton and Daphne John, "The Division of Household Labor," *Annual Review of Sociology* 22 (1996): 307–8; 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," *Gender and Society* 6 (1992): 260 and n. 11.

67. See, e.g., Francine M. Deutsch et al., "Husbands at Home: Predictors of Paternal Participation in Child Care and Housework," *Journal of Personality* 65 (1993): 1158; Shelton and John, "Division of Household Labor," 304–9; Myra H. Strober and Agnes Miling Kaneko Chan, "Husbands, Wives, and Housework: Graduates of Stanford and Tokyo Universities," *Feminist Economics* 4 (1998): 121–23.

68. See Wright et al., "Non-effects of Class," 268–75.

69. See Rhona Mahoney, *Kidding Ourselves: Breadwinning, Babies, and Bargaining Power* (New York: Basic Books, 1995), 139–48, 218–21.

70. Scott Coltrane, *Family Man: Fatherhood, Housework, and Gender Equity* (New York: Oxford University Press, 1996), 52 (internal citations omitted).

71. See *ibid.*, 199–207.

72. See Barnett and Rivers, *She Works, He Works*, 178.

73. See Strober and Chan, "Husbands, Wives, and Housework," 108.

74. Among couples with children, for example, 94 percent of the women who shared tasks equally with their husbands were satisfied with their arrangements, compared to only 47 percent of the women who did more than half of the household work. Even among mothers who were full-time homemakers—who might be expected to be content with more traditional arrangements—40 percent said they would prefer to change their arrangements. See *ibid.*

75. See Chloe Bird, "Gender, Household Labor, and Psychological Dis-

stress: The Impact of the Amount and Division of Housework," *Journal of Health and Social Behavior* 40 (1999): 42.

76. See Roberta Spalter-Roth and Heidi Hartmann, "Gauging the Consequences for Gender Relations, Pay Equity, and the Public Purse," in *Contingent Workers: From Entitlement to Privilege*, ed. Kathleen Barker and Kathleen Christensen (Ithaca, N.Y.: ILR Press, 1998), 71 (citing evidence that male-breadwinner families declined from 44 percent of all families with children in 1975 to only 20 percent in 1994).

77. See Arne L. Kalleberg et al., *Nonstandard Work, Substandard Jobs: Flexible Work Arrangements in the U.S.* (Washington, D.C.: Economic Policy Institute, 1997), 4.

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

79. See Steve Friess, "Gay Couples Aim to Be Counted: 'Unmarried Partners' to Be Used in Census," *Fort Lauderdale Sun-Sentinel*, March 6, 2000, 1B.

80. 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*, ed. Lourdes Benería and Catharine R. Stimpson (New Brunswick, N.J.: Rutgers University Press, 1987), 37–39; David Popenoe and Barbara Dafoe Whitehead, "The State of Our Unions: The Social Health of Marriage in America," June 1999, <<http://marriage.rutgers.edu/SOOU.htm>>.

81. See Bird, "Gender, Household Labor," 41; Shelton and John, "Division of Household Labor," 315–16.

82. See Barnett and Rivers, *She Works, He Works*, 34–38; Grace K. Baruch, "The Psychological Well-Being of Women in the Middle Years," in *Women in Midlife*, ed. Grace K. Baruch and Jeanne Brooks-Gunn (New York: Plenum Press, 1984), 161, 170–73; Nancy E. Betz and Louise F. Fitzgerald, *The Career Psychology of Women* (Orlando: Academic Press, 1987), 192–93.

83. See Barnett and Rivers, *She Works, He Works*, 29.

84. See Ingrid Waldron and Jerry A. Jacobs, "Effects of Labor Force Participation on Women's Health: New Evidence from a Longitudinal Study," *Journal of Occupational Medicine* 30 (1988): 981–82.

85. See Elaine Wethington and Ronald C. Kessler, "Employment, Parental Responsibility, and Psychological Distress," *Journal of Family Issues* 10 (1989): 532 (finding in a three-year study of 745 married women that those who engaged in paid work had better emotional health than women who were not employed).

86. See Barnett and Rivers, *She Works, He Works*, 29.

87. Myra Marx Ferree, "Class, Housework, and Happiness: Women's Work and Life Satisfaction," *Sex Roles* 11 (1984): 1068.

88. *Ibid.*, 1073.

89. See Joan Williams, "Implementing Antiessentialism: How Gender Wars Turn into Race and Class Conflict," *Harvard Blackletter Journal* 15 (1999): 49–50, 55–57.

90. See Ferree, "Class, Housework, and Happiness," 1068.
91. See Barnett and Rivers, *She Works, He Works*, 34–38.
92. See *ibid.*, 111–12; Baruch, "Psychological Well-Being," 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* (New York: Free Press, 1991), 86–87.
93. See Crosby, *Juggling*, 59–110 (explaining the benefits of combining paid work and parenting). See also Stephen R. Marks, "Multiple Roles and Role Strain: Some Notes on Human Energy, Time, and Commitment," *American Sociological Review* 42 (1977): 921–36 (proposing a theory that takes into account the energy-producing as well as energy-consuming aspects of multiple roles).
94. See Mahoney, *Kidding Ourselves*, 44–45.
95. See, e.g., Williams, *Unbending Gender*, 162–63 (arguing that a collectivization strategy privileges white women over women of color and working-class women, and apparently assuming that such a strategy must involve moneyed women hiring private nannies and housekeepers).
96. See Fineman, "Nature of Dependencies," 300–304.
97. See Marieka M. Klawitter and Victor Flatt, "The Effects of State and Local Antidiscrimination Policies on Earnings for Gays and Lesbians," *Journal of Policy Analysis and Management* 17 (1998): 662 ("Gender still has a large impact on earnings, and its effects are doubly felt within same-sex couples"); *ibid.*, 670 (showing that female same-sex couples earn less than married couples); see also M. V. Lee Badgett, "The Wage Effects of Sexual Orientation Discrimination," *Industrial and Labor Relations Review* 48 (1995): 737 (showing that lesbian and bisexual women earn 12 percent to 30 percent less than heterosexual women, although this number declines "greatly in size and significance when occupation and a selection bias correction are taken into account").
98. See Katharine Silbaugh, "Commodification and Women's Household Labor," *Yale Journal of Law and Feminism* 9 (1997): 120 (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, "Home as Work," 1127–35 (documenting that 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).
99. See Williams, *Unbending Gender*, 162–63; cf. Siegel, "Home as Work," 1190 (characterizing nineteenth-century feminists' call to enable two-career marriage by establishing cooperative forms of housework as a move that introduced class distinctions among women).
100. 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, *Revolving Doors*, 41 (show-

ing 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 Sexual Harassment," 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 may unite across class boundaries to hold feminist views that are significantly less likely to be held by homemakers. See Jane J. Mansbridge, *Why We Lost the ERA* (Chicago: University of Chicago Press, 1986), 216, table a(9) (reporting that in the 1974–82 period, working women were more likely than full-time homemakers to support the ERA, were more approving of interracial marriage, abortion, sex education, birth control, and homosexuality, were more likely to approve of married women earning money in business or industry even if their husbands were capable of supporting them, and were less likely to believe that "[w]omen should take care of running their homes and leave running the country up to men"); see also Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley and Los Angeles: University of California Press, 1984), 110–21 (showing that working women were more likely than full-time homemakers to support abortion rights); Myra Marx Ferree, "Working Class Feminism: A Consideration of the Consequences of Employment," *Society Quarterly* 21 (1980): 175 (showing that working-class, married women who work for a living are more likely than full-time homemakers to favor egalitarian gender roles for men and women).

101. 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* (New Haven: Yale University Press, 1987), 23–36 (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* (New York: Metropolitan Books/Henry Holt, 2000), 73–144, 225–46 (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).

102. See Jonathan A. Glickstein, *Concepts of Free Labor in Antebellum America* (New Haven: Yale University Press, 1991), 182–84 (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, ed. Berenice A. Carroll (Urbana: University of Illinois Press, 1976), 333–37 (emphasizing that the ideology of separate spheres legitimated the relegation of working-class women to low-paying menial jobs).

103. By contrast, Bergmann notes that in the United States, under AFDC, a low-skilled single parent had no incentive to leave AFDC for a paid job. After paying for child care, a mother would earn no more—and might even earn less—than she did on welfare. In addition, if she went to work, she would lose her health insurance, and her job would not be likely to provide it. Thus, she would live in fear of illness that would place her family in financial ruin (Bergmann, *Saving Our Children*, 12–13, 91–94). Low wages and lack of health insurance continue to plague the working poor. To enable people to participate fully in the workforce, wages must be improved, and health insurance and child care assistance must be provided.

104. See *ibid.*, 12.

105. See *ibid.*, 124–30.

106. See Barbara Bergmann and Heidi Hartmann, “A Welfare Reform Based on Help for Working Parents,” *Feminist Economics* 1 (1995): 85–89.

107. See Bergmann, *Saving Our Children*, 124–30.

108. 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 (*Justice Interruptus*, 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.

109. See *Justice Interruptus*, 55.

110. *Ibid.*, 55–56.

111. *Ibid.*, 57.

112. *Ibid.*, 55.

113. 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.

Ibid., 58.

114. *Ibid.*, 62.

115. *Ibid.*, 61.

116. Gordon, *Pitied but Not Entitled*, 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*, ed. Seth Koven and Sonya Michel (New York: Routledge, 1993), 277–78 (discussing maternalist political activism).

117. Gordon, *Pitied but Not Entitled*, 62.

118. See *ibid.*, 135–37, 142, 236–38.

119. See Kalleberg et al., *Nonstandard Work, Substandard Jobs*, 1–3.

120. Cynthia Fuchs Epstein et al., *The Part-Time Paradox: Time Norms, Professional Lives, Family, and Gender* (New York: Routledge, 1999), 83, 86–87.

121. 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 *Women’s Work and Chicano Families: Cannery Workers of the Santa Clara Valley* (Ithaca, N.Y.: Cornell University Press, 1987), 15.

122. 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 made clear in recent work by Alicia Schmidt Camacho, “On the Borders of Solidarity: Race and Gender Contradictions in the ‘New Voice’ platform of the AFL-CIO,” *Social Justice* 26 (1999): 72, 89. 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.

123. See Eileen Appelbaum and Rosemary Batt, *The New American Workplace: Transforming Work Systems in the United States* (Ithaca, N.Y.: ILR Press, 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* (New York: Guilford Press, 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* (New York: Simon and Schuster, 1989) (discussing strategies to face these trends); Sennett, *The Corrosion of Character* (arguing that the decline of stable employment threatens people’s ability to form coherent narratives for their lives).

124. Kanter, *Men and Women*, 290.

125. See *ibid.*

126. Sennett, *The Corrosion of Character*, 23.

127. Kanter, *Men and Women*, 293.

128. See Harry Braverman, *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century* (New York: Monthly Review Press, 1974); Katherine Stone, “The Origins of Job Structures in the Steel Industry,” *Review of Radical Political Economy* 6 (1974): 115–23.

129. Sennett, *The Corrosion of Character*, 22; Harrison, *Lean and Mean*, 8.
130. Harrison, *Lean and Mean*, 9.
131. See Sennett, *The Corrosion of Character*, 98–99.
132. Laurie Graham, *On the Line at Subaru-Isuzu: The Japanese Model and the American Worker* (Ithaca, N.Y.: ILR Press, 1995), 58–61.
133. See *ibid.*, 59–60.
134. See Ruth Milkman, *Farewell to the Factory: Auto Workers in the Late Twentieth Century* (Berkeley and Los Angeles: University of California Press, 1997), 170–77.
135. Sennett, *The Corrosion of Character*, 113.
136. See Graham, *On the Line*, 98–101.
137. In 1992, about 25 percent 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 percent (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,” typescript, April 1999, 8.
138. See Edward E. Lawler III et al., *Employee Involvement and Total Quality Management: Practices and Results in Fortune 1000 Companies* (San Francisco: Jossey-Bass, 1992), 9–11.
139. Osterman, *Work Reorganization*, 11–13.
140. According to a study by the Economic Policy Institute, “The share of workers in ‘long-term jobs’ (those lasting at least 10 years) fell sharply between 1979 and 1996,” for example, from 41 percent to 35.4 percent (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* (Ithaca, N.Y.: ILR Press, 1999), 7.
141. *Ibid.*, 235.
142. *Ibid.*, 236.
143. See *ibid.*, 236, 238–39, table 4.12.
144. Sennett, *The Corrosion of Character*, 93.
145. In 1997, almost 30 percent of all workers were employed in situations that were not regular full-time jobs (Mishel et al., *Working America, 1998–99*, 8).
146. See Kalleberg et al., *Nonstandard Work, Substandard Jobs*, 6; Mishel et al., *Working America, 1998–99*, 246–47.
147. See Mishel et al., *Working America, 1998–99*, 242–47. In the labor force as a whole, for example, 35 percent of all women workers and 21 percent of men receive only poverty-level wages (currently \$7.63 an hour). Among nonstandard workers, 52 percent of all women and 33 percent of all men earn such wages—evidence that the working poor are concentrated disproportionately among nonstandard workers. See Kalleberg et al., *Nonstandard Work, Substandard Jobs*, 16.
148. See Kalleberg et al., *Nonstandard Work, Substandard Jobs*, 18–19, table 9.
149. For example, only 28 percent of the white men who work in non-

standard jobs work in those types where people earn less, on average, than similar full-time workers. However, fully 81 percent 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 percent of black and 43 percent of Latino nonstandard male workers hold the lowest-paying types of nonstandard jobs (*ibid.*, 44).

150. See Harrison, *Lean and Mean*, 189–91.

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

152. See Lawrence Mishel and Jared Bernstein, *The State of Working America, 1992* (Armonk, N.Y.: Sharpe, 1993), 137. According to an 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, *Lean and Mean*, 193–94 (quoting Frank Levy and Richard Murnane, “U.S. Earnings Levels and Earnings Inequality: A Review of Recent Trends and Proposed Explanations,” *Journal of Economic Literature* 30 [1992]: 1371).

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

154. See Mishel et al., *Working America, 1998–99*, 149.

155. According to the Economic Policy Institute study:

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

Ibid., 119–20.

156. *Ibid.*, 1.

157. *Ibid.*, 2.

158. See Pateman, “The Patriarchal Welfare State,” 258–59.

159. Professor Cynthia L. Estlund has long emphasized this theme. See “Working Together: The Workplace, Civil Society, and the Law,” *Georgetown Law Journal* 89 (2000): 1, and “Free Speech and Due Process in the Workplace,” *Indiana Law Journal* 71 (1995): 112. See also Karst, “Coming Crisis of Work,” 550–51 (arguing that the workplace has been a major institutional site of social integration of various racial and ethnic groups).

160. See Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven: Yale University Press, 1999), 11.

161. Their sharpest criticism is reserved for those who advocate wage subsidies, which they see as interfering with the freedom *not* to work (*ibid.*, 207). See also Anne L. Alstott, "Work vs. Freedom: A Liberal Challenge to Employment Subsidies," *Yale Law Journal* 108 (1999): 971 ("The 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 measures to democratize 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, 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.

162. See Pateman, "The Patriarchal Welfare State," 258–59.

163. See Wilson, *When Work Disappears*, 228–35.

164. See United States Kerner Commission, *Report of the National Advisory Commission on Civil Disorders*, 1968, 219–35, 251–65.

165. As most readers are undoubtedly aware, Betty Friedan's classic book *The Feminine Mystique* (New York: Norton, 1963), which gave popular voice to many of the dissatisfactions that culminated in second-wave feminism, emphasized women's need to work at productive endeavors outside the home (344–57). See also Ruth Rosen, *The World Split Open: How the Modern Women's Movement Changed America* (New York: Viking, 2000), 72 (arguing that Title VII's guarantee of equality at work galvanized the modern women's movement in the same way that *Brown v. Board of Education* galvanized the civil rights movement). For additional accounts of second-wave feminism, see Jane Sherron De Hart, "The New Feminism and the Dynamics of Social Change," in *Women's America: Refocusing the Past*, ed. Linda K. Kerber and Jane Sherron De Hart, 3d ed. (New York: Oxford University Press, 1991), 493–521; Sara Evans, *Personal Politics: The Roots of Women's Liberation in the Civil Rights Movement and the New Left* (New York: Vintage, 1980); Mansbridge, *Why We Lost the ERA*.

166. 29 U.S.C. secs. 621–34 (1994); see also *EEOC v. Wyoming*, 460 U.S. 226, 228–34 (1983) (providing a history of the development of the ADEA).

167. See Stephen Leinen, *Gay Cops* (New Brunswick, N.J.: Rutgers University Press, 1993), 200–201.

168. See Thomas H. Barnard and Timothy J. Downing, "Emerging Law on

Sexual Orientation and Employment," *University of Memphis Law Review* 29 (1999): 557.

169. See Susan Sturm and Lani Guinier, "The Future of Affirmative Action: Reclaiming the Innovative Ideal," *California Law Review* 84 (1996): 956–57.

170. See generally Schultz, "Reconceptualizing Sexual Harassment," 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).

171. 42 U.S.C. secs. 12111–17 (1994).

172. 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," *University of Pennsylvania Journal of Labor and Employment Law* 1 (1998): 514.

173. *Ibid.*, 520 n. 44 (internal citations omitted).

174. 42 U.S.C. secs. 12111–17. 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*," *Yale Law Journal* 109 (2000): 1161.

175. See Iris Marion Young, "Disability and the Definition of Work," in *Americans with Disabilities: Exploring Implications of the Law for Individuals and Institutions*, ed. Leslie Francis and Anita Silvers (New York: Routledge, 2000), 169–73 (arguing that many workers who do not identify as disabled would benefit if they joined with disabled people to demand more humane workplaces).

176. As most readers are undoubtedly aware, much of the traditional AFDC system has been 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 that gives wide discretion to the individual states to design and administer their own welfare programs. For a description of the new programs, see Blank, *It Takes a Nation*, 83–132; Mark Greenberg, "Welfare Restructuring and Working-Poor Family Policy: The New Context," in *Hard Labor: Women and Work in the Post-Welfare Era*, ed. Joel F. Handler and Lucie White (Armonk, N.Y.: Sharpe, 1999), 24–47; see also Jonathan Zasloff, "Children, Families, and Bureaucrats: A Prehistory of Welfare Reform," *Journal of Law and Policy* 14 (1998): 295–306 (analyzing the politics of some of the failures of recent welfare reforms). The literature distinguishes between "workfare" programs, in which those who draw welfare must 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 and Edward Pauly, *From Welfare to Work* (New York: Russell Sage Foundation, 1991), 7–21, 97 (outlining the main conclusions and policy implications of completed welfare-to-work studies from the 1980s). Here I will refer to welfare-to-work programs, which are less punitive in nature.

177. See Katherine S. Newman, *No Shame in My Game: The Working Poor in the Inner City* (New York: Knopf and Russell Sage Foundation, 1999), 98; Lillian B. Rubin, *Families on the Fault Line: America's Working Class Speaks about the Family, the Economy, Race, and Ethnicity* (New York: HarperCollins, 1994), 197–99.

178. See Newman, *No Shame*, 98–100.

179. See Kathryn Edin and Laura Lein, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* (New York: Russell Sage Foundation, 1997), 6–7; Joel F. Handler and Yeheskel Hasenfeld, *We the Poor People: Work, Poverty, and Welfare* (New Haven: Yale University Press, 1997), 47–48.

180. See Spalter-Roth and Hartmann, "Gauging the Consequences," 92–93 (showing that in 1990, 14 percent of women who worked in contingent arrangements, compared to 3 percent of all women in permanent full-time work and 6 percent of women in permanent part-time work, relied on income from means-tested welfare benefits to supplement their earnings); *ibid.*, 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 Mishel et al., *Working America, 1998–99*, 242–47 (documenting similar results for nonstandard workers).

181. See Forbath, "Equal Citizenship," 11; see also Handler and Hasenfeld, *We the Poor People*, 11–12.

182. See note 50 and accompanying text.

183. Martha Fineman has already planted the idea that women and mothers should have a "right to work" ("Nature of Dependencies," 308–9); see also William E. Forbath, "Why Is This Rights Talk Different from All Other Rights Talk? Demoting the Court and Reimagining the Constitution," *Stanford Law Review* 46 (1994): 1804–5 (arguing for a right to work); Karst, "Coming Crisis of Work," 557–58 (same).

184. See Jason DeParle, "Getting Opal Caples to Work," *New York Times Magazine*, August 24, 1997, 33–36.

185. *Ibid.*, 35–36.

186. *Ibid.*, 35.

187. *Ibid.*, 33, 35.

188. See Jason DeParle, "Symbol of Welfare Reform, Still Struggling," *New York Times*, April 20, 1999, A1.

189. 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 (DeParle, "Opal Caples"). Once food stamps and tax credits are added in, and copayments 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 (*ibid.*).

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

191. I am grateful to Stanley Aronowitz for this point. Stanley Aronowitz, remarks at Workplace Theory and Policy workshop at Yale Law School, March 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” (*Saving Our Children*, 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” (133).

192. See DeParle, “Opal Caples,” 33; DeParle, “Symbol of Welfare Reform.”

193. Newman, *No Shame*, 58.

194. 42 U.S.C. secs. 12111–17.

195. Family and Medical Leave Act of 1993, Pub. L. No. 103–3, 107 Stat. 6 (codified at 5 U.S.C. secs. 6381–87 and 29 U.S.C. secs. 2601–54 (1994)).

196. See, e.g., Edward J. McCaffery, “Slouching towards Equality: Gender Discrimination, Market Efficiency, and Social Change,” *Yale Law Journal* 103 (1993): 602, 626, 653, 671 (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 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.

Ibid., 671.

197. See Fraser, *Justice Interruptus*, 57–62 (arguing against a model that creates flexible jobs for women on the ground that it promotes gender inequality); Jerry A. Jacobs and Kathleen Gerson, “Toward a Family-Friendly, Gender-Equitable Work Week,” *University of Pennsylvania Journal of Labor and Employment Law* 1 (1998): 465–66 (pointing out problems with reforms aimed at achieving flexibility for women, such as unpaid leave and nonstandard jobs).

198. See Kessler-Harris, *A Woman’s Wage*, 7–12; Joan W. Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1988), 71–79.

199. See Fraser, *Justice Interruptus*, 28–31 (discussing problems with a cultural feminist politics of seeking recognition for women’s difference).

200. See Scott, *Gender and Politics*, 197 (arguing that feminists should problematize the category of “women’s experience” rather than treating it as a fixed phenomenon).

201. Here, I mean to invoke a feminist tradition that is not celebrated very often in the contemporary feminist legal literature—that of feminist radicals from the early twentieth century. See generally Cott, *Grounding of Modern Feminism*, 23–50 (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, *American Moderns*. 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 (*ibid.*, 120–44, 225–72). Then, as now, there were barriers to realizing such a vision—especially the absence of cooperative, publically supported child care. Yet, in my view, theirs is still an inspiring vision, rather than one that deserves feminist condemnation. But see Hirshman and Larson, *Hard Bargains*, 223–303 (condemning those who advocate such a vision as sexual libertines).

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

203. See Blank, *It Takes a Nation*, 257; Harvey, *Securing the Right*, 11–20; Mickey Kaus, *The End of Equality* (New York: Basic Books, 1992), 136–48; Wilson, *When Work Disappears*, 232; Bergmann and Hartmann, “Welfare Reform,” 85.

204. In some communities, competition remains fierce even for low-wage jobs. For example, Katherine Newman reports that in central Harlem in the 1990s, there were fourteen applicants per person hired for fast-food jobs (Newman, *No Shame*, 62). Even in the “red hot” Boston economy of the 1990s 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 and Mary Huff Stevenson, *The Boston Renaissance: Race, Space, and Economic Change in an American Metropolis* (New York: Russell Sage Foundation, 2000), 222–25.

205. See generally Ackerman and Alstott, *The Stakeholder Society*, 207–9 (arguing against wage subsidies in favor of a universal cash grant on the ground that the grant better promotes individual freedom); Forbath, “Equal Citizenship,” 12–15 (describing Sunstein and Michelman as favoring welfare entitlements over rights to work for this reason); see also Kronman, “Meaningful Work,” 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”).

206. For a similar critique, see Forbath, “Equal Citizenship,” 89–91.

207. See generally Glickstein, *Concepts of Free Labor*, 220–22, 257–58.

208. See, e.g., Bryan Sierra, “House Passes GOP Welfare Plan,” United Press International, March 24, 1995, 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).

209. See Newman, *No Shame*, 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, *Working*, 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?’”).

210. See Kronman, “Meaningful Work,” 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 (32). According to Kronman, the meaningful/instrumental distinction rests, in turn, on a higher valuation of mental as opposed to manual labor (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.

211. Carol Stack, paper presented to Workplace Theory and Policy Seminar, Yale Law School, February 5, 1999 (showing that fast-food jobs demand skills that may not be obvious, but that come to be appreciated by most who do them).

212. See Glickstein, *Concepts of Free Labor*, 95–96.

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

214. Terkel, *Working*, xxxii.

215. Shklar, *American Citizenship*, 1–2; Karst, “Coming Crisis of Work,” 530–38.

216. See generally Zasloff, “Children, Families, and Bureaucrats,” 261–62 nn. 118–23 (documenting Americans’ support for social programs supporting, or even guaranteeing, a right to employment); see also Harvey, *Securing the Right*, 4–5 (showing similar support during the Roosevelt and Reagan eras).

217. See Phelps, *Rewarding Work*, 103–4; Harvey, *Securing the Right*, 16–24.

218. In Phelps's plan, 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's proposal (*Rewarding Work*, 113).

219. For technical criticisms of wage subsidies paid to employers (such as the potential for employer fraud and churning), see Alstott, "Work vs. Freedom," 1043–45.

220. The earned income tax credit (EITC) provides a tax refund to supplement the wages of families with children who earn less than a certain guaranteed amount. Recent evidence suggests, however, that although it is intended to encourage labor force participation, the EITC actually reduces such participation among low-income married women by, in effect, subsidizing them to stay home. For this reason, some researchers have suggested that the EITC should be based on individual as opposed to family earnings. See Nada Eissa and Hilary Williamson Hoynes, "The Earned Income Tax Credit and the Labor Supply of Married Couples," University of Wisconsin–Madison Institute for Research on Poverty Discussion Paper No. 1194–99, 1999, 55–56. In my view, it is important to provide any wage subsidy to the individual worker, in order to give individual women and men the incentive and the ability to participate in the workforce on their own.

221. Like Bergmann and Hartmann, I lean toward the view that this benefit should be aimed at those who work full-time. See Bergmann and Hartmann, "Welfare Reform," 86. Unlike Phelps (*Rewarding Work*, 96), 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. As is stated below, I support measures to eliminate the distinction between full-time and part-time work and reduce the workweek for everyone.

222. See Jon Elster, "Is There (or Should There Be) a Right to Work?" in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton: Princeton University Press, 1988), 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," *Columbia Law Review* 94 (1994): 893–904 (discussing the noninstrumental benefits of work).

223. See Regina Austin, "Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress," *Stanford Law Review* 41 (1988): 18–25 (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," *Georgetown Law Journal* 88 (1999): 16–22 (discussing the dignitary harm resulting from workplace harassment). See generally Schultz, "Reconceptualizing Sexual Harassment," 1687–89 (describing how gender-based harassment excludes and marginalizes women in debilitating ways).

224. See Barbara A. Gutek, *Sex and the Workplace: The Impact of Sexual*

Behavior and Harassment on Women, Men, and Organizations (San Francisco: Jossey-Bass, 1985), 143; Kanter, *Men and Women*, 242, 281–84; Schultz, “Reconceptualizing Sexual Harassment,” 1759.

225. For illuminating analyses of how antidiscrimination law treats the distribution of resources as a zero-sum game in a way that divides rather than unites 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,” *Cornell Law Review* 85 (2000): 333–59, 410–26; Noah Zatz, “Beyond the Zero-Sum Game: Toward Title VII Protection for Inter-group Solidarity,” *Indiana Law Journal* (forthcoming) (proposing 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).

226. See Appelbaum and Batt, *The New American Workplace*, 58.

227. See Susan Sturm, “Race, Gender, and the Law in the Twenty-first Century Workplace: Some Preliminary Observations,” *University of Pennsylvania Journal of Labor and Employment Law* 1 (1998): 663–65.

228. See *ibid.*, 647.

229. See generally Barbara Reskin, “The Proximate Causes of Employment Discrimination,” *Contemporary Society* 29 (2000): 325 (arguing that the impact of stereotypes and other cognitive distortions on evaluative judgments are reduced when decision makers know they will be held accountable for the criteria they use).

230. See Barenberg, “Democracy and Domination,” 893–96.

231. *Ibid.*, 921.

232. See *ibid.* 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” (923). Yet it is not only 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” (925–26).

233. See, e.g., Ackerman and Alstott, *The Stakeholder Society*, 207 (noting that most Americans see themselves as citizens and not workers).

234. An overwhelming 63 percent of all workers surveyed say they want more influence at the workplace, while only 35 percent want to keep things as they are. See Richard B. Freeman and Joel Rogers, *What Workers Want* (Ithaca: Cornell University Press, 1999), 41–42.

235. For example, 87 percent of employees say they would like their jobs better if they had more authority over decisions about production and opera-

tions. In addition, 79 percent of the employees believed that the quality of the firm's product or services would improve if they made more decisions about production and operations (*ibid.*, 42–43). Among all managers, 58 percent agreed (*ibid.*, 42).

236. See *ibid.*, 43.

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

238. 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 percent of all workers said this was important to them (*What Workers Want*, 48–49).

239. Terkel, *Working*, 521, 523.

240. *Ibid.*, 720.

241. See Kanter, *Men and Women*, 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," *Antioch Review* 49 (1991): 47–50 (discussing efficiency-based models in similar terms).

242. For a description of Taylorism and its historical development, see Katherine V. W. Stone, "The New Psychological Contract," *UCLA Law Review* 48 (2001): 519, 531. For a stunning biography of Taylor himself, see Robert Kanigel, *The One Best Way: Frederick Winslow Taylor and the Enigma of Efficiency* (New York: Viking, 1997).

243. See Becker, "Human Capital," 25–26.

244. In my view, this is parallel to neoconservative 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," *Signs* 14 (1989): 875–78 (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); Kimberlè 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*, ed. Katharine T. Bartlett and Roseanne Kennedy (Boulder, Colo.: Westview, 1991), 57, 71–72 (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").

245. See, e.g., Epstein, "Non-work Aspects of Work," 47–50 (criticizing productionist models of work for excluding such experiences as well as the noninstrumental aspects of work itself).

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

247. See, e.g., McCaffery, "Slouching towards Equality," 602, 626, 653, 671 (arguing for the repeal of Title VII and the adoption of reforms that allow women to shape work/family patterns different from men's).

248. See, e.g., Silbaugh, "Marriage Contracts," 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").

249. See, e.g., Christine A. Littleton, "Reconstructing Sexual Equality," *California Law Review* 75 (1987): 1292 (criticizing "assimilation" models that "[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").

250. See Arlie Russel Hochschild, *The Time Bind: When Work Becomes Home and Home Becomes Work* (New York: H. Holt and Metropolitan Book, 1997), 12.

251. See Kalleberg et al., *Nonstandard Work, Substandard Jobs*, 6; Arne L. Kalleberg and Barbara F. Reskin, "Gender Differences in Promotion in the United States and Norway," *Research in Social Stratification and Mobility* 14 (1995): 255.

252. See Epstein, *Part-Time Paradox*, 29–37.

253. Fraser, *Justice Interruptus*, 62.

254. See Jacobs and Gerson, "Gender-Equitable Work Week," 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 and Kathleen Gerson, "The Endless Day or the Flexible Office?" Report to the Alfred P. Sloan Foundation, June 1997, 12–16.

255. See Jacobs and Gerson, "Gender-Equitable Work Week," 466–67; Jacobs and Gerson, "Endless Day," 45–46.

256. See also Jacobs and Gerson, "Gender-Equitable Work Week," 468–69 (urging a thirty-five-hour workweek); Jerry A. Jacobs and Kathleen Gerson, "Who Are the Overworked Americans?" *Review of Social Economics* 56 (1998): 457.

257. Jacobs and Gerson, "Overworked Americans," 448–50.

258. *Ibid.*, 452.

259. See *ibid.*, 457; see also Fraser, *Justice Interruptus*, 62 (noting the need for men and women to have time to integrate all aspects of life).

260. For example, instead of one person working sixty hours a week while his or her partner stays at home to care for the house and children, or one person working forty hours a week while the partner combines a twenty-hour-a-week job with after-school care of the children, changing the workweek—and the definition of “full time”—to thirty hours could help create a new norm in which each partner worked a standard, thirty-hour job and divided the household labor equally.

261. 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,” *Michigan Law Review* 96 (1998): 2285–86.

262. See David Woodruff, “In France, Working Long Hours Becomes a Crime: Inspectors Enforce Shorter Workweek,” *Wall Street Journal*, June 15, 1999, A15.

263. See Jennifer Hunt, “Has Work-Sharing Worked in Germany?” *Quarterly Journal of Economics* 114 (1999): 119–21. According to Kathryn Abrams, “Cross-Dressing in the Master’s Clothes,” *Yale Law Journal* 109 (2000): 759 n. 61, a thirty-hour standard workweek has also been actively advanced in Sweden by both feminists in the Social Democratic Party and by two smaller parties.

264. See Dora L. Costa, “Hours of Work and the Fair Labor Standards Act: A Study of Retail and Wholesale Trade, 1938–1950,” *Industrial and Labor Relations Review* 53 (2000): 662 (explaining that the proportionate decline was 18 percent for both men and women in the North, and—owing to more effective minimum wage laws—23 percent for men and 43 percent for women in the South).

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

266. 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*, ed. Richard B. Freeman and Peter Gottschalk (New York: Russell Sage Foundation, 1998), 195, 209.

267. SAS Institute, a computer firm in North Carolina, has successfully reduced its workweek to thirty-five 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,” *New York Times*, May 4, 1999, A1. Some economists have voiced concerns that many professionals’ long, intense hours reduce welfare and merit correction. See, e.g., Fredrik Andersson, “Career Concerns, Contracts, and Effort Distortions,” typescript, October 1999 (contending that many professionals’ long hours and extreme hard work represent a market distortion).

268. 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 disadvan-

tage women. See Schultz, "Reconceptualizing Sexual Harassment," 1794 and 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, *Sex and the Workplace*, 143, table 2. The attempt to purge sexuality from the workplace can have drastic harmful consequences for sexual minorities. See Schultz, "Reconceptualizing Sexual Harassment," 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); *ibid.*, 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," typescript, January 13, 2000, 2-4 (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 Sexual Harassment," 1790, 1793.

269. See Ferree, "Working Class Feminism," 175.

270. See *ibid.*, 181.

271. See Mansbridge, *Why We Lost the ERA*, 216, table a(9).

272. *Ibid.*; see also Luker, *Abortion*. Mansbridge also found that over time the gap between the views of employed women and homemakers had further diverged, a trend that 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" (*Why We Lost the ERA*, 204, 217).

273. Consistent with Mansbridge's and Luker's findings, historical research suggests 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*, ed. Judith Friedlander et al. (Bloomington: Indiana University Press, 1986), 234.

274. See Friedan, *The Feminine Mystique*, 344–57; Cynthia Fuchs Epstein, "The Major Myth of the Women's Movement," *Dissent* (fall 1999): 83, 83–86; De Hart, "New Feminism," 493.

275. DeParle, "Symbol of Welfare Reform," A1.

276. Lynette Holloway, "Contest Essays Find Heroes Near Home," *New York Times*, March 25, 1999, B5.

277. Nancy Polk, "When Life Is a Song, and Also a Cause," *New York Times*, April 18, 1999, 3.