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FROM DIFFERENCE TO DOMINANCE TO DOMESTICITY: CARE AS WORK, GENDER AS TRADITION

JOAN WILLIAMS*

INTRODUCTION

For much of the late 1980s and 1990s, feminist jurisprudence focused primarily on the study of eroticized dominance.¹ Domestic violence, traditionally seen as uncontrollable outbursts of anger by individual men, was seen as the process of regaining control over women who—in the view of their intimate partners—were claiming too much power.² Sexual harassment, traditionally seen as the “bad taste” of a few men who just needed to add a bit more class to their act, was seen as integral to the gender policing of women out of good blue- and white-collar jobs.³ Pornography, traditionally seen from the frame of civil liberties, was placed firmly within a new frame, as part of the social system that eroticizes sexual dominance and helps create a climate of permission for the sexual exploitation of women and feminized men.⁴

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1. Although the thrust of feminist jurisprudence focused on the sex/violence axis, some commentators continued to develop the work/family axis. *See, e.g.*, MARTHA ALBERTSON FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* (1991) (hereinafter *FINEMAN, ILLUSION OF EQUALITY*); MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995) [hereinafter *FINEMAN, NEUTERED MOTHER*]; DEBORAH L. RHODE, *SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY* (1997); DEBORAH L. RHODE, *JUSTICE AND GENDER, SEX DISCRIMINATION AND THE LAW* (1989); Joan C. Williams, *Deconstructing Gender*, 87 *MICH. L. REV.* 797 (1989); Jana B. Singer, *Divorce Reform and Gender Justice*, 67 *N.C. L. REV.* 1103 (1989).

2. *See, e.g.*, Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 *S. CAL. L. REV.* 1283, 1304 & n.89 (1992).

3. *See, e.g.*, CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* 7 (1979); Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 *YALE L.J.* 1683, 1687 (1998).

4. *See, e.g.*, CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 138-39 (1989); Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 *HASTINGS L.J.*

Building on that important work, attention is now shifting back to the work-family axis of gender. This Symposium raises the important question of how to conceptualize gender in that context. Like sexual harassment, domestic violence, and pornography, work/family issues traditionally have been conceptualized as personal issues, not political ones. Though all feminists agree that “the personal is political,” little consensus exists beyond that. This Article argues that the work-family axis should be conceptualized around a historical understanding of the sex-gender system that organizes the relationship of market work and family work, a system I call domesticity. In Part I, I explain what I mean by domesticity: it refers not only to women’s role in the home but also to a particular organization of market work and family work, and to the conceptions of masculinity and femininity that support breadwinner/primary caregiver gender roles. In Part II, I attempt to show how domesticity helps us conceptualize work/family issues. In Part III, I use the work of Judith Butler and Pierre Bourdieu to analyze gender not as difference or as dominance, but as tradition. The analysis of gender as tradition helps explain the continuing hold of domesticity and provides some guidance on how to develop strategies for changing the current system while avoiding a new round of sameness/difference debates.

I. DOMESTICITY SETS THE MATERIAL AND IDEOLOGICAL FRAME OF “CARE”

In order to understand how patterns that stem from domesticity are recycled today, both in the material and ideological conditions women face with respect to work and family, and in feminist debates over work and family, we need to begin with a description of domesticity.⁵ I will not repeat the analysis of domesticity offered in my book, *Unbending Gender*,⁶ but will (in Section A) recall the basic outlines of domesticity as a gender system. Then I will develop three themes that are particularly relevant to the question of how to conceptualize family work. These are: the contemporary socialization of childcare (Section B); the potential for gender wars between

1257, 1288-89 (1997).

5. For a review of the literature critiquing domesticity’s role in perpetuating and reinforcing class and racial hierarchies among women, see JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 145-76 (2000).

6. See *id.* at 14-39.

maternalists and the equal parenting advocates (Section C); and whether to conceptualize care through the social welfare system (Section D).

A. *The Basic Outline*

1. The Organization of (What Came to Be Market) Work

In the system preceding domesticity, “productive” and “reproductive” work were not separated—conceptually, geographically, or temporally; in addition, both types of work were interspersed with leisure.⁷ With the advent of domesticity, certain kinds of production were time-disciplined, moved into factories, and gendered masculine. Other kinds of production (such as production of food and clothing) were coded as “caring” rather than “work” and were gendered feminine. This separation of home and work was translated in the 1950s into a gendered geography of homes in the suburbs isolated from “work” in the cities.⁸

These shifts in the organization of work have not played a central role in feminist analysis. We should be aware of them today because the industrial revolution has been replaced by the information revolution. Computers, cell phones, and facsimile machines mean that work need no longer be geographically isolated from the home; the suburb can become the office. Nor is work temporally isolated from home life. Indeed, our only protection today from having work swallow home life whole is our ability to generate new social norms that articulate reasonable limits on work demands in a society that works more hours even than Japan—the country with a word for “death from overwork.”⁹ This is a key moment for remaking our work patterns—and our gender patterns. The only question is whether we will blow it and simply reinscribe domesticity. To avoid this outcome and to envision new futures, we need to understand how domesticity continues to define the scope of the thinkable in the present. It’s one of those rare moments in history where a paradigm shift is there for the making.

7. *See id.*

8. An example of the work in feminist geography is SUSAN HANSON & GERALDINE PRATT, *GENDER, WORK, & SPACE* (1995).

9. ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* 23 (2001).

2. Shifts in Ideals of Womanhood: The Moral Mother

Prior to domesticity, women were conceptualized as the “weaker vessel”—devious, sexually voracious, emotionally inconstant, and intellectually inferior to men. The virtuous woman’s central role was as a faithful “helpmeet” to her lord and master.¹⁰

With the advent of domesticity, the faithful helpmeet became the Moral Mother. This shift entailed several related changes. The first was a shift in the gendering of childrearing. In colonial times, childrearing manuals were addressed to fathers: children were considered to be in their fathers’ charge. Letters home typically were addressed to fathers, with perhaps a postscript to the mother.¹¹ Domesticity reallocated childrearing to women’s sphere and associated it with femininity. Fathers’ role diminished and the mother-as-sole-source-supplier, or “primary caregiver,” model emerged.

Motherhood also took on a new political and ideological significance. As historian Nancy Cott brilliantly argued, domesticity was a “cri de coeur against modern work relations,” an internal critique of the emerging dog-eat-dog world of alienated, capitalist labor.¹² The new political ideology of possessive individualism enshrined self-interest as the chief engine of social good, a shocking new development in a society that had traditionally defined the good citizen as a man who pursued the common good rather than his own narrow selfish interest.¹³ People dealt with the moral shock of the early days of the emerging capitalist order by preserving the older virtues and associating them with women. Whereas men were now expected to be “selfish and calculating,” that spirit was to be balanced by women’s selflessness.¹⁴ To quote Nancy Cott, “women’s self-renunciation was called upon to remedy men’s self-alienation.”¹⁵ The redemptive quality of mother love, and its role in placing limits on capitalism, found expression both in politics and in religion. In politics, the moral mother became the clubwoman and the social housekeeper, inventing both the professional and the ideological infrastructure of the welfare state.¹⁶ As motherhood was sacralized

10. WILLIAMS, *supra* note 5, at 21-22.

11. *See id.* at 22.

12. NANCY F. COTT, *THE BONDS OF WOMANHOOD* 70 (2d ed. 1997).

13. WILLIAMS, *supra* note 5, at 31.

14. *Id.*

15. COTT, *supra* note 12, at 71.

16. *See* ROBYN MUNCY, *CREATING A FEMALE DOMINION IN AMERICAN REFORM 1890-*

and sentimentalized, child abuse and other abuses of power by mothers tended to be erased from the popular imagination.¹⁷

Domesticity's structural role in humanizing a capitalist world is often overlooked. It should not be: this role is a key reason for domesticity's persistence in the modern day, in feminism (as discussed below) and among women in general (as discussed in my book).¹⁸ One reason domesticity has proved so hard to change is that it intertwines cultural patterns we like, including its internal critique of capitalism, with patterns of gender subordination. This is a major reason why the most effective strategy for destabilizing domesticity is (following Butler) what I have called domesticity in drag (of which more will come later).

3. Shifts in Ideals of Manhood: From Father to Breadwinner

In the gender system that preceded domesticity, the key male role was that of the father, who ruled not only over his wife, but over his sons and the rest of his household. With domesticity, the key masculine role shifted from patriarch to breadwinner.¹⁹

Hegemonic masculinity came to be defined in terms of work roles. Alternative definitions exist: the artist, the new nurturing father, the sexual conquistador. But to this day, masculine dignity is linked with success at work. Virtually no feminists talk about this, but they should. Gender pressures on men are a key reason for the "stalled revolution" in work and family life.²⁰ As I argued in my book, a key to jump-starting that revolution is to change gender pressures on men by changing the way we define the ideal worker. We also need to work towards social subsidies designed to increase men's household contributions, in order to counter the many pressures that now cause men to underinvest in their children even if they love them very much.²¹

1935 (1991); EVELYN BROOKS HIGGINBOTHAM, *RIGHTEOUS DISCONTENT: THE WOMAN'S MOVEMENT IN THE BLACK BAPTIST CHURCH, 1880-1920*, at 185-229 (1993); Susan D. Carle, *Gender in the Construction of the Lawyer's Persona*, 22 *HARV. WOMEN'S L.J.* 239, 252 (1999).

17. Carol Sanger, *M Is for the Many Things*, 1 *REV. LAW & WOMEN'S STUD.* 15, 33 (1992).

18. See WILLIAMS, *supra* note 5, at 149 ("[P]ro-life advocates are [the] modern-day 'moral mothers.'").

19. See *id.* at 25.

20. ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME* 11-12 (1989).

21. See Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 *N.C. L. REV.* 707, 755 (2000).

4. The Spiritualization of "Care"

Historian Jeanne Boydston has brilliantly documented how domesticity "turned labor into love."²² Boydston points out both the continuities in women's work patterns and the sharp disjunctures in how women's work was conceptualized.

On the one hand, Boydston documents that women continued to do a tremendous amount of productive work (including canning, raising livestock, sewing, etc.) even after the advent of domesticity. In fact, women not only continued to perform many of their traditional tasks; new tasks devolved upon them, notably shopping.²³ The irony is that at the same time as women's workload increased, their work ceased to be understood as "work." "A little washing, a touch of the needle, and a moment's stop in the kitchen are all that are required; the food appears virtually as a gift of nature, and the compliant fires and lamps seem to light and tend themselves."²⁴ Women's work was depicted not as hard labor but as "the effortless emanations of their very being, providing for the needs of their families without labor, through their simple presence in the household."²⁵

The "spiritualization of housework" erased the economic dimension of women's labor; it also made housework's nonspiritual dimensions fall from view. No one has brought them back to the surface better than Dorothy Roberts, who documents how contemporary white women divide housework into a spiritual component, which they keep for themselves, and a menial component, which they often delegate to women of color.²⁶

Roberts's analysis is important for several reasons. First, it highlights the ethical problems inherent in a model that seeks to attain women's economic equality by having women delegate family work to the market. This model leaves out the important question of who will care for the children of the childcare workers. In addition, in a society allergic to social subsidies, it often consigns the children of poor families to childcare of questionable quality.²⁷

22. Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 23-26 (1996).

23. See JEANNE BOYDSTON, HOME AND WORK 102 (1990).

24. *Id.* at 148.

25. *Id.* at 146.

26. See Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51, 51 (1997).

27. See NAT. INST. OF CHILD HEALTH & HUMAN DEV., THE NICHD STUDY OF EARLY CHILD CARE, available at http://www.nichd.nih.gov/publications/pubs/early_child_care.htm (last modified Apr. 11, 2000).

This is an important message, but Roberts's analysis also is important for another reason. She points out that a lot of what it takes to keep a family running is far from spiritual. "Care" involves not only emotion work and social capital development; it also involves wiping up feces and scrubbing floors and toilets. Domesticity as a gender system codes all this work as "care." To quote Roberts, "The truth is that housework usually involves both menial and spiritual aspects; women view many of the household and childcare tasks as an inseparable combination of manual labor and social nurturing."²⁸ By coding all housework as "care," domesticity sent the message that, by its very nature, family work is not tied to economic entitlements. Roberts quotes Robin West, who expresses this sentiment when she writes, "wherever intimacy is, there is no compensation."²⁹ While there is something to this sentiment—the issue is complex—it reflects an ideological system that makes any linkage of family work to economic entitlements seem implausible, indeed repulsive. (This is what I have termed "commodification anxiety," and is a direct expression of domesticity. Feminists have recognized that defusing commodification anxiety is a key agenda in the rewriting the relationship of women and economics.)³⁰ As we take a new look at work/family issues, a major issue for feminist jurisprudence is whether to fight the sacralization of care work, to embrace it—or both.

B. *The Sacralization of Childcare*

The second sketch I will offer is designed to focus attention on childcare: how we conceptualize it, and especially how we romanticize it. The best way to see this is to break domesticity into two distinct phases.

1. Stage #1: Breadwinner/Housewife: 1780–1970

Have dinner ready. . . . Most men are hungry when they come home and the prospect of a good meal is part of the warm welcome needed. . . . [T]ouch up your makeup, put a ribbon in your hair and be fresh-looking. [Wash the children's faces, comb their hair, and keep them quiet.] He has just been with a lot of work-weary people. . . . His boring day may need a lift. . . . [M]ake the evening

28. Roberts, *supra* note 26, at 79.

29. *See id.*

30. Kathryn Abrams, *Cross-Dressing in the Master's Clothes*, 109 *YALE L.J.* 745, 750-51 (2000).

his. [Never] greet him with problems and complaints. Make him comfortable. Have a cool or warm drink ready for him. Arrange his pillow and offer to take off his shoes. Speak in a low, soft, soothing and pleasant voice. Allow him to relax and unwind. . . . Never complain if he does not take you out to dinner or to other pleasant entertainment. Instead, try to understand his world of strain and pressure, his need to unwind and relax.³¹

This excerpt, from a mid-century essay entitled *The Role of a Wife*, aptly expresses the first stage of domesticity, which predominated from roughly 1780 to 1970.³² The key for our purposes is that the description focuses on the housewife's role in providing a haven for her husband from the heartless world he faced outside: Thus, the ideal housewife is described as focusing on the emotional and physical needs of her husband, not of her children. Her duty is to keep the children quiet; this is not a "child-centered household."

2. Stage #2: Ideal Worker/Marginalized Caregiver: 1970–Today

The contemporary version of domesticity perpetuates three basic themes from the classical breadwinner/housewife model. It first perpetuates the system of providing for children's care by economically marginalizing their caregivers: elsewhere I have documented the economy of mothers and others.³³ The second continuity is the notion that the good mother is selfless: "I'm a good mother because I sacrifice a lot for my daughter," one woman told a sociologist in 1991.³⁴ The third is the continuing association of men with the breadwinner role.³⁵

But for our purposes we need to recognize not only continuity but also change. Households are now child-centered in a way that seems foreign to non-Americans, and even to Americans in their seventies and eighties. The epitome of this trend is the "floor time"

31. Bob Levey, *The Revolution in the Role of a Wife*, WASH. POST, Dec. 1, 2000, at C9 (citing *The Good Wife's Guide*, HOUSEKEEPING MONTHLY, May 13, 1955). Domesticity still retains a powerful hold in our society. See Michelle Conlin, *The New Debate over Working Moms*, BUS. WK., Sep. 18, 2000, at 102 ("I clean the house, I cook, I take care of the money, and I take care of the baby. And when my husband comes home, he comes back to a peaceful home. . . . It has made me believe that this is the way it's supposed to be.").

32. This periodization reflected ideology, not sociology. The relationship of ideology to sociology is, as always, complex.

33. Joan Williams, *Our Economy of Mothers and Others: Women and Economics Revisited*, 5 IOWA J. GENDER RACE & JUST. (forthcoming 2001).

34. See SHARON HAYS, THE CULTURAL CONTRADICTIONS OF MOTHERHOOD 83, 86-96 (1996) (asserting very different mothers share a common assumption about the importance of putting their children's needs first).

35. JEAN L. POTUCHECK, WHO SUPPORTS THE FAMILY? 4 (1997).

recommended by the noted child psychiatrist Dr. Stanley Greenspan, who advises that parents spend at least thirty minutes a day focusing exclusively on each child. "Tune in to her interests and feelings, and march to her drummer. If she wants you to get down on all fours and bark like a dog, do it. Participate in the action, but don't control it—she's the director, and you're the assistant director."³⁶

Dr. Greenspan admits that floor time was no part of his own childhood, but he asserts it "creates the whole basis for security, trust, and self-worth that a child will need from here on."³⁷ The notion that without this kind of intensive, one-on-one attention children will fail to flourish is symptomatic of what sociologist Sharon Hays has called "the ideology of intensive mothering." Hays, in my view, is somewhat inaccurate in her chronology: she does not realize that the ideology she documents is both class-specific and, historically, a very recent development. But her description itself is apt.

Why do many professional class employed women seem to find it necessary to take the kids to swimming and judo and dancing and tumbling classes, not to mention orthodontists and psychiatrists and attention-deficit specialists? Why is the human bonding that accompanies breast-feeding considered so important that elaborate contraptions are now manufactured to allow children to suckle on mothers who cannot produce milk? Why are there aerobics courses for babies, training sessions in infant massage, sibling-preparedness workshops, and designer fashions for two-year-olds? Why must a "good" mother be careful to "negotiate" with her child, refraining from demands for obedience to an absolute set of rules?³⁸

The new ideology of intensive mothering represents a sharp break from the first stage of domesticity: the mothers interviewed by Hays felt that "nurturing a child provides a different and perhaps superior form of gratification than does nurturing one's spouse."³⁹

[Raising children] brings us a sense of love we couldn't get from sex, or pleasures from, you know, going out, or doing something we like to do, dancing, or watching a movie. Kids give us this inner pleasure that [we are] unable to get from anything, anyone.⁴⁰

Other scholars have documented the intensity of women's feelings for their children, particularly their infants.⁴¹

36. WILLIAMS, *supra* note 5, at 37.

37. *Id.*

38. HAYS, *supra* note 34, at 5-6.

39. *Id.* at 109.

40. *Id.* at 109-10.

41. See, e.g., Mary E. Becker, *Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationships*, 23 STETSON L. REV. 701, 719-20 (1994).

No wonder the men feel left out. The sacralization of household work has turned into the sacralization of childrearing as the key source of meaning creation in a human life. Nearly one quarter of the women Hays interviewed actually cried when she asked them what life would have been like if they had not had children.⁴²

The ideology of intensive mothering plays an important ideological role: it preserves our self-image of gender equality by coding mothers' decisions to stay home without reference to the needs of male partners to command the flow of family work they need to perform as ideal workers. Thus women who stay home today almost invariably say it is "to take care of the children"—they just happen to pick up the dry cleaning and clean the toilets as well.

The ideology of intensive mothering has also led to new spins on the commodification anxiety that polices the boundary between home and work, as it has since roughly 1780. The sacralization of childrearing has been accompanied by a new insistence on its nondelegability. When viewed in historical perspective, this is odd: commodification was not considered a problem in the days when housewives had servants handling much of children's daily care.⁴³

The unselfconscious sacralization of childcare holds the potential to be very divisive, both for feminists and for women in general. The recent well-publicized backlash against family-responsive workplaces provides a good example. The backlash is fueled, in significant part, by employer exploitation: employers allow some mothers to go part-time, then pocket the part-time dividend that results when employers dump the excess work on existing employees but pay them no additional compensation for doing it. This is good, old-fashioned worker exploitation. Feminists need to work with reporters to point out this phenomenon, to defuse the growing backlash against mothers. (This backlash is a typical example of the way domesticity pits women against other women. Indeed, Elinor Burkett, whose book *The Baby Boon* led this charge, has argued that the only way to

42. See HAYS, *supra* note 34, at 109.

43. There is growing confusion around the use of the word "commodification" in the context of care work. Some influential commentators use "commodification" to refer to any attempt to link family work with economic entitlements. See Katharine Silbaugh, *Commodification and Women's Household Labor*, 9 YALE J.L. & FEMINISM 81 (1997). I do not consider this commodification; I use that word only to refer to the literal transfer of family work to the market arena. These issues will be further explored in a forthcoming paper, *Commodification As a Class Issue*, to be delivered at the March 30–31, 2001 Conference on *Commodification Futures* in Denver, Colorado.

protect parents' co-workers is to have one parent at home; the alternative of ending employer exploitation is not mentioned.)⁴⁴

The sacralization of childcare is divisive in another way. For those cultural entrepreneurs whose project is to envision a full adult female life without motherhood, the sacralization of childcare and of motherhood can be very off-putting. Much of the spleen surrounding *The Baby Boon* reflects a gender war in which women hurt by domesticity's sacralization of motherhood as the only path to "true" womanhood turn their anger on women hurt by domesticity's marginalization of mothers.⁴⁵ There must be a better way: this kind of gender war derailed the last feminist effort on the work/family axis, and threatens to derail this one as well.⁴⁶

It is also important to recognize the way the sacralization of childrearing creates new gender pressures on men, a theme that emerges in a recent article in *The New York Times* entitled "Taking Baby to a Power Lunch."⁴⁷ The author explains that, while he curtailed his travel for several months after the birth of his daughter, and gives her her first bottle in the morning and her last bottle at night, "there is no question that I miss the great bulk of her day during the week."⁴⁸

He found that other fathers had the same problem. "As I talked to others, I soon realized that many of us well-meaning dads share a desire to see more of our children. We also want to prove to our wives that we can take responsibility for our children without a meltdown."⁴⁹

The solution? He and a few friends decided to take their babies to The Four Seasons for lunch. Thinking the better of it, they ended up at California Soup Kitchen.

On the appointed day, I was as excited as, well, a kid. My wife, a writer, was on deadline that afternoon, so I arranged for our baby sitter to drop off my daughter at the restaurant. "See you at lunch,

44. See ELINOR BURKETT, *THE BABY BOON* 214 (2000).

45. See, e.g., High Productivity Publ'g & Bill of Rights II, *Book Review of Elinor Burkett's The Baby Boon*, at <http://hpub.com/brboon.htm> (last visited Feb. 8, 2001) (arguing that there is a "competitive tension between parents and childless adults").

46. The challenge for feminists is to work with reporters to transform mommy-war stories into stories about the structural constraints faced by all women. See, e.g., Conlin, *supra* note 31.

47. Daniel R. Mintz, *My Money, My Life; Taking Baby to a Power Lunch*, N.Y. TIMES, Dec. 10, 2000, § 3, at 14.

48. *Id.*

49. *Id.*

Noa; we've got serious business to discuss," I told her as I left for work.⁵⁰

To make a long story short, though "[their] men-of-the-new-millennium routine did not create the ego-lifting stir we had anticipated," all went fairly well.⁵¹ "As we lingered on the street after lunch, reluctantly handing back our precious lunch dates to our wives or baby sitters, we agreed that the Baby Business lunch should become a tradition."⁵²

This article documents a fascinating cultural moment. As childcare is conceptualized as a key spiritual experience, fathers feel more pressure to participate in it. Some are using their gender privilege much as privileged white women have used their class/race privilege: they do the spiritual housework, leaving their "wives or baby sitters" the menial tasks like lugging the baby to and from midtown Manhattan. Studies confirm that mothers typically do more of the menial housework, while fathers "take their children on 'fun' outings to the park, the zoo, the movies."⁵³ This is not to deny the persistence of a racial hierarchy of housework; it's just to say that there's a gender hierarchy operating as well.

C. *How to Avoid Gender Wars between the Femmes and the Tomboys: Maternalists v. Equal Parenting Advocates*

I have argued that domesticity divides women against each other, in gender wars over divergent views of the proper role for women. Here I will explore a specific gender war with important implications for feminist jurisprudence as we face the question of how to conceptualize care work: the gender war between maternalists and equal parenting advocates. Maternalists, like femmes, embrace the traditional feminine role, either because they have given up their hopes for involving men in caregiving or because they never had any. Equal-parenting advocates, like tomboys, seek new ways of being a woman that ring changes on hegemonic femininity.

What the "femme" and "tomboy" language signals is a recognition of the complex relationships individuals negotiate with traditional feminine scripts.⁵⁴ To quote Judith Butler: "To the extent

50. *Id.*

51. *Id.*

52. *Id.*

53. See HOCHSCHILD, *supra* note 20, at 9.

54. I do not mean to signal that any individual is a "femme" or a "tomboy" along every axis: think of the law professor who dresses very femme but is an ideal worker in terms of

that gender is an assignment, it is an assignment which is never quite carried out according to expectation, whose addressee never quite inhabits the ideal s/he is compelled to approximate.”⁵⁵

The first important point, constantly forgotten, is that whether people are femmes or tomboys on this particular issue depends on their personal experience. If a woman truly loves the mothering role and feels no desire to give up part of it, or has no partner and wants none, she will be maternalist. In sharp contrast, a woman who has successfully shared family work with a partner in a way she feels has enriched both her family and her work life will feel equally to ideals of equal parenting.

We need to acknowledge that our divergent “truths” in this arena stem from personal experience, and to avoid turning felt authenticity into intolerance. As a conscious matter of feminist strategy, we need to respect each other’s truths, and to acknowledge that we cannot make this divide disappear. Insisting on *only* measures in the maternalist mode, or *only* in the equal parenting mode, will fuel a new series of sameness/difference debates that will impede our ability to build coalitions for social change.

This is where philosophical pragmatism can help.⁵⁶ Pragmatism, to me, signals a respect for the situated nature not only of other people’s truths, but of my own. I am an equal parenting advocate, a conclusion that reflects my own experience and aspirations;⁵⁷ I recognize that others whose experience (or aspirations) differ may not share my views. A true understanding of incommensurability requires us to accept with serenity that people of good faith often will see things differently. The key question is how we avoid letting that undermine our ability to work together.

One solution is for all of us to think through our proposals *both* from a maternalist *and* from an equal parenting standpoint. In fact, we have no choice but to do this, because proposals that appeal only

gender role, or the stay-at-home mother who performs masculinity with an aggressive personal style.

55. JUDITH BUTLER, *BODIES THAT MATTER* 231 (1993).

56. Note that I make a distinction between philosophical pragmatism, which is a variant of nonfoundational philosophy, and being “pragmatic.” To the extent I am pragmatic, this stems from a pragmatist commitment to the incommensurability of the subject positions of different groups of women on work/family issues. For further discussion of pragmatism, see WILLIAMS, *supra* note 5, at 244.

57. Cf. Vicki Shultz, *Life’s Work*, 100 COLUM. L. REV. 1881, 1905 (2000) (arguing that one conclusion of the “movement to value home-based labor” is to reject “greater male involvement in housework as ‘liberal escapism’”).

to one side or the other will serve to divide women rather than to unite them. I have pursued this goal by very consciously linking proposals to restructure market work, which appeal to tomboys, with proposals to restructure family entitlements, which appeal to the femmes. Linking together one proposal designed around the experience of femmes with another designed around the experience of tomboys is the least we can do. The ideal is to craft our every proposal to appeal to both groups.

Take my joint property proposal as an example. It is maternalist in that it aims to empower women who remain in traditional marginalized-mother roles. Yet it is also responsive to equal-parenting concerns: the specific entitlement proposed gives mothers an incentive to pursue a serious job commitment *and* gives fathers an incentive to support this endeavor. (This is because the size of the mother's financial claim on the father decreases as her salary rises relative to his.)⁵⁸ This approach is very different from the traditional full-commodification model, which takes sides with the tomboys and lets the femmes be damned.⁵⁹

D. Conceptualizing Care through the Welfare System

In a society with an unconscionable rate of child poverty, the need for social subsidies for care work—in centers, in the home, and in other settings—is pressing. A distinct issue is whether academic

58. For a further explanation, see WILLIAMS, *supra* note 5, at 130.

59. The full-commodification model views the key to women's equality as increasing their commitment to market work, with childcare delegated to professionals in childcare centers; the housewife's role is depicted very negatively. For a recent restatement of the full-commodification model, see Shultz, *supra* note 57, at 1908-09. Shultz stresses that she herself is closely identified with her job and that paid work is the key to women's liberation, in a classic restatement of the full-commodification model that has long dominated mainstream feminism. She does not address the "gender wars" analysis in *Unbending Gender*: namely, that one of the key characteristics of domesticity as a gender system is the way it divides tomboys and femmes. (In this context, being a "tomboy" entails the traditionally masculine gender performance of framing one's identity primarily around one's job; "femmes" give the traditionally feminine gender performance of framing their lives around motherhood rather than paid work.) Shultz does not respond to (or even mention) the central argument in *Unbending Gender*: that an insistence that femmes turn themselves into tomboys as a condition of being considered "true" feminists serves only to fuel bitter sameness/difference debates within feminism (at best), or to alienate huge numbers of women from feminism (at worst). For a discussion that analyzes sameness/difference debates as gender wars between femmes and tomboys, see WILLIAMS, *supra* note 5, at 40-41 (citing BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1962)). See also ROSALIND C. BARNETT & CARYL RIVERS, *SHE WORKS/HE WORKS, HOW TWO-INCOME FAMILIES ARE HAPPIER, HEALTHIER, AND BETTER OFF* 32 (1996) (arguing that a mother working part-time instead of full-time will actually suffer harm to her health); Shultz, *supra* note 57, at 1908-09 ("A large body of literature shows that working women are better off than full-time homemakers, as measured by a woman's physical and psychological well-being.")

feminists should refuse to explore policy initiatives that help working- and middle-class women unless those policies are equally effective in helping poor women. In my view, we should not, for several reasons.

First, the unhappy fact is that, in the United States today, the politics surrounding social subsidies are truly poisonous. In the arena of practical politics, the issue is not whether to fund huge new social programs, but how big to make the tax cuts. In a political climate where government has been successfully demonized, additional social subsidies are, by in large, infeasible. Even the tiny (though vital) step of passing an unpaid three-month Family and Medical Leave Act took a decade of lobbying—and raising a child takes not three months but twenty years.⁶⁰ If we conceptualize solutions to care work only through a social welfare lens, the risk is that we might fail to investigate strategies that do not trigger the poison that surrounds discussions of social subsidies.

On a more general level, Theda Skocpol persuasively argues that progressives do themselves a disservice by insisting on an approach to social problems that frames solutions around the very poor. The result, she argues, is that liberals have lost the “middle” without helping the poor, because when working- and middle-class people see progressive agendas as offering nothing to them, it becomes politically impossible to achieve a broad range of progressive goals.⁶¹

This strikes me as an apt description of the rise of the conservatives since Ronald Reagan. In formulating an approach to care, we cannot simply wish away the political culture we now have, one allergic to social provisioning. This allergy does not mean that we cannot engage in a strategy of small wins.⁶² But even as we work to change that political culture and to accomplish small wins within it, we simultaneously need to work on agendas that are not precluded by our current allergic condition. We need simultaneously to work towards increases in social subsidies for care work, *and* to try to improve women’s economic position without social subsidies in an era notably inhospitable to new social programs.

This is particularly true because some approaches that do not

60. See Donna R. Lenhoff, *What It Took to Pass the Family and Medical Leave Act: A Nine-Year Campaign Pays Off, National Partnership for Women and Families*, at http://www.nationalpartnership.org/workandfamily/fmleave/fmla_whattook.htm (Aug. 18, 1994).

61. See THEDA SKOCPOL, *THE MISSING MIDDLE* 8 (2000).

62. See Debra E. Meyerson & Joyce K. Fletcher, *A Modest Manifesto for Shattering the Glass Ceiling*, *HARV. BUS. REV.*, Jan.–Feb. 2000, at 128.

rely on social subsidies offer significant potential benefits for disadvantaged people. Restructuring work is a good example. While inflexible workplaces may take a toll on the career prospects of professional mothers, the solutions to work/family conflict available to poor women sometimes mean that while they work they leave their children in the car, or that they are fired when they take time off to care for children.⁶³ Feminists concerned with interclass equity need to be involved in conceptualizing workplace flexibility in ways that are responsive to the needs of poor and working-class as well as professional women. The project of reconceptualizing family entitlements also holds the potential to help a wide range of women: after all, if nearly forty percent of divorced mothers end up poor (more than twice the national poverty rate), then the joint property regime would protect a significant number of women from descending into poverty.⁶⁴

We need also to keep in mind different models for the provision of social subsidies. Proposals by Martha Fineman, Eva Kittay, Nancy Dowd and others for sweeping new programs designed to fund care work are important because they open up new conceptual space: to let current conditions constrict us from imagining what is actually needed would be a mistake.⁶⁵ The Berlin Wall fell; conditions change.

But we also need to keep smaller steps in focus. These include proposals to expand the Family and Medical Leave Act.⁶⁶ They also include proposals to eliminate the ideal-worker norm in the benefits related to market work. Social Security, unemployment, and other social programs linked with paid work help to systematically impoverish women by making receipt of benefits contingent on ideal-worker schedules that mothers do not work.⁶⁷

63. See RANDY ALBELDA & CAROL COSENZA, CHOICES AND TRADEOFFS: THE PARENT SURVEY ON CHILD CARE IN MASSACHUSETTS 12 (2000) (showing low-income parents more likely to be fired due to childcare problems).

64. See DEMIE KURTZ, FOR RICHER FOR POORER 3 (1995).

65. See generally NANCY E. DOWD, REDEFINING FATHERHOOD (2000); EVA FEDER KITTAY, LOVE'S LABOR: ESSAYS ON WOMEN, EQUALITY AND DEPENDENCY (1999); FINEMAN, NEUTERED MOTHER, *supra* note 1.

66. See Selmi, *supra* note 21, at 759-60; Donna Lenhoff & Elana Tyrangiel, *Paying Mom: Now That States Can Grant Unemployment Benefits to New Parents, They Should*, LEGAL TIMES, Aug. 7, 2000, at 59, available at <http://www.nationalpartnership.org/news/legaltimes.htm>.

67. See WILLIAMS, *supra* note 5, at 110-13; Mary Becker, *Patriarchy and Inequality: Towards a Substantive Feminism*, 1999 U. CHI. LEGAL F. 21 [hereinafter Becker, *Patriarchy and Inequality*]; Mary E. Becker, *Obscuring the Struggle: Sex Discrimination, Social Security, and Stone, Seidman, Sunstein & Tushnet's Constitutional Law*, 89 COLUM. L. REV. 264, 276 (1989); Deborah Maranville, *Feminist Legal Theory and Legal Practice: A Case Study on Unemployment Compensation Benefits and the Male Norm*, 43 HASTINGS L.J. 1081, 1085-86

Finally, the experience in Scandinavia holds a cautionary note about the potential of relying on social subsidies alone. In a recent Law and Society session, one audience member pointed out that, even in countries that offer social subsidies, such subsidies typically are quite low.⁶⁸ Research confirms this assertion. A 1992 article found that “[w]henEVER a state benefit has been offered to women for their work as mothers, or, more commonly in the 1980s, for their work in caring for elderly and infirm dependents, the rates have been extremely low.”⁶⁹

This evidence suggests that even if we could change women’s relationship to public wealth tomorrow, women would not gain economic equality. Sweden, for example, has an outstanding set of social subsidies for care work; it also has a more sex segregated economy than the United States.⁷⁰ To achieve economic equality for women, we need to change not only women’s relationship to public wealth, we need to change their relationship to private wealth as well. After all, most of the world’s assets are held by private parties—men—who gain it through employment and through the family economy.⁷¹

E. Conclusion

Domesticity’s organization of market work lives on, as does its sacralization of motherhood and of childrearing, its pastoralization of household work, and its linkage of manhood with breadwinning. So do its corrosive gender wars among women. We need to be aware that domesticity sets both the material frame for our daily experience of work/family issues as well as the frame for how feminists conceptualize those issues.

While domesticity is an important analytic on the work/family axis, it is not *the* key to an understanding of gender. The shift to domesticity rests on a pragmatist recognition that gender is such a complex phenomenon that any analysis of gender necessarily will be

(1992); Mary E. O’Connell, *On the Fringe: Rethinking the Link Between Wages and Benefits*, 67 TUL. L. REV. 1421 (1993).

68. See Joan Williams, *Afterword—Exploring the Economics of Meanings of Gender*, 49 AM. U. L. REV. 987 (2001).

69. *Id.* (quoting Jane Lewis & Gertrude Aström, *Equality, Difference, and State Welfare: Labor Market and Family Policies in Sweden*, 18 FEMINIST STUD. 59, 79-80 (1992)).

70. *Id.*

71. CRITTENDEN, *supra* note 9.

partial.⁷² But though domesticity is limited, it is an extraordinarily useful tool in the conceptualization of “care.”

II. CARE AS WORK

All we can hope for is that any language we craft will be fit for the particular purpose it is designed to serve.⁷³ Even language that provides a suitable lens for focusing one set of issues from one point of view inevitably will blur issues at the edge of the frame, or out of it. In forging new rhetoric we need to be aware of the extent to which we are taking sides in the divide between maternalists and equal-parenting advocates. We also need to be mindful of how an analytic designed to address work/family issues relates to the feminist analytics designed in other arenas.

Obviously, domesticity is not as useful for the study of eroticized dominance—the key concern of the sex/violence axis—as it is for the work/family axis. Making progress on the study of eroticized violence requires an exploration of the social structure of desire; the relationship between that project and the project of inventing a new imaginary relating family work and market work is complex, and sorely needs to be theorized (a task I cannot undertake here). So does the relationship between these projects and a third important feminist agenda: to deconstruct and deinstitutionalize heteronormativity.⁷⁴

In examining the relationships between these three distinct projects, we need to respect their distinctness. Thus, sexual nonconformists may be conformists in terms of gender roles. For example, gay couples who are clearly cultural innovators on the axis of sexuality may well be very conventional in terms of parenting roles—so-called “Rozzie and Harriet” lesbian couples are one example.⁷⁵ Other gays give very conventional gender performances on the job, performing as ideal workers and embracing work as the all-consuming axis of their identity. As I have argued before, people who are disadvantaged on one axis of social power may well try to use

72. See WILLIAMS, *supra* note 5, at 243-71; Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25, 30-32 (1990).

73. WILLIAMS, *supra* note 5, at 244.

74. See, e.g., Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 206 (2001).

75. See Maureen Sullivan, *Rozzie and Harriet? Gender and Family Patterns of Lesbian Coparents*, 10 GENDER & SOC'Y 747 (1996).

an axis of privilege as armor.⁷⁶ Indeed, this is common because of the tendency to offset one's social nonconformity by sending reassuring signals of conformity, as when a gay male couple adopts the breadwinner/housewife model to show they are good parents in bringing up baby.

In short, the three major agendas in feminist jurisprudence today—to deconstruct work/family roles, to end the eroticizing of dominance, and to deconstruct heteronormativity—though inter-related, are logically distinct. Yet in most contexts these three agendas can proceed in solidarity. Indeed, in a book on work/family consciously designed for a broader-than-academic audience, I declared my solidarity with the queer agenda by centering the work of Judith Butler and the political uses of drag.⁷⁷ Moreover, the work/family agenda I propose would go a long way toward deconstructing the power now associated with hegemonic masculinity,⁷⁸ by eliminating its legal/economic infrastructure, namely the he-who-earns-it-owns-it rule, and the design of market work around men's bodies and life patterns.⁷⁹

To quote Martha Ertman's wonderful phrase, there will be some "zero sum moments" when a queer agenda, for example, will clash with a new vision for work and family.⁸⁰ But for the most part the different feminist projects can proceed in solidarity. To accomplish this, we need to accept that the tools necessary for one feminist agenda may well differ from those necessary for a different one. A good example is the tension over the use of the words "sex" and "gender."⁸¹ From a work/family perspective, "gender" is vital as a way of differentiating between body shape ("sex") and the social arrangements surrounding caregiving ("gender"). In sharp contrast, for an analysis of heteronormativity it may well seem undesirable to disaggregate sex from gender, both for analytical reasons (gender

76. See WILLIAMS, *supra* note 5, at 256.

77. See, e.g., BUTLER, *supra* note 55; JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990).

78. An important point is that men who refuse to participate in hegemonic masculinity pay a price along with the women. Thus men in dual-career families earn, on average, 20% less than do men married to housewives. See Martha M. Ertman, *Commercializing Marriage: A Proposal for Valuing Women's Work Through Premarital Security Agreements*, 77 TEX. L. REV. 17, 44 (1998).

79. See Williams, *supra* note 68.

80. Conversation with Martha Ertman, Associate Professor of Law, University of Denver College of Law, in Denver, Colo. (Nov. 19, 1999).

81. See generally Katherine M. Franke, *The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex from Gender*, 144 U. PA. L. REV. 1 (1995).

performances are eroticized) and for strategic ones (the disaggregation typically is done in a way that reinforces the notion that sex is “natural” and not socially constructed).⁸²

The demands of rhetoric in the two contexts are simply different. Recognizing this can help avoid creating a dynamic where feminists expend energy fighting among each other over whether sex is “really” different from gender or not. It depends on what meaning you assign to each of these elusive terms, and the assignment you make will differ in the context of different feminist projects. This conflict can be defused if feminists on the work/family axis take care to avoid the implication that “sex” is natural and biological. I try to do this by contrasting socially constructed gender not with sex, but with body shape. In an age of breast implants, it does not take much imagination to recognize that body shape itself is socially constructed, even if one is not familiar with the extensive literature on transsexuals and intersex babies.⁸³

A. “Care” v. “Family Work” v. “Care Work”

Is “care” the best rubric for theorizing gender on the work/family axis? Some recent work argues that it is. Members of The Care Project associated with the Radcliff Public Policy Center define the key agenda as involving issues of “care.” Mona Harrington argues that we face a “care crisis” stemming from the need to replace the care work traditionally done by women in the home.⁸⁴ Deborah Stone argues for a new “care movement,” designed to build a political coalition of paid and unpaid care workers, built on an empowerment/organizing model.⁸⁵ Lucie White argues that we need to analyze the problems from the perspective of social welfare theory, asking how it “is *actually* getting done, how it is *normatively* getting done, and how it is *resourced* for different socio-racial groups.”⁸⁶

The “care” perspective provides an important conceptual framework for innovative thinking about the social organization of

82. *Id.* at 1-2.

83. See, e.g., JOHN COLAPINTO, *AS NATURE MADE HIM: THE BOY WHO WAS RAISED AS A GIRL* (2000); DEIRDRE MCCLOSKEY, *CROSSING: A MEMOIR* (1999).

84. See generally MONA HARRINGTON, *CARE AND EQUALITY: INVENTING A NEW FAMILY POLITICS* (1999) (describing the “care crisis”).

85. Deborah Stone, *Why We Need a Care Movement*, *THE NATION*, Mar. 13, 2000, at 13-14.

86. E-mail from Lucie White, Professor of Law, Harvard University, to Joan Williams, Professor of Law, American University, Washington College of Law (Dec. 19, 2000, 09:59:53 EST) (on file with author).

the work of caring for children, the sick, and the elderly. It also represents an important shift from prior work, which tends to conceptualize care work as “dependence.” The dependence framework has been brilliantly used by Martha Fineman for deconstructing false claims of “autonomy” by workers whose success, in fact, is premised on a flow of subsidies from either the government or in the form of unpaid work from women, or both.⁸⁷ Yet the “dependence” framework runs the risk of associating an adult’s decision (or social assignment) to take responsibility for care work with a character flaw (as in “she has a dependent personality”). The “dependence” framework also runs the risk of blurring the difference between a baby and a mother: the only reason a mother is dependent is that we provide for children’s care by marginalizing their caregivers; mothers’ dependence is socially constructed and eminently changeable.⁸⁸

Using “care” as the central analytic for conceptualizing work/family issues holds risks that are both rhetorical and ideological, for the word “care” reinscribes domesticity in unhelpful ways. First, “care” genders the work as feminine, which is antithetical to an equal-parenting approach. For maternalists this doesn’t matter, but it’s better to choose terminology that doesn’t take sides in this profound split among feminists, for the reasons discussed above.

“Care” reinscribes domesticity in other ways as well. It perpetuates the pastoralization of household work, with its intimation that where there is “care” there is no “work.” Indeed, the contemporary resonance of the word “care” reflects a change in the understanding of household work that dates back to the Romantic period. Whereas during the colonial period, “mothers were certainly expected to ‘care’ about and for their children, this act of caring was not seen as the transcendent act of personal identity.” It is during the Romantic period that “the transcendently ‘individual,’ self-realizing act for Woman [became] the act of mother-love (privatized caring).”⁸⁹ Thus, using the word “care” sacralizes this family work in a way that feeds commodification anxiety, the view that consigning any “care” to the market sullies both the work and the consignor. To quote Katharine Silbaugh, it turns labor into love.⁹⁰

87. See FINEMAN, *NEUTERED MOTHER*, *supra* note 1, at 162.

88. See *id.* at 162-63.

89. E-mail from Jeanne Boydston, Professor of History and Women’s Studies, University of Wisconsin, Madison, to Joan Williams, Professor of Law, American University, Washington School of Law (Dec. 4, 2000, 11:59:10 EST) (on file with author).

90. See Silbaugh, *supra* note 22, at 1.

To defuse the disadvantages associated with “care,” we need, at a minimum, to reclassify “care” as “work.” Before the advent of domesticity, a woman’s “work” was what she had in her “workbasket” (that is, her sewing basket);⁹¹ the phrase “care work” turns care back into work. It uses the momentum associated with domesticity in the manner of a judo master, to flip and bend domesticity into new configurations.

“Care work” is a term with notable advantages, but we need to disaggregate what we mean by it. It blurs the distinction between at least seven distinct types of work. They are:

(1) *Growth work*. Mothers, and mothers alone, undergo months of pregnancy, often at great physical cost, which can include exhaustion, nausea (I once described it as feeling like you had an intense hangover every day for four months), hospitalization, and risk of death (due to high blood pressure). Mothers alone also do all the childbirth—and nursing, which itself can be physically taxing.⁹² Finally, mothers alone typically shoulder the burden of invasive infertility treatments, which take a tremendous and increasing physical toll on women: they are one of the most emotionally difficult types of growth work.⁹³

(2) *Housework and yardwork*. Is scrubbing floors and toilets “care work”? Domesticity as an ideological system erases much hard and menial physical labor by coding it as “care” that is—by its nature—undelegable and unpaid (even though it is often delegated and paid, as it always has been in many middle-income and affluent households.) Perpetuating terminology that classifies cleaning, cooking, and other forms of housework as “care” holds particular risks in a society that encourages women to keep encoding the task of taking their husbands’ shirts to the cleaners as part of “staying home to care for their children.” We need to reverse the spiritualization of housework, and to recover its economic dimension. Classifying housework as “care” moves in the wrong direction. We should also mention yardwork, which in many families takes a significant amount of time and attention. It is not commonly mentioned in feminist texts, perhaps because it is disproportionately done by men—but it is as

91. COTT, *supra* note 12, at 27, 73.

92. See Mary Becker, *Maternal Feelings: Myth, Taboo, and Child Custody*, 1 S. CAL. REV. L. & WOMEN’S STUD. 133, 142 (1992).

93. See Linda J. Lacey, “O Wind, Remind Him That I Have No Child”: *Infertility and Feminist Jurisprudence*, 5 MICH. J. GENDER & L. 163, 174 (1998) (noting that infertile women have sometimes been erased when feminists focus on motherhood).

important for women not to erase men's work as it is for men not to erase women's.

(3) *Household management.* Who coordinates schedules so that someone is always there to pick up the children? Who remembers to make and keep doctor's appointments? Who has the default responsibility for all tasks that cannot be successfully delegated away? Who consults with teachers, in the case of children, or with doctors and social workers, in the case of elders, and takes responsibility for long-term planning? Who finds the lessons that play such a large role in the lives of middle-class kids,⁹⁴ and takes the children to and from lessons, or sets up carpools? Who applies for Children's Health Insurance Program ("CHIP") and makes sure the kids get school and other vouchers? Managers get paid good money for management work, yet we tend to erase it when it is done within the household. For those reasons it is important to separate management as from "line work" as a distinct category.

(4) *Social capital development.* A fourth distinct component of "care" is social capital development, which remains highly gendered work.⁹⁵ This includes the work of maintaining kinship ties: for example, women talk with their mothers-in-law more than men talk with their own mothers.⁹⁶ It also includes initiating and maintaining friendship networks, from play dates to dinner parties. Again, this work is done disproportionately by women.⁹⁷ In his influential book *Bowling Alone*, Robert Putnam notes that the key group for social capital development are mothers who "work" part-time by choice. One suspects that many of these mothers do paid work only part time in order to leave time for the social capital development that Putnam values so highly.

A final component of social capital development in high-status families is what we could call status development work.⁹⁸ This is easiest to see in the work load of executive wives in two-person careers,⁹⁹ who spend huge amounts of time buying a succession of

94. Joan Williams, Revised Memo of Sloan Work/Family Policy Network: Who Is Caring for America's Children (June 4, 2000) (unpublished manuscript, on file with author) (citing SANDRA L. HOFFERTH ET AL., URBAN INSTITUTE REPORT 91-5: THE NATIONAL CHILD CARE SURVEY (1990)).

95. See ROBERT D. PUTNAM, *BOWLING ALONE* 95 (2000).

96. See *id.* (noting that marriage cuts the frequency of men sending greeting cards in half).

97. See *id.*

98. See BOYDSTON, *supra* note 23, at 128 (noting of nineteenth-century women that "much of their work was overlaid with a class significance that easily obscures its character as labor").

99. Hanna Pappanek, *Men, Women, and Work: Reflections on the Two-Person Career*, in

houses, getting into a succession of clubs, serving on a succession of boards, all designed to signal that their husbands are entering into different and ever-higher fractions of the elite.

In other families, social capital development is centered not on the husband's job but on the children's welfare, through child-based community service work, on the PTA, coaching kids' sports teams, running the school auction, scouts, etc. This work can prove very time consuming; it is also very important. It is widely known (and even more widely sensed) that children whose parents are involved in their children's schools do better at school. This is part correlation, part causation: it is obvious that a mother who has invested a lot in her children's school is in a better position to weigh in to ensure her child gets a desired teacher.

(5) *Emotion work*. To whom does the child run when she skins her knee? Whose job is it to notice, and to help strategize, when a teenager has been snubbed? Who comforts a widow? Who helps a father, or father-in-law, who has just learned he has terminal cancer? The "strong silent type" reminds us that domesticity (as practiced in the United States) codes people who show emotions as feminine.¹⁰⁰ It constructs gendered personalities where a woman's sense of self is more likely to be linked with her ability to discern other people's emotions than a man's. As Lillian Rubin reminds us, after all those years of ignoring their own emotions, men may literally be unaware of what they are feeling.¹⁰¹ Even the men who know what they are feeling may be less likely to feel it is their family responsibility to provide other family members with emotional support.¹⁰² Emotion work is psychologically draining and potentially very time consuming. It is also important.

(6) *Care for the sick*. The average child gets sick about four times a year.¹⁰³ This care is a major issue for the nearly eighty percent of families that use some nonparental care.¹⁰⁴ Care of seriously ill partners, parents, and children is the other major category of sick

CHANGING WOMEN IN A CHANGING SOCIETY (Joan Huber ed., 1973).

100. See LESLIE BRODY, GENDER, EMOTION, AND THE FAMILY 228 (1999).

101. See WILLIAMS, *supra* note 5, at 24.

102. See Becker, *supra* note 92, at 312.

103. See Ralph L. Cordell et al., *Illnesses and Absence Due to Illness Among Children Attending Child Care Facilities in Seattle-King County, Washington*, PEDIATRICS, Nov. 1, 1997, at 851 (finding that children suffered from 7.7 separate illness episodes per 100 week periods).

104. See U.S. DEP'T OF EDUC., NAT. CTR. FOR EDUC. STATISTICS, NATIONAL HOUSEHOLD EDUCATION SURVEY, tbl.7 (1999), available at <http://www.childstats.gov/ac2000/pop7.htm> (finding that 77% of 3-6-year-old children had some form of nonparental care).

care. Much of this can be delegated, but some cannot. “I know how to handle sick child care,” said one Boston lawyer in response to some firms’ offer to commodify that care, “It’s called home.”¹⁰⁵ And, while many families commodify the care of chronically or terminally ill partners or parents, many families do not, either because of economic constraints or because they do not want to. (The class analysis of commodification above is relevant here.)¹⁰⁶

(7) *Daycare*. Someone has to “watch” the children; elderly people may well need daycare, too. Good daycare includes emotion work and social capital development, but is logically distinct from it: it simply reflects the fact that someone has to be “in charge” during the day.

Disaggregating these seven types of work lumped under the rubric of “care” will help us think more clearly in a number of ways. First, it highlights that a lot of work remains within the family unit even when a family has commodified daycare. By in large, women still do most of it.

Second, this disaggregation opens up the question of whether men and women tend to specialize in different kinds of care work; it also opens up the question of whether this gender breakdown differs in different class contexts and different racial and ethnic communities.

Third, a disaggregation of care work holds the potential to help women in the divorce courts, where ideal-worker mothers now are at risk of losing custody of their children even when they continue to perform virtually all of the traditionally feminine tasks other than daycare.¹⁰⁷

Fourth, disaggregating “care” can help overcome the unthinking assurance that no care work is delegable outside the family: after all, the commodification of cooking is fairly far advanced. (It’s called take-out.)

Fifth, disaggregating care work also brings some analytical focus on an important issue, namely that some kinds of care work must be done even in households with no children—notably the care of elderly parents and ill partners, kin work, emotion work, and housework. This point is an important one: the *Baby Boon* backlash often implies that it is only parents who need time for care work. In

105. Lauren Stiller Rikleen, Comments on a Talk by Joan Williams, March 14, 2000, New England School of Law, Boston, Massachusetts.

106. This subject will be explored in *Commodification As a Class Issue*, *supra* note 43.

107. See WILLIAMS, *supra* note 5, at 139-40 (noting that women who fulfill the ideal-worker role “risk losing custody of their children” in divorce proceedings).

an era of high overtime, this is not true. Childcare may be the most time-consuming form of care work over a life cycle, but it is not the only one. We need both to acknowledge that childcare typically takes far more time over a lifetime than other types of care work, and to keep in focus the fact that everyone on the planet needs time for life outside paid work.

Finally, disaggregation shows why the full-commodification model of feminism is flawed. While daycare can be commodified, most of the other forms of care cannot: you cannot simply hire someone to strategize with your teenager, or to comfort your mother, or to build up a reservoir of goodwill so that you have a friend or neighbor available for emergency backup childcare.

Even if we are careful to disaggregate care into its component parts, we are left with two generic terms, each of which has both advantages and significant drawbacks: “care work” and “family work.” “Care work,” while it is much better than “care,” still has the little pink bow, and the sacralizing heritage, of domesticity. “Family work,” the term favored by sociologists, is accurate as a descriptive term but has drawbacks as a normative one. Most care work in fact is done within the confines of the family; I use the phrase in *Unbending Gender* as part of a strategy to use the legitimate claims of family life as a pivot to redefine the ideal worker. An additional attraction of the term “family work” is that it carries the message that, because the work is a *family* responsibility, it is not the sole responsibility of the mother. Thus, I use the term as part of a strategy that proposes that couples decide how much care work is delegable, and then share it equally.¹⁰⁸

My strategic embrace of “family” is part of the pragmatist strategy to embrace some cultural truths in order to change others, on the theory that a whole-scale reinvention runs too high a risk of seeming as bizarre as bloomers. (For those who don’t know, bloomers were invented as an alternative to nineteenth century billowing skirts—but they served more to discredit feminists than to change norms of dress.)¹⁰⁹

The trouble with “family work” is that it sounds prescriptive as well as descriptive. That is, it appears to endorse the notion that all seven types of work at issue *should* be performed within the family.

108. See *id.* at 53-54.

109. Sarah J. Moore, *Making a Spectacle of Suffrage: The National Women Suffrage Pageant, 1913*, 20 J. AM. CULTURE 89 (1997).

This was not my intent, and it is definitely a drawback. In addition, as Lucie White has pointed out to me, coding the work as belonging in the family also constricts the potential for using new ways of working to build new forms of social capital, notably her vision of a wide variety of neighborhood-based caretakers' circles, drop-in centers, and network-based approaches to childcare in place of rigid bureaucratic models.¹¹⁰

For the time being, my sense is that “care work” and “family work” are both useful and both flawed. I have discussed why both terms are flawed. Both are useful in that they clearly identify as “work” the manifold investments it takes to bring human beings from infancy to death—thereby reversing domesticity’s implication that care work is “leisure” and not worthy of being linked with economic entitlements.

In conclusion, do we need to deny that care has a dimension of leisure? My response is this: family work *does* have a component of leisure; in that, it is much like market work. As I write this, I sit on a plane to go out to the Association of American Law Schools annual conference. The paid work I will do there involves, among other things, social capital development and emotion work. As in the context of family life, both kinds of work take place in contexts often classified as leisure. Why do we see emotion work as “care” in the family sphere but as “mentoring” or “networking” when they occur on the job? The answer, of course, is that we, ourselves, are constructed by domesticity’s artificial distinction between home and work.

III. GENDER AS TRADITION

Tradition, Tradition, Tradition!
 Tradition, Tradition, Tradition!
 Who, day and night, must scramble for a living,
 Feed a wife and children, say his daily prayers?
 And who has the right, as master of the house,
 To have the final word at home?
 The Papa, the Papa! Tradition.
 The Papa, the Papa! Tradition.
 Who must know the way to make a proper home,

110. HARD LABOR 119, 139 (Joel F. Handler & Lucie White eds., 1999).

A quiet home, a kosher home?
 Who must raise the family and run the home,
 So Papa's free to read the holy books?
 The Mama, the Mama! Tradition!
 The Mama, the Mama! Tradition!¹¹¹

How does my analysis of domesticity change our understanding of gender? Domesticity, first, is partial: it sends the message that no one image of gender will serve all of the diverse projects that comprise feminism. Centering domesticity also affects our understanding of the two dominant conceptualizations of gender within feminist jurisprudence: difference and dominance.

Gender does not only reflect his "foot [on] our neck,"¹¹² it reflects a system of meaning built into our institutions, perceptions, and values. Bourdieu's notion of *habitus* helps to explain how domesticity structures our gender traditions. While Bourdieu's work helps us understand why gender has proved so unbending, it is less helpful in explaining gender flux. An important tool in that context is the work of literary theorist Judith Butler, whose conception of drag provides a model for understanding the process of gender change that can help us avoid divisive gender wars.

A. *Difference, Dominance, Domesticity*

A decade of antiessentialist critique has not dislodged different-voice feminism. Indeed, the critique has accomplished remarkably little. Early different-voice articles noted that Carol Gilligan's descriptions were "controversial," and proceeded to use them anyway;¹¹³ more recent scholarly work acknowledges antiessentialist critiques but then proceeds to use precisely the same picture of women as selfless, all-giving, and focused on care.¹¹⁴ Thus Robin West acknowledges the antiessentialist critique but then goes right on to talk about "women." This only serves to fuel objections that she overlooks many women who do not feel described by relational feminists' description of women.¹¹⁵

111. Fiddler on the Roof Lyrics, at www.geocities.com/Broadway/Balcony/5705/Fiddler.html.

112. Catharine A. MacKinnon, *Difference and Dominance: On Sex Discrimination* (1984), in FEMINISM UNMODIFIED 32, 45 (1987).

113. See, e.g., Carrie Menkel-Meadow, *Mainstreaming Feminist Legal Theory*, 23 PAC. L.J. 1493, 1540 (1992).

114. See, e.g., ROBIN WEST, CARING FOR JUSTICE 17-19 (1997).

115. See, e.g., Linda C. McClain, *The Liberal Future of Relational Feminism: Robin West's Caring for Justice*, 24 LAW & SOC. INQUIRY 477, 481 (1999).

My analysis of domesticity allows us to acknowledge the traditional linkages between women and care without essentializing women. What the “different voice” describes is not women, but domesticity’s image of motherhood as representing the central ethical impulse of humanity (think Robin West). The different voice *does* describe some women—the Amys who embrace domesticity as their true voice.¹¹⁶ But it alienates others—the Jakes who define themselves in opposition to conventional femininity.¹¹⁷ All it takes to avoid a gender war between the femmes and the tomboys is to call the different voice not *the voice of women* but *the voice of domesticity*—of femininity as conventionally defined. Women negotiate very different deals with domesticity; as Judith Butler points out, just because women are assigned a certain role does not mean all will embrace it, or that any woman will embrace it all.

My analysis of domesticity offers insights not only into “difference” but also into dominance feminism. An assessment of dominance feminism must begin by recognizing that the “gender as dominance” model works well in some contexts. Catharine MacKinnon deploys it brilliantly, first, to critique sameness and difference feminism.¹¹⁸ Sameness feminism preserves masculine dominance, she points out, by leaving masculine norms intact,¹¹⁹ as when women are given “equal opportunity” to live up to an ideal-worker norm framed around men’s bodies and life patterns. Difference feminism preserves masculine dominance, MacKinnon points out, by proposing to celebrate “the voice of the victim” instead of “get[ting] your foot off our neck [so we can] . . . see in what voice women speak.”¹²⁰ For an analysis of the eroticizing of dominance, dominance feminism serves well as “normal science”: in the context of domestic violence, his foot may *literally* be on her neck; pornography and sexual harassment also are best understood as different ways of “doing power.”

Yet dominance feminism has important drawbacks when the goal is to build the political will to change the way we structure our work

116. See CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982).

117. *Id.*

118. Catharine A. MacKinnon, *Reflection on Sex Equality Under Law*, 100 YALE L.J. 1281, 1301-02 (1991).

119. CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 34 (1987).

120. Ellen C. Dubois et al., *Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFF. L. REV. 11, 49-54 (1985).

and family lives.¹²¹ As I have noted before, its tone of anger against men often has served to discredit feminism; even when the anger is well deserved, humor may well be more effective as an organizing tool. Another important drawback is that the only rhetoric dominance feminism offers for understanding “choice,” which plays such a central role in the second stage of domesticity, is “false consciousness.” “False consciousness” presents several problems. First, it is infuriatingly condescending; can you imagine a trade book that actually inspired women to think of themselves as responding to social mandates rather than making authentic choices by telling them they suffered from “false consciousness”? As feminist jurisprudence seeks a broader audience than academic lawyers, the false consciousness language becomes less useful.

False consciousness is analytically flawed as well, for it implies that the analyst has a bird’s-eye view from outside the gender system she is describing, and is delivering the Truth to the poor, trapped inhabitants. Not only is this condescending, it will cause feminists to miss the extent to which we all are operating within the gender system we seek to contest, which is a crucial insight if we are to avoid a new round of sameness/difference debates.

A third drawback of dominance feminism is its rigid structuralism, which threatens to deteriorate into a determinism that leaves little room for women’s agency, and fails to account adequately for women’s sense of making “choices.” In addition, the imagery of gender as dominance that is “metaphysically almost perfect”¹²² fails to account adequately for gender flux—an important drawback given the dramatic changes in women’s relationship to paid work in the past two generations.

Finally, and most importantly, gender is not just a power differential between men and women. In fact, gender plays diverse roles in creating meaning in people’s lives. We think immediately of the woman whose life is framed around motherhood, and of the “strong silent” type whose chosen gender performance may literally have deprived him of knowledge of his own emotions.

But this does not scratch the surface. Sexual arousal is often linked with gender display, through short skirts and low necklines. Class performances are gendered, so that being “classy” may require dressing and behaving “like a lady.” Rebellion, too, is often

121. See WILLIAMS, *supra* note 5, at 6-7, 254-56, 275-76.

122. MACKINNON, *supra* note 4, at 116.

expressed through particular forms of gendered display (“dressing slutty”) or behavior (“sleeping around”). The list goes on and on. Gender provides rich cultural imagery most people find a convenient metaphoric. Gender is one of the “metaphors we live by”;¹²³ it can carry so many loads of cultural meaning that the prospect of persuading people to abandon it seems slim indeed. Thus while it is true that “all cultural order must be seen as being . . . made . . . actively and continuously,”¹²⁴ gender as a metaphorical system offers to many different people many different reasons to perpetuate conventional gender symbolism in their everyday lives.

Gender is unbending not only because of its infinite availability as a metaphor but because it intertwines gender roles with attractive ideals, as when domesticity links the economic and social marginalization of mothers with mothers’ dreams for their children. Our hopes and aspirations, our rebellions and our proprieties—all are linked with gendered roles and norms. From the norm of parental care to the structure of the erotic, our gender traditions exert built-in headwinds, a force field pushing men and women back into line with conventional gender performances.

B. Domesticity defines the logic of practice: “[I]nternalized as second nature, and so forgotten as history.”¹²⁵

Our self-image of gender equality is quite a feat in an era when women still do eighty percent of childcare and two-thirds of the housework; when ninety-two percent of mothers do not work the kind of overtime required by many of the best jobs; when ninety-five percent of upper-level management, and a similar percentage of the best blue-collar jobs, are held by men.¹²⁶

The conspiracy of silence around the persistence of domesticity’s patterning of work and family life is a central feature of the contemporary version of domesticity. How can we understand how domesticity’s breadwinner/primary caregiver roles continue to retain their hold even in the face of a strong ideology of gender equality? Why do so many men and women end up in ideal-worker and

123. GEORGE LAKOFF, *THE METAPHORS WE LIVE BY* (1980).

124. WILLIAMS, *supra* note 5, at 246 (quoting FAYE GINSBERG & ANNA LOWENHAUPT TSING, *UNCERTAIN TERMS: NEGOTIATING GENDER IN AMERICAN CULTURE* 7-8 (1990)).

125. PIERRE BOURDIEU, *THE LOGIC OF PRACTICE* 56 (Richard Nice trans., Stanford Univ. Press 1990) (1980).

126. See HAYS, *supra* note 34, at 99; WILLIAMS, *supra* note 5, at 2, 67, 76.

marginalized-caregiver roles respectively, even when that was not their original goal or intention? Why do they then describe the resulting traditionalist gender patterns as their “choice”?

Pierre Bourdieu’s reflexive sociology provides an important model for understanding the answers to these questions. Bourdieu’s key insight is the reflexive nature of the *habitus*:

The *habitus*, which, at every moment, structures new experiences in accordance with the structures produced by past experiences, which are modified by the new experiences within the limits defined by their power of selection, brings about a unique integration, dominated by the earliest experiences, of the experiences statistically common to members of the same class.¹²⁷

The *habitus* structures institutional arrangements, identities, perceptions, academic debates and proposed solutions¹²⁸—and inspires people to describe traditionalist gender arrangements that they adopted because they saw no alternative as their “choice.”

[H]ow can one fail to see that decision, if decision there is, and the “system of preferences” which underlies it, depend not only on all the previous choices of the decider but also on the conditions in which his “choices” have been made, which include all the choices of those who have chosen for him, in his place, pre-judging his judgements and so shaping his judgement.¹²⁹

Bourdieu begins to explicate the *habitus* by excavating and addressing the implicit model beneath the rhetoric of choice: of society as composed of rational actors making rational choices.

[I]f one fails to recognize any form of action other than rational action . . . , it is impossible to understand the logic of all the actions that are reasonable without being the product of a reasoned design, still less of rational calculation; informed by a kind of objective finality without being consciously organized in relation to an explicitly constituted end; intelligible and coherent without springing from an intention of coherence and a deliberate decision; adjusted to the future without being the product of a project or a plan.¹³⁰

Following a rule, Bourdieu argues (per Ludwig Wittgenstein), is not an exercise in logic but a cultural habit. It is not “the product of rational calculation,” or “consciously organized in relation to an explicitly constituted end.”¹³¹ Thus, Bourdieu shows that the

127. BOURDIEU, *supra* note 125, at 60.

128. For my discussion of how domesticity sets the frame for academic debates and proposed solutions on the work/family axis, see *infra* notes 201-27 and accompanying text.

129. BOURDIEU, *supra* note 125, at 49-50.

130. *Id.* at 50-51.

131. *Id.* at 50.

economists' image of free-standing individuals freely choosing breadwinner/housewife roles in order to maximize economic efficiency rests on a flawed analysis of human motivation.¹³² Bourdieu also provides an analytic from which to critique the vernacular view that, when families reproduce the ideal worker/marginalized caregiver structure I have called the dominant family ecology, this reflects nothing more troubling than authentic choices made in the pursuit of self-fulfillment. Bourdieu associates this model of authenticity with Sartre's vision of "each action [as] a kind of antecedent-less confrontation between the subject and the world."¹³³ Bourdieu contests this view, arguing that the "coincidence of the objective structures and the internalized structures which provides the illusion of immediate understanding, characteristic of practical experience of the familiar universe, and which at the same time excludes from that experience any inquiry as to its own conditions of possibility."¹³⁴

This is the "logic of practice," which reflects the *habitus*, systems of durable, transposable dispositions, structured structures predisposed to function as structuring structures, that is, as principle which generate and organize practices and representations that can be objectively adapted to their outcomes without presupposing a conscious aiming at ends . . . Objectively "regulated" and "regular" without being in any way the product of obedience to rules, they can be collectively orchestrated without being the product of the organizing action of a conductor.¹³⁵

The system of "structured, structuring dispositions"¹³⁶ "durably inculcated"¹³⁷ make "possible the free production of all the thoughts, perceptions and actions inherent in the particular conditions of its production—and only those."¹³⁸ Bourdieu immediately backs off this extreme structuralism, noting that the *habitus*

governs practice, not along the paths of a mechanical determinism, but within the constraints and limits initially set on its inventions. This infinite yet strictly limited generative capacity is difficult to understand only so long as one remains locked in the usual antinomies—which the concept of the *habitus* seeks to transcend—of determinism and freedom, conditioning and creativity,

132. See GARY S. BECKER, *A TREATISE ON THE FAMILY* (1981) (using the economic model to analyze the family).

133. BOURDIEU, *supra* note 125, at 42.

134. *Id.* at 26.

135. *See id.* at 53.

136. *Id.* at 52.

137. *Id.* at 54.

138. *Id.* at 55.

consciousness and the unconscious, or the individual and society. Because the *habitus* is an infinite capacity for generating products—thoughts, perceptions, expressions and actions—whose limits are set by the historically and socially situated conditions of its production, the conditioned and conditional freedom it provides is as remote from creation of unpredictable novelty as it is from simple mechanical reproduction of the original conditioning.¹³⁹

This description seeks to capture both the highly structured quality of gender performances and the space left for innovation. In doing so, it avoids the problems presented by the rigid Invasion-of-the-Body-Snatchers determinism of both dominance feminism and socialization theory. “The *habitus* is a spontaneity without consciousness or will.”¹⁴⁰ This description also helps explain “choice” in a way that breaks out of the traditional debate over whether women’s work/family choices roles reflect choice or coercion; it builds on the attempt to invent a new analytic to describe women’s agency.¹⁴¹

In sum, Bourdieu’s analysis of the logic of practice provides a model to explain how gender functions not merely as dominance, but as a system of meaning that structures institutional arrangements, perceptions, identities, academic debates, and solutions. I have already discussed how the *habitus* defined by domesticity structures academic debates and proposed feminist solutions. I will here say a few more words about how domesticity structures institutional arrangements, perceptions, and identities.

1. Institutional Arrangements

The institutional arrangements people face in their work and family lives include, first, workplaces structured around an ideal worker who is not a primary caregiver. This means that primary caregivers often feel inadequate, as in the law firm where the part-time women lawyers gave each other the “L” (for loser) on their foreheads every time they met one another other in the library.¹⁴² Mothers of all classes often feel inadequate by their failure to perform as ideal workers. Said one working-class woman:

[W]hat happens when your kid gets sick? Or when the baby sitter’s kids get sick? I lost two jobs in a row because my kids kept getting

139. *Id.*

140. *Id.* at 56.

141. See Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives on Self-Direction*, 40 WM. & MARY L. REV. 805 (1999).

142. Joan Williams & Cynthia Thomas Calvert, *Don’t Go! We Can Change* (Feb. 6, 2001), at <http://www.law.com>.

sick and I couldn't go to work. Or else I couldn't take my little one to the baby sitter because her kids were sick. They finally fired me for absenteeism. I really didn't blame them, but it felt terrible anyway. It's such a hassle, I sometimes think I'd be glad just to stay home."¹⁴³

Thus women might well describe her decision to quit as her "choice," when what she really means is that her employer is inflexible and her children's father should help shoulder the responsibility of caring for them.

A second institutional constraint that helps create the headwinds many mothers face is the lack of the kind of high-quality subsidized childcare available in many other industrialized countries. In sharp contrast to France, where parents fight to get their children into high-quality neighborhood childcare centers that are considered vital for children's social development,¹⁴⁴ in the United States working (and even middle class) people often cannot find good quality childcare. Said one mother:

It's the best we can afford, but it's not great because she keeps too many kids, and I know they don't get enough attention. Especially the little one. . . . She's so clingy when I bring her home; she can't let go of me, like nobody's paid her any mind all day.¹⁴⁵

This mother might well say she wishes she could quit—when what she really means is that she wishes she had high-quality childcare.

Another institutional constraint is our system of delivering child services through moms in cars. In sharp contrast to France, where inoculations and other medical services are delivered through childcare centers, in the United States most doctor visits require a parent to take time off work.¹⁴⁶ In addition, lessons are a major factor in the lives of many children,¹⁴⁷ and although some lessons occur in after-school programs, many do not. This means that families where both parents work full-time often face sharp trade-offs. Said one secretary, "If you can afford the cut in pay for the hours, the ideal situation would be to get home when they get home from school, 3 P.M., so you can take them to ballet and Boy Scouts."¹⁴⁸ Another

143. LILLIAN B. RUBIN, *FAMILIES ON THE FAULT LINE* 94 (1994).

144. BARBARA R. BERGMANN, *SAVING OUR CHILDREN FROM POVERTY: WHAT THE UNITED STATES CAN LEARN FROM FRANCE* 30 (1996).

145. RUBIN, *supra* note 143, at 93.

146. See BERGMANN, *supra* note 144, at 70.

147. See Williams, *supra* note 94.

148. ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* 135 (1997).

element of the “headwinds”¹⁴⁹ pulling women into marginalized employment is families’ desire to avoid having their children disadvantaged by their lack of a mom in a car.

A final institutional arrangement that causes some mothers to quit is the way domesticity is enshrined into geography. Again this “objective” social condition may well feed the family’s “choices” by creating situations where “the only logical thing” is for the father to concentrate on market work, while the mother takes a job close to home (or in it) in order to avoid long commutes and to be ready and available to drive kids here and there.

This is the logic of practice. The “coincidence of the objective structures and the internalized structures which provides the illusion of immediate understanding, characteristic of practical experience of the familiar universe, and which at the same time excludes from that experience any inquiry as to its own conditions of possibility.”¹⁵⁰ To put this less technically, few folks will ask for lamb when only beef and chicken are on the menu. Most “well-adjusted” people will choose between the beef and the chicken and describe the result as their choice.

2. Perceptions

As Bourdieu points out, perceptions reflect “all the choices of those who have chosen for him, in his place, pre-judging his judgements and so shaping his judgement.”¹⁵¹ Thus, in a workplace that links the ideal worker with forty years of uninterrupted seniority and face time, women returning from maternity leave may well feel the need to protest (as did one lawyer) “I had a baby, not a lobotomy”; suddenly she was viewed as “not a keeper,” as less committed and less competent.¹⁵²

Similarly, in a society where men are judged by the gold standard of a male breadwinner with a wife at home, a man who takes time off after the birth of a child may seem somehow vaguely “flaky” or “not serious” or “ineffectual.”¹⁵³ To put the matter more technically, one of the subtle discriminatory effects of gendered norms is to make countergender behavior translate into a failure to live up to

149. *Griggs v. Duke Power Co.*, 401 U.S. 424, 432 (1971).

150. BOURDIEU, *supra* note 125, at 26.

151. *Id.* at 49-50.

152. Williams, *supra* note 68, at 69 (quoting Deborah L. Rhode, *Myths of Meritocracy*, 65 *FORDHAM L. REV.* 585, 588 (1996)).

153. Martin H. Malin, *Fathers and Parental Leave*, 72 *TEX. L. REV.* 1047 (1994).

“objective” standards of excellence.

Perceptions contribute to the headwinds policing men into breadwinner roles and women out of them in other ways as well, stemming from the unspoken and typically unconscious sense of who is entitled to what. Thus, nonelite women may well defer to “their” men in an attempt to preserve their dignity in the face of hidden injuries of class.¹⁵⁴ Elite women may show equal solicitude: a woman professor at an elite school bargains hard to get her husband a job there, moved by the unspoken sense that his dignity is at stake; a highly qualified executive informs the company recruiting her that “if my husband doesn’t want to move, we don’t move,” so they wine him and dine him and locate a suitable job for him. So even a scramble for qualified women at the top ends up rebounding to the benefit of men; again, the engine is a sense of what is due to men to preserve their “dignity” in contexts where it would rarely occur to the husband, the wife, or the employer that the wife’s dignity required her to have a job at least equal in status to that of her husband. This is the “intentionless invention of regulated improvisation”¹⁵⁵ that may land men married to talented women in better jobs than they otherwise might have attained, while women married to talented men typically experience no such lift to their prospects. A model of gender as dominance fails to capture the subtlety and reflexive nature of this dynamic.

Bourdieu’s focus on reflexivity reminds us that perceptions often translate into differences in “objective” treatment. Take the news producer who noted that when a man protested that he could not attend an 8 A.M. meeting because he needed to take his kids to school, everyone thought he was a great guy and the meeting always seemed to be rescheduled without controversy; whereas when a woman could not make a meeting for the same reason, the meeting was not rescheduled and the incident tended to confirm people’s sense that she was not a real “player.”

These are the actions that are “‘regulated’ and ‘regular’ without being in any way the product of obedience to rules . . . collectively orchestrated without being the product of the organizing action of a conductor.”¹⁵⁶

154. WILLIAMS, *supra* note 5, at 150-72 (quoting RICHARD SENNETT & JONATHAN COBB, *THE HIDDEN INJURIES OF CLASS* (1972)).

155. BOURDIEU, *supra* note 125, at 57.

156. *Id.* at 53.

Another example: take the supervisor who, when asked about work/family issues, pointed out three employees to a researcher: a male baker who had twins, a single mother, and another mother who had recently given birth.¹⁵⁷ The supervisor was aware that all had work/family conflicts, but when asked whom he would promote, he said that he would promote the baker and that the work/family issues of the women meant they were not sufficiently committed to their jobs.¹⁵⁸

Or take the example of the academic who left her law firm because a partner constantly made suggestive remarks and suggested that they go away together on assignments where only one lawyer was needed. She left and became a law professor. But because she “could not” move due to her husband’s job, she took an appointment at a law school with a history of problems with women. Things went fine until she had a baby. Her commitment to the school was questioned; ultimately, she was denied tenure.

This (composite) story shows that the interaction between perceptions and institutional arrangements creates “built in headwinds”¹⁵⁹ so strong it creates a force field, translated into triple disadvantage and ultimate marginalization, as she took up an adjunct job with no career track or economic security. Had she divorced, she would have found herself awarded no alimony (because she was a lawyer and could support herself), despite the fact that she had not been in practice for over a decade. Even with child support, this a grim picture.¹⁶⁰

3. Identities

Domesticity links identities with standard gender performances, so that many women measure their own worth by whether or not they are mothers, and many mothers measure their worth by whether or not they “have all the time in the world to give”;¹⁶¹ in other words, by how well they enact the selfless mother role. Domesticity also links masculine identity to work success, making men feel unable to accept the marginalization currently required of committed caregivers. Identities are built around social norms, so that the “logic . . . of a

157. See Interview with Jody J. Heymann, Director of Policy for the Harvard University Center for Society and Health, in Boston, Mass. (Dec. 17, 2000).

158. See *id.*

159. *Griggs*, 401 U.S. at 432.

160. FOOTE ET AL., CASES AND MATERIALS ON FAMILY LAW 671-84 (3d ed. 1985).

161. DEBORAH FALLOWS, A MOTHER’S WORK 22 (1985).

particular field” is built not only into institutions “but also in bodies, in durable dispositions to recognize and comply with the demands immanent in the field.”¹⁶² The most dramatic instance of the demands imminent in a field being built into literal bodies is the fact that unemployed men experience higher rates of impotence: men’s bodies literally cease to function sexually in the socially mandated manner if they transgress the breadwinner norm.¹⁶³

The logic of practice also helps account for the many stories students tell me of men who have promised to take time off upon the birth of children, only to back off when they sense that the response at work will be negative. Men may be committed to gender equality while at the same time they feel it is too much to ask them to sacrifice their own personal dignity and their dreams—despite the fact that those dreams reflect an unrecognized sense of entitlement to a flow of family work from a wife, girlfriend, or ex-wife. Once again, Bourdieu’s insight into the overdetermined quality of conformity to a *habitus* where institutional arrangements, perceptions, and identities align proves much more helpful than a model of gender as men’s feet on our necks.

In summary, Bourdieu helps us move far beyond the “choice versus constraint” formulations embraced by myself and others. He offers an important model for understanding how objective and subjective structures align to create “durable dispositions,” while providing a response to arguments that assume that “choice” guarantees authenticity and immunizes inquiry into the social conditions that define the arena of choice. Ultimately, however, Bourdieu does better at explaining structure than explaining innovation.

Taste is *amor fati*, the choice of destiny, but a forced choice, produced by conditions of existence which rule out all alternatives as mere daydreams and leave no choice but the taste for the necessary.¹⁶⁴

If Bourdieu’s strength is in theorizing the “taste for the necessary,” Judith Butler’s is in theorizing gender innovation. In her analysis of drag, she provides important insights that can help us avoid recycling destructive sameness/difference debates.

162. BOURDIEU, *supra* note 125, at 58.

163. RUBIN, *supra* note 143, at 119.

164. PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGMENT OF TASTE* 178 (Richard Nice trans., Harvard Univ. Press 1984) (8th prt. 1996).

C. *Drag As a Model for Gender Innovation*

You know what I think? I think that we're all in our private traps. Clamped in them, and none of us can ever get out. We scratch and claw, but only at the air. Only at each other. And for all of it, we never budge an inch.

—John Epperson¹⁶⁵

That this reiteration is necessary is a sign that materialization is never quite complete, that bodies never quite comply with the norms by which their materialization is impelled. Indeed, it is the instabilities, the possibilities for rematerialization, opened up by this process that mark one domain in which the force of the regulatory law can be turned against itself to spawn rearticulations that call into question the hegemonic force of that very regulatory law.

—Judith Butler¹⁶⁶

Judith Butler gets a bad rap. Her analysis of gender as constitutive of identity provides an important complement to the work of Bourdieu, and her analysis of “drag”—far from being politically quiescent—provides important insights into the process of gender change. Butler’s analysis of drag holds important messages about how to avoid recycling the destructive sameness/difference debates that predominated when feminists last focused sustained attention on work/family issues.

If Bourdieu has an instinctive respect for the power of conventionality and moves towards an appreciation of innovation, Butler takes the opposite path. She has an instinctive appreciation for innovation and has moved towards an appreciation of structure.

In *Gender Trouble*, Butler entered a discourse in which drag was theorized as “either degrading to women” or “an uncritical appropriation of sex-role stereotyping from within the practice of heterosexuality, especially in the case of butch/femme lesbian identities.”¹⁶⁷ Butler defended drag. “The performance of drag plays upon the distinction between the anatomy of the performer and the gender that is being performed.”¹⁶⁸ By revealing gender as a performance, drag highlights the “radical contingency in the relation

165. John Epperson, *We're All Trapped, But Let's Laugh*, N.Y. TIMES, Dec. 3, 2000, § 2, at 5. The author, also known as “Lipsinka,” discusses his life as a transvestite in this article.

166. BUTLER, *supra* note 55, at 2.

167. JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* 137 (1990).

168. *Id.*

between sex and gender in the face of cultural configurations of causal unities that are regularly assumed to be natural and necessary.”¹⁶⁹ Butler viewed drag as a “gender parody” that brought into focus the “fluidity of identities that suggests an openness to resignification and recontextualization; parodic proliferation deprives hegemonic culture and its critics of the claim to naturalized or essentialist gender identities.”¹⁷⁰ She acknowledges that not all drag is counterhegemonic. Some “parodic repetitions” are “effectively disruptive, truly troubling” while others are merely “domesticated and recirculated as instruments of cultural hegemony.”¹⁷¹ Viewing gender not as a stable identity but as a “stylized repetition of acts”¹⁷² opens up “possibilities of gender transformation.”¹⁷³ Gender is the “repeated stylization of the body, a set of repeated acts within a highly rigid regulatory frame that congeal over time to produce the appearance of substance, of a natural sort of being.”¹⁷⁴ Drag “productions swerve from their original purposes and inadvertently mobilize possibilities of ‘subjects’ that do not merely exceed the bounds of cultural intelligibility, but effectively expand the boundaries of what is, in fact, culturally intelligible.”¹⁷⁵ Drag, at best, is a site of “cultural configurations of gender confusion” that “operate[s] as sites for intervention, exposure, and displacement of these reifications.”¹⁷⁶ “*In imitating gender, drag implicitly reveals the imitative structure of gender itself—as well as its contingency.*”¹⁷⁷ At best, drag is “part of the strategy that conceals gender’s performative character and the performative possibilities for proliferating gender configurations outside the restricting frames of masculinist domination and compulsory heterosexuality.”¹⁷⁸ Butler links her analysis of drag with a political strategy, namely to “make gender trouble, not through strategies that figure a utopian beyond, but through the mobilization, subversive confusion, and proliferation of

169. *Id.* at 138.

170. *Id.*

171. *Id.* at 139.

172. *Id.* at 140.

173. *Id.* at 141.

174. *Id.* at 33.

175. *Id.* at 29.

176. *Id.* at 31.

177. *Id.* at 137.

178. *Id.* at 141.

precisely those constitutive categories that seek to keep gender in its place by posturing as the foundational illusions of identity.”¹⁷⁹

Gender Trouble was both enormously influential and enormously controversial. In particular, Butler was criticized on the grounds that she made it sound as if one went to the closet every day and chose what gender to be today.¹⁸⁰ This criticism overlooks an important point: one performs pursuant to a script. Indeed, perhaps the best metaphor is not a Shakespeare play but a jazz quartet, where significant spontaneity is contained within rigorously defined conventions that serve to structure, coordinate, and constrain what appears on the surface to be the free flow of authentic expression. Yet the metaphor of a performance remains important on the work/family axis, because it urges mothers to see their gendered behavior as something other than unfettered authenticity, something they do to create meaning in their lives but which is the product of conscious effort, conscientiously sustained. The performance metaphor is distinct from insight that gender persists only through iteration, a reading of Butler that exaggerates the extent to which free play is possible.

In *Bodies That Matter*, Butler struggles hard with the same issue that fascinates Bourdieu: how to invent a language that plots a third alternative between the unfettered authenticity of “choice” and the rigid determinism of structuralism. Sometimes she comes close to describing her project in terminology reminiscent of the logic of practice: “In the first instance, performativity must be understood not as a singular or deliberate ‘act,’ but, rather, as the reiterative and citational *practice* by which discourse produces the effects that it names.”¹⁸¹ Butler is at her strongest when she abandons the literary metaphor of citationality, and struggles towards a language of social structure.

Hence, the reading of “performativity” as willful and arbitrary choice misses the point that the historicity of discourse and, in particular, the historicity of norms (the “chains” of iteration invoked and dissimulated in the imperative utterance) constitute the power of discourse to enact what it names.¹⁸²

What Butler adds to Bourdieu is the Foucaultian sense of compulsion in the reproduction of social norms. She also adds an instinctive

179. *Id.* at 34.

180. *See* BUTLER, *supra* note 55, at 231.

181. *Id.* at 2 (emphasis added).

182. *Id.* at 187.

(rather than merely intellectual) appreciation of the room left over for nonstandard gender performances. "The practice by which gendering occurs, the embodying of norms, is a compulsory practice, a forcible production, but not for that reason fully determining."¹⁸³ Or again: "*This is citation, not as enslavement or simple reiteration of the original, but as an insubordination that appears to take place within the very terms of the original.*"¹⁸⁴ At times, however, Butler seems too sanguine about the destabilizing potential of drag, particularly where she is talking about drag in the abstract.

Most useful are the passages when she does not romanticize the deconstructive potential of drag, but rather acknowledges its ultimate ambiguity. In some passages of *Bodies That Matter*, Butler reiterates the simple "some drag is deconstructive, some drag is heteronormative" formulation in *Gender Trouble*. In other passages, she makes a subtler and more interesting point:

This is a "girl," however, who is compelled to "cite" the norm in order to qualify and remain a viable subject. . . . [T]here is no "one" who takes on a gender norm. On the contrary, this citation of the gender norm is necessary in order to qualify as a "one," to become viable as a "one," where subject-formation is dependent on the prior operation of legitimating gender norms.¹⁸⁵

The insight that gender is constitutive, that "[i]t is in terms of a norm that compels a certain 'citation' in order for a viable subject to be produced,"¹⁸⁶ leads Butler beyond a simple either/or of good drag and bad drag, to an acknowledgment of the ambiguity inherent in all drag.

At best, it seems, drag is a site of a certain ambivalence, one which reflects the more general situation of being implicated in the regimes of power by which one is constituted and, hence, of being implicated in the very regimes of power that one opposes.¹⁸⁷

Butler best captures this "ambivalence" in her analysis of the film *Paris Is Burning*. There, faced with a documentary about drag as actually practiced rather than a romanticized notion of drag's deconstructive potential, she concludes that drag entails "both a sense of defeat and a sense of insurrection";¹⁸⁸ it "both appropriates and subverts racist, misogynist, and homophobic norms of oppression";¹⁸⁹

183. *Id.* at 231.

184. *Id.* at 45 (emphasis omitted).

185. *Id.* at 232.

186. *Id.*

187. *Id.* at 125.

188. *Id.* at 128.

189. *Id.*

“[drag is] neither an efficacious insurrection nor a painful resubordination, but an unstable coexistence of both.”¹⁹⁰ Thus Venus Xtravaganza yearns “to become a whole woman, to find a man and have a house in the suburbs with a washing machine”¹⁹¹—she has what I have called “the white picket fence in [her head]”¹⁹²—in other words, she dreams of playing a conventional gender role as an expression of upwardly mobile class aspirations. In this context, Butler concludes that “the accumulated force of a historically entrenched and entrenching rearticulation overwhelms the more fragile effort to build an alternative cultural configuration”¹⁹³; indeed, “it becomes the means by which that dominant norm is most painfully reiterated as the very desire and the performance of those it subjects.”¹⁹⁴

This is Butler’s most original contribution to our thinking about gender as tradition. The message is this: precisely because gender is constitutive of identity, we all are fated to reproduce significant elements of hegemonic genderings even if we are committed to undermining others. This is as true of gender reformers as it is of drag queens. Some commentators have acted as if “domesticity in drag” is a strategy I have embraced by choice. It is not. It is meant to describe the process of gender innovation. Gender flux is particularly tricky for two reasons. First, as Butler shows so well, gender is constitutive of identity. Then again, so are race and racism. But gender is different from racism in that it marries oppressive social patterns with elements of what we like about ourselves and want to keep, such as the structure of the erotic or our dreams for our children. This is what makes the process of gender change more like rebuilding a boat in the high seas than like starting new construction from the ground up. The risk, if we tear down too much of the existing structure, is that we will sink like a stone.

Few people are willing to risk abandoning our traditions of feminine gender display, because they are so tied up with the social construction of erotic arousal. Thus the resurgence of high, tottery heels, which feminists of the 1970s thought were gone forever.¹⁹⁵ Thus, too, the difficulty of deconstructing domesticity: it links

190. *Id.* at 137.

191. *Id.* at 133.

192. WILLIAMS, *supra* note 5, at 8.

193. BUTLER, *supra* note 55, at 132.

194. *Id.* at 133.

195. See Deborah L. Rhode, *Step, Wince, Step, Wince*, N.Y. TIMES, Oct. 18, 2000, at A31.

oppressive gender performances with our dreams for our children and ourselves.

Domesticity is not dead. Its current hold is both material (ideal-worker workplaces, the “moms in cars” system, men constructed on the old model) and symbolic. What does it mean to be an adult? What does it mean to be a responsible mother? To the extent that some women’s work/family conflict results not from outside material constraints, but from internal constraints that lead to gatekeeping, domesticity reflects not outside forces but internal ones.¹⁹⁶ This is particularly true in a social environment when motherhood has been sacralized (at least by some mothers) to the extent that it “brings us a sense of love we couldn’t get from sex” or anything else.¹⁹⁷

“‘Man’ and ‘woman,’” Butler notes, are “for the most part compulsory performances, ones which none of us choose, but which each of us is forced to negotiate.”¹⁹⁸ We need to apply this insight not only to drag queens of color, but to ourselves. This describes not only the process of gender flux we have experienced in our lifetimes; it also describes our projects as academic feminists. If we reexamine the work of three feminists who have worked on issues related to domesticity, we can see that each proceeds by catachresis¹⁹⁹—the creative misreading of the tradition represented by domesticity that “expands or defiles the very domain of the proper.”²⁰⁰

D. *Caring for Justice: Motherhood As a Colonized Concept*²⁰¹

If caregiving is moral work, there is no reason to restrict its domain to family life.

—Robin West²⁰²

Robin West’s *Caring for Justice* tracks the mandates of domesticity in three important ways. The first is her linkage of mothering and selflessness. Her notion of women as “giving selves” who subordinate their own needs to those of their families tracks domesticity’s conflation of women with mothering, as well as its

196. See Naomi R. Cahn, *Gendered Identities: Women and Household Work*, 44 VILL. L. REV. 525 (1999).

197. HAYS, *supra* note 34, at 109.

198. BUTLER, *supra* note 55, at 237.

199. *Id.* at 214, 218.

200. *Id.* at 218.

201. See McClain, *supra* note 115, at 505.

202. WEST, *supra* note 114, at 34.

celebration of mothers' selflessness as a central "fact" about women. One might well say that the only reason mothers have to be selfless is that they live in a society that provides for children's care by shoving their caregivers to the margins; but West does not. As a first cut, she embraces mothers' selflessness as an "ethic of care" that provides an important template for moral life.

This embrace of the ethic of care as a moral template is the second aspect of West's embrace of domesticity. West follows feminists of the nineteenth century—from the social housekeepers to the club women—who sought to use Moral Motherhood as an alternative to the mainstream celebration of individualism. Instead of having "women's renunciation" balance men's pursuit of self-interest, however, West follows the club women and social housekeepers in seeking to transform domesticity into a political vision capable of serving as an internal critique of liberalism.²⁰³

The third aspect of West's position that she carries over from domesticity is her distaste for the market in general, and the thought of commodifying care work in particular. Commodification anxiety has always served an important role in policing the boundary between home and work.²⁰⁴ West's anxiety stems, in significant part, from the way West conceptualizes care work. The center of her vision is not a daily grind of dirty dishes, carpools, and negotiations with toddlers over socks; instead it is on those we "will move heaven and earth to protect and nurture"²⁰⁵ and on nurture as a spiritual practice. The latter is reinforced by imagery of the Virgin, a very straightforward spiritualization of the mother's role.²⁰⁶ The sacralization of care work is, of course, another characteristic of domesticity; it is an integral part of a vision that leads to anxiety at commodification, which does not arise if one thinks about care work in a more matter-of-fact way.

West is only the most prominent representative of relational feminism: many other feminists also work within the conventions of womanhood set by domesticity.²⁰⁷ Yet, in *Caring for Justice*, West

203. Joan C. Williams, *Domesticity As Dangerous Supplement of Liberalism*, 2 J. WOMEN'S HIST. 69, 79 (1991).

204. Cf. WILLIAMS, *supra* note 5, at 117-18 (discussing the role of commodification anxiety in policing the boundary between home and work).

205. WEST, *supra* note 114, at 87.

206. *See id.* at 31.

207. *See, e.g.*, JOAN C. TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* (1993); Becker, *Patriarchy and Inequality*, *supra* note 67, at 21; Leslie Bender, *Feminist (Re) Torts: Thoughts on the Liability Crisis, Mass Torts, Power, and Responsibilities*, 1990 DUKE L.J. 848.

takes the philosophy of femininity the next step: she seeks to keep in focus not only the positive elements, but also the negative elements of domesticity's imagery of women as selfless mothers.

"Relationships of care, untempered by the demands of justice, resulting in the creation of injured, harmed, exhausted, compromised, and self-loathing 'giving selves,' rather than in genuinely compassionate and giving individuals, are ubiquitous in this society."²⁰⁸ West retells a children's story where the "giving tree" first provides shade for a young boy as he plays; the boy climbs its branches as he grows older; as a young man, he builds a house with it; finally, as an old man, he sits on its stump.²⁰⁹ She points out that the story celebrates a relationship where the boy literally uses up the tree; she decries the lack of reciprocity it celebrates. West protests that the kind of maternal self-sacrifice celebrated in domestic ideology "comes with a high psychic price as well as the self-evidently high economic price";²¹⁰ indeed, she associates it with self-betrayal, with reducing oneself to a deadened stump. West, in her signature melding of relational feminism and dominance, also explores the iron fist behind the velvet glove of domesticity, discussing how women are kept in line both through domestic violence and through fears of the economic and emotional consequences of abandonment by their intimate partners.²¹¹

In the end, West embraces domesticity only to deconstruct it, as she concludes that the traditional model of selfless mothering "is not in the end very caring."²¹² Indeed, it "reflects not a moral sensibility but a battered sense of self."²¹³ This is the strategy of domesticity in drag: she begins with an embrace of domesticity's idealization of privatized caring by marginalized mothers, and seeks to use it to create a broader sense of social responsibility to replace a liberalism that has lost its virtue²¹⁴ and impoverished into selfish individualism.²¹⁵ In West's hands, the supplement of domesticity becomes truly "dangerous."²¹⁶ Like Butler, she begins by embracing a problematic tradition because it is constitutive of her and many other women; she

208. WEST, *supra* note 114, at 81.

209. *See id.*

210. *Id.* at 82.

211. *See id.*

212. *Id.* at 87.

213. *Id.* at 111.

214. *See* JAMES T. KLOPPENBERG, *THE VIRTUES OF LIBERALISM* 21-37 (1998).

215. *See* McClain, *supra* note 115.

216. *See* Williams, *supra* note 203.

seeks to transform it from within, using weapons forged within its frame. West provides our first example of domesticity in drag.

E. *The Neutered Mother in Drag*

Like West, Martha Fineman places motherhood at the center of her analysis of gender. "Motherhood is a totalizing, culturally defined institution that applies across race and class lines."²¹⁷ On the following page, we see an elision between "Woman" and "Mother," a construct that becomes central to her analysis.²¹⁸ She reminds us that, "The very gendered and Mothered lives most women live continue."²¹⁹

Fineman's embrace of motherhood as the central concept for an analysis of gender, and her concept of the "gendered life," track the assumption, drawn from domesticity, that motherhood is the central, defining role for women.²²⁰ She echoes the ideology of intensive mothering, with its focus on the mother/child bond as the key locus of personal identity and social transcendence. Indeed, Fineman pushes the ideology of intensive mothering to its logical conclusion by positing the mother/child bond as the key social bond, more important than the sexual tie between the parents. Fineman, like Butler, embraces a conventional gender performance that is constitutive of women's identities (though Butler focuses on gender display while Fineman focuses on motherhood).

Yet, like Robin West, Fineman does not simply "recirculat[e] . . . instruments of hegemony."²²¹ No one could accuse Fineman of failing to offer a "parodic repetition" that is "effectively disruptive, truly troubling."²²² Fineman embraces domesticity's assignment of caregiving to women, but seeks to empower women in their role as Mothers (note the commanding capital, sending the messages that Mother is not to be Messed with). When I am in Latin America doing gender trainings I often say "I speak with the voice of motherhood": I do so because it is one of the few voices available to Latin American women where they can claim cultural authority and

217. FINEMAN, NEUTERED MOTHER, *supra* note 1, at 51.

218. *See id.* at 52.

219. *Id.* at 89.

220. *Id.* at 12-13.

221. BUTLER, *supra* note 77, at 139.

222. *Id.*

command respect. Fineman uses a similar same strategy, as she forges the voice of motherhood into a commanding one indeed.

Fineman then raises this voice to deconstruct the (hetero)sexual family, and to argue for a sweeping reorganization of intimacy. She seeks state subsidies that will make Mother independent of men; she takes domesticity's model of mother-as-sole-source-supplier to its logical conclusion, and proposes as well to give mothers total authority over children: other adults (including fathers) can have legally protected relationships with children only to the extent Mother allows it.²²³ Her critics have worried at what will happen in Fineman's world if a mother abuses her child—but this is a question that does not arise within the logic of the domestic tradition.²²⁴

Fineman makes brilliant and unruly use of domesticity as a tool for deconstructing the social organization of intimacy as we know it. This is indeed an important topic, and Fineman attacks the problem with style, in another example of domesticity in drag.

F. *A Third Approach to Domesticity in Drag*

My work also embraces elements of domesticity. My choices are different from West's; my first article on gender was a clarion call against relational feminism.²²⁵ They also are different from Fineman's; I am an equal parenting advocate rather than a maternalist. What I tap from domesticity is what I christen "the norm of parental care." Like West and Fineman, I do not merely reproduce domesticity's norm of mothercare; instead I seek to use it as a transformative force, in two distinct ways.

One is as a language of social redistribution. Domesticity originally proposed parental care only for privileged white women: black and working-class families' childcare problems were not seen as needing attention or concern. (Indeed, working-class women were roundly criticized for failing to perform as moral mothers without any attention to the fact that if they stayed home and off the streets, their families might well go hungry.)²²⁶

223. See generally FINEMAN, *ILLUSION OF EQUALITY*, *supra* note 1. Although Fineman does not specifically state this proposition, by default Fineman's world gives all the legal power over the child to the mother.

224. Sanger, *supra* note 17, at 25.

225. Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 807 (1989).

226. See CHRISTINE STANSELL, *CITY OF WOMEN: SEX AND CLASS IN NEW YORK, 1789–1860*, at 209 (1986).

My proposal is to transform this uncertain heritage by “democratizing domesticity.” Thus the first message of the “norm of parental care” is that all parents, not just affluent ones, should be entitled to workplaces structured in ways that allow them to meet the legitimate needs of children and elders. I have argued that domesticity may have some potential to function as a redistributive language, in a society that lacks a viable language of class. Though few Americans have strong sense of entitlement as *workers*, many do have a sense of entitlement as *parents*. The proposal is to use the “norm of parental care” to insist that employers respect the legitimate claims of family as a brake on the Great American Speed Up in the country with overtime hours higher than Japan’s.²²⁷

My rechristening of domesticity’s norm of mothercare also plays a central role in translating what most people see today as a personal problem into a social problem. The problem, I argue, is not one of striking an individualistic “balance”; the problem is that the way we define the ideal worker does not fit with our sense that children need and deserve time with their parents, and that it is unethical to leave one’s mother to die alone.

CONCLUSION: GENDER BENDING ON THE WORK/FAMILY AXIS

Feminists use domesticity both because it is constitutive of who we are (“this citation of the gender norm is necessary in order to qualify as a ‘one,’ to become viable as a ‘one’”²²⁸) and for professional reasons, to accomplish our job as social persuaders. We need to have our proposals sound resonant and reasonable, and each of us needs to find a voice of authority that is convincing and not merely “shrill.” For these reasons, domesticity exerts that strong, if subtle, pull. In order to be persuasive rather than “out to lunch,” we need to use domesticity because its patterning lends resonance, familiarity, and authority to our proposals. Feminist theory itself needs to be viewed as one kind of gender performance, one which reflects the more general situation of “being implicated in the regimes of power by which one is constituted and, hence, of being implicated in the very regimes of power that one opposes.”²²⁹ Feminists on the work/family axis inevitably will use domesticity even as we seek to destabilize it and transform it into something fundamentally new.

227. CRITTENDEN, *supra* note 9.

228. BUTLER, *supra* note 55, at 232.

229. *Id.* at 125.

This analysis offers important insight into the sameness/difference debates that plagued feminism the last time feminists focused on the work/family axis in the 1970s and 1980s. In that context, feminists repulsed by the ideology of domesticity fought with feminists who identified with it (the “different voice” debate). And feminists who proposed to leave in place domesticity’s primary-caregiver role (maternalists) fought with those whose highest goal was to replace that role with a new vision of equal parenting (the “special treatment” debate). A high priority is to avoid these destructive debates this time around, unless we want once again to focus more energy on fighting each other than on changing the world. We need a new feminist ethics, informed by a recognition of how convenient it is for nonfeminists to be able to hire and promote only feminists whose work attacks other feminists.

None of us wants this. And we can avoid it. But to do so we need to avoid the tempting “argument culture” that beckons us to attack other feminists on the grounds that they reinscribe domesticity while we destabilize it.²³⁰ We all reinscribe domesticity. We do so both because domesticity is constitutive of who we are, and because it is an indispensable weapon for making feminist proposals sound resonant and persuasive even when they push the envelope. Our proposals will be “neither an efficacious insurrection nor a painful resubordination, but an unstable coexistence of both.”²³¹ We all are trying to avoid the most likely result, where the “accumulated force of a historically entrenched and entrenching rearticulation overwhelms the more fragile effort to build an alternative cultural configuration.”²³²

We also need to respect the fact that each theorist on the work/family axis has lived a life shaped by domesticity in a certain way. Some have lived up to workplace ideals, but have had a disabled child who needed expensive, long-term care; like Eva Kittay, they will see the key as changing America’s allergy to social provisioning.²³³ Others will have been engaged in long battles to lure partners into equal parenting, with the sense that if only we could reach equality within the household, mothers would be better off. Still others might feel that an important part of the problem lies in women’s

230. See DEBORAH TANNEN, *THE ARGUMENT CULTURE* (1998).

231. BUTLER, *supra* note 55, at 137.

232. *Id.* at 132.

233. See KITTAY, *supra* note 65.

unwillingness to let go of the sole-source-supplier role, and that an end to gatekeeping is a key step towards ending the marginalization of mothers.²³⁴ Others might identify for political reasons with marginalized mothers made vulnerable by divorce, and seek to remedy that part of mothers' economic marginalization.²³⁵

We need all these voices, and more. Trying to march everyone into support for one proposed solution will not work, not just because each person's work testifies to her own personal experience of gender, but also because we are in a brainstorming stage in a fundamentally inhospitable political environment. We need diverse voices trying out diverse ideas. There is plenty of room for maternalist solutions to coexist with equal parenting solutions, for relational feminism to coexist with the viewpoint of us Jakes.

There is also the issue of compulsory motherhood. Should every adult be responsible for contributing to the caretaking required to raise the next generation and care for the elderly? Some think so, but I do not. When I see a woman who has successfully managed to construct a full adult life without children, I see an important contribution: she is helping invent a new imaginary for all women. It is to childfree women, and to poor women, that we can look as cultural entrepreneurs in the social construction of intimacy. Isn't it crazy, with all the people in the world, to put all our eggs into the one basket of a family consisting of four people? How can we create new social forms, new forms of association and solidarity, that fulfill people's needs for intimacy in new ways? This is a different agenda from my own, but a vitally important one.

Childrearing is such taxing work, particularly in a society that privatizes the costs of childrearing onto individual mothers, that I feel strongly that no one it does not appeal to should have to do it. There is a separate question of whether everyone should contribute financially. I believe they should. We already share the costs associated with old age to a significant extent. We should do the same with childrearing: after all, who will pay the social security of the childfree? Whose children will be their doctors when they are old?

My respect for the childfree and for those who do not live the household life, and for family-identified women alienated from job

234. See Cahn, *supra* note 196, at 525.

235. See, e.g., Ertman, *supra* note 78; Martha M. Ertman, *Marriage As a Trade: Debunking the Private-Private Distinction* (unpublished manuscript, on file with author).

roles, stem from a truth I take from pragmatism: that incommensurable truths result from incommensurable lives. All truths bring some things into focus while blurring others. Pragmatism, as I see it, is committed to a nonfoundationalism that applies not only to others' truths but to our own. Not only are other people's truths partial, situated, and contingent. Mine are too.

Once we take this perspective, we will recognize immediately that, because women are sharply split between those who frame their identity primarily in terms of family and those who frame their identity primarily in terms of paid work, our solutions need either to bridge that divide—or write off half the population of women. Bridging that divide seems the better option, both for ethical reasons—it seems more respectful of the constraints and difficulties faced by each group of women in a society where all the available choices are flawed—and because it is political suicide to write off a huge group of women when the goal is to build an effective coalition for social change.

Zero-sum moments will come around, when feminists of different stripes apply for the same job or the same grant. But not often. So the question is whether we treat the zero-sum moments as the norm that shapes our every combative interaction, or as the aberration—the bridge we will cross only on the rare occasions when we come to it. For me, this choice is an easy one.

