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“A Masculinist Vision of Useful Labor”*

Popular Ideologies About Women and Work in the United States, 1820 to 1939

BY PATRICIA COOPER**

INTRODUCTION

In 1978, I was teaching at night at Bolling Air Force Base outside Washington, D.C., and writing my doctoral dissertation during the day. One evening, our readings had focused on early industrialization and I lectured about the young farm women who came to work for a year or two in the Lowell, Massachusetts, textile mills in the 1820s and 1830s. When I had wrapped up my overview, one of my students, an African-American woman who worked as a nurse for the Air Force, raised her hand and made no effort to hide her irritation: If women were the first factory workers in the United States and among the country's first industrial workers, why was the subject of women working still such a big deal? Why was it still a question whether a woman would work or not, and why weren't women as natural a part of every workplace as men were?

At the time she raised her questions, few historians had addressed the history of women's work. In the last two decades, however, scholars have not only investigated working class women's history and the history of women's work generally, but they have also explored how popular beliefs about gender, ethnic, and racial differences have shaped those histories. This Article, honoring the winning of women's right to vote in the United States (although it is always sobering to note how many women, especially women of color, were denied this right until the 1960s and

* LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890-1935*, at 193 (1994).

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beyond), draws on this rich scholarship to examine elements of the public discourse about women's relationship to work since the nineteenth century that have defined women and work as incompatible on the one hand, and yet on the other, have required particular groups of potentially "lazy" women to work.

Many women in the 1990s enjoy expanded job choices and opportunities and many women's daily experiences on the job contrast sharply with those of most women back in 1920. That year, women constituted about one fifth of the labor force.¹ In 1992, women were almost half of the nation's workers, and three quarters of all U.S. women between ages thirty-five and forty-four worked for pay.² But overall, much has not changed. Women are still regarded by many as "outsiders — as visitors to a male labor force."³ Thousands of women still work in low-paid jobs with no hope of advancement. Men's work and women's work are still highly segregated — fewer than ten percent of Americans share the same job, employer, and location with someone of the other sex.⁴ The United States Census in 1990 listed 503 occupations; one-third of all working women were concentrated in just ten of them, including clerical jobs, retail sales, food preparation, school teaching, and nursing.⁵ Despite everything that has happened since World War II, women still are concentrated in the very same occupations that topped the list back in 1940!⁶

Within the occupational hierarchy, women of color are more concentrated in blue-collar and service occupations such as cleaning, cooking, and sewing than white women.⁷ Pay is still differentiated by gender and race, and as almost any working woman will testify, differential treatment on the job is currently thriving in a chilly political climate. Many more women than men continue to regard work and family life as a difficult combination (what comes to mind when we say working fathers as opposed to working mothers?). Public policy does little to

¹ BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, HISTORICAL STATISTICS OF THE UNITED STATES: COLONIAL TIMES TO 1970, at 132 (1975).

² BARBARA F. RESKIN & IRENE PDAVIC, WOMEN AND MEN AT WORK 24, 25 (1994).

³ Alice Kessler-Harris, *Working Women: Myths and Realities*, N.Y. TIMES, Aug. 18, 1982, at A21 [hereinafter Kessler-Harris, *Working Women*].

⁴ RESKIN & PDAVIC, *supra* note 2, at 31.

⁵ *Id.* at 52-53.

⁶ *Id.* at 54.

⁷ *Id.* at 25, 31, 32, 53, 55-57; NANCY WOLOCH, WOMEN AND THE AMERICAN EXPERIENCE 587 (2d ed. 1994).

address women's needs as workers and more often than not, it is based on stereotypes about women generally and about racial and ethnic groups particularly.⁸

Alice Kessler-Harris, perhaps the leading scholar and theorist regarding the history of women's work in the United States, has noted that a man's wage still contains images of strength, security, and respect, while a woman's wage suggests dependency and inadequacy and "is frequently a term of opprobrium."⁹ It is not because wages are purely market driven that no one of color and no woman earns a "man's" wage. Rather, wages are constituted in part through gendered and racialized meanings. Operating inside the wage, Kessler-Harris persuasively argues, are strong beliefs that make male workers the norm, express the low value placed on women's work, define women's activities as marginal to economic life, and prescribe proper duties for women and honorable labor for men.¹⁰

Work itself is a kind of social construction: our definitions of what activities qualify as work and our assumptions about the status of particular jobs all arose in specific historic contexts. Once in place these meanings are hard to identify, much less dislodge; they feel absolutely natural. Contemporary problems and issues bear the imprint of these racialized and gendered meanings, which have long histories and continue to perpetuate and sustain power relationships that deny justice and equality (albeit in varying degrees) to women of all colors and most men of color.

Public debate currently rages on the question of welfare "reform." Scholarship on the development of the United States welfare state in the past five years has boldly and convincingly illustrated how welfare policies contain now-hidden beliefs about how people in different groups ought to live. Yet, this literature has often overlooked the relationship between welfare policy and popular ideas about work.¹¹ The welfare

⁸ ALICE KESSLER-HARRIS, *A WOMAN'S WAGE: HISTORICAL MEANINGS AND SOCIAL CONSEQUENCES* 6-15 (1991) [hereinafter KESSLER-HARRIS, *A WOMAN'S WAGE*].

⁹ KESSLER-HARRIS, *A WOMAN'S WAGE*, *supra* note 8, at 3.

¹⁰ *Id.* at 2-3, 18-22.

¹¹ EILEEN BORIS, *HOME TO WORK: MOTHERHOOD AND THE POLITICS OF INDUSTRIAL HOMEWORK IN THE UNITED STATES* 6-7 (1994) [hereinafter BORIS, *HOME TO WORK*]; LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE, 1890-1935*, at 6-7, 39-40, 99 (1994) [hereinafter GORDON, *PITIED BUT NOT ENTITLED*]; Kathryn K. Sklar, *The Historical Foundations of Women's Power in the Creation of the American*

discussion and the ominous caricatures of women and mothers that are contained within it are intimately connected to ideas about work, ideas that have powerful racial/gender dimensions. In one way of thinking, we could refer to the welfare discussion as one of women and not work. The images of the lazy welfare mother or the chiseling welfare queen (recall Clarence Thomas's reference to his own sister this way),¹² and the large place they occupy in the current debate can provide us with some clues about the relationships among women, race, class, and work.

These vivid images pass for thoughtful analysis, but actually subvert it. Recognizing them as cultural symbols provokes several questions. Just what is it that constitutes work? How have racial/class constructions affected ideas about women's work? What representations of women have historically been available in our culture to be readily invoked as true? How have these images and beliefs affected women's possibilities and shaped popular attitudes about working and nonworking women? How have these images become inscribed in policies and legislation affecting different groups of men and women?

Research to answer these questions is now underway, but the fundamental conclusion is already clear. In the history of labor in the United States, Alice Kessler-Harris has written: "The sex [and race] of a worker remained safely more important than what that worker did."¹³ Gendered

Welfare State, 1830-1930, in *MOTHERS OF A NEW WORLD: MATERNALIST POLITICS AND THE ORIGINS OF WELFARE STATES* 43, 45 (Seth Koven & Sonya Michel eds., 1993) [hereinafter *MOTHERS OF A NEW WORLD*]. See also Evelyn B. Higginbotham, *African-American Women's History and the Metalanguage of Race*, 17 *SIGNS* 251, 254, 258 (1992).

¹² See Nell I. Painter, *Hill, Thomas, and the Use of Racial Stereotype*, in *RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY* 200, 201-03 (Toni Morrison ed., 1992).

¹³ *KESSLER-HARRIS, A WOMAN'S WAGE*, *supra* note 8, at 32. My research on labor in Philadelphia underscores this point. Even when employers were required by municipal and state law in the 1940s and 1950s to stop denying jobs to or discriminating against African-American workers, they experienced tremendous difficulty in breaking the association between particular ethnic or racial groups and specific jobs that had become, for them, natural. Black women were not waitresses in restaurants and black men were not bank tellers (and few people of any color at the time could visualize black women as bank tellers). Employers continued to protest that Blacks could not do the jobs or that customers would flee if African-Americans were hired. It took nearly five years of intense effort to get downtown department stores to hire black women as sales clerks instead of as "stock girls" or janitors. I detail this in an essay in progress

and racialized beliefs about work have affected the very notion of what work is; informed discussions and meanings of dependency; propelled the passage of protective labor legislation for women; and shaped legislation on mother's pensions (today's version is AFDC, or "welfare"), labor standards, and social security. Popular and official thinking about women's work has rarely been focused on women as wage-earners and their well-being. Rather, it has emphasized women's proper roles and behavior. For white women born in the United States, these roles were intimately linked to their identities as mothers and the notion that women's citizenship should naturally be different from men's. For different groups of women of color, many immigrant women, and poor women of all colors, work for pay has been seen as more acceptable. Indeed, many of the latter have been expected to work, although only in certain jobs — occupational segregation by sex, race, and ethnicity has been one of the defining features of the history of work in the United States. Regardless of the jobs they have held or their marital status, they have repeatedly been marked as inadequate, flawed mothers — a designation that resurfaces frequently and has taken on new power in recent years. Labor market analyses tell us little about the history of women and work. To use Gwendolyn Mink's expression, women [and people of color] have had an "ascribed relationship[] to the workforce."¹⁴

The material and ideological apparatus that perpetuates these assigned meanings to women and people of color and their experiences of work is still powerful enough to affect the lives of all women in the United States just about every day. If we understand something about how ideas about women and work have been formulated and reproduced, we have at the very least forged some additional tools for dismantling "the master's house."¹⁵

To that end, this Article addresses two public discourses relating to gender (I believe gender in the United States is always racialized in some way) and work. The first appeared in northern states in the decades before the Civil War, when "real" work came to be understood as gender

entitled, Patricia Cooper, *Fair Employment in Philadelphia: Conflicts Over Race, Gender and Jobs, 1946-1954*.

¹⁴ GWENDOLYN MINK, *THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE, 1917-1942*, at 137 (1995).

¹⁵ Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in *FEMINIST FRONTIERS III*, at 10, 10-11 (Laurel Richardson & Verta Taylor eds., 1993).

and race specific — something white men did.¹⁶ The work of others was not really work or it was degraded work and these “others” were suspect and dependent. The second was most clearly articulated during the first half of the twentieth century when concern about women’s potential roles as mothers came to dominate policymaking related to women and work.¹⁷

That is not to say that these discourses described reality. What women actually did and thought is often quite different from these popular images or it may extend far beyond them. Nor were these the only ideas that the culture was producing regarding women and work: there have been divergent discourses, ideological contradictions, and shifting contexts that affect their authority and cohesion. In addition, there have always been people throughout the past two centuries who have resisted the logic of these discourses and have established very different formulations. At times their voices play significant roles in shaping thinking in our culture, in subverting the status quo, and in taming or constraining mainstream discourses. But in broad terms, the discourses isolated here have exerted powerful influences over popular thinking and have been encoded into state policies, which in turn, added to the production of “knowledge” about women and work.¹⁸

I. NINETEENTH CENTURY MEANINGS: WORK AND THE WORKER

Between 1800 and the onset of the Civil War in 1861, the northern states of the United States underwent a rapid and far-reaching transforma-

¹⁶ See *infra* notes 19-44 and accompanying text.

¹⁷ See *infra* notes 45-62 and accompanying text.

¹⁸ This process of “production” of ideas is a complicated one to summarize. It is too easy to think in terms of producers and consumers of ideas. Clearly that split does not get one very far in understanding how cultural ideas and identities, subjectivities, develop and thrive. Carroll Smith-Rosenberg’s explanation of subjectivities provides a useful and compact description of the kind of complex mapping that is required.

[B]eing ideologically constructed . . . , they [subjectivities] circulate within popular culture — where they are produced and reproduced in religious sermons, political orations, newspaper articles, and popular fiction — and through social interactions and, ultimately, are enforced by the political power of the state. It is thus as subjects to and of popular and political culture that individuals internalize and affirm a particular subjectivity as “naturally” their own.

Carroll Smith-Rosenberg, *Dis-Covering the Subject of the “Great Constitutional Discussion,” 1786-1789*, 79 J. AM. HIST. 841, 845 (1992). Thanks to Kathi Kern for suggesting the Article’s usefulness here.

tion. This period, the one that my student in 1978 was trying to understand, was pivotal in crystallizing an opposition between women and work. Amid the rise of the wage labor system, the transition from a commercial to a manufacturing economy, and the development of mass production, one thing became clear and unmistakable: "the worker" was a white man.

Throughout the seventeenth and eighteenth centuries, white women were viewed as the inferiors of men, although their work, which included growing food, making clothing, cooking, washing, and handling production and even barter or sale of dairy or other farm products, was visibly recognized. However, historian Jeanne Boydston argues that recognition of the value of women's work began waning near the turn of the century.¹⁹ As industrialization emerged by the early nineteenth century, this process was accelerated. Men's activity was increasingly drawn into the market, and cash became the primary medium of exchange. Boydston has argued that households remained very dependent on goods and services generated within them, but that men were increasingly being discussed in terms of work, while women were portrayed as pious mothers who created gentle sanctuaries from the rough-and-tumble world of the marketplace.²⁰ Popular discussions of men and women increasingly emphasized that they should act in separate spheres and that this separation of public and private was natural and orderly. Indeed, the entire stability of society depended on it.

This ideology transformed what had formerly been a gendered division of labor into a new definition of work and labor altogether. The "pastoralization of housework," as Boydston terms it, redefined what white women did in the home into duties, not work, and dedicated women's role there: they were to build happy homes with their tender love.²¹ Housework was reformulated as the opposite of work.

Working-class women did work for pay in textile mills, shoe factories, street vending, sewing, and homework including washing, sewing, and hatmaking. Yet, as women's work spread, disdain for it grew and such work was marked by the middle class as emblematic of degradation. Working women also stirred anxieties in male workers whose association between paid work and masculinity meant that

¹⁹ JEANNE BOYDSTON, *HOME & WORK: HOUSEWORK, WAGES, AND THE IDEOLOGY OF LABOR IN THE EARLY REPUBLIC* 18, 24, 27-29 (1990).

²⁰ *Id.* at 142, 145-46, 149-50.

²¹ *Id.* at 142-63.

women's visible employment was not only evidence of a man's failure to make a family wage, but could constitute a threat to manhood itself.²²

The rise of the wage labor system had disturbing implications for northern workingmen. As Boydston, Eric Foner, David Roediger, and others have shown, the importance of independence had been underscored by the American Revolution: indeed, independence was an ideal. Yet these decades found the artisan system declining. Men who decades earlier might have become independent artisans were now increasingly looking forward to a lifetime of waged labor. By 1860, half of the nonenslaved labor force in the country worked for someone else, and by the end of the century, the proportion rose to three-quarters of the labor force. In this new economic context, at least some men could never be "independent;" they would always work for someone else.²³

In their analysis of the term "dependency," Nancy Fraser and Linda Gordon explain that dependence in preindustrial culture was not connected to any particular group of people.²⁴ The American Revolution gave new meaning and status to independence and dependency became much more stigmatized with the rise of industrial capitalism. Dependency increasingly took on moral meanings and reflected flawed individual character traits. This was happening at the very same time that more attention was being paid to gender and race differences and changes in the religious culture that toppled older beliefs about a natural rank order in society. Dependency was no longer God's will, but the result of individual failure. It also took on a "feminine" cast, distinctly different from the robust imagery of independence. Moreover, dependency was downright dangerous to a free society.²⁵

To make peace with the emerging wage system and its new economic realities, historian David Roediger has argued, white working men — including Irish immigrants who had themselves been reproached by

²² *Id.* at 149-55; CHRISTINE STANSELL, *CITY OF WOMEN: SEX AND CLASS IN NEW YORK, 1789-1860*, at 217-21 (1986).

²³ DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 20, 33, 36, 44, 46, 49, 57, 60 (1991); BOYDSTON, *supra* note 19, at 153-56. *See* ERIC FONER, *FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR* (1970); ERIC FONER, *TOM PAINE AND REVOLUTIONARY AMERICA* (1976); DAVID MONTGOMERY, *BEYOND EQUALITY: LABOR AND THE RADICAL REPUBLICANS 1862-1872* (1967).

²⁴ Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 *SIGNS* 309, 313 (1994).

²⁵ *Id.* *See also* BOYDSTON, *supra* note 19, at 156.

native-born working men — redefined independence to mean wage earning.²⁶ Using the dualities of independent and dependent in new ways, they could frame their own labor as independent if it were contrasted to dependent labor, particularly unfree, slave labor.²⁷ Roediger's study, *The Wages of Whiteness*, examines how the formation of class and whiteness — white worker's self-conscious identity as white — happened simultaneously.²⁸ This sense of racial superiority could cut across ethnic splits between native born and immigrant workers and create a common identity.²⁹ Whiteness offered a way to cope with the discipline of the new industrial system and the instability and shame of dependency contained within it.³⁰ The term "master" — now associated with deference and slavery — disappeared, replaced by the word "boss."³¹

Thus white workers, anxious about dependency, could reassure themselves that they were so different from "the other" that they were independent, while the "other" was dependent. This construction further stigmatized all blacks, whether slave and free, as dependent, servile, and vulnerable and therefore threatening to the republic because of the popular notion that dependence destroys freedom. Racism infected the labor movement long after the Civil War ended and blackness and dependency remained joined in the popular consciousness.³² All black people were reduced to the symbol of slave and, Roediger has argued, "served as a touchstone by which dependence and degradation were measured."³³

Dependents also included others who did not earn wages such as white housewives and the poor. As Fraser and Gordon point out, it was not just that these individuals did not earn a wage or that they were dependent on someone else, rather they had personal characteristics that made them weaker than others and thus justified their subordination.³⁴ The housewife, the pauper, and the slave — all composites that people

²⁶ ROEDIGER, *supra* note 23, at 33.

²⁷ *Id.* at 13.

²⁸ *Id.* at 20.

²⁹ *Id.* at 147.

³⁰ *Id.* at 150.

³¹ *Id.* at 50.

³² *Id.* at 170-72, 177, 179.

³³ *Id.* at 13, 20, 54, 87, 118, 121, 151.

³⁴ Fraser & Gordon, *supra* note 24, at 318.

used and normalized — together constructed the identity of the white working class man. He existed only with reference to them.³⁵

Taken together, Roediger, Boydston, Fraser, and Gordon suggest that labor came to be understood as something white men did for pay. White women's work was seen as "separated from the economic life of the community and . . . in fact, not really work at all."³⁶ In this new industrial context, ideology reconstituted white men's roles as fathers into breadwinners and white women's social identities as productive workers in the household into mother/nurturer. Racism defined the work African-Americans performed as unproductive and degraded. The most obvious result of this redefinition of real work during this period was that work and wage-earning became joined with whiteness and masculinity.

This discourse was connected to others about race, gender, and work in the North and South, and the configuration grew still more complicated after the War and emancipation. Once slavery ended, racism insured that notions about the work of African-Americans would not change. The late nineteenth and early twentieth centuries witnessed the passage of "Jim Crow" (racial apartheid) legislation throughout the South and de facto segregation elsewhere, lynching, black men's disfranchisement, and racist theorizing that justified policies of white supremacy. Newly enshrined were images of black men as sexual predators and black women as domineering and sexually immoral. Although the black "Mammy" image may have portrayed a diligent black female (although unsexed), most African-American men and women faced representations in popular culture that defined them as lazy, "shiftless," and lacking intelligence.³⁷

³⁵ *Id.*; see also DAVID ROEDIGER, *TOWARDS THE ABOLITION OF WHITENESS: ESSAYS ON RACE, POLITICS, AND WORKING CLASS HISTORY* (1994); ROEDIGER, *supra* note 23; Smith-Rosenberg, *supra* note 18, at 849. Smith-Rosenberg identifies three figures who constituted the "other" during the late eighteenth century — "the white middle-class woman, the American Indian warrior, and the enslaved African-American. Predictably, like the subjects they existed to support, these negative others were interdependent, self-contradictory, and protean." *Id.*

³⁶ Jeanne Boydston, *The Pastoralization of Housework*, in *WOMEN'S AMERICA: REFOCUSING THE PAST* 142, 152 (Linda K. Kerber & Jane S. De Hart eds., 4th ed. 1995).

³⁷ See PATRICIA MORTON, *DISFIGURED IMAGES* 1-13, 102-03 (1991); Christie Farnham, *Sapphire? The Issue of Dominance in the Slave Family, 1830-1865*, in "TO TOIL THE LIVELONG DAY": *AMERICA'S WOMEN AT WORK, 1780-1980*, at 68, 68-83 (Carole Groneman & Mary B. Norton eds., 1987); Painter, *supra* note 12, at 200-14. Elsa Barkley Brown reminds us that despite the fact that women were lynched, the image of lynching always has remained masculine.

In his essay, *Shiftless of the World Unite!*, Robin D. G. Kelley reminds readers that notions about virtue and hard work are socially constructed.³⁸ Whites' references to Blacks' laziness was partly a simple example of their racism. But Kelley also argues that in some cases, racist Whites misconstrued the meaning of black workers' activities, as was intended. Being "shiftless" and quitting were forms of resistance to white labor control and sexual harassment.³⁹ However not-working was interpreted, white southerners had a strong stake in keeping African-Americans employed (by whites): their work not only provided a cheap labor force, but it also kept them under the watchful eyes of whites and served as a method of control. Whites went to great lengths to try to control quitting. For example, as Tera Hunter notes, the Atlanta City Council in 1866 made it against the law for Blacks to quit work without their employers' permission.⁴⁰ Whites displayed considerable anxiety about black women who chose to stay home, rather than work, and decried "female loafers-ism" at the same time that white women's domesticity was encouraged and celebrated. During World War I, several southern states designed "work or fight" laws. "Similar to the logic used by white Progressives in antivagrancy campaigns during the same period, 'work or fight' laws were rationalized as a solution to alleged crime and moral depravity that resulted when Blacks filled all or part of their day with pursuits other than gainful work."⁴¹ As the supply of black men diminished, white employers' need for black women to work intensified, so local and state officials targeted black women as well.⁴²

The meanings attached to white and black work were never the same, however. Whites self-consciously continued to claim their whiteness and contrast their work to what they labeled "nigger work," which Kelley argues was — no matter how heavy or arduous — transformed into

Barkley Brown's essay is a brilliant excavation of the complexity of racial images. See Elsa Barkley Brown, *Imaging Lynching: African-American Women, Communities of Struggle, and Collection Memory*, in *AFRICAN AMERICAN WOMEN SPEAK OUT ON ANITA HILL-CLARENCE THOMAS 100*, 100-23 (Geneva Smitherman ed., 1995).

³⁸ Robin D.G. Kelley, *Shiftless of the World Unite!*, in *RACE REBELS: CULTURE, POLITICS, AND THE BLACK WORKING CLASS* 17, 30-31, 33 (1994).

³⁹ *Id.*; Higginbotham, *supra* note 11, at 259.

⁴⁰ Tera Hunter, *Domination and Resistance: The Politics of Wage Household Labor in New South Atlanta*, 34 *LABOR HIST.* 205, 209-12 (1993).

⁴¹ *Id.* at 214-16.

⁴² *Id.* at 215 (recounting the active and often successful resistance that African-Americans undertook to fight these laws).

“unmanly” work.⁴³ “In order to retain the socially constructed categories in which work designated as masculine is valorized, the racialization of the same work can, in effect, change the gendered meaning of certain jobs.”⁴⁴ Thus African-American men and women by definition did degraded work that could never be associated with the real work of white men.

II. WOMEN, WORK, AND STATE POLICY, 1900-1940

Viewed here in terms of how it shaped early twentieth century state policy, the second discourse built on the first and equated women with mothers.⁴⁵ Once again, we need to think about it not as a description of complex social life, but as a set of ideas, assumptions, and what many people accepted as common “knowledge.” For emphasis and ease, I have made the discourse appear more unified and seamless than it really was. If we analyze popular culture during the years, for example, we might see more of the contradictions and mixed messages that existed alongside these particular policies. I find the evidence of the scholars discussed here, however, quite compelling: state building in the twentieth century cannot be fully comprehended until we think carefully about the ways in which beliefs about gender and racial differences shaped ideas about government and its functions.

A brief look at women’s occupations seventy-five years ago will help us contextualize these popular ideas. In 1900, about five million American women worked for pay, about twenty percent of the labor force

⁴³ Kelley, *supra* note 38.

⁴⁴ *Id.*; Jacqueline Hall, “*The Mind that Burns in Each Body*”: Women, Rape, and Racial Violence, in POWERS OF DESIRE: THE POLITICS OF SEXUALITY 328, 328-49 (Ann Snitow et al. eds., 1983); Hunter, *supra* note 40, at 209-11. Of course racial images affected so many aspects of the way whites thought about African-Americans and work and these were often gendered. Tera Hunter has shown that white employers accused black women household workers and laundry workers of spreading contagious diseases. *See* Hunter, *supra* note 40, at 211. Whites’ “fear and fascination of female sexuality was projected onto black women,” historian Jacqueline Hall has explained, and this construction of black women was captured in images of the sexualized domestic worker and, of course, the reality of sexual harassment, including rape. *Id.* The violent and treacherous images of black men required their complete segregation in workplaces from white women and only reinforced the culture’s interest in confining black men to the worst jobs possible. *Id.* *See also* Hall, *supra*, at 333.

⁴⁵ *See supra* pp. 837-38.

according to the United States Census, which tended to undercount women workers.⁴⁶ Two million of these women had domestic work jobs — primarily African-American women in the South and immigrant women in the North.⁴⁷ By 1930, domestic work accounted for only a quarter of women's jobs, but over half of all African-American women still cleaned other people's houses.⁴⁸ Other occupations that women held were sorted by race, ethnicity, and class. The poorest, least educated, newest and darkest women had the fewest choices — domestic and service work or the most arduous factory jobs. Southern textile factories hired no African-Americans; tobacco processing factories did, but segregated everyone by race and sex. As late as 1960, only sixteen percent of African-American women held jobs in manufacturing.⁴⁹ Better factory jobs went to immigrant and native-born women, and native-born educated women monopolized jobs in teaching, nursing, and retail sales. A majority of working women were young and single during these years, but the numbers of working married women increased steadily. For many people of color and some immigrant groups, discrimination against male workers was so acute that married women had little choice but to work. For example, in 1920, under one-tenth of European-American women were employed, while one-third of African-American and one quarter of Asian-American women were employed.⁵⁰ Office work became an increasingly important source of employment, especially for white women — in 1930, one-third of white women worked in an office, while less than one percent of African-American women had secured clerical jobs.⁵¹

Twice during the first half of the twentieth century, the role of the state, on both the local and federal level expanded to address pressing social issues of the day. The dislocations resulting from industrial capitalism, rapid urbanization, and the rise of the corporation in the late nineteenth and early twentieth centuries, stimulated an activist state between the 1890s and World War I, which historians call the Progressive

⁴⁶ TERESA AMOTT & JULIE MATTHAEI, *RACE, GENDER, AND WORK: A MULTICULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES* 316 (1991).

⁴⁷ *Id.* at 323-24.

⁴⁸ *Id.* at 330.

⁴⁹ *Id.* at 328-34.

⁵⁰ *Id.* at 305-06. Nationally, 44% of all African-American working women, 46% of foreign born working women, and 36% of all employed Chinese-American women worked in household service in 1900 and by 1930 the figures were 54%, 12%, and 12% respectively. *Id.* at 323-24.

⁵¹ *Id.* at 334-35.

Era. In the late 1920s and early 1930s, when the nation plunged into the worst economic depression in its history, reformers once again had the opportunity to address social problems through legislative means. Women of all classes, races, and ethnicities were active in both movements, but middle class women's voices, particularly white ones, were most likely to prevail and exert visible political power. During the Progressive Era, women's organizations, including the Women's Trade Union League and the National Consumer's League, were more widespread than at any time before or since, and through them women mobilized and pushed for legislation on such issues as public sanitation, working conditions, maternal and child welfare, recreation, health, factory inspection, urban government reform, and social services, not to mention women's suffrage.⁵²

Beliefs about gender, racial, and ethnic differences shaped many reformers' thinking and perpetuated and expanded popular ideas about the dependence/independence dichotomy with respect to work. White women's dependency was now discussed primarily in terms of all women's potential motherhood and the public discourse on women and work was increasingly framed in language identifying women as potential mothers. White middle class women reformers, who now began to exercise significant influence over certain narrow aspects of public policy, participated in reshaping the discussion. In the process, they made changes that improved the lives of many working class women and also carved out careers as professional women by emphasizing their expertise on women's social needs and focusing on women's roles as mothers.⁵³

Many historians have used the term "maternalist" to describe these women because of their emphasis on motherhood in the policies they pursued between the Progressive Era and the New Deal. In *Creating a*

⁵² For an excellent introduction to women's role in the Progressive Era, see GENDER, CLASS, RACE, AND REFORM IN THE PROGRESSIVE ERA (Noralee Frankel & Nancy S. Dye eds., 1991).

⁵³ See, for example, MOTHERS OF A NEW WORLD, *supra* note 11; ROBYN MUNCY, CREATING A FEMALE DOMINION IN AMERICAN REFORM, 1890-1935 (1991); Fraser & Gordon, *supra* note 24, at 320. Men who could support their families were respectable citizens and those who could not were marked as inadequate and less than manly. Ava Baron, Paternalism and Gender Equality: The Woman Worker and Protective Legislation 16 (Sept. 1992) (typescript on file with the author). Baron's essay was recently published in French: Discours Egalitaires, Lois Protectrices et Politique du Travail dans L'imprimerie aux Etats Unis, 1850-1920, edited by Leora Auslander and Michelle Zancarini-Fournel published by Presses Universitaires de Vincennes, 1995.

Female Dominion in American Reform, 1890-1935, Robyn Muncy has sharply critiqued these women, especially the group that concentrated its efforts and influence through the United States Children's Bureau, for developing their own careers at the expense of working women, imposing their own values and habits on these same women, and stressing motherhood narrowly.⁵⁴ Others such as Kathryn Sklar, Linda Gordon, and Eileen Boris have acknowledged the positive improvements that women reformers made and have hesitated to let the term maternalist stand unqualified.⁵⁵ These historians have situated women reformers not simply within one movement concerned about mothers and children, but rather within broad circles and alliances of reformers. For example, Gordon has shown that women reformers active in labor reform were not necessarily the same ones whose primary interest was children, although the groups certainly overlapped.⁵⁶ Yet even when labor's rights were the key concern and women's right to work unquestioned as in the case of women reformers at the United States Women's Bureau or in the Women's Trade Union League, maternalism still informed policies and outlooks.⁵⁷ All "maternalists" regardless of affiliation, tended to exag-

⁵⁴ MUNCY, *supra* note 53, at 162.

⁵⁵ See GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 38-40; Eileen Boris, *Reconstructing the "Family": Women, Progressive Reform, and the Problem of Social Control*, in GENDER, CLASS, RACE, AND REFORM IN THE PROGRESSIVE ERA, *supra* note 52, at 73, 73-86; Kathryn K. Sklar, *Historical Foundations of Women's Power*, in U.S. HISTORY AS WOMEN'S HISTORY: NEW FEMINIST ESSAYS 36, 60 (Linda Kerber et al. eds., 1995) [hereinafter U.S. HISTORY AS WOMEN'S HISTORY]. MOLLY LADD-TAYLOR, MOTHER-WORK: WOMEN, CHILD WELFARE, AND THE STATE, 1890-1930 (1994).

⁵⁶ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 38-40.

⁵⁷ *Id.* at 38-40, 99; KESSLER-HARRIS, A WOMAN'S WAGE, *supra* note 8, at 31; ELIZABETH PAYNE, REFORM, LABOR, AND FEMINISM: MARGARET DREIER ROBINS AND THE WOMEN'S TRADE UNION LEAGUE 123-29 (1988). See Sklar, *supra* note 55, at 60. Sklar has stressed that "maternalism" does not really describe many women involved in labor issues, such as Florence Kelley, because they did not really support the idea that women should stay home. Sklar notes that Kelley, for example, was a strong supporter of minimum wages for women and proposed, among other things, wage boards on which women workers could sit. *Id.* Kelley and others, Sklar argues, had to seize the only loophole they could find to get legislation for women. *Id.* Moreover, Kelley found it frustrating to have to justify every item in working women's budgets, including expenditures for clothing and carfare, to state legislators, not to mention the male reformers in the American Association for Labor Legislation. *Id.* Sklar shows how Kelley and others argued that men were also physiologically weak in a 1916 court case

gerate and highlight women's "difference" from men, locate women inside the family, rank women by race, ethnic, and class distinctions, and conflate women with mothers. Kessler-Harris and Mink have shown that maternalists' public discussions about women and work, ostensibly geared towards helping women and children, resulted instead in discouraging women's wage earning, making working mothers suspect, failing to focus on women's problems as individuals and as workers, and possibly making it harder to juggle home and work responsibilities.⁵⁸

Groups of women reformers, including maternalists, were not the only ones involved in defining women as mothers and men as individuals and thus perpetuating the notion that work for women and men was fundamentally different. Men in courtrooms, legislatures, and reform organizations along with other women caught up in the spirit of the time all shared gendered and racialized notions about women and work. It is important to remember that gendered images (along with ones emphasizing middle class and white superiority) were readily available in the culture. Although maternalists did fashion successful careers, the gendered discourse worked against the interests of all women, even the maternalists, and it forced them to frame their public lives quite narrowly. What the maternalists and other reformers did between 1900 and 1945 was to invoke and deploy popular representations to shape policy, with consequences that can still be felt today. This is not to say that the maternalists asserted some simplistic social control. Numerous scholars have demonstrated the ways in which working women demanded certain reforms, such as mothers' pensions, manipulated and subverted others, such as the prohibition of home work, and shaped the content of still others. Working class women also valued motherhood, but often supported different policies from reformers who wanted to separate home from work. Although the policies that developed were thus a process of struggle and the messages contained in them were often contradictory,

regarding minimum wages. Sklar, *supra* note 11, at 74-75. The decision in that case, however, was safely ignored by the courts until the 1930s. My own feeling is that the power of the arguments about women, no matter how self-conscious their proponents may have been, has a life of its own over which Kelley and others had no control.

⁵⁸ MINK, *supra* note 14, at 52, 149, 150, 154-56; Alice Kessler-Harris, *The Paradox of Motherhood: Night Work Restrictions in the United States*, in *PROTECTING WOMEN: LABOR LEGISLATION IN EUROPE, THE UNITED STATES, AND AUSTRALIA, 1880-1920*, at 337, 353 (Ulla Wikander et al. eds., 1995). See also GORDON, *PITIED BUT NOT ENTITLED*, *supra* note 11, at 55-57; Boris, *supra* note 55, at 73-86.

their main outlines and emphasis on motherhood have had far-reaching and lingering consequences.⁵⁹

Not surprisingly, understandings of the term “mother” were also race-specific; white and black maternalists used the language of motherhood in very different ways. These reformers, such as Eugenia Burns Hope, Helen Burroughs, and Mary Church Terrell all took for granted that mothers had to work because black men encountered so much discrimination and such low wages in the labor market. Like their white counterparts, who believed they had to upgrade immigrant culture by changing habits from eating to cleanliness, middle class black maternalists were confident that they could prescribe correct ways of living for poor and working class black women. Unlike whites, however, black women leaders grounded their efforts in the church and aimed directly at racism. As mothers, black women organized for an antilynching bill, against convict-labor systems, disfranchisement, and segregation laws. Black women also saw the state differently from white women — they had few illusions about state action since most of its actions in their experience were hostile, not benevolent.⁶⁰ Linda Gordon has persuasively argued that activists in black women’s networks preferred universal programs for working girls: they rarely supported means-tested programs as many white women did.⁶¹ They saw their emphasis on morality not as prudish, but as a defense of all black women’s honor. Theirs was a broad perspective that linked poverty, women’s, and race issues together. They accepted married women’s employment and valued women’s economic independence. Both white and black women noted the burdens of working mothers’ double day, but black women tried to develop strategies to address this tension, rather than simply urging mothers to stay at home. Had African-American “maternalists” been permitted to shape policy, popular ideas about women and work and about the “welfare” system would certainly have looked very different.⁶²

⁵⁹ BORIS, HOME TO WORK, *supra* note 11, at 8, 84, 88; Boris, *supra* note 55, at 74. Annelise Orleck has written a marvelous study of working-class women’s politics. See ANNELISE ORLECK, COMMON SENSE & A LITTLE FIRE: WOMEN AND WORKING-CLASS POLITICS IN THE UNITED STATES, 1900-1965 (1995); see also GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 55-57.

⁶⁰ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 111-43; MINK, *supra* note 14, at 51-52, 55, 59, 86, 115; Eileen Boris, *The Power of Motherhood: Black and White Activist Women Redefine the “Political”*, in MOTHERS OF A NEW WORLD, *supra* note 11, at 213, 213-35; Sklar, *supra* note 11, at 44; MORTON, *supra* note 37, at 125-25.

⁶¹ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 111-43.

⁶² *Id.* at 136-37.

A. *Protective Labor Legislation*

Protective labor legislation is perhaps the most obvious example of public policy related to women and paid work in the early twentieth century. The debates around state laws for maximum hours, minimum wages, and for an end to night work, however, reveal just how complicated “protections” were. Certainly they relieved many women of long hours and great hardships, but built into the debates and the laws themselves were ideas about the differences between men’s and women’s work and the state’s special responsibility for women’s welfare. Protective labor legislation focused not on women as workers, but rather on women’s proper role in society, especially their “capacity to become mothers.”⁶³

It took years to win protective labor legislation. Reformers had initially aimed for the “regulation” of conditions of labor such as hours and wages, for all workers. Complicating efforts to act, however, were notions of individual liberty within the law. The principle of freedom of contract precluded most state interference with the rights of workers and employers to set the terms of their contract. Moreover, the rapidly strengthening American Federation of Labor (“AFL”), which joined together most of the large national craft unions, opposed codifying into law protections for workers. AFL President Samuel Gompers’ own experience with the courts during the previous three decades had caused him and other AFL leaders to mistrust profoundly the state and they consequently opposed labor legislation. In their opinion, only collective bargaining could truly win rights for workers. Still, reformers continued to push for some state role in regulating labor and succeeded in creating the United States Department of Labor in 1913.⁶⁴ Various efforts by states to limit the hours of all workers ran into judicial resistance.⁶⁵

⁶³ KESSLER-HARRIS, *A WOMAN’S WAGE*, *supra* note 8, at 13-19, 43-46; Kessler-Harris, *supra* note 58, at 338, 341, 352.

⁶⁴ WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* 1-9, 35, 37-58 (1989); Eileen Boris, *New Deal Reformers Use the Government to Protect Women Workers*, in *MAJOR PROBLEMS IN THE HISTORY OF AMERICAN WORKERS* 449 (Eileen Boris & Nelson Licktenstein eds., 1991); Howell Harris, *Politicians, Bureaucrats, and the Shaping of Federal Labor-Relations Policy*, in *MAJOR PROBLEMS IN THE HISTORY OF AMERICAN WORKERS*, *supra*, at 430; Kessler-Harris, *supra* note 58, at 339. Of course, this was complicated because women were both citizens under the law, who thus had freedom of contract, and they were also dependents in whose health the state had an interest in preserving. *Id.* at 340.

⁶⁵ FORBATH, *supra* note 64, at 50.

Selected state courts permitted defining certain groups of workers, including miners, as special and meriting state intervention. Unable to win regulation for all workers, women reformers increasingly aimed to get at least something for women. Applying the special case argument, they persuaded many state legislatures to regulate hours, set limits on night work, and in some cases address minimum wages for women.⁶⁶ The courts ruled that state power could intervene and limit women's freedom of contract in order to protect them because they were dependents. By contrast, independent free adults (men) should not and could not rely on state protection. Only the weak needed it. These efforts stressed the notion that men were the providers and breadwinners and that women were dependent — on a male wage earner or now, the state.⁶⁷

Although many women benefited from protective labor legislation, the emphasis on sexual difference simultaneously worked against women's interests. In the 1908 case *Muller v. Oregon*,⁶⁸ the Supreme Court reasoned that the state had the right to limit women's hours of work to ten, because women were the nation's mothers and future mothers.⁶⁹ The argument was ideological, but it also had a material base, as Kessler-Harris has noted: "Jobs that undermined the working class family by destroying women's health or fertility, or by encouraging women to compete for male jobs, could easily destroy the golden egg that produced cheap labor."⁷⁰ The context of the argument in *Muller* was an increasingly racist one with leaders, including President Theodore Roosevelt, warning that women's failure to meet their reproductive responsibilities could lead to "race suicide." White women's fragile natures, future motherhood, and dependence on men were resonant images that male and female reformers used to make the case for protective legislation for women (white women). Because the debate focused not on regulating working conditions, but on protecting women's reproductive functions, the question of minimum wages or working conditions for all workers disappeared.⁷¹

⁶⁶ *Id.* at 49-50; ALICE KESSLER-HARRIS, *OUT TO WORK: A HISTORY OF WAGE-EARNING WOMEN IN THE UNITED STATES* 188 (1982) [hereinafter KESSLER-HARRIS, *OUT TO WORK*]; Boris, *supra* note 64, at 450; Boris, *supra* note 60, at 234; Kessler-Harris, *supra* note 58, at 341, 349-51.

⁶⁷ FORBATH, *supra* note 64, at 53; Kessler-Harris, *supra* note 58, at 346, 352 (stressing that this limited women's citizenship rights).

⁶⁸ *Muller v. Oregon*, 208 U.S. 412 (1908).

⁶⁹ *Id.* at 420-21.

⁷⁰ KESSLER-HARRIS, *A WOMAN'S WAGE*, *supra* note 8, at 39.

⁷¹ KESSLER-HARRIS, *OUT TO WORK*, *supra* note 66, at 185-87; Boris, *supra*

The category of "women" was understood to be white. State laws routinely excluded work in hotels, restaurants, and domestic service — the very locations of black women's employment. As Mink puts it, women of color were a distinct class, "to which the ideal of domesticity did not apply."⁷² Finally, limiting hours and prohibiting night work sometimes cost women jobs and provided convenient ways for employers and unions to keep women out of certain occupations. Women with traditionally male jobs, such as printers, streetcar conductors, ticket agents, and telephone operators organized against these laws, while labor unions in these and other industries tended to support them.⁷³

In discussions over minimum wages for women during the early twentieth century, both sides utilized arguments that emphasized separate spheres and women's inherent weaknesses. Women's wages were low, opponents argued, because women competed with each other and chose the wrong jobs. Minimum wages would only give them extra money to fritter away on luxuries and self-indulgences. Proponents argued that weak women would succumb to the temptation of prostitution unless they had minimum wage floors.⁷⁴ The family-wage ideal — the belief that men should earn enough to care for their families without other family members working — was an influential part of the reasoning related to the minimum wage, particularly on the part of reformers who stressed mothers and children. By contrast, trade union activists were more likely to recognize the impossibility of having women depend on working class men for full support.⁷⁵ Efforts to settle on a minimum wage inevitably focused on what was the minimum that women needed. Discussions described women as contributors to families, not breadwinners or simply self-sufficient workers. Once again, their sex was more important than the content of the work they did. Even when minimums were won, they were

note 60, at 235; Kessler-Harris, *supra* note 58, at 352.

⁷² MINK, *supra* note 14, at 142; *see also* KESSLER-HARRIS, *OUT TO WORK*, *supra* note 66, at 188; Boris, *supra* note 64, at 450; Boris, *supra* note 60, at 234; Kessler-Harris, *supra* note 58, at 341, 349-51.

⁷³ Baron, *supra* note 53, at 26, 27. In 1913, when New York State reinstated its ban on night work, 150,000 women, according to one estimate, lost their jobs. In another example, Western Union stopped hiring women as messengers because there was no guarantee that someone would open the doors for them. KESSLER-HARRIS, *OUT TO WORK*, *supra* note 66, at 185.

⁷⁴ KESSLER-HARRIS, *A WOMAN'S WAGE*, *supra* note 8, at 45-47; Boris, *supra* note 64, at 450.

⁷⁵ GORDON, *PITIED BUT NOT ENTITLED*, *supra* note 11, at 54; KESSLER-HARRIS, *A WOMAN'S WAGE*, *supra* note 8, at 8-10.

often set low, based on estimates of what women needed for subsistence. Legislators reasoned that women needed very little and were more accustomed to struggling with less than men. These minimums were also kept purposely low so that women would not be encouraged to work outside their homes.⁷⁶ Economist Alfred Marshall, for example, argued that higher wages for women might be “a great gain in so far as it tends to develop their faculties, but an injury in so far as it tempts them to neglect their duty of building up a true home, and of investing their efforts in the personal capital of their children’s character and abilities.”⁷⁷

The major justification for protective legislation for women was that women were mothers and needed to be protected on that basis.⁷⁸ Yet in numerous ways, protective legislation failed to assist working mothers.⁷⁹ The very same reformers who were concerned about setting the minimum wages too high, were also trying to eliminate home work — something that working class mothers often wanted so that they could earn money at home while caring for children. The United States did not enact any federal legislation until 1993 to protect pregnant women’s jobs, and United States protective legislation for women generally ignored one measure that working mothers would certainly need: maternity leave. National Consumers’ League leader Florence Kelley may have disapproved of setting minimum wages deliberately low, but she also opposed maternity leaves because they might encourage women to work.⁸⁰ Most

⁷⁶ KESSLER-HARRIS, A WOMAN’S WAGE, *supra* note 8, at 33-56; Boris, *supra* note 60, at 234-35.

⁷⁷ ALFRED MARSHALL, PRINCIPLES OF ECONOMICS 685 (1953) (quoted in KESSLER-HARRIS, A WOMAN’S WAGE, *supra* note 8, at 19-20).

⁷⁸ Kessler-Harris, *supra* note 58, at 341.

⁷⁹ *Id.*

⁸⁰ See GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 83; KESSLER-HARRIS, A WOMAN’S WAGE, *supra* note 8, at 47-53; Boris, *supra* note 60, at 234-35 (concluding that black women favored mothers earning wages at home); Sklar, *supra* note 11, at 59-60. Kessler-Harris’s discussion of *Adkins v. Children’s Hosp.*, 261 U.S. 525 (1923), is revealing, see KESSLER-HARRIS, *supra*, at 50. Although the court overturned arguments about women’s special case, the decision helped to pave the way for protections for all workers in the 1930s and expose the folly of freedom of contract reasoning. *Id.* Sklar argues that women reformers tried to get minimum wages using the one argument that might prevail: the health and morals of young women. Sklar, *supra*, at 68-69. Gordon’s emphasis is different from Kessler-Harris in subtle ways. Gordon argues that many reformers opposed day care for women less because it would

maternalists and women labor reformers opposed daycare for the same reason. In New York in 1916-18, during debates on public health insurance proposals, reformers such as Kelley and Frances Perkins opposed paying working mothers stipends to help replace wages lost during confinement, thinking that it could encourage husbands to pressure their wives to seek employment.⁸¹ Kessler-Harris, Boris, Mink, and other scholars have demonstrated that by focusing on women's domesticity, reformers created an image in the public mind that made motherhood and working incompatible⁸² (recall how black maternalists did not accept this dichotomy).⁸³ As Kessler-Harris has explained, the whole discussion of protective labor legislation for women "created the paradoxical situation in which the idea of motherhood became the object of protection in the workplace, while women who became mothers derived no job protection at all."⁸⁴

The discourse about protective labor legislation not only eliminated discussion of workplace protections for men, it eliminated the workplace as the ultimate locus of importance, replacing it with the home. In this context, it was small wonder that maternity leaves, daycare, and workers' rights were not part of the conversation. Women were not providers. They were weak and needed special protections. Although the proportion of working mothers was still low during these early decades, women workers were still defined as potential mothers.⁸⁵ Women with children who did work were defined as inadequate mothers.⁸⁶

tempt mothers to work and more because they did not want to see women burdened with two jobs. In any case the result was very low stipends, eligibility requirements, and means testing. GORDON, PITIED BUT NOT ENTITLED, *supra*.

⁸¹ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 54.

⁸² MINK, *supra* note 14, at 62-63 (discussing the "link" between infant mortality and working mothers); Boris, *supra* note 60, at 216-17; Kessler-Harris, *supra* note 58, at 338.

⁸³ Boris, *supra* note 60, at 227 (discussing the club women who accepted the working mother as a worthy mother).

⁸⁴ Kessler-Harris, *supra* note 58, at 341.

⁸⁵ Boris, *supra* note 60, at 235.

⁸⁶ MINK, *supra* note 14, at 43 ("The maternalists' rhetorical association between a member's worthiness and her . . . child-centered domesticity stigmatized mothers who worked outside the house."); Baron, *supra* note 53, at 26-27; Kessler-Harris, *supra* note 58, at 353. Again the motherhood construction occupied the center of the discussion. Even the women who opposed these laws argued for women's right to work at night in order to support their families and meet their obligations as mothers. Ironically, in their opposition they reinforced

B. *From Mothers' Aid to Welfare: Women Not-Working*

Perhaps the best way to protect children and make good mothers was to pay women not to work at all. Such thinking, as Alice Kessler-Harris has suggested, may have propelled interest in mothers' aid (what subsequently became the policies termed welfare).⁸⁷ The original idea, promoted most fervently during the Progressive Era, aimed to create mothers' pensions, payments to mothers with dependent children to enable the mothers to stay home and care for the children. Some of these proposals supported pensions for all women, regardless of need. A few envisioned them as a way to liberate women from dependence on men for support,⁸⁸ while others reflected the idea of providing compensation and recognition for mothers' necessary social labor.⁸⁹ All of the proposals rested on white middle class women reformers' belief in the family-wage ideal: men are and should be breadwinners for families, and normal families are composed of married couples with children. The dominant and most politically viable proposal and the one that triumphed, framed mothers' aid as state-run charity for those who needed it, i.e., a means-tested program. Proponents carefully portrayed potential recipients as good mothers who had fallen on hard times through no fault of their own: widows were the ideal example.⁹⁰ The strategy was successful. Illinois instituted the first mothers' aid law in 1911, and by 1919, thirty-nine

the idea of men as breadwinners and women as mothers. *Id.* at 27. The two sides highlighted a discourse that has too often characterized discussions related to gender relations: are women equal to or different from men? Should laws treat men and women the same or should they provide women with "special" treatment? Joan Scott and others have pointed out the folly of using this dichotomy, but current debates over maternity leave still incorporate the same construct. See Joan W. Scott, *The Sears Case*, in *GENDER AND THE POLITICS OF HISTORY* 167, 176-76 (1988). Boris suggests that African-American women reformers felt less of a conflict between equality and difference than white women did. See Boris, *supra* note 60, at 214.

⁸⁷ See MINK, *supra* note 14, at 36; Joanne L. Goodwin, *An American Experiment in Paid Motherhood: The Implementation of Mothers' Pensions in Early Twentieth-Century Chicago*, 4 *GENDER & HIST.* 323, 323 (1992) (introducing a discussion of the goals behind mothers' aid).

⁸⁸ GORDON, *PITIED BUT NOT ENTITLED*, *supra* note 11, at 44.

⁸⁹ *Id.* at 56-57.

⁹⁰ *Id.* at 44 (referring to some reformers' "rescue" fantasies). See also KESSLER-HARRIS, *A WOMAN'S WAGE*, *supra* note 8, at 69-70.

states had passed similar legislation — most of it establishing small, poorly funded, means-tested programs.⁹¹

Idealized images worked well in getting the legislation passed, but the realities of mothers' aid exposed the extent to which class, race, ethnicity, and gender determined the ultimate fate of these programs. In a society where meaning often derives from oppositions, the blameless widow existed in contrast to the nonwidow, who seemed somehow "guilty of something."⁹² Many reformers knew from the outset that widows were not likely to be the only recipients and many planned to focus on improving the habits of the worthy working class immigrants they expected to assist.⁹³ Not surprisingly, the women who needed mothers' aid most did not conform to popular images of ideal womanhood. It soon became apparent that many reformers along with those charged with administering the programs believed that some women deserved to stay home more than others.⁹⁴ Criteria for eligibility, unlike criteria for workmen's compensation, another popular measure during these years, were arbitrary and uneven,⁹⁵ which made it easy and customary to exclude any individual or group deemed unworthy.⁹⁶ For example, black women were defined as workers, not mothers (and I would suggest not-women), so their employment was acceptable, although it probably made them bad mothers.⁹⁷ As with protective legislation, both the idea and its implementation were racialized from the outset. As late as 1931, a labor department study showed that nationally ninety-six percent of all clients in the system were white.⁹⁸ Poor and working class white women might receive assistance depending on how they conducted their lives, kept their homes, and spent their money. Unmarried women were often ineligible from the outset.⁹⁹

⁹¹ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 38. I should stress just how underfunded these programs were — some states never provided money to launch the programs at all. See also Barbara J. Nelson, *The Origins of the Two-Channel Welfare State: Workmen's Compensation and Mothers' Aid, in WOMEN, THE STATE, AND WELFARE* 123, 139 (Linda Gordon ed., 1990).

⁹² GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 45.

⁹³ MINK, *supra* note 14, at 39.

⁹⁴ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 45.

⁹⁵ Nelson, *supra* note 91, at 140-42 (explaining that flexibility and nonroutinized decision rules went hand in hand with repeated scrutiny).

⁹⁶ MINK, *supra* note 14, at 52.

⁹⁷ *Id.* at 51-52, 162; Nelson, *supra* note 91, at 123-51.

⁹⁸ Nelson, *supra* note 91, at 139.

⁹⁹ Goodwin, *supra* note 87, at 332. See also MINK, *supra* note 14, at 38

The Sheppard Towner Act, which Congress passed in 1921, provided an alternative model to mothers' aid, although it was not ultimately successful.¹⁰⁰ This measure, a result of both reformers' and women clients' pressure, provided maternal and child-health services and education on a non-means-tested basis. Gordon, Mink, and Ladd-Taylor have placed a different emphasis on just how much influence women recipients had on shaping the program and how positive its results were. However, they all agree that the law established programs without stigma and suggested the potential for involving women in democratically organized programs. The law was repealed, however, in 1929.¹⁰¹

Over time, mothers' aid emphasis shifted from women to children, largely for strategic reasons: the latter could evoke more sympathy.¹⁰² In the process, negative images of women — their weaknesses, cupidity, laziness, and immorality — got more attention in mothers' aid and later "welfare" discussions. By the 1930s, reformers explained that it was important to care for children despite their mothers' flaws.¹⁰³ Of course,

("Stories about unrestrained breeding by the women least able to support large families elicited calls for tighter enforcement . . .").

¹⁰⁰ Sheppard-Towner Maternity & Infancy Act, ch. 135, 42 Stat. 224 (1921), repealed by Act of Jan. 22, 1927, ch. 53, § 2, 4 Stat. 1024, 1024.

¹⁰¹ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 93-96; LADD-TAYLOR, *supra* note 55, at 167-96; Molly Ladd-Taylor, "My Work Came Out of Agony and Grief": Mothers and the Making of the Sheppard-Towner Act, in MOTHERS OF A NEW WORLD, *supra* note 11, at 321-42. Mink argues that the program benefited many women but had its problems as well:

[It] was also laden with class, cultural, and gender-ideological baggage: women who need to work were admonished to stay at home and breastfeed, immigrant women were often given nutritional instructions that required them to abandon the culinary customs of their own cultures, and little girls were trained to define their futures as an idealized "American" motherhood.

MINK, *supra* note 14, at 72.

¹⁰² See Linda Gordon, *Putting Children First: Women, Maternalism, and Welfare in the Early Twentieth Century*, in U.S. HISTORY AS WOMEN'S HISTORY, *supra* note 55, at 82.

¹⁰³ It was children who were featured in the ADC program, out of a fear that focusing on women would provoke hostility, especially since some mothers did not marry. Gordon argues that earlier, children were in effect the surrogates for women, but with ADC in the 1930s, children were to be helped in spite of their mothers' sins. See *id.* at 81-82. Women were now contrasted with their innocent children — poverty was their own fault, but the children were poor through no fault of their own.

eligibility continued to rest on an evaluation of the mother and her presumed characteristics.¹⁰⁴

As with minimum wages, pension levels were set low to make them unattractive. Although the public imagery of mothers' aid stressed women's domesticity, in fact, as Joanne Goodwin, Linda Gordon, and Barbara Nelson have pointed out, many laws required women to work to supplement their "aid" and other recipients worked just to survive.¹⁰⁵ According to one national estimate in 1923, half of mothers receiving aid worked for pay.¹⁰⁶ These programs also developed alongside state-funded public assistance and all of them became increasingly concerned to weed out the "bad" women, the undeserving, and the chiselers. Although initially the pensions had been thought of as something available for all women, they evolved into something for the poor only, who were already suspect. It was no surprise that so-called mothers' pensions soon became associated not with pride and recognition, but with dependency and shame.¹⁰⁷

Several scholars have discussed the way in which mothers' pensions became part of a two-track "welfare" system. One track included various social insurance entitlement programs, such as workmen's compensation, that had standardized rules, universal application, and no associated stigma, while the other placed the poor, primarily women, into means-tested assistance programs.¹⁰⁸

During the New Deal of the 1930s, these two tracks were entrenched and normalized in new ways, particularly through the Social Security Act of 1935.¹⁰⁹ It is important to note that women's reform organizing on behalf of mothers and children had reached its peak in the 1920s and had

¹⁰⁴ *Id.* at 83.

¹⁰⁵ Goodwin, *supra* note 87, at 337-38; Nelson, *supra* note 91, at 142.

¹⁰⁶ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 49; Goodwin, *supra* note 99, at 330-31; Nelson, *supra* note 91, at 142.

¹⁰⁷ Goodwin, *supra* note 87, *passim*; LADD-TAYLOR, *supra* note 55, at 159 ("The maternalist campaign for mothers' dignity had metamorphosed into a charity for the poor."); Fraser & Gordon, *supra* note 24, at 320-22; Sonya Michel, *The Limits of Maternalism: Policies Toward American Wage-Earning Mothers During the Progressive Era*, in *MOTHERS OF A NEW WORLD*, *supra* note 11, at 277, 302-03. See also MINK, *supra* note 14, at 175 (discussing post-maternalist politics).

¹⁰⁸ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 4-6; Fraser & Gordon, *supra* note 24, at 321; Nelson, *supra* note 91, at 133.

¹⁰⁹ Social Security Act, ch. 531, 49 Stat. 620 (1935) (codified as amended in scattered sections of 42 U.S.C.).

subsidized considerably by the time the New Deal began. Analyzing the language and intent of the Social Security Act reveals much about the history of and power within the developing welfare policy in the United States, but it also underscores the problematic ways in which policy makers continued to conceptualize the relationship between women and paid work.¹¹⁰

The Social Security Act included much more than the payments to retirees that we most commonly associate with it. Programs for the elderly, the unemployed, and dependent children operated in two tiers: one section was a means (and morals)-tested program for the poor and needy that included maternal-infant care and public health service.¹¹¹ These public assistance programs were supported by women reformers that Linda Gordon has identified with a social work model of help that emphasized casework, uplifting clients, and means-testing their eligibility.¹¹² The second tier, promoted by men interested in providing social insurance for anyone who had temporarily or even permanently had to stop working because of illness, injury, layoff, or retirement, provided aid regardless of income, with high payments and a respectable reputation.¹¹³ Central to both tiers, however, were assumptions that the worker was male. The social insurance programs were fundamentally based on the notion of wage-earning and that wage earning was done by men, not women and especially not married women.¹¹⁴ Aid to Dependent Children¹¹⁵ ("ADC" — later "AFDC": Aid to Families with Dependent Children) was eventually the only program left in the stigmatized tier. As its name implies, it borrowed from mothers' aid the emphasis on children, not women, and did so for the same reasons — legislators and the public were more likely to be kind to children, who could be depicted as innocent. Still, its constituents were poor women, who over time have become more likely to be single mothers, a factor that intensified already present hostility towards them for being poor.¹¹⁶ Negative attitudes towards these women related also to continuing public anxieties regarding

¹¹⁰ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 85; LADD-TAYLOR, *supra* note 55, at 197.

¹¹¹ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 145.

¹¹² *Id.* at 175.

¹¹³ *Id.* at 147, 149.

¹¹⁴ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 291.

¹¹⁵ Aid to Dependent Children, ch. 531, 49 Stat. 627 (1935); Aid to Families with Dependent Children, 42 U.S.C. §§ 601-687 (1994).

¹¹⁶ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 6.

morality, women's potential independence from men, and preservation of a unitary model of the good family, viewed as essential to social stability.¹¹⁷

The tiers themselves represented racial and gender constructions, but the 1939 amendments¹¹⁸ illustrate the extent to which the family-wage ideal was encoded within the law. The amendments provided that widows could collect social security benefits if their insured husbands, who by design were white men working in northern manufacturing, had died.¹¹⁹ Although policy makers and the law ostensibly discouraged dependency, the amendments encouraged these women to stay out of the labor market and dependent on their husbands. As Alice Kessler-Harris has shown, these changes were adopted, not to compensate women's work at home, but to consume a problematic surplus of funds that had accumulated in the program.¹²⁰ Adding widows meant that the program would not have to expand coverage to additional occupations where people of color and individuals in the lower ranks of the working class were located. By expanding coverage to widows of men who were covered, they kept the program virtually white. Moreover, the law reinforced notions about the virtue of white women's dependency: it made no provision for dependent husbands, or the possibility of husbands collecting benefits if their covered wives died (indeed such men were not covered until a court case in 1975!).¹²¹ If a widow remarried, her benefits stopped — she only received assistance on the basis of being dependent on her husband.¹²² If she earned money in a job that was covered, she could receive only the social security income from one, not both, sources.¹²³ Given women's low pay, even if she worked in a covered occupation, it would take decades to earn as much in social security benefits as she could get if she simply stayed home and depended on her husband.¹²⁴ Not accidentally, the fund

¹¹⁷ *Id.* at 145-46, 177-79. The resulting system had different effects: "those who received 'nonwelfare' did well; those who received 'welfare' did badly." *Id.* at 6.

¹¹⁸ Ch. 666, 53 Stat. 1362 (1939).

¹¹⁹ *Id.* at 1365.

¹²⁰ Alice Kessler-Harris has estimated that 80% of black women were excluded by various provisions of the act. Kessler-Harris, *Designing Women and Old Fools: The Construction of the Social Security Amendments of 1939*, in U.S. HISTORY AS WOMEN'S HISTORY, *supra* note 55, at 101-03.

¹²¹ *Id.* at 87. See *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975).

¹²² Kessler-Harris, *supra* note 120, at 95.

¹²³ *Id.* at 99-100.

¹²⁴ *Id.* at 104.

would save money because many women would work a little and have the deductions removed from their pay and yet would never make enough to collect those contributions.¹²⁵

The 1939 amendments had even more far-reaching consequences as Kessler-Harris, Gordon, and Mink have demonstrated.¹²⁶ The resulting legislation tracked citizens by gender, race, and class. As late as 1979, eighty-two percent of recipients of social insurance programs were white men, while sixty percent of public assistance programs were women. Worthy women (white widows of insured men) could receive aid on the death of a spouse in a non means-tested program. No matter how much money they had, these mothers got the coverage. "Other" women were left with ADC, which never provided adequate funds to meet its purpose and required women to demonstrate that they needed the money. In 1937, widows were forty-three percent of the national caseload under ADC. By 1961, they were only seven percent and by then a majority of clients were single mothers.¹²⁷ Splitting off widows spotlighted single mothers' behavior and marital status, intensified images of dependency and blame, and also "darkened" the population receiving the means-tested aid — with white widows removed, the proportion of immigrant and African-American women rose.¹²⁸ The two tiers as a whole, Gordon has recently stressed, represented "a common commitment to the family wage," an assertion that a man's wage should be enough, which in turn only strengthened the image of women's natural dependency.¹²⁹ The two-tier split also had significant material consequences — the individuals who were entitled to receive benefits under the insurance programs tended to prosper while individuals who could only appeal to the assistance programs,¹³⁰ which even in the 1960s paid only half of what the other programs paid in benefits per child, were left behind.¹³¹ Finally, it ignored several groups of women: those who did not marry or did not choose to depend on men, single mothers, or lesbians.

The configuration of the Social Security Act highlights the class, gender, and racial constructions regarding women and work: All women should be married with children and should not work. Some women who

¹²⁵ *Id.* at 101-02.

¹²⁶ See *infra* notes 127-32 and accompanying text.

¹²⁷ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 12.

¹²⁸ Kessler-Harris, *supra* note 120, at 104-05.

¹²⁹ Gordon, *supra* note 102, at 81.

¹³⁰ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 6.

¹³¹ *Id.* at 294; Gordon, *supra* note 102, at 81.

did not have a man to depend on were innocent and should receive state assistance so that they could stay home. Other women were more suspect and could only receive help, albeit very little, if they proved their worthiness. Still others deserved no help and should work, although when they did, they were neglecting their children.¹³² Policies thus relied on a familiar dichotomy: "Good" women could depend on a living man or on a dead insured one, but it was mostly "bad" women who depended on the state.¹³³

C. *New Deal Legislation and Labor*

Although some reformers had focused their efforts on mothers' aid, generating puzzling questions about women and non-work, others continued to believe in winning protections for all workers. In the midst of a devastating national depression in the 1930s, the campaign to win labor legislation and set labor standards received new life. Yet gendered and racialized thinking shaped the new policies and that had its own consequences.

As both Gordon and Mink have emphasized,¹³⁴ the whole public representation of the Depression stressed the unemployment of men, and most New Deal reformers thought about the Depression primarily as a crisis for male wage-earning. When labor unions stressed "full employment," they usually meant for men. That emphasis reinforced the notion that honorable poverty derived from disrupted wage-earning, a factor that only served to reinforce the false associations of men/whites/workers and women/people of color/nonworkers.¹³⁵ Legislation and work programs associated with the New Deal all carried with them the goal of men's employment security.¹³⁶ The legitimation of labor unions as reflected in the National Labor Relations Act of 1935¹³⁷ and the establishment of maximum hours and minimum wages in the Fair Labor Standards Act of 1938¹³⁸ all focused on men's jobs and generally women reformers had little influence over their final forms. As we have seen, women's influence was most visible with respect to the public assistance aspects

¹³² MINK, *supra* note 14, at 137-38.

¹³³ Fraser & Gordon, *supra* note 24, at 322.

¹³⁴ See *infra* notes 135-44 and accompanying text.

¹³⁵ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 185.

¹³⁶ MINK, *supra* note 14, at 126.

¹³⁷ 29 U.S.C. §§ 151-168 (1935).

¹³⁸ 29 U.S.C. § 201 (1938).

of the Social Security Act.¹³⁹ Most 1930s labor legislation, particularly Social Security, assumed that men rightly headed households, earned a family wage, and supported their wives and children.

Work relief programs, Gordon has asserted, only reinforced the “masculinist vision of useful labor.”¹⁴⁰ In many places, all work program paychecks were sent to male heads of household. Women with husbands working were often ineligible to receive Works Progress Administration (“WPA”) jobs. Most of the programs emphasized creating jobs for men. Many of the projects focused on large outdoor construction — such as of bridges and roads. This was work that almost everyone agreed at the time was “men’s work.” Local control underscored the intersections of race and gender, as Linda Gordon has recently pointed out. Black women in some areas lost their WPA jobs when the local supply of domestic workers got too small or if white women needed jobs. In other cases, black women on the WPA were required to do domestic work in agency officials’ homes. Hispanic women in New Mexico could not get public works jobs because government officials argued they should stay home with their children in keeping with their “culture.”¹⁴¹ Mink recalls how some maternalists and WPA officials encouraged single mothers to apply for mothers aid, rather than try to get a government job.¹⁴² It is true that many women reformers fought to include women in such efforts as the Civilian Conservation Corps (“CCC”), but projects to which they were assigned focused on domestic skills training.¹⁴³ Many maternalists did fight for equal treatment for women on various federal work programs, and they worked hard for job opportunity, good wages, and good conditions for single, childless women who worked. None of that activity was enough to offset the traditional beliefs that these programs replicated.¹⁴⁴

¹³⁹ MINK, *supra* note 14, at 127.

¹⁴⁰ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 193.

¹⁴¹ *Id.* at 197-98.

¹⁴² MINK, *supra* note 14, at 154-56.

¹⁴³ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 184-85; MINK, *supra* note 14, at 154-62. Indeed, Mink argues: “Domestic training and employment in women’s jobs were the norm for New Deal services for wage-earning women. . . . Tying women’s economic security to husbands, occupational fulfillment to the home, and social responsibility to children, maternalists approached the problem of unemployment among women by disputing the concept of women’s unemployment altogether.” *Id.* at 161-62.

¹⁴⁴ Boris, *supra* note 64, at 452-53.

The National Recovery Act ("NRA") encoded wage differentials by sex and by region, which effectively permitted employers to pay African-Americans less than whites.¹⁴⁵ Codes of fair competition were formulated by industry and thus posed no challenge to the sexual and racial stratification in the occupational structure as a whole. The NRA omitted domestic service and agricultural work so only half of women workers were even covered.¹⁴⁶ In 1937, the Supreme Court struck down the *Adkins* decision¹⁴⁷ and removed the use of the freedom of contract doctrine as a defense against minimum wage legislation, further opening the way toward a national wage and hour law.¹⁴⁸ Yet the Court also indicated that it was acceptable to provide special protections for women.¹⁴⁹ In 1938, Congress passed the Fair Labor Standards Act ("FLSA"),¹⁵⁰ which included minimum wages, maximum hours, an end to child labor and a ban on home-work in selected industries.¹⁵¹ Most states followed suit.¹⁵² The abolition of home-work might have seemed good for all workers, including women, but since their opportunities in the labor market were limited, the prohibitions hit them disproportionately hard. Assigned by the culture to care for children, women had fewer opportunities to get the education and skills needed to operate in a labor market that would discriminate against them anyway. When they did leave home to get work, the jobs open to them were those that were the lowest paid. Indeed, the minimum wage has become, not a floor, but a ceiling, as some labor leaders predicted from the outset. Despite the FLSA, many reformers and most states persisted in keeping protective labor legislation for women on the books and these could still operate to keep women out of certain occupations. As Mink has suggested, many supporters of FLSA believed that minimum wages would go to male

¹⁴⁵ National Industrial Recovery Act, ch. 90, 48 Stat. 195 (1933), held unconstitutional by *A.L.A. Schechter Poultry v. United States*, 295 U.S. 495 (1935).

¹⁴⁶ *Id.*

¹⁴⁷ *Adkins v. Children's Hosp.*, 261 U.S. 525 (1923).

¹⁴⁸ *West Coast Hotel Co. v. Parrish*, 302 U.S. 379 (1937).

¹⁴⁹ KESSLER-HARRIS, *A WOMAN'S WAGE*, *supra* note 8, at 53-54; Boris, *supra* note 64, at 456.

¹⁵⁰ Ch. 676, § 1, 52 Stat. 1060 (1938) (current version at 29 U.S.C. §§ 201-219).

¹⁵¹ BORIS, *HOME TO WORK*, *supra* note 11, at 273. Boris reminds us that banning home-work without understanding why women did it in the first place provided no real relief for home-workers.

¹⁵² Boris, *supra* note 64, at 454.

breadwinners, going to men and providing them with a family wage and permitting women — conceptualized as men's wives and daughters — to stay home.¹⁵³

CONCLUSION

This survey highlights some of the ways in which official and unofficial policies regarding women's work have been packed with directives about how people should live their lives. Popular thinking about women and work has relied on particular constructions of women, people of color, social class, morality and poverty, and the good society. It has invoked idealized images of motherhood and family and ignored the complex realities of working and surviving in an economy based on privileging private property, and protecting profits for large corporations, married heterosexual couples, men, and white people. Mink, Gordon, and Boris have particularly stressed the simultaneity of gendered and racialized constructions connected to ideas about women and work.¹⁵⁴ They have also documented the very different discourses that African American women leaders generated. White maternalists and others in a position to institutionalize women's roles as mothers participated in a system that gave the public new reasons to believe that men and women were different. Men's work has represented masculinity, independence, and responsibility, while women's work has been associated with tragedy, need, and/or dependency.¹⁵⁵ The dominant discourse never recognized women's legitimate claims as workers or as individuals: everything was justified and women's rights defined in terms of women's social roles as mothers and their future or current children. As a result, misleading ideas have guided policy formation, which in turn has shaped popular thinking and passed itself off as verifiable evidence.¹⁵⁶ It is not just that policies have reflected gendered and racialized assumptions, it is that state policy

¹⁵³ MINK, *supra* note 14, at 149-61.

¹⁵⁴ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 111-43; MINK, *supra* note 14, at 151, 162, 164, 171; Gordon, *supra* note 102, at 75; Kessler-Harris, *Working Women*, *supra* note 3. Summing up state policy on women and work, Mink has written that: "The policies won by maternalists between 1917 and 1945 survived to frame the paradigm for women's work and women's welfare well into the 1960s. Central to this paradigm was the idea that woman's social responsibility for children overrode her political and economic rights of citizenship." MINK, *supra* note 14, at 171.

¹⁵⁵ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 193.

¹⁵⁶ *Id.* at 215.

played a key role in reproducing and teaching them anew — the policies themselves became knowledge.

Although this Article has addressed the period before 1940, it invites a few comments on the present. Today there is less emphasis on beliefs about men being breadwinners and about women needing to stay home rather than work. Yet working women and working men are still constructed as different. Not-working has generated intense interest and interpretations of it have remained gendered. In the welfare debate, the catch phrase has been “from welfare to work,” but what political leader has seriously considered publicly funded day care and other supports for working women? The debate continues to use historical notions about dependency.¹⁵⁷ There is also an increased salience among whites of the association between “welfare” and African-Americans and the way in which these women are singled out for particular disdain in policy discussions and media representations. For many whites, there is only one image of welfare — a teenaged black woman with children. This image stirs up, for many whites, old anxieties and stereotypes about black women’s sexuality, fertility, and work habits. Furthermore, many whites believe that “blacks and women” have won equality and can now get jobs, which has only underscored the idea that if you are not working, there is “something wrong with you.”¹⁵⁸ Morality and personal characteristics remain central to explanations for why some people are poor and obscure critics’ failure to make work available. Clearly there are discourses related to men’s not-working — what Gordon calls the “shiftless men” discourse — and these have their debilitating consequences as well.¹⁵⁹

¹⁵⁷ Fraser & Gordon, *supra* note 24, at 323. In a related point, Kessler-Harris has written: “The idea that women still are peripheral workers only serves to maintain the status quo, at the expense of individuals and their families, who know better.” Kessler-Harris, *Working Women*, *supra* note 3.

¹⁵⁸ Fraser & Gordon, *supra* note 24, at 324.

¹⁵⁹ GORDON, PITIED BUT NOT ENTITLED, *supra* note 11, at 41; Fraser & Gordon, *supra* note 24, at 323-25. As Rickie Solinger argues in her book, whites associate black women with the idea of unrestrained breeders. RICKIE SOLINGER, WAKE UP LITTLE SUSIE: SINGLE PREGNANCY AND RACE BEFORE *ROE V. WADE* 187 (1992). Solinger argues that policies on single mothers dictated shame for white women and blame for black women. The latter were expected to keep out-of-wedlock babies, while white women were expected to give them up for adoption. *Id.* at 188-89. For a marvelous analysis of the recent discourse on poverty, see Adolph Reed Jr., *The Underclass as Myth and Symbol: The Poverty of Discourse About Poverty*, 24 *RADICAL AM.* 21-40 (1992). “Finally,” Reed

The misconceptions within both discourses discussed here as well as their contradictions — work is something men do and some women “ought” to work, while others should not — are still with us. I exaggerate here to make my point, but the peculiar reasoning goes something like this: Poor women who are mothers, especially women of color, should not have a choice about whether to stay home or to work because it is clear that they should work, which will make them bad mothers, but if they do not work they are lazy spongers and emblems of a deep psychological pathology of dependency, not to mention excessive childbearing; if they are white, nonimmigrant, and middle class they can be entrusted with making a choice between working and not working, and staying home is probably an acceptable kind of dependency, although clearly a measure of inferiority and women’s inability to cut it in the real world; but if they work, they probably cannot compete with male peers, which explains why they think there is a glass ceiling and since working mothers are not very good mothers anyway, they should probably quit work since they do not enjoy it and feel guilty, which only proves how weak and dependent they were in the first place.

Now this kind of reasoning may seem perfectly acceptable in the United States Congress, but I for one would prefer a more intelligent analysis. Thinking rooted in decades of racialized gender assumptions has already inflicted untold damage, not only on millions of women, but also on the well being of the nation as a whole. More than seventy-five years after women won the right to vote, Americans are still struggling with staggering inequalities that are encoded into our laws and daily activities. There is no question that the degrees of subordination many of us experience vary significantly, but to paraphrase the great Mississippi civil rights activist, Fannie Lou Hamer, none of us can be truly free until all of us are.

A workplace that represents justice and fairness, and that embraces difference without linking them to hierarchy and rank, is something we need to keep trying to build, despite the obstacles and defeats. For my part, I have to believe that this kind of equality with differences can be won in my lifetime. And in those moments when I need a little lift, I can

closes, “with respect to the litany of moral repressiveness that seems to be obligatory these days, I want the record to show that I do not want to hear another word about drugs or crime without hearing about decent jobs, adequate housing and egalitarian education in the same breath.” *Id.* at 38. *See also* Adolph Reed Jr., *Assault on Affirmative Action*, PROGRESSIVE, June 1995, at 18 (discussing affirmative action).

daydream about writing a follow-up article to this one in the year 2020, the one hundredth anniversary of the suffrage amendment, when I will get to point out how the discourses that defined men's and women's relationships to work as different and unequal, were finally dismantled. I hope my student from 1978 will read it.