

1991

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Recommended Citation

Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155 (1991).

Available at: <https://repository.law.umich.edu/mlr/vol89/iss5/3>

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FEMINIZING UNIONS: CHALLENGING THE GENDERED STRUCTURE OF WAGE LABOR†

Marion Crain*

INTRODUCTION

Feminist scholars in increasing numbers are calling for a feminist agenda that challenges directly the economic, social, and political power imbalance between women and men.¹ All agree that economic empowerment of women is a central feature of this agenda.² Some center this debate in a broad-based challenge to the gendered structure of wage labor, arguing that our sex-segregated occupational structure should be dismantled, and suggesting a reevaluation of the gendered construct of "work."³ The scholars have not specified exactly how this challenge could be mounted, given women's current economic and political subordination.⁴ Other feminist scholars focus on individual

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1. See, e.g., Dowd, *Work and Family: The Gender Paradox and the Limitations of Discrimination Analysis in Restructuring the Workplace*, 24 HARV. C.R.-C.L. L. REV. 79, 128-35 (1989); Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 822-36 (1989). See generally A. DWORKIN, *LETTERS FROM A WAR ZONE* (1988); C. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989) [hereinafter C. MACKINNON, *THEORY OF THE STATE*]; C. MACKINNON, *FEMINISM UNMODIFIED* (1987) [hereinafter C. MACKINNON, *FEMINISM*].

2. See authors cited *supra* note 1.

3. See Dowd, *Work and Family: Restructuring the Workplace*, 32 ARIZ. L. REV. 431, 491-93 (1990); Dowd, *supra* note 1, at 171-72; Williams, *supra* note 1, at 822-36; see also Conaghan, *The Invisibility of Women in Labour Law: Gender-Neutrality in Model-Building*, 14 INTL. J. Soc. L. 377, 385 (1986) ("Fundamental then, to a feminist approach to labour law, is challenging the assumption that unions represent the interests of [all] the workers.").

4. See *supra* notes 1, 3. These writers apparently believe that this transformation and "degenderization" process will be performed primarily by feminist scholars. Their work is consequently vulnerable to the criticism, advanced by critical race theorists, that their version of feminism is essentialist in nature: those engaged in feminist discourse and scholarship are primarily white, college-educated, middle- and upper-class women who focus solely on gender as a system of power relations while ignoring other critical aspects of identity such as race, ethnicity, and class. See B. HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 3-4 (1984); Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990); Lugones &

challenges to the gendered structure of labor, proposing reforms of antidiscrimination analysis under Title VII to end women's economic subordination in the workplace.⁵

In this article, I argue that labor unions can be an effective, central tool in a feminist agenda targeting the gendered structure of wage labor. Collective action is the most powerful and expedient route to female empowerment; further, it is the only feasible means of transforming our deeply gendered market and family structure. Others have laid the groundwork by showing how existing individual-model challenges have been unable to accomplish such broad-based reform.⁶ I begin where they leave off.

I suggest that feminized labor unions could, through collective bargaining and political lobbying for legislation to protect unorganized workers, politicize gender issues and transform the structures of work and family. Because labor unions' locus is at the center of economic, social, and political power relations, unions are ideally positioned to enable women to confront collectively inequalities of power. Moreover, the democratic structure of labor unions would afford working-class women and women of color a voice in this transformation. Unions themselves, faced with declining membership in the industrial sector and searching for ways to increase their membership and power, are more receptive than ever before to women members. An influx of women members with new ideas about how unions should be structured, how they can exert economic power, and what they should do for their membership would give labor a much-needed shot in the arm, psychologically and numerically. With enhanced power, unions might be able to take advantage of their strategic political position.

Spelman, *Have We Got a Theory For You? Feminist Theory, Cultural Imperialism and the Demand for 'the Woman's Voice,'* 6 WOMEN'S STUD. INTL. F. 573, 574-75 (1983); *infra* notes 211-19 and accompanying text. See generally E. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988).

5. See, e.g., Dowd, *supra* note 1, at 154-71; Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749, 1839-43 (1990); see also Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589 (1986) (arguing that rights discourse is a necessary aspect of political and legal strategy for change).

6. See Dowd, *supra* note 1, at 135-54 (discussing the following inadequacies of existing discrimination analysis: a limited ability to reach or affect structural discrimination, a conceptual focus on sex discrimination rather than on gendered constructs, a limited usefulness in solving issues of power and patriarchy, and a potential for reinforcing the public-private dichotomy); Schultz, *supra* note 5, at 1799-1815 (examining judicial interpretations of sex segregation under Title VII, and proposing deeper judicial scrutiny of employer responsibility for sex segregation); Browne & Giampetro-Meyer, *The Overriding Importance of Market Characteristics for the Selection of Pay Equity Strategies: The Relative Efficacy of Collective Bargaining and Litigation in the Nursing Industry*, 11 INDUS. REL. L.J. 414, 428-32 (1989) (discussing courts' lack of receptivity to comparable worth claims under Title VII).

Many feminists display ambivalence toward and distrust of male-dominated unions, which have historically discriminated against women and remain insensitive to many concerns of women.⁷ Unions have been notoriously ineffective in organizing women, and women have played a minor role within unions.⁸ Despite the much-publicized efforts of union leaders to lead a "renaissance" of labor organizing targeting women workers,⁹ women continue to be underrepresented on union membership rolls: only thirteen percent of female workers, as compared with twenty percent of male workers, were union members in 1989.¹⁰ Women's entry into union leadership has also been slow.¹¹

In Part I, I provide an overview of the historical and ideological backdrop within which unions have failed to organize women.¹² I argue that labor's historic ineffectiveness in promoting women's causes is traceable to the adoption of the family-wage ideology, a sexist philosophy of the ideal male worker which was encouraged by capital because it served to fragment the labor market and to create a secondary, superexploited labor force composed primarily of women and minori-

7. See, e.g., Browne & Giampetro-Meyer, *supra* note 6, at 445 (unions probably will not provide much help to women unless they change strategies, increase their representation of female-dominated workforces, and show more concern for pay equity issues); L. FARLEY, *SEXUAL SHAKEDOWN: THE SEXUAL HARASSMENT OF WOMEN ON THE JOB* 157-58 (1978) (early labor movement sought and modern unions seek to maintain male domination of female labor).

8. Cook, *Introduction to A. COOK, V. LORWIN & A. DANIELS, WOMEN AND TRADE UNIONS IN ELEVEN INDUSTRIALIZED COUNTRIES* 12 (1984). Women's minor role in numerical terms was partially explicable by virtue of their underrepresentation in the workforce generally: in 1950, women made up only 31.4% of the labor force. Cetron, Rocha & Luckins, *Into the Twenty-First Century: Long-Term Trends Affecting the United States*, FUTURIST, July-Aug. 1988, at 29, 35. That explanation is no longer satisfactory: Bureau of Labor statistics project that women will enter the labor market in increasing numbers. In fact, 63% of the new entrants into the workforce between 1985 and 2000 will be women. *Id.* Women will represent 55.5% of the labor force by 1990, and 59.9% by the year 2000. *Id.*

9. See Pollock, *Pink-Collar Workers: The Next Rank and File?*, BUS. WK., Feb. 24, 1986, at 116 (describing efforts of Service Employees International Union to organize office workers); Gustke, *Unions Move to Recruit Women*, MGMT. REV., Feb. 1988, at 52 (describing efforts by unions to organize women, including clerical workers, garment workers, and flight attendants); Kelly & Bradford, *Labor May Have Found an Rx for Growth*, BUS. WK., Feb. 22, 1988, at 162 (discussing efforts to organize female health care workers). Unions' new-found interest in organizing women comes at a time when union membership is drastically declining. See *Union Membership Down to 16.4 Percent in 1989*, 133 LAB. REL. REP. (BNA) 209, 210 (Feb. 19, 1990); *Union Coverage of Private Workforce Predicted to Fall Below 5 Percent by 2000*, 3 Lab. Rel. Wk. (BNA) 1185 (Dec. 20, 1989).

10. *Union Membership Down to 16.4 Percent in 1989*, *supra* note 9, at 210. Estimates vary; 13% is the high-end estimate. Cf. *America's Trade Unions Return from the Dead*, ECONOMIST, Feb. 10, 1990, at 66, 67 (only 12% of women workers are union members); Curme, Hirsch & MacPherson, *Union Membership and Contract Coverage in the United States, 1983-88*, 44 INDUS. & LAB. REL. REV. 5, 12 (1990) (in 1988, only 12.5% of women, as compared with 20.3% of men, were union members).

11. See Milkman, *Women Workers, Feminism and the Labor Movement Since the 1960s*, in *WOMEN, WORK AND PROTEST* 300, 301 (R. Milkman ed. 1985); *infra* notes 86-92 and accompanying text.

12. See *infra* notes 26-106 and accompanying text.

ties.¹³ The early exclusion of women from economic and political power in the workforce was institutionalized by the incorporation into our culture of a public-private spheres ideology which assigns men power in the public world of politics and the workforce, and women responsibility in the private world of the home.¹⁴

In Part II, I review the explanations advanced by academics and unionists for unions' failure to organize women in significant numbers.¹⁵ Both academics and union leaders have asserted that women workers are "difficult to organize,"¹⁶ and have excused unions for their failure to organize women in significant numbers.¹⁷ They justify the exclusion of women based on women's purported innate proclivities, specifically women's lack of ability and interest in participating in the labor movement. In particular, women's "unorganizability" has been explained as a byproduct of their status as secondary wage earners, focused primarily on family relationships.¹⁸ Alternatively, some argue that women's unorganizability results from women's concentration in occupations that are inherently difficult to organize, such as clerical positions, service occupations, and health care jobs.¹⁹ These justifications for women's unorganizability have relieved scholars and unions from the need to seek alternate explanations that would raise fundamental questions about the definitions of work, collective organization and collective action, labor power, and the structure of labor law itself.

In Part III, I apply feminist theory to unravel the myths used to maintain the exclusion of women from labor unions, and unmask the economic and social motivations behind creation and maintenance of

13. See *infra* notes 49-72 and accompanying text.

14. See *infra* notes 99-106 and accompanying text.

15. See *infra* notes 107-79 and accompanying text.

16. *Fast Leaders Map Strategies, Goals For Future Union Growth*, 3 Lab. Rel. Wk. (BNA) 1072 (Nov. 15, 1989). Mainstream social scientists during the 1950s and early 1960s shared and legitimized this view. See Bookman, *Unionization in an Electronics Factory: The Interplay of Gender, Ethnicity, and Class*, in *WOMEN AND THE POLITICS OF EMPOWERMENT* 159-60 (A. Bookman & S. Morgen eds. 1988). Social scientists described women and immigrants as unorganizable. "Women are 'secondary wage earners' who enter the labor market for extra money and can leave it at any time, . . . they tend to be more dependent on and loyal to the company than men, and . . . internecine warfare constantly rages among them." *Id.* at 160 (quoting Karsh, Seidman & Lilienthal, *The Union Organizer and His Tactics*, in *UNIONS AND UNION LEADERSHIP* 98 (J. Barbash ed. 1959)). Italian immigrant workers were described as "'village minded, fatalistic and self-reliant, three qualities which made them poor union members.'" *Id.* at 160 (quoting Fenton, *Immigrants and Unions, A Case Study: Italians and American Labor, 1870-1920* 20 (doctoral dissertation, Harvard Univ. 1957)). Bookman describes the studies as "replete with the stereotypes of that era." *Id.* at 159.

17. See Bookman, *supra* note 16, at 159-60.

18. See *infra* notes 130-66 and accompanying text.

19. See *infra* notes 167-79 and accompanying text.

those myths.²⁰ Feminist scholars have only recently begun to question these assumptions about women's inherent natures. Recent work suggests that there is no inherent gender-based reason why women should be uninterested in work issues or resistant to organization; indeed, it suggests that women should be *more* amenable to collective organization than men. I conclude that women's "unorganizability" is structurally created and maintained rather than inherent, and that this exclusionary structure serves capital's purposes. Labor unions, by acquiescing in this system, have essentially put issues of gender superiority prior to their class struggle with capital.²¹

In Part IV, I develop a strategy for utilizing unions to empower women by breaking down mutually reinforcing family and work sexual stereotypes.²² I suggest a two-part solution.²³ First, feminists and unionists must pressure unions to target and organize women in sex-segregated occupations, to improve their economic lot, and to funnel women's voices into the political arena.²⁴ Second, scholars must begin the process of deconstructing labor law to transform the gendered structure of labor law and labor jurisprudence.²⁵ I provide an outline of potential reforms, and suggest avenues for others to explore in the process of deconstructing labor law.

I. HISTORICAL AND IDEOLOGICAL PERSPECTIVES ON THE EXCLUSION OF WOMEN FROM LABOR UNIONS

A brief historical overview is necessary to appreciate the very rational ambivalence and distrust for labor unions expressed by many feminists. In section I.A, I show that many of the early unions explicitly excluded women, and even those which allowed women were deeply uncomfortable with the idea of women exercising power and influence in the workplace. The actions of the AFL during this time period demonstrate the conflict it perceived between including women and the traditional union philosophy of the "family wage." Section I.B explores the post-World War II context in which the brief wartime demand for female labor led to the breakdown of overt barriers against women in unions, but the latent gendered structure of society was in-

20. See *infra* notes 180-294 and accompanying text.

21. See Conaghan, *supra* note 3, at 385, 389-90 (by rendering women invisible and ignoring that their subjective experience of work may be very different from that of men, unions legitimate patriarchal conceptions of work and workers).

22. See *infra* notes 295-357 and accompanying text.

23. See *infra* notes 309-57 and accompanying text.

24. See *infra* notes 309-28 and accompanying text.

25. See *infra* notes 329-57 and accompanying text.

stitutionalized within unions. In particular, the public/private spheres ideology arose to justify women's disenfranchisement within the labor movement. What follows is a summary of the historical experience of women with labor unions, and an explication of the ideological basis for unions' failure to organize and represent women workers.²⁶

A. Pre-World War II

Before 1873, nearly all male-dominated trade societies and unions completely barred women.²⁷ When the Knights of Labor began to flourish in the 1880s, its open membership policy encouraged women to organize in relatively large numbers.²⁸ The Knights of Labor gave way, however, to the American Federation of Labor (AFL), a group of trade unions founded in 1886.²⁹ The AFL developed a " 'philosophy of pure wage consciousness,' " signifying " 'a labor movement reduced to an opportunistic basis, accepting the existence of capitalism and having for its object the enlarging of the bargaining power of the wage earner in the sale of his labor.' " ³⁰ The AFL's focus was thus on short-run objectives rather than political goals; it "refused to allow its energies to be diverted from the task of improving the immediate economic position of its members."³¹ The AFL's narrow, shortsighted focus produced a willingness to sacrifice solidarity for wage gains, and ultimately led to the creation of a partnership of organized labor and organized capital which supported exclusionary policies against marginalized workers such as women and immigrants.³²

26. The summary in Part I owes much to the work of feminist labor historians, cited throughout Part I. For a more detailed background, see generally A. KESSLER-HARRIS, *OUT TO WORK* (1982); R. MILKMAN, *GENDER AT WORK* (1987); and essays in *WOMEN, WORK AND PROTEST*, *supra* note 11.

27. May, *Bread Before Roses: American Workingmen, Labor Unions and the Family Wage*, in *WOMEN, WORK AND PROTEST*, *supra* note 11, at 6.

28. A. KESSLER-HARRIS, *supra* note 26, at 152. The Knights of Labor brand of unionism has been described as "romantic," and "reformist" as contrasted with the American Federation of Labor's approach. See H. MILLIS & R. MONTGOMERY, *ORGANIZED LABOR* 59 (1945). The Knights emphasized equality of opportunity and sought "panaceas" which would "lift the wage earners out of their class." A. COX, D. BOK & R. GORMAN, *CASES AND MATERIALS ON LABOR LAW* 7 (10th ed. 1986).

29. A. COX, D. BOK & R. GORMAN, *supra* note 28, at 7-8.

30. *Id.* at 8 (quoting S. PERLMAN, *HISTORY OF TRADE UNIONISM IN THE U.S.* (1922)).

31. *Id.* at 8.

32. See A. KESSLER-HARRIS, *supra* note 26, at 152; S. PERLMAN, *supra* note 30, at 66. The AFL's short-term perspective was not solely a product of shortsightedness and self-interest; political expedience was an important element as well. The capitalist system restrained the labor movement. The demise of the American Socialist Party and the Red Scare were instrumental in destroying labor's larger political and social goals. See M. HARRINGTON, *SOCIALISM: PAST & FUTURE* 28-59 (1989) (early utopian socialism was communitarian, moral, feminist, and committed to the transformation of work; socialism as it ultimately evolved within the capitalist system reduced mass workers' movement to impotence).

1. *AFL Ambivalence Toward Organizing Women*

The AFL's short-term focus on increasing the wages of its members resulted in considerable ambivalence by the AFL toward organizing female workers. Despite rapid expansion in the numbers of working women in the industrial labor force between 1897 and 1920,³³ the AFL was able to organize no more than 1.5% of the women engaged in industrial occupations by the year 1910; only new organizing among garment workers was responsible for raising the figure to 6.6% by 1920.³⁴ The AFL's ambivalence derived from competing and conflicting concerns between a fear of being undercut by cheap female labor, and a commitment to the patriarchal view of women's role as homemakers.³⁵ The former concern generated a shaky commitment to unionize women and to demand equal pay for them, while the latter suggested that women "ought not to be in the labor force at all."³⁶

The AFL resolved the conflict by pledging to organize women.³⁷ Despite its rhetorical commitment to organizing women, however, the AFL's efforts were half-hearted at best: although it did not take affirmative steps to exclude women from its member unions, it took no action against gender restrictions on membership imposed by member unions.³⁸ Moreover, the AFL did little to assist unionized women in obtaining entry into the appropriate parent unions, which frequently ignored them or denied them access.³⁹ Even unions that did admit women sometimes directed exclusionary tactics at female members; these unions held meetings at late hours, in meeting places such as

33. By 1920, more than 20% of the labor force was female. A. KESSLER-HARRIS, *supra* note 26, at 152.

34. *Id.*

35. *Id.* at 153, 154. As Kessler-Harris has pointed out, the interest of trade unionists in supporting the patriarchal family structure was at the root of both concerns; the only truly satisfactory answer was that women be removed from the workforce entirely. *Id.* at 154. Samuel Gompers, president of the AFL, asserted: "It is the so-called competition of the unorganized, defenseless woman worker, the girl and the wife, that often tends to reduce the wages of the father and the husband." Gompers, *Should the Wife Help To Support the Family?*, AM. FEDERATIONIST, Jan. 1906, at 36. The Birmingham *Labor Advocate*, voice of the AFL in the south, was more blunt: "[I]t is one of the ironies of the labor agitator's life that women have ever been and do still remain their most uncompromising opponents. . . . Could the woman wage earner be eliminated — suddenly and absolutely eliminated — from all consideration in the labor problem, that problem would be more than half solved." Birmingham *Labor Advocate*, Oct. 10, 1903, at 1, col. 4, *quoted in* A. KESSLER-HARRIS, *supra* note 26, at 154.

36. A. KESSLER-HARRIS, *supra* note 26, at 153.

37. May, *supra* note 27, at 9.

38. *Id.*

39. A. KESSLER-HARRIS, *supra* note 26, at 157. Kessler-Harris describes the methods by which the AFL effectively denied women's unions access. The methods included stalling until the employer had dissipated union support through discharge of union leaders, outright refusals to issue charters, disputes over jurisdiction of the parent body, and assessing unreasonably high dues and fees. *Id.* at 157-58.

saloons.⁴⁰

The lone exception was the Women's Trade Union League, an organization of women that "attempted to serve as a link between women workers and the labor movement and as a focal point for unorganized women interested in unionism."⁴¹ The League was founded in 1903 at an AFL meeting.⁴² Its founders solicited the aid of AFL leaders to produce the combination of wage-earning women and middle-class allies that did most of the women's trade union organizing in the early 1900s.⁴³ The League's purpose was to provide money, publicity, tactical advice, and political support for nonunionized women seeking to build their own unions, while simultaneously maintaining connections with male-dominated labor unions.⁴⁴ The League's eventual alliance with the Industrial Workers of the World (the Wobblies), a leftist group that advocated the abolition of capitalism and the modern political state through direct action by workers,⁴⁵ prompted a split between the AFL and the League.⁴⁶ Ultimately, the League, dependent on the AFL for support, acquiesced in the AFL's policy regarding organizing women workers,⁴⁷ and turned away from activist organizing efforts. The League sought instead to solve the problems of female wage-earners through political action, an activity that proved largely unsuccessful.⁴⁸

2. *The Family-Wage Ideology*

The AFL's ideological resistance to organizing women was based on gendered stereotypes. These stereotypes were predicated upon three assumptions about women: (1) women's primary interests and talents lay in homemaking and caretaking; (2) it was inappropriate for

40. *Id.* at 158-59; Feldberg, "Union Fever": *Organizing Among Clerical Workers, 1900-1930*, *RADICAL AM.*, May-June 1980, at 53, 63 ("Women without male escorts had little access to 'public' gathering places."); *id.* at 64 ("While men could congregate in barber shops, saloons, bowling alleys or even on street corners, there were few public places available to women.")

41. Dye, *Creating A Feminist Alliance: Sisterhood and Class Conflict in the New York Women's Trade Union League, 1903-1914*, 2 *FEM. STUD.* 24 (1975).

42. A. KESSLER-HARRIS, *supra* note 26, at 165.

43. *Id.*

44. *Id.*; Feldberg, *supra* note 40, at 57.

45. A. COX, D. BOK & R. GORMAN, *supra* note 28, at 10. The Wobblies' political focus upon labor solidarity more closely parallels that of the original Knights of Labor; the Wobblies "refused to limit union goals to improving the conditions of workers within a capitalist economy." *Id.* Hence, it was far more feminist in orientation than the AFL. *See supra* note 32.

46. A. KESSLER-HARRIS, *supra* note 26, at 166.

47. The AFL's policy was to focus on obtaining higher wages for male workers rather than to organize women workers, a policy that was legitimized and labeled the family wage strategy. *See infra* notes 49-72 and accompanying text.

48. *Id.*

women to work or to be members of unions, because both tended to denigrate women's respectable, morally pure status; and (3) women were not competent to understand or appreciate the traditional work issues utilized by organizers during union campaigns to rally support from the workers.

The AFL female stereotype was packaged and marketed as the "family-wage ideology."⁴⁹ This ideology proclaimed the social right of the working class to the ideal family and gender roles — female domesticity and male responsibility.⁵⁰ It expressed serious concern over the effects of industrial development on family life.⁵¹ Specifically, unions argued that if women were forced to work because their husbands were poorly paid or had little job security, women would be unable to fulfill their obligations to their husbands and children.⁵² The ideology connected class issues of subsistence and justice with gender, thereby establishing the parameters of the relationship between men, women, and work.⁵³ The National Trades' Union's proclamation of the ideology was typical: "The physical organization, the natural responsibilities, and the moral sensibilities of woman, prove conclusively that her labor should only be of a domestic nature."⁵⁴

49. See May, *supra* note 27, at 1.

50. *Id.* at 5.

51. R. MILKMAN, *supra* note 26, at 3.

52. Indeed, unionists urged that woman's full-time presence in the home was critical to the very survival of the family: "'The demand for female labor' . . . is 'an insidious assault upon the home . . . it is the knife of the assassin aimed at the family circle.'" A. KESSLER-HARRIS, *supra* note 26, at 154 (quoting statement of an official of the Boston Central Labor Union, made in 1897).

53. See *id.*

54. *National Laborer*, Nov. 12, 1836, at 133, reprinted in 6 J. COMMONS & H. SUMNER, A DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY 281 (1958). William Sylvis of the National Labor Union carried the analysis one step further during an 1867 speech: "It will be fatal to the cause of labor, when we place the sexes in competition, and jeopardize those social relations which render woman queen of the household. Keep her in the sphere which God designed her to fill, by manly assistance. . . ." J. SYLVIS, THE LIFE, SPEECHES, LABORS, AND ESSAYS OF WILLIAM H. SYLVIS 220 (1872).

Although most feminists are critical of the family-wage ideology, Martha May points out that the family-wage ideal had its origins in a politics of class *unity* rather than class division. See May, *supra* note 27, at 2. Historically, May argues, the family-wage ideal constituted a class aspiration, supported by both men and women of the working class — and the ideology was strenuously resisted by capital. *Id.* at 7. May quotes an AFL spokesperson who described the ideology in more positive terms:

The workers are tired of having themselves, their wives and children, used as chips for our commercial, financial, and industrial gamblers . . . What is the price we pay for children free from factory life, for mothers burdened by no duties outside the home, for fathers who have leisure for homes and families? . . . The living wage is the right to be a man and to exercise freely and fully the rights of a free man [T]o realize that is the sure and true destiny of organized labor.

Id. at 8-9. Note that even in this explication, however, the family-wage ideology — and, indeed, the goals of organized labor itself — were defined in terms of gender roles. It was only when the presence of women wage earners in the labor market threatened to upset the balance between

The AFL continued the ideology in the early 1900s. Said an AFL member:

We stand for the principle . . . that it is wrong to permit any of the female sex of our country to be forced to work, as we believe that the man should be provided with a fair wage in order to keep his female relatives from going to work. The man is the provider and should receive enough for his labor to give his family a respectable living.⁵⁵

Thus, it was man's role and right to serve as the breadwinner, and it was woman's responsibility to remain in the home. Trade unionists worried that the shop atmosphere would be "morally corrupting" for women.⁵⁶ Similarly, they expressed concern that men would lose respect for women if they worked together:

Respect for women is apt to decrease when they are compelled to work in the factory or store More respect for women brings less degeneration and more marriages . . . if women labor in factories and similar institutions they bring forth weak children who are not educated to become strong and good citizens.⁵⁷

Finally, the cultural expectation that wage-earning women would eventually marry and leave the workforce spawned the argument that women were transient and temporary members of the workforce; therefore, allowing them to occupy positions that could be filled by men was pointless and unfair to the ousted male workers.⁵⁸ Women themselves internalized these cultural stereotypes and behaved accordingly. Wage-earning women were sometimes reluctant to join unions due to their desire to marry and the consequent belief that work was merely a temporary interval between childhood and marriage.⁵⁹ Some women believed that "no nice girl would belong to [a union],"⁶⁰ apparently either because they felt that such an allegiance would undermine the primary loyalty or obedience which they owed to their fathers,⁶¹ or because it was considered socially inappropriate for women "to act militantly or to wield power directly," which they would be required

home and shop, that the family-wage ideology took on the aspect of female exclusion. *Id.* at 7. Ultimately, May agrees, the family-wage ideology operated to divide the working class along gender lines. *Id.*

55. A. KESSLER-HARRIS, *supra* note 26, at 153.

56. D. MONTGOMERY, *THE FALL OF THE HOUSE OF LABOR* 202 (1987); May, *supra* note 27, at 6; see Feldberg, *supra* note 40, at 55, 56 ("women stenographers were 'innocent' and should not be exposed to the harsh realities of the courtroom").

57. A. Kessler-Harris, *supra* note 26, at 153-54.

58. Feldberg, *supra* note 40, at 56.

59. A. KESSLER-HARRIS, *supra* note 26, at 159; Feldberg, *supra* note 40, at 60.

60. A. KESSLER-HARRIS, *supra* note 26, at 159.

61. *Id.* In effect, these women were aware of, and were attempting to conform to, notions of male territoriality.

to do if they organized or joined a union.⁶² Women's life situations — their exclusions from many of the best jobs because of the perception that women were only temporarily in the workforce, and the low pay available in the jobs they did hold — served to increase the economic pressure on young women to marry.⁶³ The message was clear: "[F]ind some nice young man and form a union of two, for life; that's the best form of union."⁶⁴

Widespread acceptance of the assumptions underlying the family-wage ideology in large part generated the gendered stereotypes that crept into the workplace and affected women who did work. The family-wage ideology portrayed women as the weaker sex, in need of protection.⁶⁵ Women were regarded either as mothers or potential mothers, who needed protection from threats on their chastity or excessive strains upon their health.⁶⁶ Consequently, women were channeled into jobs thought to be less demanding physically and safer.⁶⁷ Women were also assumed to be especially good at certain tasks suited

62. Feldberg, *supra* note 40, at 60-61. Even those who sympathized with the condition of working women believed that improvements in working conditions should only be achieved through "appropriate methods" and in "ladylike fashion, through the exercise of quiet influence and moral suasion among men who would champion their cause." *Id.* at 61. In short, "[women] were to be protected, not to become their own guardians." *Id.*

63. *Id.* at 56.

64. *Id.* at 53 (quoting Typewriter Tappings, 24 *The Typewriter and Phonographic World*, 90 (1904) (to the "typewriter girls" of Montreal, Canada, who had "the fever" and were talking about forming a union)).

65. See Cook, *supra* note 8, at 14. Somewhat contradictorily, others contended that women were better suited for manual work and should be prohibited as competitors with an unfair advantage. See May, *supra* note 27, at 6.

66. Cook, *supra* note 8, at 13.

67. This conception of women persists today. It lies at the root of the current fetal vulnerability debate, which has recently been put to rest by the Supreme Court's decision in *International Union, UAW v. Johnson Controls, Inc.*, 111 S. Ct. 1196 (1991). (company policy excluding all unsterilized women of child-bearing age from higher-paying jobs because of danger to fetus posed by potential exposure to toxic chemicals in the workplace violates Title VII). Justice Blackman, writing for the majority, took note of the historical conception of women as potential mothers and deplored its use by employers — and courts — to limit women's economic opportunities:

Concerns for a women's existing or potential offspring historically has been the excuse for denying women equal employment opportunities It is no more appropriate for the courts than it is for individual employers to decide whether a woman's reproductive role is more important to herself and her family than her economic role. Congress has left this choice to the woman as hers to make.

111 S. Ct. at 1210. See also Becker, *From Muller v. Oregon to Fetal Vulnerability Policies*, 53 U. CHI. L. REV. 1219, 1241 (1986) (protective policies undermine society's perception of women as competent decisionmakers); Williams, *Firing the Woman to Protect the Fetus: The Reconciliation of Fetal Protection with Employment Opportunity Goals Under Title VII*, 69 GEO. L.J. 641, 651 (1981) (protective policies excluding women from employment limit women's opportunities for self-fulfillment through work of their choice). Mary Becker notes that employers tend to erect fetal vulnerability policies to protect women and their children "only when women are perceived as marginal members of the workforce. [Such] policies . . . have been adopted only in male-dominated industries." See Becker, *supra* at 1237-38.

for women; thus, working women's problems differed from those of male workers. For example, women were required to meet male standards of feminine attractiveness, were sometimes hired for "companionship," were often asked to perform personal services (sewing buttons on clothing, selecting gifts for the employer's family), and faced sexual advances.⁶⁸ Finally, the isolated situations in which many women office and clerical employees worked contributed to the formation of close, personal ties to bosses.⁶⁹

In sum, women were not thought of, nor were they supposed to be, "real" workers.⁷⁰ Joining a union meant publicly proclaiming one's status as a worker.⁷¹ Instead, women became

members of a secondary labor force, performing marginal tasks, receiving lower wages, occupying a narrower range of jobs, even serving as a reserve army of labor. Indeed, they constituted so different, so other, a category of labor that, like slaves in colonial economies, they were scarcely regarded as part of the labor force. They became — and remained for more than a century — invisible.⁷²

B. *The Post-World War II Context*

As a result of the sudden need for female workers during World War II, large numbers of married as well as unmarried women joined the workforce. The family-wage ideology was abandoned and the major unions were forced to ease restrictions on the employment of married women.⁷³ After the war, pressure by female trade unionists caused the major unions to abandon openly discriminatory policies and contract provisions blocking the hiring of married women.⁷⁴ The influence of the women's movement on the outlook of female trade unionists was evident: women argued for the first time that they possessed the right to equal protection under union contracts despite their marital status, asserting that union discrimination against married women was counter to the democratic principles of industrial unionism.⁷⁵

68. Feldberg, *supra* note 40, at 63.

69. *Id.* at 59.

70. *Id.* at 60.

71. *Id.*

72. Cook, *supra* note 8, at 14.

73. See Gabin, *Women and the United Automobile Workers' Union in the 1950s*, in *WOMEN, WORK AND PROTEST*, *supra* note 11, at 259, 264.

74. Examples of these policies included contracts forbidding the hiring of married women and requiring the resignation of single female employees who married; contracts that required a married woman to show "cause" for her employment (e.g., her husband was either incapacitated or in the service); contracts restricting the accumulation of seniority for women; and contracts requiring women to pay a special fee to the local union for "permission to work." *Id.*

75. *Id.* at 265.

1. Institutionalizing Gender Discrimination by Unions

Despite the dramatic effect World War II had on women's position in the labor market, the change proved to be only temporary. After World War II, the market reverted to prewar patterns of job segregation. Ruth Milkman has argued that the reversion to prewar patterns was fundamentally capital's conscious choice, rather than simply the result of either a postwar resurgence of the ideology of domesticity, or the operation of union-instituted seniority systems and their manipulation by male unionists.⁷⁶ Milkman attributes postwar capitalist policy to two factors: (1) the traditional sexual division of labor was embodied in the structure of each industry and so remained compelling when demobilization occurred; and (2) capital had assessed labor's position on the subject of retaining women in "men's jobs" as ambivalent, at best, and with sex differentials in wages having been narrowed considerably during the war, female substitution was no longer as profitable.⁷⁷ Job segregation patterns, wage structures that discriminated against women, and separate seniority systems continued to exist.⁷⁸

The 1960s, 1970s, and 1980s brought an increased consciousness of women's rights, and along with it changes in social mores.⁷⁹ The rise of feminism, particularly during the 1970s, encouraged a more independent and assertive role for women.⁸⁰ Militancy and unionism also increased.⁸¹ The media portrayed women's position in the labor market as radically altered.⁸² The influx of women into the workforce increased the percentage of women who were union members.

Nevertheless, women remain underrepresented on union rolls. Unions blame employers for past discrimination against women in hiring, arguing that if women are not workers, they will never become union members. Yet women are grossly underrepresented in union leadership proportionate to female union membership, particularly at the national level.⁸³ As power and control over union affairs becomes

76. See R. MILKMAN, *supra* note 26, at 100-01.

77. See *id.* at 112-27.

78. Gabin, *supra* note 73, at 273.

79. The consciousness-raising activity of the women's movement, and the publicity, legal advocacy, and cultural sensitivity which it spawned, inevitably affected the workplace. Green & Tilly, *Service Unionism: Directions for Organizing*, 38 LAB. L.J. 486, 491 (1987).

80. Gray, *Militancy, Unionism and Gender Ideology*, 16 WORK & OCCUPATIONS 137, 140 (1989).

81. *Id.* at 149.

82. R. MILKMAN, *supra* note 26, at 154.

83. See Koziara & Pierson, *The Lack of Female Union Leaders: A Look at Some Reasons*, 104 MONTHLY LAB. REV. 30, 31 (1981); see also K. AMUNDSEN, A NEW LOOK AT THE SILENCED MAJORITY 89-91 (1977) (describing phenomenon of predominantly white male oligarchy controlling organized labor).

increasingly centralized at the national level, the lack of female union leadership and, consequently, attention to women's concerns at the national level makes it increasingly difficult for prospective female members to identify with unions.⁸⁴ In addition, only a small percentage of union organizers are female.⁸⁵

Researchers attribute unions' failure to admit women into the ranks of officers and organizers⁸⁶ to gendered stereotypes held by male union members.⁸⁷ One study shows that, applying stereotypical notions about attributes of the sexes, men rank higher than do women in perceived competence to perform the tasks of a union organizer and officer.⁸⁸ Women are perceived as lacking competence in negotiation and interpersonal skills (using effective power tactics, being assertive and strong, and empathizing with and responding to members); industrial relations knowledge and political savvy; and availability of time for union duties and accessibility.⁸⁹ Men are perceived as more aggressive, uncompromising, competitive, assertive, intelligent and as having better judgment than women. Men also are assumed to use more expert, direct tactics; therefore they are perceived as better negotiators.⁹⁰ Men are perceived as more emotionally stable than women, and hence may be perceived as more approachable; men possess more self-confidence than women when evaluating personal industrial relations skills, and are more likely to be accepted as equals by management: therefore, they are viewed as better negotiators.⁹¹ Men generally have more seniority than women, and with experience comes industrial relations knowledge.⁹² Finally, union members still believe that women should bear primary responsibility for childcare and homemaking; because men do not have these family responsibilities, they have more time for their roles as union officers, and thus are more

84. See R. GOLDBERG, ORGANIZING WOMEN OFFICE WORKERS 21, 122 (1983).

85. See, e.g., DEPT. OF ORG. & FIELD SERVS., AFL-CIO ORGANIZING SURVEY: 1986-87 NLRB ELECTIONS 6 (Feb. 1989) [hereinafter AFL-CIO ORGANIZING SURVEY] (only 9% of AFL-CIO organizers surveyed were women). The same study demonstrates that female organizers have a significantly higher success rate in winning union elections than do male organizers: female organizers enjoyed a 61% win rate, while male organizers had a 41% win rate. *Id.*

86. The position of union organizer has traditionally been an entry-level position for those desiring positions in union leadership: organizers typically are promoted to business agents, then field representatives, and upward through the union leadership hierarchy.

87. See, e.g., Koziara & Pierson, *supra* note 83, at 31.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

accessible.⁹³

Moreover, unions continue to represent their female membership with ambivalence. Title VII litigation⁹⁴ over the effect of union seniority and security clauses on women hired under affirmative action programs reflects unions' continued willingness to serve the needs of the white male majority and to sacrifice those of women and other marginalized groups.⁹⁵ Similarly, litigation over unions' failure to fairly represent female members is evidence of unions' continuing tendency to ignore women's interests.⁹⁶

In short, unions have failed to fulfill their promise to represent the interests of female workers in the workplace. Instead, women's interests have been subordinated to those of male union members, while unions have appropriated female support in the struggle against capital. Although new attacks on union power may have limited the "political space" for the advancement of women's interests in the workplace,⁹⁷ unions have chosen to ignore altogether their female constituencies. As a 1980 study by the Coalition of Labor Union Women concluded, "With regard to some of the traditional measures of progress and equality — in particular, adequate representation at the power centers of institutions — women are absent from the agenda' of the labor movement."⁹⁸

93. *Id.*

94. Title VII prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin. 42 U.S.C. §§ 2000e-2000e-17 (1982).

95. See Goldberg, *The Economic Exploitation of Women*, in CAPITALIST SYSTEM 343 (1972); *W.R. Grace & Co. v. Rubber Workers*, 461 U.S. 757 (1983) (company's departmental and plantwide seniority systems, mandated by its collective bargaining agreement, violated Title VII; company was required to comply with EEOC conciliation agreement, and to bear costs of breach of collective bargaining agreement); Wallace, *Increased Labor Force Participation of Women and Affirmative Action*, in WOMEN IN THE WORKPLACE 1, 16-20 (P. Wallace ed. 1982) (describing legal battle between AT&T and telephone unions over EEOC consent decree requiring implementation of an affirmative action plan in conflict with seniority provisions in collective bargaining agreement; unions fought implementation of affirmative action plan). *But see* Leonard, *The Effect of Unions on the Employment of Blacks, Hispanics, and Women*, 39 INDUS. & LAB. REL. REV. 115 (1985) (studying how unions have mediated affirmative action pressure and concluding that unions' resistance to implementation of affirmative action plans has not harmed the blue-collar employment opportunities of women or minorities except for Hispanic women).

96. See, e.g., *Jones v. Truck Drivers Local Union No. 299*, 748 F.2d 1083, 1086 (6th Cir. 1984) (breach of duty of fair representation action by five female office clericals against union for blocking them from bidding on nonoffice jobs despite accrued seniority after merger which left them jobless, held barred by statute of limitations).

97. See R. MILKMAN, *supra* note 26, at 128.

98. Milkman, *supra* note 11, at 301 (quoting COALITION OF LABOR UNION WOMEN, CENTER FOR EDUC. & RES., *ABSENT FROM THE AGENDA: A REPORT ON THE ROLE OF WOMEN IN AMERICAN UNION 5* (1980)).

2. *The Public-Private Spheres Ideology*

While it is certainly true that attitudes toward women's employment have shifted dramatically, and that unions have abandoned the overt articulation of a family-wage ideology, feelings about female labor force participation remain, at best, ambivalent. Antidiscrimination statutes such as Title VII institutionalize new mores that render overt sex discrimination socially unacceptable.⁹⁹ Yet as the post-World War II period described above indicates, gender discrimination nevertheless persists in more subtle forms.

Current gender discrimination is supported by a new ideology, labeled the "public-private spheres ideology" of work and home, male and female.¹⁰⁰ Under the public-private spheres view of the world, "the [male-dominated] market structures our productive lives and the [female-dominated] family structures our affective lives."¹⁰¹ The market is particularly suited to men; the family is particularly the domain of women.¹⁰² This dichotomy is firmly embedded in our traditions, culture, workplace structure, and law. And it is nothing more than

99. By overt sex discrimination, I mean policies and practices that classify and exclude women based on their gender or immutable traits associated with gender (for example, the ability to become pregnant). Although Title VII has been expanded to redress sexual harassment on the job that is overtly sexual, even the most expansive interpretation does not touch broader patterns of male on-the-job behavior that make the culture of the workplace hostile and alienating. See Schultz, *supra* note 5, at 1832-33. Schultz quotes blue collar women workers' accounts of such harassment, and gives the following summary by Mary Walshok of the form this hostile environment takes:

[I]t is "normal" for men in blue-collar trades "to question the sincerity of the woman's interest and commitment to a man's job, to wonder about whether or not the woman was going to get married and take off or get pregnant, to question whether the woman had technical or mechanical competence or the physical strength and agility to do the job, and to resent women because they perceived them as taking away a job from one of their own."

Id. at 1833 (quoting M. WALSHOK, BLUE-COLLAR WOMEN: PIONEERS ON THE MALE FRONTIER 211 (1981)). Schultz concludes that Title VII will only be effective as a tool in advancing women's position in the labor force (and, in particular, in eliminating job segregation by sex) if judges view themselves as "authors of women's work aspirations," and scrutinize more carefully the ways in which employers have structured their workplaces to reinforce sex-based job preferences. *Id.* at 1841-43.

100. I use the phrase "public-private spheres ideology" adopted by feminist writers to refer to the dichotomy between the home and the workplace. See, e.g., Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118, 1118-19 (1986) (arguing that the public-private split between home and workplace has fostered the economic and social subordination of women); Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1498 (1983) (arguing that social reforms are limited by unexamined assumptions about radical separation of market and family); cf. Klare, *The Public/Private Distinction in Labor Law*, 130 U. PA. L. REV. 1358, 1358-59 n.2 (1982) (acknowledging dichotomy between world of work and world of family as a subject of feminist writing, but asserting that "most important" usage in labor law and in liberal political tradition generally is the distinction between state and civil society). Olsen, by contrast, believes that deep ties exist between the state/civil society dichotomy and the market/family and male/female dichotomies. Olsen, *supra*, at 1498-99.

101. Olsen, *supra* note 100, at 1498.

102. *Id.* at 1498-99.

the family-wage ideology in another, more sinister, guise.¹⁰³

Frances Olsen has argued that efforts to reform society to eliminate the subordination of women have been limited by the ideological premise of the public-private dichotomy.¹⁰⁴ She describes the home, and the women's work done in the home, as simultaneously glorified and denigrated. The home was historically referred to as sacred, and homelife was celebrated as the reward for which men suffered in the work world; the home represented a haven for moral, emotional, and spiritual values that men were unable to express in the commercial world.¹⁰⁵ Men also believed, however, that world goals such as the pursuit of wealth represented the greatest good; self-reliance, rationality, discipline, and a focus on objective reality were considered desirable aspects of the male sphere of the market.¹⁰⁶

Acceptance of the public-private dichotomy by both men and women had three effects that persist today. First, women were assigned primary responsibility for child care and homemaking chores, while men were assigned primary responsibility for economic support of the family. Second, to the extent women entered the market out of economic necessity, they were believed capable of performing only menial jobs. Third, women themselves came to value (or to be seen as valuing) nurturing, caring skills, to be relationship-centered and interested in cooperation, thus rendering them a poor fit for many jobs in a marketplace patterned on traditional male traits.

In the next Part, I examine the parallels between the public-private spheres ideology and the justifications raised by unions for their failure to organize women and to advance their interests in the marketplace. I conclude that the family-wage ideology has evolved into the public-private spheres ideology, which has been implicitly adopted by unions.

II. THE UNION STORY: FEMALE "UNORGANIZABILITY"

Until very recently, the conventional wisdom has been that women are "hard to organize," which is shorthand for the notion that women

103. I characterize the public/private ideology as more sinister because it operates even more effectively than did the family-wage ideology to subordinate women. This is so because "woman's 'place' today includes both the home and the female labor market." R. MILKMAN, *supra* note 26, at 154. As primary family caretakers who also work in the marketplace out of economic necessity and to provide their children with greater educational opportunities, women typically put in 12 to 14-hour days. M. WALSHOK, *supra* note 99, at 252. Thus, women remain in low-paying, sex-segregated jobs and simultaneously deplete their energies through fulfilling caretaking obligations, rendering them too exhausted to challenge either role.

104. Olsen, *supra* note 100, at 1498.

105. *Id.* at 1499.

106. *Id.* at 1500.

are harder to organize than men.¹⁰⁷ Indeed, the influx of women into the workforce has been cited as a major barrier to union growth.¹⁰⁸

Early conclusions about women's organizability were based in part on study by researchers whose gendered assumptions about women tainted their methodologies and conclusions.¹⁰⁹ Observations of union leaders indicated that women workers had accepted and internalized the gendered assumptions underlying the studies, and that male union leaders had done nothing to address women's particular needs. Karen Nussbaum, President of District 925, Service Employees International Union (and the founder of the Working Women's Organization, 9 to 5), believes that the consciousness-raising done by the women's movement laid the foundation for increased organizability of women.¹¹⁰ Nussbaum lists three principal reasons why women did not join unions in large numbers prior to the 1960s: (1) women saw themselves as secondary wage earners;¹¹¹ (2) consequently, women were more afraid than men of antagonizing their employers by engaging in organizing activity; (3) women perceived male-dominated unions as insensitive to issues such as equal pay, child care, and maternity leave.¹¹²

107. Strom, *Challenging "Woman's Place": Feminism, the Left, and Industrial Unionism in the 1930s*, 9 FEM. STUD. 359, 359-60 (1983) (citing as an example L. TENTLER, *WAGE-EARNING WOMEN: INDUSTRIAL WORK AND FAMILY LIFE IN THE UNITED STATES, 1900-1930* (1979)); see Okafor, *White-Collar Unionization: Why and What To Do*, 62 PERSONNEL 17, 18 (1985) (militancy of women office workers "has been especially surprising to traditional labor leaders who have long regarded women office workers as largely unorganizable"); Green & Tilly, *supra* note 79, at 488 ("it is a time-honored complaint among male organizers that women are difficult to organize"); Browne & Giampetro-Meyer, *supra* note 6, at 439 (citing studies by economists that "indicate that women are less likely than men to join unions because they see themselves as temporary, secondary workers [and] because women perceive that unions discriminate against them and fail to emphasize wage and benefit issues that are important to women." The authors characterize studies that suggest that women may be more likely to join unions as future-looking studies, reiterating that "their desire to join now is weak") (footnotes omitted).

108. Moore, *Are Women Workers "Hard To Organize"?*, 13 WORK & OCCUPATIONS 97, 97-98 (1986).

109. See *id.* at 99. Moore explains that his study, by "investigating rather than inferring attitudinal differences . . . corrects for a failing of prior research." *Id.* The research to which Moore refers is replete with gendered assumptions about attitudinal differences between the sexes. Industrial sociologists assumed a negative correlation between women's family commitments and their participation in collective action, and maintained that women's primary identification with their family roles precludes their development of a "work consciousness." See D. LOCKWOOD, *THE BLACK-COATED WORKER* 125 (1958); Kassalow, *White Collar Unionism in the United States*, in *WHITE COLLAR TRADE UNIONS* 356 (1966).

110. See Narod, *Labor Woos Women*, DUNN'S BUS. MONTH, Sept. 1984, at 83.

111. Nussbaum's understanding of the secondary wage earner self-image differs slightly from that of the 1950s sociologists; rather than describing women as uninterested in their work lives relative to their family roles, Nussbaum describes women as "happy to get whatever they could to boost their family income." *Id.* Nussbaum conceives of women as more integrated beings, interested in their work, but only as a means to a higher end: boosting the family's welfare.

112. *Id.* Some activists describe the attitudes of male-dominated unions in far more hostile terms, citing their historical resistance to women workers. Lin Farley, who has studied sexual harassment on the job, writes:

Recent studies, however, indicate that women are now and may have always been *more* organizable than men. One study, by sociologist Thomas Moore, examines the conclusions of postindustrialist sociologists and concludes that the gender differential in union membership is not simply a consequence of the differing labor force location of male and female workers, as many had theorized.¹¹³ After controlling for variables previously identified in studies of attitudes about unions,¹¹⁴ Moore finds that “unorganized women workers are *more* likely to desire union representation than [are] their male counterparts,” and that women view unions and their leadership more favorably than men.¹¹⁵ Moore concludes that analysts should exercise

The mainstream of the American labor movement was fueled at birth by a desire to maintain the male domination of female labor; the very heartbeat of this movement's unions is male rights. They are consequently a great enemy of the working woman, and it is only wishful thinking to believe this could be otherwise, despite much union rhetoric to the contrary. This rhetoric stresses unity and equality for all workers and, when pressed about the painful truth about the status of women, the unions will cry foul on the ground that employers are the root of all women's problems while anyone who says differently is antilabor, an enemy of the people. . . .

. . . Unions relentlessly discriminate against their female members' needs for equal hiring practices, seniority, equal pay, nondiscriminatory promotions, daycare, maternity leave and social insurance; continue to enforce rigid exclusion in training and segregation in jobs; deny protection from sexual harassment; will not promote more than token female leadership and steadfastly blame their refusal to organize the millions of women in the female job ghetto — the most exploited, underpaid sector of the workforce — on women's “unorganizability.”

L. FARLEY, *supra* note 7, at 157-58. Similarly, Sharon Hartman Strom notes that “years of experience with unresponsive, male-dominated unions” probably shapes female workers' negative attitudes toward unions — and women simply choose not to add another layer of patriarchy, the union, to their lives. Strom, *supra* note 107, at 381.

113. See Moore, *supra* note 108, at 97-98. Moore summarizes the work of other sociologists in this area who conclude that occupation, industry, and background characteristics account for only 65% of the union membership differential between the sexes. *Id.* at 98. Cf. R. FREEMAN & J. MEDOFF, *WHAT DO UNIONS DO?* 28 (1984) (explaining low female unionization rate by reference to two factors: differences in the characteristics of the jobs held by men and women, and differences in the economic interests of the two groups; first factor refers to the idea that women tend to be employed in sectors of the economy where unionization is, “for whatever reason,” below average).

114. Moore mentions the following variables: education (“negatively associated with union membership, presumably because of greater individual bargaining power . . . on the part of the more educated”); age (“ambiguously related to unionization”); race (minority status is positively correlated with union membership — “the need of minorities for union protection outweighs the effects of discrimination by unions”); occupation (nonmanual workers are generally less receptive to unionization than are manual workers); industrial location (government and private-sector service industry employees have traditionally been regarded as hard to organize); region (workers in southern states are more difficult to organize than are their northern counterparts, due to the strong antiunion attitudes prevalent in the South, “bolstered by the right to work laws found primarily in Southern states”); and size of the firm and the labor market in the community (small firms and small communities are more difficult to organize because of the close personal relationships with management supported by the close physical proximity). Moore, *supra* note 108, at 100-01.

115. *Id.* at 107 (emphasis added). Moore's data, developed by asking respondents a series of questions aimed at assessing views about unions and, ultimately, whether the respondent would vote for a union, revealed that 39.7% of women workers would vote for a union, as compared with only 27.8% of the men. *Id.* at 103-04, Table 1.

“greater caution” before attributing statistical differences in union membership to attitudes and propensities that have never been demonstrated.¹¹⁶

Moore’s work does not stand alone. Other recent studies also have found that many of the assumed barriers to union organization of women presupposed worker attitudes that had never been demonstrated.¹¹⁷ For example, a recent organizing survey conducted by the AFL-CIO examined elections between July 1986 and April 1987 in 189 units of over fifty employees in size, and found that “[t]he presence of a large proportion of female workers significantly increases the union’s chance of success.”¹¹⁸

Although it has become unfashionable to speak of women’s unorganizability in light of these studies,¹¹⁹ the gendered assumptions that spawned the term remain. Sociological studies concerning the relationship between gender and work are laden with these assumptions. One sociologist posed the question why, given that women hold jobs that are generally inferior to those held by men (as measured by levels of autonomy, degree of supervision, and promotional opportunities), women aren’t more dissatisfied with their jobs than are men?¹²⁰ One of three theories posited to explain the lack of difference between the sexes in job satisfaction was that women focus on their roles as homemakers, rather than on their roles as workers, and derive additional satisfaction from that sphere.¹²¹ Although the study finds no evidence to support this theory, the serious articulation of this theory evidences

116. *Id.* at 107.

117. *See id.* at 98; R. FREEMAN & J. MEDOFF, *supra* note 113, at 28-29, Table 2-2 (female nonunion workers were more likely to favor unions than were male nonunion employees, a fact which is consistent with analyses of actual voting behavior in union representation elections); Green & Tilly, *supra* note 79, at 488 (nonunionized women actually desire unionization at a higher rate than men) (citing paper presented by Freeman and Leonard); Leigh & Hills, *Male-Female Differences in the Potential for Union Growth Outside Traditionally Unionized Industries*, 8 J. LAB. RES. 131, 141-42 (1987) (“the lower extent of unionization found for females employed in private sector industries outside the unionized sectors is due almost entirely to a greater degree of frustration among women who desire a union job but are unable to get one”).

118. AFL-CIO ORGANIZING SURVEY, *supra* note 85, at 6. The study found that “[i]n units where women comprise less than half of the workforce, the win rate is only 33%. Where women make up more than 75% of the unit, the union’s win rate is 57%.” *Id.*

119. It is particularly unfashionable to do so when male union leaders are anxious to get their hands on any union members at all, regardless of sex. *See supra* note 9.

120. *See* Hodson, *Gender Differences in Job Satisfaction: Why Aren’t Women More Dissatisfied?*, 30 Soc. Q. 385 (1989).

121. *Id.* at 385-86. The other two hypotheses tested were (1) women focus upon different aspects of work in arriving at a given level of job satisfaction; and (2) women employ different personal expectations in evaluating their jobs (*i.e.*, women compare themselves to other women rather than to men, and thus do not feel relatively deprived; or, they compare themselves to homemakers and feel relatively satisfied). *Id.* at 385-88.

the continuing acceptability of this belief.¹²² Other researchers put the same idea more delicately, alluding to the fact that women have a "less permanent attachment to the labor market . . . than men."¹²³ Nor is this gendered stereotype of women workers restricted to academics. One AFL-CIO staff organizer maintained that the typical clerical worker has no job commitment: "She always expects to move on to a better job, a marriage, or a new employer."¹²⁴ Consequently, organizers stress job security less with female workers.¹²⁵ Researchers studying this practice found evidence supporting this tactic, and theorized that women, as secondary wage earners in their family units, may not value job security as much as men do.¹²⁶

Finally, some of those in power do not bother to disguise their views with either careful language or scientific rhetoric. West Virginia Supreme Court Chief Justice Richard Neely told a group of high-achieving male eleventh-graders that they should select as future wives

122. For example, in testing for satisfaction with different aspects of work, the study is noticeably bereft of any questions concerning levels of friendship, collegiality, and support or camaraderie at work. *See id.* at 386. Further, Hodson hypothesizes that "the income and status associated with paid work outside the home may compare favorably with unpaid household work," making paid work outside the home "relatively desirable, regardless of its limitations." *Id.* at 387. Finally, the study assumes that only married women would have the opportunity to compare their levels of job satisfaction with those of men, despite evidence that married women appear to be as satisfied with their jobs as do those who are not married. *Id.* at 387. Hodson suggests that this is an anomaly because husbands, who do make comparisons to the jobs which their working wives hold, tend to have more positive attitudes about their jobs where their wives' jobs are less rewarding than their own. This hypothesis is supported, he says, by research finding that men find marriage to an "overeducated" woman stressful, while achievement-oriented women find marriage to an "overeducated" man to be satisfying. *Id.* at 387-88. The study concludes that women are "less favorably disposed than men toward complex work." *Id.* at 395.

Hodson ignores the "old" insight, documented decades ago by researchers among male workers and now acknowledged among female workers as well, "that people who are placed in jobs that offer little opportunity for growth or upward mobility will adapt to their situations by lowering their work aspirations and turning their energies elsewhere." Schultz, *supra* note 5, at 1827 (footnotes omitted); *see also* R. GOLDBERG, *supra* note 84, at 61 (women accept undesirable working conditions and view work in the marketplace as secondary, contingent, and a luxury).

Finally, it is possible that at least part of women's apathy and "lack of interest" in their jobs is traceable to a lack of control over workplace decisionmaking. Although both men and women suffer from feelings of alienation and powerlessness at work, *see* Crain, *Expanded Employee Drug-Detection Programs and the Public Good: Big Brother at the Bargaining Table*, 64 N.Y.U. L. REV. 1286, 1292-93 (1989), women's typical placement in positions of low authority would logically tend to exacerbate the phenomenon.

123. Hirsch, *The Determinants of Unionization: An Analysis of Interarea Differences*, 33 INDUS. & LAB. REL. 147, 149 (1980); *see also* Fiorito & Greer, *Gender Differences in Union Membership, Preferences, and Beliefs*, 7 J. LAB. RES. 145, 161 (1986).

124. Okafor, *supra* note 107, at 20.

125. *See* Lynn & Brister, *Trends in Union Organizing Issues and Tactics*, 28 INDUS. REL. 104, 110 (1989).

126. *See id.* at 110-11 (generally, employed women are members of families with at least one other wage earner, usually a husband, whose income is significantly higher than that of his wife; also, men are more vulnerable to job loss because employment in predominantly male industries is shrinking relative to that in predominantly female industries).

women who would stay at home with their children rather than be off "chasing a buck."¹²⁷ Disregarding the fact that some families might rely on the second income of the wife for basic necessities of life, Neely urged the future husbands to "drive a Ford Escort instead of a Cadillac."¹²⁸ Finally, he made clear his views about day care by describing day-care workers (the vast majority of whom are female) as "eighth-grade graduate, minimum wage" workers.¹²⁹

The continuing adherence to gendered assumptions about women's lack of interest in work and unions is not always so obvious. Union adoption of these gendered assumptions, and their roots in an ideology of a public-private dichotomy, can be demonstrated by reference to two explanations frequently advanced by union leaders and organizers to explain their failure to organize women. I next address each of these justifications.

A. *Women Are Secondary Wage Earners*

The justification for women's lack of interest¹³⁰ in their work lives — and hence, in unionism — has two aspects: first, jobs are of secondary importance to women from an economic standpoint because women typically can rely upon a husband as a primary breadwinner, and second, women value family over jobs. The idea that most women are secondary wage earners whose earnings are "pin money" in the family economic situation is patently false. Statistics show that women are increasingly either heads of households or remaining single.¹³¹ This phenomenon is attributable to the divorce rate, longevity of women relative to men, and the cultural practice of men of a particular age marrying into younger and younger age groups, creating an artificial "man shortage" for those in higher age groups. Thus, many women simply do not have the so-called luxury of being a secondary breadwinner. Fifty percent of the nine million working poor in this country

127. Deutsch, *Neeley Urges Sowing Wild Oats*, Charleston Daily Mail, June 11, 1990, at 1A, col. 3.

128. *Id.* at 13A, col. 4.

129. *Id.* The sole consolation offered by the columnist who authored this newspaper article to readers fuming with rage was: "While Sunday's speech . . . likely will draw some comments, it probably won't get the attention of last year's talk in which [Neely] suggested that residents use baseball bats on suspected drug dealers." *Id.*

130. Vicki Schultz refers to this as the "lack of interest" argument. See Schultz, *supra* note 5 (discussing and criticizing decision in EEOC v. Sears, Roebuck & Co., 628 F. Supp. 1264 (N.D. Ill. 1986), *aff'd.*, 839 F.2d 302 (7th Cir. 1988)).

131. See *Too Late for Prince Charming*, NEWSWEEK, June 2, 1986, at 54, 55 (reporting unpublished study by Yale sociologists and Harvard economist predicting that marriage rates for college-educated single women 30 and over are only 20%, decrease to 5% by age 35, and to 2.6% by age 40).

are women, and one and a half million of these women head families.¹³² Further, more than half of *all* poor families are headed by women, with forty percent working outside the home.¹³³

Second, statistics demonstrate that most two-earner couples today find *both* incomes necessary to sustain their standard of living. The so-called typical American family — a husband supporting a nonworking wife and two children — represents less than five percent of married-couple families.¹³⁴ Nearly two thirds of families with a husband and wife present have two wage earners.¹³⁵ Half of all working wives work year round, full time, and contribute forty percent of their families' income.¹³⁶ Thus, even women in two-earner marriages may have economic needs pushing them into the labor force.¹³⁷ Over twenty percent of all poor families contain two or more workers.¹³⁸

Finally, the notion that people work solely to meet economic needs, and that they would not be in the workforce if they were not required to be by economic necessity, is itself an anachronism.¹³⁹ For many, work may be the only source of a sense of community and connection. Further, paid work often nurtures self-esteem and feelings of worth and purpose in society. Roberta Goldberg, who surveyed women office workers in the Baltimore area, writes that women's motivations for working are complex.¹⁴⁰ Her research indicates that most of the women did not consider their earnings to be as supplemental as the literature suggests.¹⁴¹ For unmarried respondents, working for a living was an unquestioned assumption.¹⁴² Among married and unmarried, divorced, separated, or widowed women, "over half reported that they alone provided 100% of their family income. An additional 13%

132. NATIONAL COMM. OF WORKING WOMEN OF WIDER OPPORTUNITIES FOR WOMEN, *NO WAY OUT: WORKING POOR WOMEN IN THE UNITED STATES 2* (1988) [hereinafter *NO WAY OUT*].

133. *Id.* at 4.

134. *Norwood Sees Encouraging Signs in Narrowing of Earnings Gap*, 3 Lab. Rel. Wk. (BNA) 1095 (Nov. 22, 1989) (summarizing Bureau of Labor Statistics data).

135. *Id.*

136. *Id.*

137. Increased household dependence on women's incomes, even in middle- and upper-class households, is evidenced by the fact that, for example, life insurance companies are now selling more policies to women than to men. See Cetron, Rocha & Luckins, *supra* note 8, at 38.

138. *NO WAY OUT*, *supra* note 132, at 4.

139. See R. GOLDBERG, *supra* note 84, at 99 (One study found that women who had to work out of economic necessity often continued to work after the necessity had passed, "finding it a relief from household drudgery" and enjoying "the personal qualities of competence, importance, and independence gained through their jobs.").

140. See *id.* at 61.

141. *Id.*

142. *Id.* at 61-62.

provided 75 to 90 percent of their family income. Only 22% reported that they provided 50% or less."¹⁴³

The second aspect of the justification for unions' failure to organize women — primary commitment to the family — is equally flawed. According to this argument, women choose low-paying, dead-end jobs because they are uninterested in their careers, preferring to devote their energies to their families. It is true that women themselves describe sex role expectations as guiding decisions they make about careers:

We've been geared by society, by the male population especially, that we're suited for clerical work. We're suited for teaching and keeping house. And the worst thing in the world would be for us to be piloting a plane, or be on the board of directors for some corporation My first thought out of high school was, "I got to make some money and the best way to do that is get some clerical skills and get a job as a secretary." I didn't think about getting technical training in plumbing.¹⁴⁴

Nevertheless, the "pre-labor market explanation" for women's "lack of interest" in market work¹⁴⁵ is not sufficient to explain why women change career aspirations after they have entered the workplace,¹⁴⁶ nor does it explain how women in nontraditional occupations escape early conditioning to feminine sex roles while still remaining "feminine."¹⁴⁷ Instead, women's work aspirations evolve and are shaped by their experiences in the work world.¹⁴⁸

At best, women who occupy roles as both workers and mothers are

143. *Id.* at 60.

144. *Id.* at 95 (quoting a survey respondent).

145. The phrase "prelabor market explanation" was coined by Vicki Schultz to describe the attribution of "workplace segregation to social forces operating prior to the labor market," whether traceable to biological influences or to "early socialization to 'feminine' sex roles." Schultz, *supra* note 5, at 1816.

Some have employed the "lack of interest" argument to justify the gender-wage gap, couching it in more "neutral" economic terms. See R. POSNER, *ECONOMIC ANALYSIS OF LAW* 313-14 (3d ed. 1986). Posner suggests that higher wages for males may reflect a compensatory premium for the "dirty, disagreeable, and strenuous jobs that men dominate presumably because their aversion to such work is less than women's"; and/or that lower wages for women represent "differences in investments in market-related human capital (earning capacity) [T]his will show up in the choice of occupations: women will be attracted to occupations that don't require much human capital." *Id.* Posner allows that "irrational or exploitive discrimination," *id.*, is another possible explanation, but he emphasizes the economic justifications, which boil down to lack of interest arguments with a decidedly negative twist: in blunt terms, women earn less either because they do not want to get dirty, or because they are lazy.

146. See Schultz, *supra* note 5, at 1817-18 (summarizing sociological research finding that the sex-type of the work to which young women aspire changes substantially after they begin working).

147. See *id.* at 1821-23 (discussing studies of female Marines and women employed in non-traditional blue collar trades).

148. *Id.* at 1824-25; see R. KANTER, *MEN AND WOMEN OF THE CORPORATION* 263 (1977).

seen as having a "conflict of allegiance" between home and work.¹⁴⁹ Because complete loyalty to the employer and the job is the male norm in the public sphere, attempts by women to accommodate the two spheres are perceived as evidencing a lack of commitment to the work world.¹⁵⁰ Thus, women workers are caught in a catch-22: they are perceived as aggressive and unfeminine if they do not assume primary responsibility for child care and family obligations, and as uninterested in market work if they attempt to juggle both roles.

Unions have played a significant part in maintaining this situation. Most unions continue to undervalue the significance of child care, maternal leave, and parental leave benefits to women workers, and have categorized them as private or personal issues. And because unions still view women as primarily responsible for child care, the issues are personal issues *for women*.¹⁵¹ Despite liberal legal rhetoric's success in gaining important private rights for women in other contexts (such as the right to private, autonomous reproductive choice for women who can afford it), in this arena it operates as a "double-edged sword" for women: private choice means having the individual responsibility for it.¹⁵²

The consequences of the privatization of women's issues like child care, maternity leave, and parental leave have been dramatic for working women. The unavailability and expense of child care leaves many working women no choice but to stay home and care for their children until they reach school age, leading inevitably to a break in women's market careers that sentences them to dead-end jobs when they return

149. Finley, *supra* note 100, at 1127.

150. *See id.* As Finley points out, this notion is irrational: for example, it would seem that a woman who requests scheduling accommodations from her employer is actually demonstrating a sincere commitment to her job; her action shows that she has considered her responsibilities and has realized that she must make adjustments in her job schedule to continue to perform at her peak in her job. *Id.* at 1166 n.199.

151. *See* Bell, *Unionized Women in State and Local Government*, in *WOMEN, WORK AND PROTEST*, *supra* note 11, at 280, 291; Dowd, *supra* note 1, at 112-14.

152. *See* Freeman & Mensch, *The Public-Private Distinction in American Law and Life*, 36 *BUFFALO L. REV.* 237, 239 (1987). It is worth noting that, as the courts have chipped away at women's rights to private, autonomous reproductive choice, the AFL-CIO has been reluctant to take a stand on abortion rights. AFL-CIO Vice President Joyce Miller has argued that women's reproductive freedom "certainly is a labor issue because it encompasses questions of economics, health, privacy, the family and other matters that are all so vital to workers and the labor movement." Bernstein, *AFL-CIO Leadership Is Still Divided on Abortion*, *L.A. Times*, Feb. 20, 1990, at D3, col. 5. As a recent editorial notes, the discrepancy between the percentage of working women who belong to unions and working men who are union members should persuade labor of the need to make a strong appeal to women in order to increase its declining membership. The editorial concludes, "Since a large majority of women seem to want the legal right to abortion, union leaders should act for pragmatic reasons, as well as out of conviction, and back an abortion rights resolution soon." *Id.* at D5, col. 2.

to the workforce.¹⁵³ Many women, however, simply cannot afford to stay at home.¹⁵⁴ Women sometimes rely on friends and relatives to care for their children.¹⁵⁵ This arrangement is unstable because the caregivers themselves move in and out of the workforce, forcing working mothers to alternate periods of work with periods of caring for their children, or to take part-time jobs.¹⁵⁶ The ultimate result, again, is a sporadic work history, which traps working mothers in low-income jobs.¹⁵⁷ Similarly, the absence of flexible job scheduling and adequate parental or maternity leave have contributed to the restriction of labor force participation for working mothers.¹⁵⁸

Several unions have noticed that unions' historical neglect of so-called women's issues has been a barrier to organizing women, and have asserted a new commitment to advancing women's interests through collective bargaining and national legislation. The approach has proved most effective where the union leadership itself is female.¹⁵⁹ Unions with primarily male leadership have been hard-

153. Bell, *supra* note 151, at 291.

154. See Zigler, Frank & Emmel, *Introduction to THE PARENTAL LEAVE CRISIS: TOWARD A NATIONAL POLICY* xv, xix (1988) [hereinafter *THE PARENTAL LEAVE CRISIS*] (employed mother's salary typically vital to basic well-being of her family; many families cannot finance parental leaves of absence from work to care for infants and children). As of 1986, 62% of mothers were paid employees. Freedman, *The Changing Composition of the Family and the Workplace*, in *THE PARENTAL LEAVE CRISIS*, *supra*, at 23.

155. NO WAY OUT, *supra* note 132, at 14-15. Average child care costs amount to approximately 43% of a full-time minimum wage worker's income. *Id.* at 14.

156. *Id.* at 14-15.

157. *Id.* at 14.

158. Finley, *supra* note 100, at 1125-28. See generally Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 B.U. L. REV. 55 (1979) (discussing the adverse economic and social impact that workplace structures and attitudes have on working mothers).

The lack of day care or availability of flexible scheduling is not necessarily a problem for middle and upper-class working mothers. A recent *Wall Street Journal* article makes the point that most women managers do not leave their corporations because of family obligations. Trost, *Women Managers Quit Not For Family But To Advance Their Corporate Climb*, *Wall St. J.*, May 2, 1990, at B-1, col. 3. Yet for these women, too, the biggest problem is discriminatory upper management attitudes regarding women's commitment to their jobs as careers; 43% of professional women surveyed at Fortune 500 companies in the northeast gave "struggle to prove it is a career and not just a job" as the highest price they paid for having a career, as contrasted with only 2% of the men surveyed. The women reported feeling blocked from advancement, and felt they had reached a "glass ceiling." *Id.*

159. The experience of the Harvard Union of Technical and Clerical Workers, which recently prevailed in a union election after a 12-year organizing effort in a 3450-person clerical and technical unit, 83% of whom are female, supports this. The Harvard Union gained valuable support from many women by focusing on issues such as insufficient affordable child care at the university. Note, *Finding A Voice Through the Union: The Harvard Union of Clerical and Technical Workers and Women Workers*, 12 HARV. WOMEN'S L.J. 260, 271 (1989). A 1981 study showed that unions' electoral chances were improved when unions emphasized "women's issues." Moore & Marsis, *Will Unions Work for Women?*, 47 PROGRESSIVE 28, 30 (1983).

The Harvard Union's experience also suggests, however, that addressing "women's issues" alone is not sufficient: empowering workers by teaching people the importance of collective ac-

pressed to demonstrate their commitment to these issues, however. First, their concern with supplementing their fast-declining ranks is apparent: unions tend to focus on these issues only when they are targeting female-dominated occupations such as health care and clerical work.¹⁶⁰ This only underscores unions' assumption that work accommodation of maternity is a special "women's problem," and highlights the entrenchment of male norms in the workplace and the persistence of the public-private spheres ideology.¹⁶¹

Second, unions have demonstrated a thin commitment at the bargaining table to issues of concern to women. Although union demands at the bargaining table for child care are "fairly common . . . in actual negotiations, [male] bargaining committees are rarely willing to give up part of a wage increase to fund such programs," and employers are unwilling to absorb the costs without some *quid pro quo*.¹⁶² Unions argue that "child care is costly and usually benefits only a small proportion of the union's members at any one time" (women);¹⁶³ some have interpreted this as the manifestation of a deep-rooted ambivalence about making it easier for mothers to work.¹⁶⁴ Because many men today have working wives, improved maternity and child care benefits would ultimately benefit men as well.¹⁶⁵ In addition, unions might (and should) negotiate *parental* leave policies that would apply equally to working parents of both sexes. Finally, those unions that takes seriously women's issues tend to confront them only at the

tion and building a community among workers should be the primary focus of any union organizing drive. Note, *supra*, at 265, 270; see also Ladd-Taylor, *Women Workers and the Yale Strike*, 11 FEM. STUD. 465, 465-66 (1985) (commenting that only women's participation in the leadership as well as the rank and file of a union insures that it will truly address issues of concern to women).

160. See 130 LAB. REL. REP. (BNA) 244 (Feb. 27, 1989).

161. See Green & Tilly, *supra* note 79, at 491-92 (arguing that "women's issues may be different from those of traditional bread-and-butter unionism," and implying that it is the province of women's organizations like 9 to 5 to identify and address "women's issues" on the job; the authors argue that unions seeking to organize service and clerical workers should "recognize the significance of associations like 9 to 5"); see also Finley, *supra* note 100, at 1138.

162. See Bell, *supra* note 151, at 291. There are many other benefits unions might bargain for which would be helpful to working mothers, and not all of them have economic costs. For example, unions might seek flexibility from employers in arranging gradual, part-time returns to work for new mothers, job-sharing, or flexible work hours to accommodate child care arrangements. See generally Steinberg, *Parental Leave Policies of Large Firms*, in THE PARENTAL LEAVE CRISIS, *supra* note 154, at 211, 212-22 (surveying parental leave and child care assistance programs in large firms); Hyland, *Helping Employees with Family Care*, MONTHLY LAB. REV., Sept. 1990, at 22 (describing various ways employers can provide childcare assistance).

163. Bell, *supra* note 151, at 291. Of course, this argument assumes that women are the primary caretakers for children.

164. See *id.*; see also Pacific Northwest ILGWU Leader Sees Need for New Organizing Tactics, 4 Lab. Rel. Wk. (BNA) 313, 314 (Mar. 28, 1990) (stressing community issues of concern, including child care, would revive rank and file activism among primarily female workforce).

165. See *infra* notes 247-48 and accompanying text.

national level, through political lobbying for parental leave legislation and the like; these strategies fail to reach women in their local unions.¹⁶⁶

B. *Women Are Concentrated in Nonunionizable Occupations*

Unions and scholars also contend that women are under-represented because women tend to work in occupations that do not lend themselves to unionization.¹⁶⁷ Labor market segmentation theorists argue that the low wages, high turnover, and vulnerable working conditions that characterize many female-dominated occupations pose barriers to unionization.¹⁶⁸ Another study suggests female-dominated occupations are less unionizable because (1) "managerial opposition to unionism is more intense in disproportionately female firms," and (2) "union leaders perceive the costs of organizing and servicing predominantly female bargaining units [as] relatively high."¹⁶⁹ The research-

166. Milkman, *supra* note 11, at 301. Even were the ideological commitment of unions to these issues strong, however, categorizing some issues as "women's issues" and focusing on those issues to the exclusion of others during the organizing process creates other problems. Some have assumed a dependence upon a male breadwinner in formulating wage and benefit packages which would be attractive to women members. For example, one research team asserts that some of the fringe benefits typically won by unions, such as health insurance, are less valuable to women because they already receive these benefits as a result of their husbands' pay packages. See Freeman & Medoff, *supra* note 113, at 28. An alternate way to view this problem would have been to consider whether, given the influx of female workers into the workforce, a cafeteria-style plan would advantage both spouses, whose benefits may overlap.

167. See Fiorito & Greer, *supra* note 123, at 161-62 (gender variations in unionism measures are due, in part, to industrial and occupational distributions, and thus may "diminish as occupational and industrial distributions become more gender-neutral"); Freeman & Medoff, *supra* note 113, at 28 (limiting the comparison between men and women union membership rates to individuals working in the same industry and occupation, the difference in unionization rates is reduced by over 60%); Hirsch, *supra* note 123, at 149 (women are more likely to work in less-unionized industries and in white-collar occupations, which are difficult to organize).

168. See R. EDWARDS, M. REICH & D. GORDON, LABOR MARKET SEGMENTATION (1975); Barron & Norris, *Sexual Divisions and the Dual Labor Market*, in DEPENDENCE AND EXPLOITATION IN WORK AND MARRIAGE 47 (D. Barker & S. Allen eds. 1976). For a feminist critique of labor market segmentation theory, see Beechey, *Women and Production: A Critical Analysis of Some Sociological Theories of Women's Work*, in FEMINISM AND MATERIALISM 155 (A. Kuhn & A. Wolpe eds. 1978).

Some female-dominated occupations, such as clerical work, have always been considered difficult to organize, regardless of whether men or women filled the jobs. The reasons for this belief include the fact that clericals identify with the boss for whom they work; clericals identify with white collar workers and with the middle class, which have traditionally been opposed to unionism because of its identification with the working class; and isolation by work roles, office organization, and status hierarchies within the office. See R. GOLDBERG, *supra* note 84, at 19. Alternatively, the argument has explicitly assumed a sex-stereotyped form: women are by nature passive and adaptable, rendering them ideally suited to performing repetitive, routine tasks without complaint; their docility makes it unlikely that they will aspire to rise above their station. See Davies, *Woman's Place is at the Typewriter: The Feminization of the Clerical Labor Force*, RADICAL AM., July-Aug. 1974, at 1, 18.

169. Leigh & Hills, *supra* note 117, at 139. Actually, the two reasons can be collapsed into a single reason: cost-effectiveness for the union. The more intense management opposition to a union campaign is, the lengthier and costlier it will be for the union to win.

ers view the second reason as more compelling; they argue that a higher expected turnover rate for women, a lack of understanding by male union leaders of the needs of women working in predominantly female occupations, and the concentration of female-dominated jobs in smaller, less capital-intensive firms located in more competitive industries, increase perceived organizing costs.¹⁷⁰ Thus, the presence of women in bottom-tier, undesirable, high-turnover jobs is self-determining as far as collective organization opportunities are concerned: unions do not seek to organize them to begin with.

Further, the nonunionizable jobs held by women are typically associated with "female" character traits, such as passivity, docility, and a preference for working in a hierarchy beneath a male superior.¹⁷¹ So, for example, conventional wisdom suggests that women are less militant than men, and therefore more difficult to organize. Women are also perceived to be more loyal to the company than men, and thus more reluctant to challenge its authority.¹⁷² Because most women work for men, this observation is generally expressed in terms of the patriarchal dimensions of the work: sexual hierarchy in the office restrains efforts to organize women, preventing the development of a critical consciousness in women.¹⁷³ In many female-dominated jobs, the very behavior that reinforces traditional sex roles in the home is also desirable behavior at the office.¹⁷⁴ Essentially, women are socialized to be submissive both at home and at work.¹⁷⁵

A striking example of unions' incorporation of the public-private spheres ideology in this context is unions' lack of commitment to is-

170. *Id.*

171. See Davies, *supra* note 168, at 18, 20.

172. Many continue to believe that women possess a "psychological component . . . that makes them less assertive, less willing to take risks, [and] more willing to be victims of employer exploitation." Strom, *supra* note 107, at 359.

173. See Kanter, *supra* note 148, at 82 ("[Male] bosses have a stake in seeing that [female] secretaries: (1) identify their interests with that of their bosses, subordinating any desires for their own career advancement; (2) suppress resentments of the differential material privileges of bosses and clerical workers by valuing instead the symbolic and emotional rewards of the secretarial job; and (3) develop attitudes [of fealty] that made it easy for bosses to exercise their authority.").

174. See R. GOLDBERG, *supra* note 84, at 26.

175. See *id.* The similarities between a woman's work at home and her work at the office have been described in terms of both the power structure and the tasks performed:

Filing is like washing dishes and induces the same sense of frustration. Typing a perfect letter is as transient an achievement as cooking an egg. These things are done with little conscious attention; the routine becomes automatic, and the mind wanders into its own escapist paths, which are different for the secretary and the housewife only because of their different ages and circumstances . . . Both kinds of work take place when the master is away; most of his presence is spent giving orders for the next round of work. The tasks are performed on his behalf but do not depend upon him personally . . .

Id. (ellipses in original).

sues of pay equity. Unions historically have demonstrated little ability to close the wage gap between men and women through collective bargaining.¹⁷⁶ Some commentators attribute unions' failure in this area to discriminatory attitudes towards women, unions' inability to protect part-time workers, and their tendency to divert pay equity issues to their lobbying agendas for national legislation.¹⁷⁷ These scholars conclude that despite courts' initial inhospitable reception of pay equity litigation,¹⁷⁸ union attitudes render litigation a more promising strategy for reducing the male-female wage gap than collective bargaining.¹⁷⁹

In short, unions continue the public-private spheres ideology by privatizing issues that affect women disproportionately, such as child care, maternity leave, parental leave, and pay equity. Unions may then utilize the "secondary wage earner" and "clustering in nonunionizable occupations" justifications to explain their failure to organize women. As I explain in the next Part, employers have every incentive to reinforce the public-private spheres ideology, and have not hesitated to do so.

III. *Unraveling the Myths: Lessons from Feminist Theory*

The labor movement was premised on the ideas that each individual worker's experience was common to that of many other workers and that, by banding together and sharing information, workers could assert their collective strength.¹⁸⁰ Labor unions have always recognized that knowledge of the production process equals power, and consequently, unions have steadfastly fought capital's efforts to break the unity of the labor process, to minimize knowledge in individual workers, and to isolate workers from one another.¹⁸¹ The women's

176. See Browne & Giampetro-Meyer, *supra* note 6, at 433.

177. *Id.* at 434.

178. See *AFSCME v. Washington*, 770 F.2d 1401, 1405-06 (9th Cir. 1985) (rejecting comparable worth claim and holding that a sex-segregated compensation system that is responsive to market forces does not support a Title VII claim); *American Nurses' Assn. v. Illinois*, 783 F.2d 716, 722 (7th Cir. 1986) (rejecting comparable worth claim and asserting that a finding of discrimination was unwarranted if the state pays market wages even if the employer is aware that its wage pattern disadvantages women).

179. Browne & Giampetro-Meyer, *supra* note 6, at 444. The authors cite *AFSCME* as an example of a union that might be able to use collective bargaining effectively as a pay equity strategy. *Id.* at 445. *AFSCME* has demonstrated its commitment to working women. It is no accident that *AFSCME* is also the union that litigated the most well-publicized pay equity case, *AFSCME v. Washington*, 770 F.2d 1401 (9th Cir. 1985).

180. See National Labor Relations Act, § 1, 29 U.S.C. § 151 (1988) (findings and declaration of purpose).

181. This process is known as deskilling, or the "Taylorization" of work — so named after the founder of the concept, Frederick Winslow Taylor. See *infra* note 291 and accompanying

movement has similar origins.

The women's movement is the direct result of information-sharing among women, leading to a consciousness that women's experiences at home and at work are not personal, private, and isolated.¹⁸² Women's consciousness-raising groups, surprisingly similar to grassroots labor organizing efforts, arose in "friendship networks, colleges and universities, women's centers, neighborhoods, churches, and shared work and workplaces."¹⁸³ These grassroots structures produced the central feminist concept — now the modern movement's slogan — that "the personal is the political."¹⁸⁴

The labor movement has as its goal the redistribution of social power and economic resources from the capital-owning class to the working class. Marxists note that the battle between labor and capital is essentially a class struggle; they theorize that labor can only "win" this struggle if it is successful in dismantling capitalism, replete as it is with concepts of hierarchy, oppression, notions that individuals rise within the hierarchy based solely upon merit (rather than because of a birthright to wealth or privilege), and the ethic of individual competition for scarce resources.¹⁸⁵

Similarly, the women's movement seeks transformation of existing social structures to redistribute social power and economic resources to women. Feminists fight against oppression in all human relationships, racism and classism as well as sexism.¹⁸⁶ Some feminists focus on resisting hierarchy, challenging the notion that individuals succeed

text. See generally H. BRAVERMAN, *LABOR AND MONOPOLY CAPITAL* 85-123 (1974) (describing Taylorism).

182. See Pollack, *Sexual Harassment: Women's Experience vs. Legal Definitions*, 13 HARV. WOMEN'S L.J. 35, 39-40 (1990).

183. See C. MACKINNON, *THEORY OF THE STATE*, *supra* note 1, at 84.

184. *Id.* at 95; Pollack, *supra* note 182, at 39-40. MacKinnon summarizes the four interrelated facets of the idea that "the personal is the political," as follows:

First, women as a group are dominated by men as a group, and therefore as individuals. Second, women are subordinated in society, not by personal nature or by biology. Third, the gender division, which includes the sex division of labor which keeps women in high-heeled low-status jobs, pervades and determines even women's personal feelings in relationships. Fourth, since a woman's problems are not hers individually but those of women as a whole, they cannot be addressed except as a whole. In this analysis of gender as a non-natural characteristic of a division of power in society, the personal becomes the political. C. MACKINNON, *THEORY OF THE STATE*, *supra* note 1, at 95.

185. See generally 1 K. MARX, *CAPITAL: A CRITICAL ANALYSIS OF CAPITALIST PRODUCTION* (1867) (S. Moore & E. Aveling trans. 1887); Braverman, *supra* note 181. Some critical legal studies scholars also advocate abolition of "the oppressive and discriminatory restraints upon human activity that form the core of capitalism." See Holt, *Recovery by the Worker Who Quits: A Comparison of the Mainstream, Legal Realist, and Critical Legal Studies Approaches to a Problem of Nineteenth Century Contract Law*, 1986 WIS. L. REV. 677, 707 n.163 (describing work of modern Marxist/CLS scholars struggling to develop a modified form of Marxist analysis).

186. See B. HOOKS, *supra* note 4; see also definition of "feminism" in National Organization of Women (N.O.W.) membership materials.

in our hierarchy based solely upon merit (rather than because of sex, race, or wealth), and others advance a different ethic based on women's experience.¹⁸⁷ Many feminists conclude that feminism can only succeed if it dismantles the capitalist patriarchy.¹⁸⁸

Despite the striking parallels between the two movements and the similarity of their goals, the labor movement and the women's movement have been uneasy allies. In Part III, I examine the justifications advanced by unions for their failure to incorporate women into the labor movement as a serious force, and apply feminist theory to unravel the mythical reasons for women's unorganizability. I conclude that the public-private spheres ideology is so deeply woven into the fabric of the labor movement that it operates as an almost unconscious barrier to the organization of women by unions. For its part, capital acts to maintain this ideology, for it keeps the unionized workforce fragmented. Finally, I suggest that the teachings of feminist theory indicate that women could be powerful allies in organized labor's struggle against capital.

A. *What Is Feminist Theory?*

Feminists strive toward the empowerment of women. As Martha Minow has noted, feminists' commitment to locate knowledge and judgment within patterns of social practice is a unifying commitment, even though it takes feminists in varying directions.¹⁸⁹ Nevertheless, some profound and troubling differences divide feminists.¹⁹⁰ Identification of the divergence in feminist thought is critical to understand-

187. See *infra* note 195 and accompanying text.

188. See, e.g., B. HOOKS, *supra* note 4.

189. Minow, *Beyond Universality*, 1989 U. CHI. LEGAL F. 115, 136. Minow explains: [S]ome feminists claim to have a correct answer to problems of justice because they have identified a pattern of unequal power or oppression that they believe is wrong and that allows them to select from among competing frameworks for sorting out conflicting versions of reality. Others believe that a process through which people with conflicting views participate as equals in reaching a judgment itself will channel and check the patterns of power that distort perceptions and thus distort judgments. And still others locate competing perceptions of reality in complex patterns of social relationships, and identify in these patterns the difficulties of reaching judgments in any but contextual, contingent ways. *Id.* Minow goes on to challenge the value of consistency and coherence, pointing out that even these seemingly neutral measures of intellectual integrity may be gendered. She concludes, "by urging modes of analysis that pay attention to the varieties of human experience and knowledge, feminists dispute the first premises against which consistency and coherence are typically measured." *Id.* at 137. See also Bender, *From Gender Difference to Feminist Solidarity: Using Carol Gilligan and An Ethic of Care in Law*, 15 VT. L. REV. 1, 11-12, 34-35 (1990) (arguing that cultural and radical feminist theory both recognize the existence of gender difference, but diverge in choice of appropriate political and legal strategies, and urging that feminists view gender difference and gender identity as a starting point for feminist solidarity).

190. Minnow, *supra* note 189, at 136; see also E. SPELMAN, *supra* note 4, at 161 (differences among women seem threatening to the possibility of a coherent women's movement); C. HEILBRUN, *WRITING A WOMAN'S LIFE* 19-20 (1988) (author describes herself as "profoundly wor-

ing the common ground that feminists do share.¹⁹¹ I believe that the differing approaches taken by feminists represent a strength of feminist theory, rather than a weakness, and offer multiple insights for union organizing and activism.¹⁹² Thus, although my argument is ultimately predicated on the commonality between the various articulations of feminist theory, I begin with a description of the basic conflicts between feminists. For purposes of clarity, I have divided modern American feminist thought into three strands of feminist theory.¹⁹³

1. Cultural Feminism

Cultural feminists (sometimes called relational feminists) focus on the differences between men and women. Robin West has aptly summarized the beliefs of cultural feminists; she asserts that cultural feminists celebrate as inherent feminine traits (at least in the white, middle-class community¹⁹⁴) a commitment to an ethic of care, and a focus upon the preservation of the relationships involved in a given situation.¹⁹⁵ Cultural feminists attribute this difference between the sexes to women's historical obligation to care for children.¹⁹⁶ As West puts it, the crucial difference is that "women raise children and men don't."¹⁹⁷ Because these feminine traits are the same ones that traditional (male) culture has stereotypically celebrated, cultural feminism appeals to traditional culture as a moderate feminist perspective.¹⁹⁸ In short, it does not necessarily threaten or challenge stereotypical no-

ried" about and "brood[ing]" on the dissensions that have grown among feminist scholars and theoreticians).

191. See C. HEILBRUN, *supra* note 190, at 19-20 (divisions in feminist theory are essential to process of understanding in an evolving field).

192. Indeed, the existence of many voices within feminist theory "is not a threat to the coherence of feminism," but is in fact "a sign of our empowerment." E. SPELMAN, *supra* note 4, at 176.

193. Any attempt to categorize feminist theory by dividing it into separate, independent strands is necessarily simplistic and distorted because it fails to identify the divergences within each strand, and tends to be underinclusive in that it excludes some feminist writers who do not fall squarely within any category. See Schroeder, *History's Challenge to Feminism* (Book Review), 88 MICH. L. REV. 1889, 1889 n.3 (1990) (criticizing West's cultural-radical feminist dichotomy, but pointing out the analytic utility of simplification); see also Cain, *Feminism and the Limits of Equality*, 24 GA. L. REV. 803, 829-41 (1990) (dividing feminist thought into four "schools": liberal feminism, radical feminism, cultural feminism, and postmodern feminism). My attempt to categorize the many variations of evolving feminist theory is intended only to aid in analytic clarity, and does not imply that feminist legal scholars have "solidified into competing schools of thought." Schroeder, *supra*, at 1889 n.3.

194. See *infra* notes 211-19 and accompanying text.

195. See West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 13-21 (1988).

196. See, e.g., Chodorow, *Family Structure and Feminine Personality*, in WOMEN, CULTURE AND SOCIETY 43-44 (M. Rosaldo & L. Lamphere eds. 1974).

197. West, *supra* note 195, at 13.

198. *Id.*

tions about women's natures, it simply urges their affirmation and celebration.¹⁹⁹ A critical distinction between traditional male views of women's proclivities and cultural feminist perception of women's attributes, however, is exactly *how* "women's" traits ought to be "celebrated." In a cultural feminist model, for example, celebrating women's attributes and values in the workplace would mean restructuring the workplace so that communitarian behavior (caring and nurturing) is valued, rather than restricting women to occupations requiring communitarian behavior, which in today's workplace tends to be undervalued, underpaid, or otherwise considered inferior.

2. Radical Feminism

Radical feminists²⁰⁰ argue that differences between the sexes are a product of male dominance, rather than traits which male dominance exploits. Therefore their focus is on male dominance over women, not difference.²⁰¹ Radical feminists point to disparities in economic, sexual, and social power, and argue that difference theory helps to maintain these power disparities by obscuring the force used to impose the "celebrated" feminine characteristics (that is, by a social structure in

199. Cultural feminism had its origin in the work of Carol Gilligan and Nancy Chodorow. See C. GILLIGAN, IN A DIFFERENT VOICE (1982); Chodorow, *supra* note 196; N. CHODOROW, THE REPRODUCTION OF MOTHERING (1978). Chodorow, attempting to explain the perpetuation of nearly universal differences that she believed characterized masculine and feminine personality and roles, attributed the differences between the sexes to the allocation of child care responsibility to women. Chodorow, *supra* note 196, at 43-44. She concluded that "in any given society, feminine personality comes to define itself in relation and connection to other people more than masculine personality does." *Id.* at 44.

Building upon Chodorow's work, Gilligan undertook studies of female development and its relationship to concepts of identity, morality, and the making of life choices. See C. GILLIGAN, *supra*. Gilligan concludes that girls and boys, women and men, seem to approach moral dilemmas and make life choices differently. While boys and men assign primary importance to separation and autonomy, girls and women value intimacy and connection with others. *Id.* at 160-61, 164. Consequently, boys and men assume that autonomy of individuals is the paramount value, and employ an "ethic of rights" or "ethic of justice" in moral decisionmaking. *Id.* at 164, 174. By contrast, girls and women have as their goal the preservation of relationships in any given situation, and so are guided by an "ethic of care" or "ethic of responsibility." *Id.* at 164, 29.

Nell Noddings has continued in this vein in her work on ethics and morality. See N. NODDINGS, CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION (1984). Noddings asserts that rather than adopting a rule-based, generalized approach to moral and ethical problems, women approach them in an empathic way, "placing themselves as nearly as possible in concrete situations and assuming personal responsibility for the choices to be made." *Id.* at 8. Although Noddings, like Gilligan, attempts to resist the temptation to generalize based on sex, she refers to the ethic of caring as "characteristically and essentially feminine" because it arises out of the experience of women. *Id.* at 8; see also C. GILLIGAN, *supra*, at 2 (asserting that the "different voice" she describes is characterized by theme rather than by gender, but admitting that her study traces the development of this voice primarily through women's voices).

200. This line of thought finds its expression principally in the work of Catharine MacKinnon and Andrea Dworkin. See A. DWORKIN, *supra* note 1; C. MACKINNON, THEORY OF THE STATE, *supra* note 1; C. MACKINNON, FEMINISM, *supra* note 1.

201. See C. MACKINNON, FEMINISM, *supra* note 1, at 22-23.

which men are on top, and women play a subordinate, and subordinated role).²⁰² Catharine MacKinnon articulates this criticism of cultural feminism best:

[A] discourse of gender difference serves as ideology to neutralize, rationalize, and cover disparities of power, even as it appears to criticize them. Difference is the velvet glove on the iron fist of domination. This is as true when differences are affirmed as when they are denied, when their substance is applauded or when it is disparaged, when women are punished or when they are protected in their name. . . . One of the most deceptive antifeminisms in society, scholarship, politics, and law is the persistent treatment of gender as if it truly is a question of difference, rather than treating the gender difference as a construct of the difference gender makes.²⁰³

The basic difference in the approach taken by cultural feminists and radical feminists is best illustrated by a dialogue that occurred between Carol Gilligan and MacKinnon at the Buffalo School of Law in 1984. In a discussion of Gilligan's typical male, Jake, and her typical female, Amy, Gilligan described the need to assimilate Amy's voice into the mainstream of society.²⁰⁴ MacKinnon responded that her goal, by contrast, was to have Amy develop a new voice, one that would be unrestricted by male dominance, and one that she cannot now articulate "because [Jake's] foot is on her throat."²⁰⁵ Nevertheless, MacKinnon described herself as "ambivalent" about Gilligan's work; she admitted that while some aspects of it infuriated her, she was also "excited" by the deeply feminist implications of "the impulse

202. *See id.* at 8.

203. *Id.* at 8-9. MacKinnon is particularly critical of the work of mainstream cultural feminists, such as Carol Gilligan, because it attributes ownership of "feminine" characteristics, such as valuing caring and relationships, to women, portraying these characteristics as if they really are women's, "rather than what male supremacy has attributed to us for its own use" or "what we have been, which necessarily is what we have been permitted." *Id.* at 38-39. She argues that "[f]or women to affirm difference, when difference means dominance, as it does with gender, means to affirm the qualities and characteristics of powerlessness." *Id.* at 39. She concludes:

I do not think that the way women reason morally is morality "in a different voice." I think it is morality in a higher register, in the feminine voice. Women value care because men have valued us according to the care we give them, and we could probably use some. Women think in relational terms because our existence is defined in relation to men.

Id.

204. Conversation among Carol J. Gilligan, Ellen C. DuBois, Mary C. Dunlop, Catharine MacKinnon, and Carrie J. Menkel-Meadow, James McCormick Mitchell Lecture Series, State University of New York at Buffalo School of Law (Oct. 19, 1984), reprinted in *Feminist Discourse, Moral Values, and the Law — A Conversation*, 34 BUFFALO L. REV. 11, 36-49, 58-60 (1985) [hereinafter *A Conversation*].

205. *Id.* at 74-75. Despite the apparent conflict in their viewpoints, Gilligan and MacKinnon's theories are not necessarily inconsistent. As Barbara Ehrenreich has written, "every Out group — whether defined by race, ethnicity or sexual preference — seeks assimilation as a first priority. But every Out group carries with it a critical perspective, forged in the painful experiences of rejection and marginalization." Ehrenreich, *Sorry, Sisters, This Is Not the Revolution*, TIME, Fall 1990, at 15 (special issue); *see also infra* note 210.

to listen to women” expressed in Gilligan’s work.²⁰⁶

Andrea Dworkin, another prominent radical feminist, focuses on the sexual subjugation of women by men because she believes that practicing heterosexual physical intimacy is collaboration with patriarchy.²⁰⁷ She argues that women have been “colonized” by men, both sexually and economically, and concludes that consequently it is impossible for women to imagine what they would be like in the absence of male domination.²⁰⁸

Robin West summarizes radical feminism bluntly and succinctly: she writes that radical feminists believe that “the important difference between men and women is that women get fucked and men fuck: ‘women,’ are definitionally ‘those from whom sex is taken,’ just as workers, definitionally, are those from whom labor is taken.”²⁰⁹ Because radical feminists are “more attuned to power disparities between men and women” and appear “more separatist” than are cultural feminists, they are “more alarming.”²¹⁰

206. *A Conversation*, *supra* note 204, at 73-74.

207. See Dworkin, *supra* note 1; see also West, *supra* note 195, at 43 (pointing out that Dworkin, MacKinnon, and other radical feminists make this argument).

208. Dworkin, *supra* note 1, at 128-29; see also *id.* at 118-19, where Dworkin argues that this appropriation — which she there refers to as “colonialization,” is simultaneously sexual and economic:

The relationship between the woman who labors and produces and the man who owns the product is at once sexual and economic. In reproduction, sex and economics cannot be separated nor can they be distinguished from each other. The woman’s material reality is determined by a sexual characteristic, a capacity for reproduction. The man takes a body that is not his, claims it, sows his so-called seed, reaps a harvest — he colonializes a female body, robs it of its natural resources, controls it, uses it, depletes it as he wishes, denies it freedom and self-determination so that he can continue to plunder it, moves on at will to conquer other land which appears more verdant and alluring. Radical feminists call this exclusively male behavior “phallic imperialism” and see in it the origins of all other forms of imperialism.

209. West, *supra* note 195, at 13 (quoting MacKinnon).

210. *Id.* West believes that the gap between cultural and radical feminism is not as wide as it first appears: first, cultural feminists are also aware of women’s powerlessness, and second, radical feminism is as concerned with pregnancy as it is with intercourse. *Id.* West provides an alternative characterization of the dichotomy between these two strands of feminist theory which “structurally parallels the characterization of the difference between liberal and critical legalism.” *Id.* She calls this the “connection thesis,” and describes it as follows:

Underlying both radical and cultural feminism is a conception of women’s existential state that is grounded in women’s potential for physical, material connection to human life, just as underlying both liberal and critical legalism is a conception of men’s existential state that is grounded in the inevitability of men’s physical separation from the species. . . . The divisions between radical and cultural feminism stem from divergent accounts of the subjectivity of the potential for connection, just as what divides liberal from critical legal theory are divergent accounts of the subjectivity of the inevitability of separation.

Id. at 14. According to West, then, the real difference between cultural and radical feminists lies in their subjective experience of the existential state of connection: cultural feminists cherish intimacy, while radical feminists “dread the intrusion [that intimacy] inevitably entails.” *Id.* at 15. West describes these contrasting stories in this way:

According to cultural feminist accounts of women’s subjectivity, women value intimacy, develop a capacity for nurturance, and an ethic of care for the “other” with which we are

3. Critical Race Feminism

Despite the widespread impact of the women's movement, its consciousness-raising never extended to working-class women. Perhaps this is unsurprising; the originators of the women's movement²¹¹ and, ultimately, those currently engaged in feminist theory and discourse, are predominantly college-educated, white, middle- and upper-class women.²¹² Unfortunately, however, a unidimensional or essentialist theory of the nature of women's reality persists today in the work of many current feminist theorists.²¹³

connected, just as we learn to dread and fear separation from the other. Radical feminists tell a very different story. According to radical feminism, women's connection with the "other" is above all else invasive and intrusive: women's potential for material "connection" invites invasions into the physical integrity of our bodies, and intrusion into the existential integrity of our lives.

Id. And, in further detail,

We might summarize cultural feminism in this way: women's potential for a material connection to life entails (either directly, as I have argued, or indirectly, through the reproduction of mothering) an experiential and psychological sense of connection with other human life, which in turn entails both women's concept of value, and women's concept of harm. Women's concept of value revolves not around the axis of autonomy, individuality, justice and rights, as does men's, but instead around the axis of intimacy, nurturance, community, responsibility and care. . . . Women's concept of harm revolves not around a fear of annihilation by the other but around a fear of separation and isolation from the human community on which she depends, and which is dependent upon her.

. . . . Against the cultural feminist backdrop, the story that radical feminists tell of women's invaded, violated lives is "subterranean" According to radical feminism, women's connection to others is the source of women's misery, not a source of value worth celebrating. For cultural feminists, women's connectedness to the other (whether material or cultural) is the source, the heart, the root, and the cause of women's different morality, different voice, different "ways of knowing," different genius, different capacity for care, and different ability to nurture. For radical feminists, that same potential for connection . . . is the source of women's debasement, powerlessness, subjugation, and misery. It is the cause of our pain, and the reason for our stunted lives. Invasion and intrusion, rather than intimacy, nurturance and care, is the "unofficial" story of women's subjective experience of connection.

Id. at 28-29.

211. Betty Friedan's *The Feminine Mystique* is heralded as the foundation of the contemporary women's movement. B. FRIEDAN, *THE FEMININE MYSTIQUE* (1963).

212. Cf. B. HOOKS, *supra* note 4, at 1, 3. As bell hooks notes, this phenomenon is predictable: Feminism in the United States has never emerged from the women who are most victimized by sexist oppression; women who are daily beaten down, mentally, physically, and spiritually — women who are powerless to change their condition in life. They are a silent majority. A mark of their victimization is that they accept their lot in life without visible question, without organized protest, without collective anger or rage.

Id. at 1.

213. *See id.* at 3-4 ("white women who dominate feminist discourse . . . rarely question whether . . . their perspective on women's reality is true to the lived experiences of women as a collective group" and they "have little or no understanding of white supremacy as a racial politic, of the psychological impact of class, of their political status within a racist, sexist, capitalist state"); Harris, *supra* note 4, at 585 (arguing that the work of Robin West and Catharine MacKinnon, "while powerful and brilliant, . . . relies on . . . gender essentialism — the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience"; essentialism silences some voices to privilege others); Lugones & Spelman, *supra* note 4, at 575 (feminist theory has "arisen out of the voices, experiences of a . . . handful of women, and if other women's voices do not sing in harmony with the theory, they aren't counted as women's voices"). *See generally* E. SPELMAN,

Critical race theory applied to feminism provides valuable insight. Although critical race feminists agree with radical feminists that many women suffer from sexual tyranny, they assert that this does not necessarily forge a common bond among all women, as many white feminists have assumed.²¹⁴ Instead, race and class identity may take precedence over sexual identity for many women because these aspects of identity give rise to profound differences in quality of life, social status, and lifestyle.²¹⁵ As hooks argues, sexist oppression has assumed primary importance “not because it is the basis of all other oppression” — including racism and classism — “but only because it is the practice of domination most people experience.”²¹⁶

Critical race theorists consequently balk at separatist strategies and the expression of anti-male sentiment, pointing out that these features of feminism “alienate[] many poor and working class women, particularly non-white women, from the feminist movement.”²¹⁷ The powerful bonds between black men and women, who fought side-by-side for liberation, spawn a loyalty that leads many black women to reject feminism.²¹⁸ Bell hooks suggests instead that feminism should focus on ending the economic exploitation of women; such a feminist agenda would cut across class and race barriers to unite women.²¹⁹

supra note 4 (challenging assumption of homogeneity of feminist thought and arguing for recognition of those treated as “inessential” — working-class women, lesbians, Jewish women, women of color).

214. See B. HOOKS, *supra* note 4, at 4.

215. *Id.* Spelman calls these differences of privilege and power. See E. SPELMAN, *supra* note 4, at 162.

216. B. HOOKS, *supra* note 4, at 35.

217. *Id.* at 68.

218. *Id.* at 69.

219. *Id.* at 100. hooks' views are echoed by those who study labor organizing efforts. Karen Brodtkin Sacks, who studied workers from the vantage point of a volunteer organizer for AFSCME during its organizing campaign at Duke Medical Center, observed that “black workers . . . on the organizing committee . . . regarded feminism as a white middle-class women's issue only.” K. BRODKIN SACKS, *CARING BY THE HOUR: WOMEN, WORK AND ORGANIZING AT DUKE MEDICAL CENTER* 213 (1988). They perceived feminism as antiworking class and as divisive of black women and men. *Id.* Sacks notes that “[t]he dominant paradigms available in political culture . . . separate[] and contrast[] racial, gender, and class oppression,” treating them competitively. Further, this framework “reinforce[s] the tendency to contrast work and family as separate . . . spheres of experience,” assigning to men the work experience and to women the family experience. *Id.*

Similarly, the women office workers in Roberta Goldberg's study indicated class, race, and gender consciousness; though Goldberg argues that gender is a significant subjective factor in the lives of these workers, she admits that class identity is an extremely powerful force as well. R. GOLDBERG, *supra* note 84, at 112-13. Indeed, she points out that “class identity” and “class consciousness” are themselves gendered concepts because the identity and consciousness of male workers is seen as the basis of all class consciousness and identity; she hypothesizes a “‘gender-specific’ class identity [which] does not interfere with class identity as a whole but puts it in a specific dimension based on experiences of patriarchy and sexism.” *Id.* Goldberg pays considerably less attention to race identity than she does to class identity.

B. *Deconstructing the Myth of Unorganizability*

As described in Part II, unions have traditionally blamed women's unorganizability on women themselves or on employers.²²⁰ Each of the two central arguments employed by unions that were identified and discussed in Part II seeks to shift the blame to one group or the other: the "lack of interest"/"women are secondary earners" argument seeks to place the blame on women themselves for their economic subordination, while the argument that most women are employed in "nonunionizable" workforces is directed primarily at employers. These blame-shifting tactics only serve to reinforce the existing gendered structure of the workplace and do little to help unions gain badly needed new members. Further, these tactics engage unions as unwitting accomplices in both the economic subordination of women and the division and disempowerment of the working class.

Application of insights gleaned from the various strands of feminist theory outlined above exposes labor unions' contribution to women's economic subordination, and points the way out of the quagmire of gendered stereotypes. I undertake that task in the next two sections.

1. *The "Lack of Interest"/"Women are Secondary Wage Earners" Argument*

The key feature of the lack of interest argument is "individual-model thinking," sometimes referred to as a "blame the victim" approach.²²¹ Individual-model thinking about women is characterized by the conception of women as "different," which provides organizations with a set of excuses for the slow pace of change.²²² Worse, because individual-model thinking compares women to a male norm of the worker, it attributes responsibility or fault for the difference to women.²²³

220. See *supra* notes 107-79 and accompanying text.

221. See R. KANTER, *supra* note 148, at 261 (individual-model thinking); W. RYAN, *BLAMING THE VICTIM* (1971) (victim-blaming approach).

222. See R. KANTER, *supra* note 148, at 261.

223. *Id.* at 261-62. Such an approach spawns "repair programs for women who recognize their personal 'deficiencies,'" designed to help them be better managers, be more assertive, communicate more effectively, and make decisions. *Id.* at 262. Though beneficial to some individuals in the short run, these programs ultimately serve to reinforce the existing system. See *id.*

The "blame the victim" methodology has been utilized often with regard to the poor. See M. KATZ, *THE UNDESERVING POOR* (1989); W. RYAN, *supra* note 221. In *The Undeserving Poor*, Michael Katz shows how poverty discourse highlights the social construction of difference. Borrowing from feminist theory, Katz argues that

for reasons of convenience, power, or moral judgment, we select from among a myriad of traits, and then sort people, objects, and situations into categories which we then treat as real. As Martha Minow shows, this process of reification defines the line between normality

The argument that women are secondary wage earners who often choose low-paying part-time or temporary jobs to accommodate their primary obligation — child care — provides an illustration of this type of thinking. Women can hardly be condemned for participating in their own victimization by making choices that are not really choices at all. As Joan Williams has argued, the concept of the ideal worker is so deeply gendered that it structures and limits the options available to working mothers.²²⁴

[I]n our deeply gendered system men and women face very different choices indeed. Whereas women, in order to be ideal workers, have to choose not to fulfill their “family responsibilities,” men do not. . . . In order for the wife’s “choice” [to make professional sacrifices for the good of her children] to be equivalent to her husband’s, she would first have to be in a position to ask herself whether or not she would choose to be an ideal worker if her husband would choose to stay home with the children. Second, she would have to pose the question in a context where powerful social norms told her he was peculiarly suited to raising children. When we speak of women’s “choices” to subordinate their careers, we are so blinded by gender prescriptions that we can forget that the husband’s decision to be an ideal worker rests upon the assumption that his wife will choose not to be in order to allow him that privilege. This is true whether the wife eschews a career altogether or whether (in the modern pattern) she merely subordinates her career to child-care responsibilities. The point is that the husband is doing neither. Women know that if *they* do not sacrifice *no one* will, whereas men assume that if *they* do not, *women* will.²²⁵

Labor unions could alter the gendered structure of labor and thus change the constraints on women’s choice whether to work for pay or not. Unions hold promise because they offer an opportunity to open communication channels between women workers, and they may serve as a vehicle for collective female access to the power structure.²²⁶ To

and deviance, ignores the perspective of the powerless, and accepts existing social and economic arrangements as natural. . . . By mistaking socially constructed categories for natural distinctions, we reinforce inequality and stigmatize even those we set out to help.

M. KATZ, *supra*, at 6. Thus, poverty in America is perceived as an individual problem: it “results from some attribute, a defect in personality, behavior, or human capital.” *Id.* at 236.

224. See Williams, *supra* note 1, at 822-23.

225. *Id.* at 831 (footnotes omitted; emphasis in original). Nor are women blameworthy for enjoying the secondary gains derived from their economically dependent positions in life — the availability of excuses for their failure to succeed, or in some cases, even to try. Some popular books, while making the very valid point that women have internalized the gendered view of the world presented to them by our culture, place the sole burden of change on individual women. See, e.g., C. DOWLING, *THE CINDERELLA COMPLEX* (1981) (urging women to confront their fears of independence and to throw off the shackles of dependence — individually); S. ORBACH, *FAT IS A FEMINIST ISSUE* (1978) (describing compulsive eating and the experience of being fat as adaptations to a patriarchal society; though rejecting the blame-the-victim approach, the author presents a plan for action that targets the cycle of compulsive eating on an individual basis, rather than addressing its root causes through structural change).

226. See Kanter, *supra* note 148, at 278 (proposing that structural change for women work-

the extent cultural feminists' observations about women's natures are accurate, women should be easier to organize because of their predisposition to value relationships, their awareness of the connection between people, and their recognition of responsibility for one another.²²⁷ An oft-quoted statement by one of Gilligan's subjects, Claire, is illustrative:

By yourself, there is little sense to things. It is like the sound of one hand clapping, the sound of one man or woman, there is something lacking. It is the collective that is important to me, and that collective is based on certain guiding principles, one of which is that everybody belongs to it and that you all come from it.²²⁸

Further, nothing in mainstream cultural feminist theory limits women's ability to care for others, and the value which they place on relationships, to the family sphere. Those relationships are not achievable only outside the workplace. Indeed, many women, both single and married, form enduring friendships with their colleagues at work. The assumption that women's ability and interest in caring for others is limited to the sphere of home is simply another manifestation of the public-private spheres ideology. If unions reject this assumption, they should be able to harness women's caring abilities to restructure the workplace.²²⁹

Radical feminists have also acknowledged women's willingness to sacrifice for the larger good, an essential element of the union philosophy.²³⁰ Dworkin has written that "[w]omen are especially given to giving up what we know and feel to be right and true for the sake of others or for the sake of something more important than ourselves."²³¹ Although radical feminists criticize this trait in women, they make their criticism in the context of women's willingness to sacrifice for

ers be accomplished through opening communication channels and facilitating system knowledge).

227. See C. GILLIGAN, *supra* note 199, at 30.

228. *Id.* at 160.

229. On the other hand, even if women *are* less interested in their work lives than in their families, it does not necessarily follow that they would not support a union. If anything, one might posit that women would be *more* willing to support unionism because they have less at risk: less identity tied up in their jobs, less job security, less pay, and less attachment to their colleagues at work.

230. The principle of "majority rule" in labor law means that the union, once elected, becomes the exclusive bargaining representative for the employees. See National Labor Relations Act § 9(a), 29 U.S.C. § 159(a) (1988). This means that some will get a better deal than they would otherwise be able to, and others will lose by virtue of union representation. See *J.I. Case Co. v. NLRB*, 321 U.S. 332, 338 (1944) (collective bargaining agreements supersede individual contracts even where individual contracts contain more favorable terms than those obtainable by the group).

231. A. DWORKIN, *supra* note 1, at 128.

men rather than for the good of other women.²³²

Finally, critical race feminists suggest that the very notion that priorities in one's life must be ordered in some hierarchical fashion — for example, work first, family second — reflects an essentialist view of the world.²³³ Poor women and women of color have historically worked both inside and outside the home. For these women, organizing work and family values hierarchically is a foreign practice, more consistent with male, competitive either/or thinking.²³⁴ Women of color in particular have long dealt with multiple, overlapping identities (race, class, sex, mother, daughter, worker), and the practice of prioritizing and compartmentalizing relationships or identities is inconsistent with their life experience.²³⁵

Another aspect of the “lack of interest” argument is the assumption that unions are political institutions, and women lack interest in political issues. If this is true, it can be explained in two ways. First, within unions as in the larger political world, a white, male majority sets the prevailing societal definition of what is publicly relevant or political; in other words, whatever interests men is called political, while anything that specifically affects women is called “private.”²³⁶ As members of the workforce whose primary concerns are defined as “private” — child care, maternity benefits, parental leave, and so on — and therefore outside the political sphere, women have been viewed as apolitical.²³⁷ One writer explains:

If what matters most to me is considered not to be appropriate to “poli-

232. See *id.* (women have developed this trait because they are colonized by men).

233. See B. HOOKS, *supra* note 4, at 29. Hooks was referring to the fact that black feminists are often asked to rank-order their gender or racial identities and to assert that either the “feminist struggle to end sexist oppression is more important than the struggle to end racism,” or vice versa. Her comments apply equally, however, to the assumptions underlying requests that women prioritize their commitment to feminism and to unionism, or to the roles of worker and mother.

234. See *id.*; C. GILLIGAN, *supra* note 199, at 32-33.

235. See B. HOOKS, *supra* note 4, at 29.

236. See Ackelsberg, *Communities, Resistance, and Women's Activism: Some Implications for a Democratic Polity*, in *WOMEN AND THE POLITICS OF EMPOWERMENT*, *supra* note 16, at 297, 300. It is no wonder, given the force of the public-private spheres ideology and women's assignment to the private, personal sphere, that the women's movement adopted the slogan, “the personal is the political.” See *supra* note 184 and accompanying text. The slogan simply reflects women's attempt to bring their private experiences in the home into the public (male) sphere of politics.

237. *Id.* at 299-301; see also Freeman & Mensch, *supra* note 152, at 239 (“the relegation of those experiences [of real interpersonal connection] to the supposed realm of pure privacy serves always to limit their significance”). Worse, such a characterization carries a stigma of irrationality and idiocy under the Aristotelian conception of politics where the public/political realm and the private/political realm are bifurcated in a hierarchical fashion. Jean Bethke Eishtain argues that under the Aristotelian system:

Fully realized moral goodness and reason are attainable only through participation in public life, and this involvement is reserved to free, adult males. Indeed, it can be said with no

tics," I will tend not to participate in (electoral) political activity. Furthermore, in the absence of a community to validate my perceptions, I may well come to see my own concerns as "merely" personal and profess little interest in politics. . . . If the activities I undertake in the larger political context are ignored, or their political significance denied, my frustration may well end in resignation and the process of the production of consent.²³⁸

Several consequences follow from unions' misperception of women as apolitical. Women internalize a view of themselves as private, non-rational, apolitical human beings.²³⁹ Also, unions fail to recognize women's activities as political.²⁴⁰ As Martha Ackelsberg points out, the public-private spheres ideology thus limits "our conceptions of what constitutes the appropriate subject matter of politics and consequently limit[s] the ability of [women] to introduce their concerns into the political arena."²⁴¹

The second possible explanation for women's perceived failure to show interest in the politics of unionism derives from a male vision of the *process* of politics that conflicts with a feminist understanding of the process of politics. In the male liberal democratic world of politics, the political community exists for instrumental purposes: its goal is "to provide the least restrictive environment possible in which each may pursue his or her own ends."²⁴² Under the male version of the political process, then, freedom means being let alone.²⁴³ Thus, in the (male) liberal democratic world of politics, "the key problem . . . is to overcome . . . what is perceived as natural self-interest and create allegiance to a community larger than the self."²⁴⁴ In short, "[male liberal theory] denies . . . that politics is about more than simply meeting

exaggeration that women in Aristotle's schema are *idiots* in the Greek sense of the word, that is, persons who do not participate in the *polis*.

Elshtain, *Moral Woman and Immoral Man: A Consideration of the Public-Private Split and Its Political Ramifications*, 4 POL. & SOC. 453, 455-56 (1974). Elshtain argues that these "Aristotelian typologies still predominate." *Id.* at 457.

238. Ackelsberg, *supra* note 236, at 299. Thus, "[t]he seeming apathy that results . . . is less a sign of popular consent to the political process . . . than of people's frustration with the options available to them and, ultimately, of resignation to their relative powerlessness." *Id.* at 298.

239. *See supra* note 237.

240. *See Ackelsberg, supra* note 236, at 299. *See infra* note 288 (detailing episodes of female worker militancy that do not fit traditional union patterns of worker resistance).

241. Ackelsberg, *supra* note 236, at 301; *see also* Olsen, *supra* note 100, at 1498 (arguing that social reforms are limited by unexamined assumptions about radical separation of market and family: under this dichotomy, "the market structures our productive lives and the family structures our affective lives").

242. Ackelsberg, *supra* note 236, at 301.

243. *Id.*

244. *Id.* The means for building community under the individualist paradigm are "interests" — an "instrumental . . . and unstable alliance" at best. *Id.* at 302 (quoting Diamond & Hartstock, *Beyond Interests in Politics*, 75 AM. POL. SCI. REV. 719 (1981)).

individual needs: that it can be, as well, an arena in which people work together with others and find pleasure and fulfillment in mutuality."²⁴⁵

By contrast, for cultural feminists the opportunity for connection and relationship presented by the political process is *itself* the goal. If it is true that connection and relationships come easily and naturally for women, there is no struggle to create allegiance to a community.²⁴⁶ Instead, the struggle is likely to revolve around reaching agreement on common goals once united.

By adopting the public-private ideology, unions miss an opportunity to embrace workers for whom connection and relationship — that is, the process of politics — comes easily. Unions also limit the agenda for change in the workplace that could advantage both male and female workers. As Lucinda Finley has pointed out, even though it is women who get pregnant and who still bear most of the responsibility for raising children, men are affected as well: those men affiliated with these women feel the effects when the women cannot get paid leave, cannot maintain sufficient health insurance, must return to work before they are physically ready, and suffer sleepless nights during the first few months of a baby's life.²⁴⁷ Finally, unions have by-passed an opportunity to revolutionize parenting by distributing equally the obligation to care for children. Many feminists argue that a dramatic change in parenting roles must precede elimination of the stereotypical notion that women are inherently better suited to parent.²⁴⁸

2. Women Are Clustered in "Unorganizable" Occupations

The second argument advanced by unionists for their failure to organize women in significant numbers purports to be gender-neutral. Women themselves are not unorganizable, rather the occupations in which they tend to work — like clerical work or nursing — are difficult to organize. Despite its initial appeal, this justification is actually deeply gendered: these "difficult to organize" occupations reflect sexual stereotyping (women are good at tasks requiring manual dexterity and nurturing) and so are female-dominated; in other words, they are

245. *Id.*

246. West, *supra* note 195, at 14 ("While it may be true *for men* that the individual is 'epistemologically and morally prior to the collectivity,' it is not true for women," for whom connection is "ridiculously easy.").

247. Finley, *supra* note 100, at 1138. Finley makes the connection to unions' lack of commitment to maternity leave and childcare issues, speculating that categorization of these issues as "women's issues" by male-led unions operating in male-dominated industries has led unions to devalue these issues. *Id.* at 1138 n.95.

248. See, e.g., B. HOOKS, *supra* note 4, at 133-46.

sex-segregated jobs.²⁴⁹

Radical feminists posit that the feminization of particular jobs results from a conscious effort by men to maintain women's inferior economic position. Dworkin asserts that sex-typing of an occupation can occur in any field where jobs are low-paying relative to other areas where men can find employment.²⁵⁰ She describes the ways in which the market operates to create and maintain women's low economic status as follows:

(1) Women are paid lower wages than men for doing the same work. . . .

(2) Women are systematically excluded from work of high status, concrete power, and financial reward. . . .

(3) Women are consigned the lowest ranks within the field, no matter what the field. . . .

(4) When women enter any industry, job, or profession in great numbers, the field itself becomes feminized, that is, acquires the low status of the female.²⁵¹

Others add that sex-typing of an occupation is especially likely to occur where the job "combine[s] a need for a fairly high level of training and education with very low pay (stenography, nursing, teaching)."²⁵² Such jobs provide valuable labor for less-than-market wages while simultaneously keeping skilled and trained workers from taking the existing higher-paying (male) jobs.

Critical race feminists argue that the low wage resulting from the sex segregation of work disproportionately affects women of color and working-class women.²⁵³ In 1986, Census Bureau data demonstrated that while a white woman earned 64 cents for every dollar a white man earned, a black woman earned 56 cents for every white man's dollar; a Hispanic woman earned only 53 cents for every white man's

249. See Schultz, *supra* note 5, at 1751 n.1. Female sex-segregated jobs include: secretaries (98% female); bookkeepers (91% female); nursing aides (88% female); cashiers (79% female); textile sewing machine operators (90% female), and waitresses (80% female). NO WAY OUT, *supra* note 132, at 17. The most immediate and serious problem associated with sex segregation in the workforce is its effect on women's earning power. Schultz, *supra* note 5, at 1751 n.2. Women's median weekly earnings in these occupations range from \$299 (secretaries) down to \$178 (waitresses). NO WAY OUT, *supra* note 132, at 17. By contrast, male sex-segregated jobs — retail sales (85%), machinists (97%), protective service (89%), construction workers (99%), truck drivers (98%), and janitors (78%), have median weekly earnings ranging from \$550 to \$275. *Id.*

250. A. DWORKIN, *supra* note 1, at 123. Dworkin points out that in the Soviet Union and Czechoslovakia, doctoring is a feminized field. Low-paying compared to the manual labor available to men, it attracted women in large numbers. Men in the medical profession are high-status, highly paid research scientists and surgeons. *Id.*

251. *Id.* at 122-23.

252. Goldberg, *supra* note 95, at 345.

253. See generally B. HOOKS, *supra* note 4.

dollar.²⁵⁴ Unions must shoulder some of the blame for these statistics. Unionized women undoubtedly are economically better off than nonunionized women.²⁵⁵ Because unions have been successful in raising the wages of the poor and of other disadvantaged groups,²⁵⁶ unions' failure to organize women, particularly women of color, implicitly helps to institutionalize the economic subordination of women.

Unions should no longer be permitted to hide behind the argument that feminized occupations are difficult to organize. Such blame-shifting furthers female subordination in two ways. First, sex segregation by occupation serves an economic purpose for both capital and unions. Second, sex-typing of low-paying, dead-end jobs that parallel the unpaid work women do in the home operates to reinforce women's subordinate role in the domestic sphere, and is predicated upon assumptions about inherent feminine characteristics that render women particularly suitable for such jobs. I address each argument in turn.

a. *The economic function of occupational segregation.* Occupational segregation is primarily an economic maneuver initiated by capital to create and maintain a cheap, marginalized labor force.²⁵⁷ This secondary labor market can then be superexploited, used to perform menial, poorly paid jobs, and to smooth over cycles in the economy.²⁵⁸ Women can be hired as temporary workers according to fluctuations in business, taking the brunt of economic cycles, and can be utilized to perform menial chores because, even if they become bored and leave, they are fungible.²⁵⁹ Efforts to splinter or fractionalize the working class also, of course, blunt class opposition to capitalism by destroying worker solidarity.²⁶⁰ This deliberate division of the labor force, often

254. NO WAY OUT, *supra* note 132, at 15.

255. WOMEN, WORK AND PROTEST, *supra* note 11, at xi (editor's preface).

256. *See infra* note 323.

257. Although the origins of patriarchy clearly predate those of capitalism, they are mutually reinforcing systems. *See* Hartmann, *Capitalism, Patriarchy, and Job Segregation by Sex*, in Z. EISENSTEIN, *CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM* 206, 208 (1979) (job segregation by sex enforces lower wages for women in the labor market, encouraging women to marry and thereby keeping them dependent on men; once married, the expectation that women will perform domestic chores weakens women's position in the labor market); *accord* R. GOLDBERG, *supra* note 84, at 13.

258. Goldberg, *supra* note 95, at 342. The author observes that ideology is vital in perpetuating a superexploited group, because it affects both society's assumptions about the group and expectations of group members about themselves. *Id.* It also creates a labor hierarchy of skilled versus unskilled workers, black versus white workers, male versus female workers, which aids in fractionalizing the working class. *See id.*; *infra* notes 260-61 and accompanying text.

259. Goldberg, *supra* note 95, at 343. The availability of a temporary female workforce has been institutionalized in the flourishing form of temporary worker agencies, such as Kelly Girl, that allow employers to hire temporary workers by the week or month. The vast majority of these workers are female. *Id.*

260. R. EDWARDS, *CONTESTED TERRAIN: THE TRANSFORMATION OF WORK IN THE*

through the use of race and sex discrimination, has been labeled "labor market segmentation."²⁶¹

Marxist feminists have argued that keeping women at home has been a "capitalist tool employed to privatize the costs of workers at the expense of women."²⁶² The ideology of sex roles is the key to maintaining a sex-segregated workforce. Capital maintains a marginal female workforce by glorifying the woman's traditional role in the nuclear family, and her primary responsibility for mothering and nurturing children.²⁶³ Unions adopted and promoted this idea as the family-wage ideology.²⁶⁴ Ultimately, the ideology evolved into the public-private spheres dichotomy.²⁶⁵ In current culture men are socialized to believe that women's place is in the home, and that women are best suited to be primary caretakers for children. Discriminatory behavior thus becomes institutionalized; pre-structured choices ensure that the individual has only to conform to the operating norms of his employer and union, and the institutions will do the discriminating for him.²⁶⁶

Women have internalized the public-private spheres ideology. Women's early socialization teaches them to expect to spend their lives as housewives and mothers, encouraging a career only when it is an extension of the serving, subordinate role in the family.²⁶⁷ Consequently, when women must enter the workforce for economic reasons, they continue to consider their economic contributions supplementary, and are more willing to accept low pay and poor working condi-

TWENTIETH CENTURY 163 (1979); see also Crain, *Building Solidarity Through Expansion of NLR A Coverage: A Blueprint for Worker Empowerment*, 74 MINN. L. REV. 953, 955 (1990) (division of workforce into employees and managers fractionalizes workforce and destroys solidarity).

261. See R. EDWARDS, *supra* note 260, at 163-99 (discussing theory of labor market segmentation and arguing that sex and race discrimination have been utilized by employers because they are powerful dividers that blur the lines between employer and employee by introducing different lines of identification).

262. Williams, *supra* note 1, at 829.

263. Goldberg, *supra* note 95, at 342.

264. See *supra* notes 49-72 and accompanying text. Heidi Hartmann, though critical of the role of male workers in restricting women's opportunities in the labor market, notes that the actions of capital in deliberately exacerbating sex divisions for profit may have been crucial in calling forth these responses from male workers. Hartmann, *supra* note 257, at 228-29.

265. See *supra* notes 99-106 and accompanying text.

266. See Goldberg, *supra* note 95, at 48.

267. *Id.* Indeed, the very definition of "work" becomes gendered. See Ferree, *Sacrifice, Satisfaction, and Social Change: Employment and the Family*, in MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME: EVERYDAY TRIALS AND TRIUMPHS OF WOMEN WORKERS 61, 72 (K. Sacks & D. Remy eds. 1984) (our culture defines "work" as that which occurs in the context of paid occupations, thereby excluding housework from the definition) [hereinafter MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME]; M. WARING, *IF WOMEN COUNTED: A NEW FEMINIST ECONOMICS* 25-27 (1988) ("when work becomes a concept in institutionalized economics, payment enters the picture"; by this narrow, masculine definition, no housewives are workers).

tions without protest.²⁶⁸ Further, the ideology is self-reinforcing: because working women continue to assume primary responsibility for child care, they often must take temporary or part-time positions, or limit themselves to positions close to their homes.²⁶⁹ This places women in a poor bargaining position vis-à-vis their employers, ensuring that they take low-paying jobs, forgo pension and other fringe benefits, and endure poor working conditions.²⁷⁰

Moreover, maintaining the nuclear family and women's role in it redounds to the benefit of capital because of the family's role as an economic, consumptive unit.²⁷¹ The housewife is encouraged to spend for two reasons: (1) especially in a time of fewer children and prepackaged foods, her concern is with the house, and with assuaging her feelings of inadequacy through consuming items for the house; and (2) as one whose job is dependent on remaining sexually and personally desirable to her employer (her husband), the housewife is motivated to spend money on making herself more attractive.²⁷²

In short, capital benefits from maintaining a marginalized workforce females.²⁷³ Employers have not hesitated to take advantage

268. K. AMUNDSEN, *supra* note 83, at 342-43.

269. Frug, *supra* note 158, at 56-58. Employers expect absenteeism and limited job tenure of married women, who may leave their jobs to have children or to follow their husbands to a new job. See W. WANDERSEE, *WOMEN'S WORK AND FAMILY VALUES: 1920-1940*, at 3 (1981). Consequently, women are relegated to part-time, low-paying, or temporary jobs with little responsibility. In 1987, more than one female worker in four worked part-time. See *NO WAY OUT*, *supra* note 132, at 11. Of temporary workers, 62% are women. *Id.*

270. Goldberg, *supra* note 95, at 343. The hourly wages of part-time workers average 59% of the hourly earnings of full-time workers. Two thirds of hourly minimum wage workers work part-time. *NO WAY OUT*, *supra* note 132, at 11; see also K. AMUNDSEN, *supra* note 83, at 51 (1977) (women constitute a marginal labor force because they serve at the whim of male employers, in times of a tight labor market, when the pool of male labor is drying up).

271. See Goldberg, *supra* note 95, at 346.

272. *Id.* at 346-47. Furthermore, the separation of workers into isolated family units inhibits male workers from feeling community among themselves or organizing against their common oppression. *Id.* at 347. Through the family unit, workers compete instead of cooperating. *Id.*

273. K. AMUNDSEN, *supra* note 83, at 54 (paying lower wages and fewer fringe benefits to women saves employers money). See generally *NO WAY OUT*, *supra* note 132, at 10-12. As recently as the 1950s, it was so common to pay women less than men in all jobs that some employer manuals instructed managers to deduct 20% from a job's wages if it was done by a woman. See *International Union of Elec., Radio & Mach. Workers v. Westinghouse Elec. Corp.*, 631 F.2d 1094, 1097 (3d Cir. 1980). Though such blatantly sexist treatment of women is now prohibited legally, it has been institutionalized through the sex-segregated occupational structure described above. See *NO WAY OUT*, *supra* note 132, at 16.

General Electric is one company that has not overlooked the benefits of sex-typed jobs and the secondary female workforce. One male employee gave this example:

Where that company has made all its money is on the conveyors; that's where they really build the clocks, see — a long assembly conveyor, thirty-five, forty women working on it. Those women are working every minute of the day; those women *really* make money for the company! The company didn't get rich on me, and the older I get, the less rich it's gonna get on me. But they got rich on those women. . . . [O]n each of those conveyors they have what they call a group leader, and it's a woman. . . . These women are *highly* qualified, *highly* skilled, these group leaders. Way underpaid. There's a man that stock-handles the

of these benefits: almost one third of the jobs created in this country since 1981 have been part-time.²⁷⁴ Ninety percent of all businesses use some form of temporary worker.²⁷⁵

The question remains, then, why unions have collaborated in these efforts. The long-run effect on unions of the existence of a secondary, marginalized workforce is clearly negative: it ultimately undercuts union wage rates and fractionalizes the workforce. The ideology of sex roles, and the sex-segregated nature of the occupations filled by the secondary workforce, however, have helped unions to overlook the threat posed by a secondary female workforce. If women are restricted to jobs men do not want, women's willingness to work for less and willingness to accept temporary or part-time positions without fringe benefits poses no threat. Further, segregating jobs by sex keeps women from competing for the more desirable jobs now filled by men.²⁷⁶ In addition, unions gain a short-term financial advantage from the employment of temporary female workers in unionized workforces in the form of increased dues collection.²⁷⁷

Finally, maintenance of the nuclear family with its concomitant subordinate economic status for women provides a place for individual men to experience power through economic domination and to vent feelings of frustration and humiliation about their jobs. Although the short-term benefits for male self-esteem are obvious, in the long run the traditional family system operates to defuse and channel anger which could be more profitably harnessed by unions.²⁷⁸ In effect,

[t]he petty dictatorship which most men exercise over their wives and families enables them to vent their anger and frustration in a way which poses no challenge to the system. The role of the man in the family reinforces aggressive individualism, authoritarianism, and a hierarchical view of social relations — values which are fundamental to the perpetua-

conveyor . . . he's just a "hunky," picks up boxes and puts them on the conveyor for the girls or moves heavy stuff. That man makes ten to fifteen dollars a week more than a woman who's a group leader.

R. EDWARDS, *supra* note 260, at 7 (quoting a process control inspector at GE).

274. NO WAY OUT, *supra* note 132, at 10.

275. *Id.* at 11.

276. *See* Hartmann, *supra* note 257, at 229.

277. K. AMUNDSEN, *supra* note 83, at 55. Temporary workers in a unionized workforce often are hired through the union, and so pay dues to the local. But if they leave or are laid off before the expiration of the 90-day waiting period for initiation, they are not members, and the dues stay in the local, yet the local has no obligation to find them jobs because they are not members. *Id.* Kirsten Amundsen points out the shortsightedness of this view, explaining that the existence of a reserve labor force ultimately depresses wages for all groups of workers. *Id.*

278. *See* Goldberg, *supra* note 95, at 347. *Cf.* Klare, *Labor Law as Ideology: Toward A New Historiography of Collective Bargaining Law*, 4 INDUS. REL. L.J. 450, 458-59 (1981) (collective bargaining coopts worker by eliciting his consent to hierarchical and authoritarian character of workplace).

tion of capitalism.²⁷⁹

b. *Sex-typing reinforces "female" characteristics and roles.* Sex-typed occupations also function to reinforce women's role in the domestic sphere, and operate to shape women's self-image as primarily suited to domestic-type jobs. Most occupationally segregated jobs possess one or more of the following attributes: they are similar to unpaid housework or child care; are not physically demanding or hazardous; and require "patience, or manual dexterity, or sex appeal, or concern for welfare or cultural matters."²⁸⁰ Differentiating female workers by sex into low-level, servant-type positions thus both strengthens and is reinforced by the roles that women hold in the family.²⁸¹ The patriarchal social relations outside the office mesh conveniently with office bureaucracies, where men make decisions and women follow them.²⁸² Women, by virtue of their "feminine docility," are perceived to be inherently suited to fill low-level clerical jobs,²⁸³ or, for example, by virtue of their skill at nurturing, to work as nurses.²⁸⁴

Despite the use of sex-stereotyped characteristics such as passivity

279. Goldberg, *supra* note 95, at 347 (quoting McAfee & Wood, *Bread and Roses*, in LEVIATHAN 9, June 1969).

280. Stevenson, *Women's Wages and Job Segregation*, in R. EDWARDS, M. REICH & D. GORDON, *supra* note 168, at 243, 245; Goldberg, *supra* note 95, at 345.

281. See Davies, *supra* note 168, at 21.

282. *Id.*

283. *Id.* The connection between women's roles at work and at home is perhaps most apparent in the case of secretaries, who play out their female sex roles with their male bosses at the office as well as with their husbands at home. Many women office workers play the role of "office wife" to their male bosses. See R. GOLDBERG, *supra* note 84, at 104-05.

The close personal relationship of the traditional secretary to her boss, and her isolation from other workers, have also spawned the notion that women are more loyal to their bosses than are men, and hence, more difficult to organize. See *id.* at 19. In addition, pink-collar clerical workers tend to identify with their white-collar, middle-class bosses, and to adopt the antiunion ideology typical of the middle class. See Crain, *supra* note 260, at 1018 (describing the antiunion ideology of individualism internalized by many middle managers).

On the other hand, employers who wish to keep a certain occupation sex-typed have sometimes professed the view that "if men and women are working side by side without supervision their animal (hetero) sexuality will break loose and anarchy will prevail." A. GAME & R. PRINGLE, *GENDER AT WORK* 83 (1983). This was the reason advanced for Bell's resistance (in Australia, where the authors live) to male telephone operators. *Id.* The authors distinguish "controlled situations of the boss-secretary type, where it may be in their own sexual interests to have them together." *Id.*; see also Olsen, *supra* note 100, at 1545 n.179 (crowding together of men and women might cause men to become distracted from their work by the presence of women, and sexual jealousies would erode men's solidarity).

284. Valued nursing characteristics perceived as feminine also include quietness, patience, endurance, obedience, unselfishness, and devotion. Indeed, many consider it inconsistent for professional nurses to assert their own self-interest as prior to their work. See A. GAME & R. PRINGLE, *supra* note 283, at 99-100. In addition, nurses, like secretaries, work closely with typically male bosses (doctors). The sex-typing in the medical profession between doctoring (male) and nursing (female) has been said to symbolize the family and sex roles in its most blatant form: doctor/father, nurse/mother, patient/child. See *id.* at 94. This symbolism functions to ensure medical authority. *Id.* at 106.

and docility to explain women's suitability for occupations that are difficult to organize, women in sex-typed occupations, once organized, have proved to be more militant than men. Feminist scholars have pointed to a simmering anger, lying just below the surface, which fuels militant female collective action.²⁸⁵ Cynthia Costello's study of office workers at a small Wisconsin insurance firm offers powerful testimony to the capacity of clerical workers to respond to authoritarian and patriarchal management policies with militant collective action.²⁸⁶ These women were willing to risk financial hardship, challenge traditional power relationships at work *and at home*, and to confront conventional norms of feminine behavior.²⁸⁷ Costello's study is only one of a growing number of feminist-initiated studies of the expression of militance by female workers.²⁸⁸ New feminist research suggests that

285. How else can one explain the barely suppressed anger apparent in this poem by Ranice Henderson Crosby, entitled simply, "Waitresses"?:

I think they give us uniforms
so we remember who we are
that's what I think.

our faces are
one gigantic grin.
I don't think they even notice
when we show our teeth
and raise our hackles.
we're always smiling
and nodding
and pleasing.

as for me
my uniform feels like skin.

WOMEN WORKING: AN ANTHOLOGY OF STORIES AND POEMS 41 (1979). Crosby explains that the poem grew out of an increasing awareness of the sexual and economic base on which the waitress system rests; soon after she wrote this poem, she turned in her uniform. *Id.*

286. See Costello, *Women Workers and Collective Action: A Case Study from the Insurance Industry*, in *WOMEN AND THE POLITICS OF EMPOWERMENT*, *supra* note 16, at 116.

287. *Id.* at 131.

288. See, e.g., Cameron, *Bread and Roses Revisited: Women's Culture and Working-Class Activism in the Lawrence Strike of 1912*, in *WOMEN, WORK AND PROTEST*, *supra* note 11, at 42 (arguing that militancy of female immigrant textile workers in Lawrence, Massachusetts, was in chief responsible for success of 1912 strike); Terborg-Penn, *Survival Strategies Among African-American Women Workers: A Continuing Process*, in *WOMEN, WORK AND PROTEST*, *supra* note 11, at 139 (describing how black women in the most "unorganizable" of occupations attempted to form unions and union-like organizations, despite race and sex prejudice within the labor movement); Frederickson, *I Know Which Side I'm On: Southern Women in the Labor Movement in the Twentieth Century*, in *WOMEN, WORK AND PROTEST*, *supra* note 11, at 156 (documenting the tradition of activism and militancy among southern women workers over the course of the twentieth century); Sacks, *Computers, Ward Secretaries, and A Walkout in a Southern Hospital*, in *MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME*, *supra* note 267, at 173 (describing militancy among hospital ward secretaries segregated by race as well as gender); Shapiro-Perl, *Resistance Strategies: The Routine Struggle for Bread and Roses*, in *MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME*, *supra* note 267, at 193 (describing nontraditional shop floor resistance strategies utilized by female costume jewelry workers, and arguing that they reflect a silent, militant struggle by workers for control over the production process); Lamphere, *On the Shop Floor: Multi-Ethnic Unity Against the Conglomerate*, in *MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME*, *supra* note 267, at 247 (describing daily resistance strategies em-

female militance has been present historically.²⁸⁹ Sharon Hartman Strom makes a powerful argument that economic, ideological, and political variables, rather than any characteristically female psyche, were responsible for the historical failure of women workers to organize in as large numbers as did men.²⁹⁰

If any doubt remains regarding women's potential for militant collective effort, it should be banished by employers' response to the threat of female unionization. Frightened at the prospect of female militance in the office, employers have deployed classical deskilling strategies, historically used to undermine unionization by demoralizing and isolating workers.²⁹¹ In recent years, employers have begun the deliberate process of deskilling clerical work through automation, specialization, and the introduction of word processing centers.²⁹² Employers have displayed extreme hostility toward efforts to organize clerical workers,²⁹³ probably because unionization would threaten the

ployed by female piece-rate garment workers). See generally WOMEN AND THE POLITICS OF EMPOWERMENT, *supra* note 16 (collecting studies on female working-class activism in various contexts). But see Gray, *supra* note 80, at 137 (finding that sex had a direct effect on militancy — male nurses were more militant than female nurses, but rise of a feminist ideology is positively correlated with measures of militancy and unionism).

289. See generally A. KESSLER-HARRIS, *supra* note 26. Kessler-Harris argues that women's historical status as secondary earners enabled them to rely on their husbands in a pinch, and to hold out longer in a strike. *Id.* at 160. Further, women showed themselves to be tougher bargainers than male workers, willing to hold out to obtain exactly what they wanted. *Id.* Kessler-Harris gives several examples, among them striking Iowa cigar workers, where men resumed work and women held fast; tough-bargaining female boot and shoe workers in Massachusetts; and the 1909 strike of 20,000 female garment workers that occurred over the objections of the male leadership. See *id.*

290. See Strom, *supra* note 107, at 360 (the most important of these variables during the 1900-1930 period were women's occupational positions in the American economy, the discriminatory policies of the New Deal, prevailing cultural and ideological views of women's roles in the workforce, the failure of industrial unionism to reach most women workers, the lack of community and family support networks for striking women workers, and the absence of a feminist critique within the progressive labor movement).

291. See Machung, *Word Processing: Forward for Business, Backward for Women*, in MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME, *supra* note 267, at 128. In classical deskilling the employer gathers all traditional knowledge possessed by workers, reduces it to rules, divides the work into its component parts, and appropriates the mental labor for management, assigning the physical labor to workers. See H. BRAVERMAN, *supra* note 181, at 85-123 (describing so-called "Taylorism"). Breaking the unity of the labor process and separating conception from execution are crucial in order to break the hold that skilled workers have over the production process. *Id.* at 113-14.

292. In word processing centers, the components of typing a letter or manuscript are divided up and assigned to different people: a supervisor to schedule and allocate the work, a word processing technician to key the material into the central memory, a printing operator to monitor the output process, a proofreader to catch mistakes, and a clerk typist to pick up and deliver the work. See generally *id.* at 127-28. For a more detailed description of these centers and how they affect workers' day-to-day experience, see Murphree, *Brave New Office: The Changing World of the Legal Secretary*, in MY TROUBLES ARE GOING TO HAVE TROUBLE WITH ME, *supra* note 267, at 140, 153-54.

293. See *supra* note 169 and accompanying text.

very low wage base which characterizes clerical work and would wrest from management its control over the office itself, as opposed to factories, warehouses, and shop floors.²⁹⁴ Thus, employers' hostile reaction to the threat of unionization by female office workers is powerful testimony to the fact that employers themselves perceive women as capable of militant collective effort.

IV. A FEMINIST AGENDA FOR ALTERING THE GENDERED STRUCTURE OF WAGE LABOR

In this Part, I propose a feminist agenda to aid female workers in challenging male control over work and the distribution of its profits. Women can successfully utilize unions to alter the gendered structure of wage labor, through economic pressure applied within individual workplaces and through political pressure for legislation that empowers all women.²⁹⁵ My agenda has two components: (1) increasing the number of women in labor unions and their power within the union structure, and (2) as the voices of more working class women become audible, a deconstruction and ungendering of labor law.

I draw upon all three strands of feminist theory outlined above. I argue that radical feminists' focus on altering the economic and political power structure should be the guiding principle and that such change can be accomplished by attacking the gendered public-private spheres ideology that operates to reinforce sex stereotypes in the family and at work. The change must be achieved through collective action by men and women working together in a labor movement responsive to the ethic of care described by cultural feminists.²⁹⁶ Finally, the movement must be the work of a strong mosaic of female voices, not necessarily speaking in unison, who can respect each other's differences and work together toward common goals. These are the insights I take from critical race theory.²⁹⁷

In this Part, I speak about the "feminization" of labor unions. By

294. See Machung, *supra* note 291, at 124, 127; unionized clerical workers earn about 30% more than their nonunion counterparts.

295. I agree with Joan Williams that the challenge to the gendered structure of wage labor must be a priority "of the highest order," and "at the core" of a feminist agenda for change. Williams, *supra* note 1, at 832, 835. Other than tossing out a few possible legislative reforms of the structure of work, Williams does not explain exactly how this change can occur within our current power structure. See *id.* at 835-36.

296. See *supra* notes 194-99 and accompanying text; Becker, *Politics, Differences and Economic Rights*, 1989 U. CHI. LEGAL F. 169, 184-85 (women and men tend to suppress the struggle between the sexes not only for economic reasons, but also because most people believe their best chance for personal happiness is in an intimate personal relationship with a person of the opposite sex; to confront oppression in personal relationships directly is painful for both exploited and exploiter).

297. See Becker, *supra* note 296, at 185 (minority women experience additional pressure to

this I mean the process of increasing female power in the labor movement. References to feminism or to the feminist movement are necessarily general and connote a broad definition of the term. For the purpose of this section, I adopt the inclusive definition of feminism articulated by Martha Minow:

“[F]eminism” [includes] efforts to take all women seriously by challenging the patterns of hierarchical power that have at times excluded or degraded all, or some, women. Attention to such patterns of power . . . properly leads feminists to examine patterns of exclusion and degradation along lines of race, class, disability, age — other traits used by some to confine or devalue others.²⁹⁸

In short, my focus here is on the common goal all feminists share: empowering women.

I propose a transformation of work and family life that is radical, yet can begin within the confines of our existing patriarchal legal structure.²⁹⁹ A central feature of the feminist working-class movement that I advocate is the rejection of the idea that there exists a single (white bourgeois) woman’s voice. As critical race theorists have noted, the tendency of the white middle-class feminist movement to adopt the ideology of liberal individualism has undermined the potential radicalism of feminist struggle, and facilitated its co-optation.³⁰⁰ Because a feminist working-class movement that relies on collective labor power will necessarily incorporate the voices of poor women, women of color, and working-class women, the threat of deradicalization and co-optation is diminished. Moreover, labor organization and collective bargaining offer a unique opportunity for the feminist movement to mobilize and to form alliances with another potentially radical movement, the labor movement.³⁰¹ Relying solely on individual fe-

repress the struggle between the sexes and support minority men in the fight against racism); see *supra* notes 217-18 and accompanying text.

298. Minow, *supra* note 189, at 116.

299. Some feminists might criticize my approach as “incorporationist.” See, e.g., Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373, 1381-84 (1986). Scales worries that attempts to graft women’s voices onto an existing right- and rule-based system ultimately risk cooptation of the female voice, a “more subtle version of female invisibility.” *Id.* at 1383. Scales argues that any effort to incorporate “the women’s voice” into the existing legal system will repress contradictions and result in giving over the world to the male voice because it provides the structure for the female voice. *Id.* at 1383-84. Similarly, some feminists contend that attempts by women to assimilate into male-dominated institutions result only in loss of momentum for the feminist movement. See, e.g., Freedman, *Separatism as Strategy: Female Institution Building and American Feminism, 1870-1930*, 5 FEM. STUD. 512, 524-25 (1979) (arguing for continuation of separatism and renewed female institution-building).

300. See B. HOOKS, *supra* note 4, at 8.

301. At its inception, the labor movement was undeniably radical: it allied itself with the Socialist Party and sought to transform the workplace by attacking capitalism. See *supra* note 32 and accompanying text. As Karl Klare has argued, the National Labor Relations (Wagner) Act was perhaps the most radical piece of legislation ever enacted by Congress. Klare, *Judicial Der-*

male action to transform a work and family system in which patriarchal assumptions have become entrenched is ineffective and, ultimately, unrealistic. The following poignant account of a lone pioneer-woman in a male workplace illustrates the sheer loneliness and emotional strain of such a task:

She had walked into their party uninvited
wedging a welcome mat in the doorway
for other women she hoped would
follow along soon.

The loud ones argued
to throw her out immediately. Even her supporters
found her audacity annoying. But once they saw
she mingled with everyone
drank American beer
kept conversations going during awkward silences
helped clean up and thanked the host

and was backed up by law
the controversy
calmed.

She surprised them.
She was reliable.
She always gave her best.
She was invited back.
She became a regular--
always on the fringe
expected to help out
just a little more.

When she stopped coming
they were confused. Why now? Hadn't she
challenged custom? stared down rumors? ingratiated herself
years ago? so that now her presence was only
mildly discomfoting. She never explained.

After all those years
hurling back cannonballs
womanizing the barricades

adicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941, 62 MINN. L. REV. 265, 265 (1978). Nonetheless, deradicalization has occurred through a confluence of political, social, economic, cultural, and legal forces. *Id.* at 268. Organized labor has become integrated into the capitalist system, and collective bargaining has become an institutional structure for controlling the labor force and preventing commerce-interrupting strikes. *Id.* at 267. I agree with Klare's conclusion that the integration of the working class into the capitalist structure has *not* negated any future prospect of working class radicalism. *See id.* at 268 n.10. It is clear, however, that labor cannot become truly emancipated unless it transforms and politicizes the law — a process which calls for radical action on a political level. *See id.* at 338-39. The process will undeniably be difficult.

of family life by bargaining for day care benefits, parental leave, and maternity benefits.³⁰⁶

Finally, once women experience their power in the workplace, and the structure of work changes to accommodate a new ideal worker, women likely will generalize that power into the larger political arena.³⁰⁷ Political scientists have long bemoaned the failure of women to participate in the political process and have explained it by reference to their social position and innate proclivities.³⁰⁸ The opportunity to redefine what is "political" may bring women into the larger political process through existing labor lobbies. Legislative change can then be effected, supporting union efforts on the comparable worth and benefit fronts, thereby improving the situation of unorganized female workers.

The first step in the program I propose must be to increase women's numbers in union membership, and to ensure that they assume positions of power within the local and international union structure. Feminists and trade unionists must join forces toward this end. I now turn to the task of how this might be accomplished.

A. *Developing a Feminist Presence in Labor Unions*

Unions will only be capable of increasing the numbers of women and their locus of power within labor unions if they can overcome the admittedly poor image of unions in the eyes of many women workers.³⁰⁹ Moreover, many women have internalized the sexist ideology they have encountered from unions and employers, and in some cases have accepted the apparent naturalness of their own inferior economic, social, and political status.³¹⁰ Thus, unions will need to reeducate themselves and women about the role women can play in

"considerably more likely [than nonunion workers] to retain their jobs to five years, and more likely to go on to reach lifetime tenure once they have had five years on the job").

306. See *supra* notes 253-54 and accompanying text.

307. See J. GAVENTA, *POWER AND POWERLESSNESS: QUIESCENCE AND REBELLION IN AN APPALACHIAN VALLEY* 209 (1980) ("[I]f opportunities for participation not subject to the dominance of the powerful do emerge," and if the dominated self-define their concerns, the previously quiescent people will develop political consciousness leading to action upon more far-reaching demands.)

308. See Bourque & Grossholtz, *Politics an Unnatural Practice: Political Science Looks At Female Participation*, *POL. & SOC.* 225, 225 (1974) ("The tendency of political scientists to explain disparities in the political participation of [women] by reference to social position and purported innate proclivities . . . has relieved the discipline from the need to seek alternate explanations which would question the distribution of . . . power as well as the very definition of politics.").

309. See R. GOLDBERG, *supra* note 84, at 121 (male-dominated unions have bad record on women's issues and in reluctance to organize women clericals).

310. See K. AMUNDSEN, *supra* note 83, at 120-21.

unions.³¹¹ In short, unions need to teach themselves, and also the women they seek to organize, to cast off ideologies which no longer serve them.

A critical feature of a feminized union's agenda must be to target women in organizing drives. This means aggressive targeting by occupation, as well as simply attending to gender issues in organizing drives. This step is absolutely essential: until we know what women feel and think about their work lives, no basis exists for constructing a feminist agenda for reforming the wage labor structure except that basis articulated by white middle- and upper-class feminists.³¹²

In addition, unions must rethink traditional, male-oriented models of union organizing. The traditional model is as follows: (1) the union targets "hot shops," shops where the workers already have indicated a desire for organization;³¹³ (2) the organizers attempt to entice workers, promising better wages and fringe benefits;³¹⁴ (3) the organizing strategy is based entirely upon appealing to workers' identities as workers, rather than appealing to their other identities — racial, gender, religious, ethnic, and so on;³¹⁵ (4) the union views organizing ability as a technical skill rather than an ability that grows out of a shared experience of community-building;³¹⁶ (5) classic organizing tactics are those developed to reach a workforce employed by a large, centralized plant, including, for example, leafletting and mass meetings;³¹⁷ (6) the union places nearly all its efforts on winning the representation election — shops where a quick victory seems unlikely, or where an election has already been lost, are largely ignored by unions; further, once

311. Evidence shows that educating workers to their own dissatisfaction with their jobs and positions leads to consciousness, which leads to participation and solidarity, and to both individual and collective action. As consciousness increases, so does participation, which further increases consciousness. The cycle continues to reinforce itself. See R. GOLDBERG, *supra* note 84, at 131.

312. See West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL F. 59, 72 ("Masculine discourse dominates the conversational space, thus generating male social constructs that in turn further women's silence."); *id.* ("[W]e will never know [what female patterning might look like] until the female voices in this society succeed in telling stories about female realities.") (quoting Payton, *Releasing Excellence: Erasing Gender Zoning from the Legal Mind*, 18 IND. L. REV. 629, 641 (1985)).

313. Green & Tilly, *supra* note 79, at 487. "Hot shops" are usually located via an initiating call from a disgruntled worker or workers to the local or regional union office. The union typically then utilizes either an in-plant committee or a polling system to ascertain interest in the union among the workers *prior* to the organizing drive. Interview with Bernard Hostein, Director of Organizing for the United Steelworkers of America (June 25, 1990).

314. Green & Tilly, *supra* note 79, at 487. Some unions vary the procedure by targeting particular issues through the polling process. *Id.*

315. *Id.*

316. *Id.*

317. *Id.*

an election has been won, the organizing task is considered to be over.³¹⁸

By contrast, a feminized union might focus first on building a nurturing community that can withstand and flourish in the face of inevitable employer antiunion pressure. Because this style of organization relies upon establishing an emotional connection between employees as well as on intellectual commitment to the goals of the union, it requires nontraditional organizing strategies that are more personal in nature, and which take into account differences of age, race, and class.³¹⁹ The process is likely to take longer. Finally, a more participatory democratic structure will be necessary so that female workers can control their own unions. Such efforts will produce a stronger coalition of workers, resistant to decertification efforts and willing to utilize militant tactics to exert economic pressure.³²⁰ Much of the organizing work can and should be done by workers themselves.

Some traditional unions have employed these organizing strategies with success. The Hotel and Restaurant Employees Union and AFSCME focus on rank-and-file involvement.³²¹ Face-to-face organizing with an initial focus on the formation of social relationships is a key to their strategy.³²² "The members, rather than the organizers and union officials, own[] the organizing drive and thus ha[ve] a greater investment in its outcome."³²³ Listening to members and allowing them to shape the issues helps to combat widespread beliefs among workers that they will have no say in what their unions do; these approaches also allow unions to deal with issues of quality of

318. *Id.* The authors argue that the traditional strategy does not function well for service workers, due to their low level of union consciousness, larger feelings of accountability to the customer and to the public, the large concentrations of female, minority, and undocumented workers in service jobs, and the rapid turnover rate typical of small, service-oriented businesses. *Id.* at 487-88.

The best illustration of this goal-oriented approach to union organizing is the "blitz" model of organizing, developed in response to management antiunion campaigns. The blitz model approaches the organizing process as if it were a war to be won, and attempts to gain the upper hand by focusing all of the union's resources on an employer's workforce, "blitzing" employees with information and obtaining signed authorization cards over a weekend, and presenting the employer with a *fait accompli* before the employer has had an opportunity to gear up its anti-union campaign. See *The Blitz: A Manual for Organizers on How to Run Fast-Paced Pre-Petition Campaigns*, AFL-CIO Department of Organization and Field Services (copy on file with author). The condensation of the organizing process into a short period of time makes community-building impossible.

319. Interview with Kris Rondeau, AFSCME organizer for the Harvard Union of Clerical & Technical Workers (June 19, 1990).

320. See Green & Tilly, *supra* note 79, at 493.

321. *Id.* at 489.

322. *Id.*

323. *Id.*

service, which are of special concern to service workers.³²⁴ A focus on and commitment to women's issues have proved very effective in organizing women.³²⁵ Addressing other aspects of identity such as race has also proved helpful.³²⁶

Similarly, the Harvard Union of Clerical and Technical Workers, now affiliated with AFSCME, successfully utilized alternative, female-centered organizing tactics including attracting members through personal contacts, cultivating leadership from within the workforce, focusing on issues of power, self-respect, and self-representation, and attempting to build women's confidence and sense of self-worth so that they would cease subordinating their own needs to those of their employer.³²⁷ In the Harvard Union model, community-building begins during the organizing stage and continues after the union wins the election. In short, the goal is to build an ongoing worker community rather than to win a union election.³²⁸

B. *Deconstructing Labor Law*

We must simultaneously begin the process of deconstructing³²⁹ and ungendering the labor laws to facilitate organization of women and bargaining on behalf of women. Such deconstruction and rigorous critique will be essential to ensure that women's voices are not coopted by existing rights-based laws. The primary goal of a feminist perspective on labor law must be to recast the law's conception of the worker as a male, full-time breadwinner with a wife and children at home.³³⁰ This assumption, and the ideology of separate spheres of action (male-public, female-private), have become so entrenched in labor law that they may seem immutable.³³¹ I sketch below some areas of

324. *Id.* at 489-90.

325. *Id.* at 491-92. The caveat, of course, is that the union's commitment to women's issues must be deep; shuffling the issues off to the political realm for national unions to deal with in legislative lobbying earns few points with women workers. *See id.* at 491.

326. *Id.* at 492. The authors note the sad fact that many organizers feel that appeals to people of color will alienate white workers, and so often avoid appeals to racial pride. *Id.*

327. *See Note, supra* note 159, at 265.

328. *See id.* at 270 n.58 ("focus on community differentiated HUCTW's efforts strikingly from union appeals of the last several decades"). For further elaboration on the advantages of a woman-centered organizing model based upon an ethic of care, *see Crain, Feminism and Labor Unions: A Strategy for Building a More Compassionate Union*, (forthcoming) (arguing that application of feminist theory has transformative potential for union organizing and labor power).

329. By "deconstruction," I mean what Robin West describes as the "critique of patriarchal jurisprudence." *See West, supra* note 195, at 61-68. *See generally* Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743 (1987).

330. *See Conaghan, supra* note 3, at 377; *see also* Finley, *supra* note 100, at 1126 (structures of work are built around the assumption that the typical worker is a male with a wife at home).

331. *See* Finley, *supra* note 100, at 1118-19.

labor law that require reform.

1. *The Gendered Definition of Work*

Labor law focuses upon "work," which it defines implicitly as that which is done for wages outside the home.³³² The paradigm of the male worker, with a wife at home tending to the necessities of life, is woven into the NLRA. This gendered paradigm is perhaps best illustrated by the definition of an "employee" covered by the NLRA. The Act explicitly *excludes* from the definition of "employee" spouses who "work" for their spouses.³³³ Further, the Act maintains the public-private spheres ideology by excluding from coverage those who perform housework and child care.³³⁴

Labor law jurisprudence also impedes unions' organization of employees in sex-segregated occupations. Some of these categories of workers are specifically excluded from the Act's coverage. "Confidential employees," defined as those who assist or act in a confidential relation to persons exercising managerial functions in the field of labor relations, are excluded from coverage under the Act.³³⁵ Because of the subordinate status of these positions in the managerial hierarchy (by definition these employees serve as "assistants" to managers), they tend to be occupied by women, usually secretaries.³³⁶ As mentioned above, domestic employees are also excluded from coverage under the Act;³³⁷ they are almost exclusively female.

Finally, independent contractors are expressly excluded from the Act's coverage.³³⁸ Contract work is particularly common in the sex-

332. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 898 (1989).

333. See National Labor Relations Act § 2(3), 29 U.S.C. § 152(3) (1988) (" 'employee' . . . shall not include any individual employed by his [sic] parent or spouse"). The original basis for this exclusion was apparently a conflict of interest rationale: Congress wanted to avoid the divided loyalties that might exist if an employer's spouse or children were included in a bargaining unit along with nonfamily employees. See *NLRB v. Action Automotive*, 469 U.S. 490, 499 (1985).

334. See National Labor Relations Act § 2(3), 29 U.S.C. § 152(3) (1988) (excluding domestic workers). The reason for the exclusion of domestic workers has been described as reflective of "political and economic realities." See 4 T. KHEEL, *LABOR LAW* § 14.02[1] (1989).

335. See *NLRB v. Hendricks County Rural Elec. Membership Corp.*, 454 U.S. 170, 186-87 (1981).

336. See, e.g., 454 U.S. at 172-73, 190-91 (Mary Weatherman, personal secretary to the general manager and chief executive officer of the employer, was ultimately reinstated only because her boss was not involved with labor relations matters).

337. See *supra* note 334.

338. National Labor Relations Act, § 2(3), 29 U.S.C. § 152(3) (1988). The independent contractor exclusion has its roots in the notion that a worker is only an "employee" if the employer has the right to control the means by which the employee accomplishes the employer's goal. See *Merchants Home Delivery Serv. v. NLRB*, 580 F.2d 966 (9th Cir. 1978) (test is whether putative employee retains control over the method, manner, and means of job performance).

typed occupations of clerical and service worker.³³⁹ The flexibility of independent contractor arrangements, and their consequent suitability for working mothers who have assumed primary responsibility for child care, ensure that women will continue to be drawn to these positions. Technological innovations, such as telecommuting, make it possible to perform many sex-typed clerical jobs from home.³⁴⁰ These jobs, too, are attractive to working mothers. As employers seek to restructure relationships with employees to reduce labor costs and deter unionization, they are increasingly utilizing these innovations.³⁴¹ Because of the difficulties in organizing isolated workers, the AFL-CIO is pressing for a total ban on telecommuting.³⁴²

Other sex-typed categories of employees, while not explicitly excluded from the Act's coverage, are a difficult target for union organization efforts because of employer job-structuring. Part-time and temporary workers often are the subject of bargaining unit composition litigation because their interests are potentially dissimilar to those of full-time employees in the unit.³⁴³ Part-time and temporary workers now comprise almost one third of the workforce,³⁴⁴ and 64% of all temporary workers and 65% of all part-time workers are women.³⁴⁵ Moreover, their high turnover rates and low pay make them a difficult group to organize: fungible, disposable, and marginal,³⁴⁶ they are readily susceptible to employer pressure not to join unions.

If union efforts to organize women are to be facilitated — or at least, not blocked — by the labor laws, an expanded definition of the term “employee” is required. In addition, the doctrine governing bargaining unit determinations must change to accommodate part-time and temporary workers. For example, the Board might adopt a “dis-

339. J. SWEENEY & K. NUSSBAUM, *SOLUTIONS FOR THE NEW WORKFORCE* 57 (1989).

340. See D. NYE, *ALTERNATIVE STAFFING STRATEGIES* 136-38 (1988) (describing category of telecommuting workers and pointing out that only one in four actually uses computers).

341. See *id.* at 152-55 (describing economic advantages of telecommuting programs for employers). See generally Sockell, *The Future of Labor Law: A Mismatch Between Statutory Interpretation and Industrial Reality?*, 30 B.C. L. REV. 987, 1000-01 (1989). Independent contractors now occupy somewhere between 9.3% and 15% of all available jobs. J. SWEENEY & K. NUSSBAUM, *supra* note 339, at 62.

342. D. NYE, *supra* note 340, at 156.

343. J. SWEENEY & K. NUSSBAUM, *supra* note 339, at 61.

344. *Id.* at 55.

345. *Id.* at 57. Part-time workers are distributed as follows: 27.7% service; 19.3% technical and sales; 18.8% clerical and administrative; 15.5% managerial and professional; 12.7% unskilled laborers; 5.7% skilled craft; and 0.4% agricultural. *Id.* Temporary workers (only those hired through agencies are included in this definition) are distributed as follows: 43.4% clerical and administrative; 16.9% unskilled laborers; 11% managerial and professional; 10.8% service; 8.8% technical and sales; 4.6% skilled craft; and 4.4% agricultural. *Id.*

346. See *id.* at 55.

parity of interests” test rather than a “community of interests” test for assessing the propriety of including temporary and part-time employees in bargaining units, which would effectively shift the burden of proof to the employer to show sharper than usual differences, or disparities, between the wages, hours, and working conditions of the part-time and temporary employees on the one hand, and the full-time employees on the other.³⁴⁷

2. *No-Solicitation Rules*

The gendered definition of the typical employee as a male with no household obligations is also reflected in the National Labor Relations Board’s rulings concerning allowable restrictions on union solicitations. The Board has upheld employer no-solicitation rules that limit employee solicitation to nonwork time, such as breaks or lunchtime, in nonwork areas.³⁴⁸ Further, outside organizers may be denied access to an employer’s property when “reasonable access” to employees may be gained through other means.³⁴⁹ These limitations on access to employees disproportionately affect working women because of their double burden of housework and child care; most women have little time to listen to the appeals of union organizers. A less restrictive approach to union solicitation is necessary if unions are to gain access to working mothers.

347. Recently, the Board has reconsidered the traditional community-of-interests standard in the context of unit determinations in nonprofit hospitals. One court described the traditional standard as follows:

For over 40 years, the Board has consistently read the definition of “unit appropriate for the purposes of collective bargaining” under § 9 [of the NLRA] to embody community-of-interest criteria. . . . The Board has traditionally considered similarity of wages and hours, extent of common supervision, frequency of contact with other employees, degree of interchange and functional integration with other employees, and area practice and patterns of bargaining.

IBEW Local 474 v. NLRB, 814 F.2d 697, 710-11 (D.C. Cir. 1987) (court ultimately rejected Board’s application of disparity-of-interest test). By contrast, under the disparity-of-interest analysis, “the Board must focus on the ‘disparities,’ as opposed to the ‘similarities,’ ‘between employee groups which would inhibit fair representation of employee interests by the union certified.’” 814 F.2d at 704-05. *Cf. Southwest Community Health Servs. v. NLRB*, 726 F.2d 611, 613 (10th Cir. 1984) (legislative history of 1974 Amendments extending reach of National Labor Relations Act to nonprofit health-care institutions requires application of disparity-of-interest test to hospital bargaining units); *NLRB v. HMO Intl./Cal. Medical Group Health Plan, Inc.*, 678 F.2d 806, 808-09 (9th Cir. 1982) (same).

Due to a split in the circuits on whether the Board should apply a community-of-interest or a disparity-of-interest standard, the Board ultimately resorted to rulemaking to establish units appropriate for bargaining in the health-care industry. The Supreme Court has agreed to review the Board’s rule, and its implementation has been delayed. *See, e.g., American Hosp. Assn. v. NLRB*, 899 F.2d 651 (7th Cir. 1990), *cert. granted*, 59 U.S.L.W. 3275 (U.S. Oct. 9, 1990).

348. *See Peyton Packing Co.*, 49 N.L.R.B. 828, 843 (1943), *enforced*, 142 F.2d 1009 (5th Cir.), *cert. denied*, 323 U.S. 730 (1944).

349. *See NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956).

3. *Legal Limitations on Workplace Militancy*

As the feminist studies of worker militancy styles described above make clear, women often choose nontraditional means of protesting working conditions imposed by their employers.³⁵⁰ Current law fails to protect many of these methods of employee protest. For example, sit-downs and slow-downs are generally unprotected.³⁵¹ Employees who engage in these forms of protest may be discharged with impunity. Expanded protection for female-style collective action should be another feature of a gender-neutral labor law.

4. *The Mandatory/Permissive Subject Dichotomy*

The gendered definition of work and the conditions under which it is performed is reinforced by the public-private spheres ideology, encapsulated in the NLRA's mandatory/permissive subject dichotomy. The obligation to bargain collectively under the NLRA is statutorily limited to issues involving "wages, hours, and other terms and conditions of employment."³⁵² All subjects falling within the scope of the statutory obligation are mandatory, and must be bargained over; all others are permissive, and may be discussed but not insisted upon to impasse.³⁵³ Because issues such as child care, maternity benefits, and parental leave have not been pressed by unions at the bargaining table,³⁵⁴ the Board has never faced the question whether they are mandatory subjects of bargaining.³⁵⁵ As feminized unions cement

350. See *supra* note 288.

351. See *NLRB v. Fansteel Metallurgical Corp.*, 306 U.S. 240 (1939) (sit-downs unprotected); *Audubon Health Care Center*, 268 N.L.R.B. 135 (1983) (partial or intermittent strike not protected activity).

352. National Labor Relations Act § 8(d), 29 U.S.C. § 158(d) (1988).

353. See *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958); *NLRB v. American Natl. Ins. Co.*, 343 U.S. 395, 407-08 (1952).

354. See *supra* notes 162-64 and accompanying text.

355. For the issue to be presented to the Board, the parties would bargain to impasse over one of these issues, and one party or the other would employ an economic weapon to bring pressure to bear (strike or lockout). The other party would then file a § 8(a)(5) or 8(b)(3) charge, alleging that the recalcitrant party had blocked bargaining over mandatory subjects by insisting to impasse on a permissive subject. See *NLRB v. Wooster Div., Borg-Warner Corp.*, 356 U.S. at 347. *But cf.* *Wichita Eagle & Beacon Publishing Co.*, 222 N.L.R.B. 742, 744 (1976) (implying that maternity leave is mandatory benefit by holding that employer could lawfully declare impasse over maternity leave clause if clause was not illegal; union could not show that clause violated antisex discrimination laws).

It seems likely that the Board would find maternity leave benefits to be a mandatory subject of bargaining because of the similarity of these benefits to health and welfare or insurance benefits, which are mandatory because they are a form of "wages." See *W.W. Cross & Co. v. NLRB*, 174 F.2d 875 (1st Cir. 1949) (" 'wages' . . . embraces . . . direct and immediate economic benefits flowing from the employment relationship"); *cf.* *General Motors Corp.*, 81 N.L.R.B. 779 (1949). Parental leave provisions might be treated similarly, as analogous to the mandatory subject of sick leave. See *NLRB v. Katz*, 369 U.S. 736 (1962). Child care benefits are more questionable. Because the benefit arguably runs to third persons outside the bargaining unit (children), the

their commitment to advancing the interests of working women at the bargaining table, the NLRA's definition of mandatory subjects must evolve. For example, the term "hours" should be construed to include flexible shift schedules for child care. "Wages" and "terms and conditions of employment" should be construed to encompass child care benefits, maternity leave benefits, parental leave provisions, and other subjects of interest to women.

5. *Women's Greater Need for Legal Protection*

As I have outlined above, women are in a position of greater economic vulnerability vis-à-vis their employers than are men. They are poor, fungible, often saddled with primary responsibility for child care, unaccustomed to wielding power or asserting it, and have internalized the blame for their powerless condition. Because women are a "superexploited class,"³⁵⁶ the limited protections that labor law *does* offer to workers are less accessible to women than to men. Thus, even apparently neutral provisions of labor law will impact in a disparate manner on women and on unions that attempt to organize them.³⁵⁷

6. *Summary*

I have outlined some areas of labor law that help to perpetuate the gendered structure of wage labor and to define work in a gendered manner. I have done so only to illustrate my thesis that labor law itself has helped to create and maintain the economic, social, and political subordination of women. Much additional deconstructive work remains for feminists and labor lawyers. The need for deconstruction will become fully apparent if the first step in my proposed agenda — the feminization of unions themselves — is implemented.

CONCLUSION

In this article, I have attempted to unmask and critique the patriarchal values inherent in union claims that women are unorganizable.

question probably would be whether the benefit "vitaly affects" the terms and conditions of employees (parents). See *Allied Chem. & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971) (holding retirees' benefits under health insurance plan not mandatory subjects of bargaining).

356. See *supra* note 258 and accompanying text.

357. For example, a woman's economic vulnerability may make her more susceptible to employer efforts at intimidation, and the time required to organize female workers, combined with the delay in holding elections permissible under the law, gives employers more time to suppress this vulnerable group. Solutions to this problem include the expedited election process suggested by Paul Weiler in his landmark article, *Promises To Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1804-22 (1983) (proposing adoption of Canadian model of certifying unions based on count of authorization cards).

I have explored the historical context of women's unorganizability, the functions that it serves for men, both those who are members of labor unions and those who are members of the capital-owning class, and the specific justifications advanced to maintain the myth of unorganizability. By applying feminist theory to unveil the ideologies and structural characteristics that reinforce the labor movement's exclusion of women, I have tried to explain how and why men's gender interest has prevailed over their class interest. In particular, I have focused on the ways in which the gender division of labor in the home and in the workplace has been mutually reinforcing, and how the gendered assignment of public and private spheres has operated to exclude women from economic, social, and political power.

Feminized labor unions can be an effective vehicle for improving women's economic, social, and political position. I propose that we forge a link between the feminist movement and the working class, and begin the process of empowering women now. Labor unions present a vehicle for collective action, available within the existing legal framework. In the process of organizing and empowering women, stories of women's lives, at work and at home, will begin to emerge.³⁵⁸ Simultaneously, we must undertake the process of challenging the conceptual barriers to female power encoded in labor law jurisprudence.³⁵⁹ The ambivalence and distrust for male-dominated labor unions displayed by most feminists is rational, given the historical and continuing evidence of sex discrimination by unions against women. Nevertheless, it undermines the tremendous unrealized potential of unions for improving the situation of women workers, the opportunity to elicit women's voices within a democratic framework,³⁶⁰ and the possibility of forging links between the mainstream feminist movement, women of color, and working class men. Most important, however, by rejecting unions as an immediate avenue of reform, feminists cast the burden of waiting for large-scale, revolutionary reform upon women without advantage; as Rosabeth Moss Kanter has pointed out,

358. See West, *supra* note 195, at 64 (only way to show what the exclusion of women from the law's protection has meant to both women and the law is to tell true stories of women's lives).

359. See *id.* at 71.

360. Indeed, only by increasing female participation in labor unions can unions serve their supposed function of furthering the interests of democracy in the larger political system. See Klare, *Workplace Democracy & Market Reconstruction: An Agenda for Legal Reform*, 38 CATH. U. L. REV. 1, 4 (1988) (unions, as institutions of working people in a society that lacks a major labor party, can contribute to political democracy); see also J. GAVENTA, *supra* note 307, at 260 (challenging pluralist notion that universal democracy exists in America, and arguing that our concept of power and our understanding of the reasons for and function of nonparticipation are intertwined). "[A]s long as the roots of quiescence can continue to be blamed upon the victims of power, then democracy of the few will continue to be legitimated by a prevailing belief in the apathy or ignorance of the many." *Id.*

“[i]t is the people caught in such [dead-end, powerless, isolated] situations . . . that make me unwilling to wait.”³⁶¹

361. R. KANTER, *supra* note 148, at 287.