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Gendered Shades of Property: A Status Check on Gender, Race & Property

Laura M. Padilla*

Approximately 75% of women between the ages of twenty and fifty-four now work, including nearly 65% of women with children under the age of six. Yet, women on average still earn between 70% to 75% of what men earn. Working women also continue to perform between two to three times as much housework as men, remain overwhelmingly responsible for child rearing, and occupy different jobs than men.¹

Women in the United States continue to be economically disadvantaged, and women of color are even more disadvantaged. This article will open with a review of laws, past and present, which have shaped women’s rights to own, manage and transfer property. It will then provide a status check of where women, including women of color, stand in the United States relative to the rest of the population vis-à-vis income and other indicators of economic well-being. The article will then discuss why economic inequality persists, trotting out the usual reasons of discrimination and women’s individual choice, and a number of less frequently discussed reasons. It will also question the validity of some typical justifications for the economic gap.² The article closes by suggesting possibilities for decreasing the economic gap between men and women in the future.

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². A companion piece explores the ripple effects of the economic gap, including implications for women at a global level if women in the world’s economically strongest country are struggling. See Laura M. Padilla, Gender, Race & Property: Status Review, Implications and Possibilities (on file with the author). The piece focuses on ways to halt the expanding colored feminization of poverty and more ideally, to grant all women better access to economic resources and equality of opportunity. Id.
WOMEN'S PROPERTY, THEN AND NOW

This part of the article will briefly describe several laws, both historic and more recent, which have controlled women's rights to own, manage and transfer property in the United States. The first section explains why it was inevitable that women would be economically inferior to men under the law as it existed historically. The next section provides an overview of modern law whose construction was guided by a model of equality which was purportedly gender-neutral. It also discusses the economic status of women under gender-neutral property laws and concludes that an unacceptable gap remains between men's and women's economic status, though women's status has improved from the time when they were explicitly legally disadvantaged.

A. An Historic Overview of Women's Property Rights in the United States

By marriage, the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs every thing. . . .

The law of coverture expressed by the above quotation prohibited married women from owning property, whether it was property they brought to a marriage, wages from their labor, inherited property, or any other property. Further, they could not manage or freely transfer property, even upon death. Although the law of coverture specifically bound married women, formal and informal restrictions confined single women's ability to acquire, manage and transfer property. For example, it was difficult for women to acquire property with limited market work, education, and

3. Given the brevity of this article, it will not provide a detailed history of laws governing women's rights to own, manage or transfer property, nor an analysis of how and why those laws evolved over time. It instead provides enough information for the reader to understand why women have traditionally been economically inferior to men in the United States, why they continue to be economically inferior, and why particular legal changes developed.


7. In 1860, the national census reported that only 15% of all free women were engaged in paid labor and most were single or widowed. Historians estimate that 5% of married white women worked outside the home during the nineteenth century. The 1890 census counted only 3.3% of
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upward mobility, non-existent credit, and disfavored inheritance status.

In the latter half of the 1800s through the early 1900s, the states which adopted the common law system of marital property enacted Married Women's Property Acts, which eventually gave women ownership and management rights over their earnings, as well as the rights to manage and transfer their property, to enter into contracts, and to designate the disposition of their property on death. During the same period, a number of western states became established as community property states, meaning that both husband and wife had equal ownership rights over marital or community property. It was not until the 1970s, however, that many of married women working for wages.

8. See, e.g., PATRICIA S. BUTCHER, EDUCATION FOR EQUALITY: WOMEN'S RIGHTS PERIODICALS AND WOMEN'S HIGHER EDUCATION 1849-1920, at 69-92 (1989) (discussing movements for women's access to higher education and professional careers); BARBARA MILLER SOLOMON, IN THE COMPANY OF EDUCATED WOMEN: A HISTORY OF WOMEN AND HIGHER EDUCATION IN AMERICA 44 (1985) (stating that in 1870, fifty-nine percent of college institutions were closed to women). As would be expected, when educational opportunities for women broadened, so did employment opportunities and their economic well-being improved. DAPHNE SPAIN & SUZANNE M. BIANCHI, BALANCING ACT: MOTHERHOOD, MARRIAGE AND EMPLOYMENT AMONG MARRIED WOMEN 52 (1996) ("Throughout American history the more gender integrated the educational opportunities, the higher women's status relative to men's.").


10. See, e.g., Ankeney v. Hannon, 147 U.S. 118 (1893) (discussing generally limitations on women's ability to enter into contracts and women's common law disabilities).

11. Inheritance hurt females both by favoring sons over daughters, and treating widows worse than widowers. See, e.g., CAROLE SHAMMAS ET AL., INHERITANCE IN AMERICA FROM COLONIAL TIMES TO THE PRESENT 32-35 (1987). Although primogeniture, the system by which the eldest male inherited parents' land, was ultimately rejected in the United States, many states continued to treat the eldest son favorably. Id. Under the common law systems of dower and curtesy, widows typically received less property than widowers. Id. For a more general discussion of women and inheritance, see id. at 83-101; Siegel, supra note 5, at 1169-72.

12. In these separate property states, during marriage, each spouse separately owns his or her wages and anything acquired through his or her labor. See, e.g., GRACE GNZ BLUMBERG, COMMUNITY PROPERTY 3 (3rd ed. 1999).


15. See, e.g., BLUMBERG, supra note 12, at 6. In community property states, property is typically characterized as either separate or community property. Id. Separate property is all property owned prior to marriage and property acquired during marriage by gift, devise, descent or bequest.
those states gave wives equal management power over community property.\textsuperscript{16}

Although historical information about property rights and acquisition for women of color is sparse, it seems that some married women of color had more property rights than white married women.\textsuperscript{17}

Ironically, in some ways the situation of Indian women was superior to that of their contemporary white sisters... Indian women frequently had more rights and opportunities to achieve positions of importance and power than did white women. This was especially true of Indian women in matrilineally-oriented societies where descent was traced through the female line.\textsuperscript{18}

One must be cautious in asserting that women of color's economic rights were superior to white women's rights—it would be more accurate to say that their claims were more direct. Many women of color, as well as all poor women, had to work for wages and were more likely to have a direct claim to property than white women.\textsuperscript{19}

The history of women's property in the United States is more complex than this thumbnail sketch can begin to present, but it can be summarized as patently unfair to women.\textsuperscript{20} Married women had limited rights to own and manage property, whether acquired prior to marriage, or during marriage.\textsuperscript{21} Not only were women not compensated for the labor they provided in the

\textit{Id.} Community property is all property acquired throughout the marriage by the labor of either spouse. \textit{Id.}

\textsuperscript{16} See, e.g., Kirchberg v. Feenstra, 450 U.S. 455 (1981) (holding as unconstitutional a Louisiana law designating the husband as "head and master" of the home with the unilateral right to manage and transfer community real property); see also CAL. FAM. CODE § 5125 (2001).

\textsuperscript{17} This is a broad statement that does not begin to take into account the varied experiences among different, and within the same groups, of women of color. For example, Black women's property rights depended on their status as free or slave, and Native American women's property rights depended on whether their nations were patrilineal or matrilineal. Valerie S. Mathes, \textit{Native American Women in Medicine and the Military}, 21 J. WEST 41, 42 (1982). And regardless of their property rights, women of color remained even more oppressed and subordinated than white women. This is an area ripe for further research, which research will undoubtedly be frustrated by the dearth of historical information on women of color and property.

\textsuperscript{18} \textit{Id.} at 41-42. Mathes notes that in a number of matrilineal tribes, "land title was often vested in the eldest or in all mature females and residence was matrilocal (bride and husband residing with the former's parents). Women therefore owned the houses, fields and gardens, and passed their property to their female heirs." \textit{Id.}

\textsuperscript{19} See, e.g., Siegel, \textit{supra} note 5, at 1086-91.

\textsuperscript{20} For more detailed histories of women and property in the United States, see generally NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE AND PROPERTY IN NINETEENTH-CENTURY NEW YORK (1982); MARYLYNN SALMON, WOMEN AND THE LAW OF PROPERTY IN EARLY AMERICA (1986).

\textsuperscript{21} Siegel, \textit{supra} note 5.
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home, they did not acquire an ownership interest in any of the fruits of the marriage. Unmarried women did not face the same legal prohibitions on property ownership that married women faced, but they still encountered de-facto prohibitions in the form of unequal educational and employment opportunities. Yet all women did not passively accept their property limitations. For example, Elizabeth Cady Stanton, Susan B. Anthony, and Frances Gage each worked tirelessly for women’s rights, including rights to property, for the reasons outlined in the Declaration of Sentiments:

[Man] ... has made her, if married, in the eye of the law, civilly dead. He has taken from her all right in property, even to the wages she earns. ... After depriving her of all rights as a married woman, if single, and the owner of property, he has taxed her to support a government which recognized her only when her property can be made profitable to it. He has monopolized nearly all the profitable employments, and from those she is permitted to follow, she receives but a scanty remuneration. He closes against her all the avenues to wealth and distinction which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known. He has denied her the facilities for obtaining a thorough education, all colleges being closed against her.

Stanton, Anthony, and Gage were not the only feminists who fought for women’s equality. Professor Reva Siegel explains women’s historical claims to a property right for household labor and discusses a number of efforts in women’s movements for greater equality. Women’s struggles produced fruit, but in a piecemeal fashion, with one advance often followed by a backlash and retreat. With time, women achieved many victories. The following section on modern property law will describe some of those victories.

B. The Modern Story, Over Time

We have come a long way from coverture. In the late 1900s, many state legislatures reformed laws to make them gender-neutral, and courts struck

22. See id. (discussing women’s claims for unpaid work).
23. Id. at 1084-85.
24. See supra notes 7-8.
26. See generally Siegel, supra note 5.
27. See Herma Hill Kay, An Appraisal of California’s No-Fault Divorce Law, 75 CAL. L. REV. 291, 299-300 (1987). Although equality between the sexes was not an explicit goal of no-fault divorce laws, the reforms ultimately manifested a move toward gender-neutralization and equality.
down laws which did not treat women and men equally. At the same time, the divorce revolution swept the land, followed by reforms in the characterization of marital property and how it was distributed on divorce, a change in custody default rules from maternal preferences toward gender neutrality, and a severe curtailment of alimony.

In 2001, women and men have the same legal rights to own, manage, and transfer property. Of course when women did not have those rights, the law dictated women's economic inferiority. Now that the law purports to be gender-neutral, women's economic position should be radically improved, maybe even equal to men's given their equal status under the law. Although women's positions have improved greatly, they are far from equal to men's positions and they may never be.

In 1997, women's salaries averaged between 70% and 76% of men's salaries, depending on the particular measure used. These figures represent a substantial improvement from the level of inequality that persisted through much of the 1970s, when the wage gap hovered around 60%. Most of this improvement occurred during the 1980s, however, and the pay gap has largely stagnated during the last decade.

To understand the economic gap between men and women, it is worth detailing women's earnings as a percent of men's throughout the 1990s, and then to trace a bit further back for comparative purposes. In 1990, women earned 71.6% of men's earnings. The differential grew as the percentage dropped during each of the following three years, falling to 69.9% in 1991, rising slightly to 70.8% in 1992, and rising slightly again in 1993 to 71.5%.

Id. at 300-04. Legislatures were not always proactive defenders of women's rights or staunch supporters of equality. For example, the no-fault divorce revolution was not prompted by equality concerns, but rather by a desire to eliminate the perjurious and acrimonious nature of fault-based divorce. Id. at 299.

See, e.g., Frontiero v. Richardson, 411 U.S. 677, 690-91 (1973) (striking down a law giving women's military dependents fewer benefits than men's on grounds that the law violated equal protection principles); Reed v. Reed, 404 U.S. 71, 76 (1971) (invalidating an Idaho law preferring men over women as estate administrators on grounds that the law violated equal protection principles).

See SPAIN & BIANCHI, supra note 8, at 40.


Selmi, supra note 1, at 714-15. But see VICTOR R. FUCHS, WOMEN'S QUEST FOR ECONOMIC EQUALITY 3 ("[T]he gap between women and men in economic well-being was no smaller in 1986 than in 1960.").

still below the 1990 level of 71.6%. In 1994, the differential narrowed as the percentage climbed to 72%, but then the percentage declined in 1995 to 71.4%, before jumping to 73.8% in 1996, with continued improvement in 1997 to 74.2%, and a drop in 1998 to 73.2%. It dropped further in 1999 to 72%. From 1990 to 1999, the overall gain in women’s earnings relative to men’s was marginal, and that marginal growth was not steady. Women’s earnings actually dropped below the 1990 level in four of those years and exceeded the 1990 level in four of the years. I do not want to underestimate the gains, but highlight that the gains came at a much slower rate than during the 1980s.

In 1980, women earned 60.2% of what men earned annually. There was a slight downward turn the following year to 59.2%, but during the remainder of the decade, with one exception, women’s earnings increased each year. By 1989 they were at 68.7% of men’s earnings. More impressively, from 1980 to 1990, women’s earnings as a percent of men’s jumped from 60.2% to 71.6%, a stunning 11.4% leap. The increase from 1990 to 1999 of 0.4% is modest by comparison. The numbers reveal that the gap between women’s earnings and men’s has narrowed, but the rate at which it has narrowed has declined significantly; if the change continued at the current rate, the gap would not be closed for another 700 years.

Women of color on average earn even less than white women, resulting

33. Id.
34. Id.
37. Id. Women’s earnings were 59.2% of men’s in 1981, 61.7% in 1982, 63.6% in 1983, 63.7% in 1984, 64.6% in 1985, 64.3% in 1986 (the one downward year), 65.2% in 1987, 66% in 1988, and 68.7% in 1989. Id.
38. Id.
39. Id. This leap has been attributed to a particular confluence of forces.
40. While far from scientific, I base this estimate on a continued narrowing of 0.4% per decade. A gap of 28% remains and that reduced by 0.4% per decade means that the gap will be eliminated in 70 decades, or 700 years.

*Spain & Bianchi*, supra note 8, at 108. The gap narrowed for women who were not as well-educated for other reasons, such as declining real wages for men and women’s increased work hours. *Id.* at 109.
in an even larger gendered wage gap for them. To illustrate, in 1998 white female householders with no husband present earned a median annual income of $27,542, compared with $17,737 for similarly situated Black women and $18,452 for Hispanic women. These numbers are not inconsequential, as many women are householders (formerly referred to as heads of households). In 1998, 18% of the 71 million families in the United States were headed by women. In that same year, women headed 47% of Black families and 24% of Hispanic families. These numbers do not reveal the fluid form of many families of color. Census figures cannot capture the multiple family structures seen in communities of color, where grandmothers, aunts and uncles, cousins, close friends, and others often live together, sometimes temporarily and sometimes long-term. Thus, it is hard to accurately compare family incomes of women of color with other family incomes. Once we move out of the family realm, income for women drops even further. Women in non-family households fared worse across the board than those who were members of family households. For example, in 1998 white female non-family householders earned an average of $19,239, Blacks

41. See U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY (CPS), MARCH 1990, 1998, AND 1999, TABLE 1. MEDIAN INCOME OF HOUSEHOLDERS BY SELECTED CHARACTERISTICS, RACE, AND HISPANIC ORIGIN OF HOUSEHOLDER: 1998, 1997, AND 1996 (1999), at 2-4 [hereinafter U.S. CENSUS BUREAU, CPS: MARCH]. "The householder refers to the person (or one of the people) in whose name the housing unit is owned or rented (maintained) or, if there is no such person, any adult member, excluding roomers, boarders, or paid employees. If the house is owned or rented jointly by a married couple, the householder may be either the husband or wife." U.S. CENSUS BUREAU, CURRENT POPULATION SURVEY: DEFINITIONS AND EXPLANATIONS, at http://www.census.gov/population/www/cps/cpsdef.html (last visited Sept. 11, 2001) [hereinafter U.S. CENSUS BUREAU, CPS: DEFINITIONS AND EXPLANATIONS]. Throughout this article, I borrow the terms "Black" and "African-American," as well as "Hispanic" and "Latina," from cited sources, which explains the varied word choice.


43. Id. Although the number of married couple households has declined across the board, there are some variations among different groups of women of color. For example, Asian women were "more likely to be married in 1990 than in 1970," whereas

Hispanic women are more likely than black women to be currently married, less likely never to have married, and less likely to be divorced. Hispanics were less likely than whites but more likely than blacks to live in married-couple households, . . . Blacks were approximately twice as likely as Hispanics, and about four times as likely as whites and Asians, to live in female-headed households. . . .

Id. at 44-45.


45. "A nonfamily household consists of a householder living alone (a one-person household) or where the householder shares the home exclusively with people to whom s/he is not related." U.S. CENSUS BUREAU, CPS: DEFINITIONS AND EXPLANATIONS, supra note 41.
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Women's income is the clearest evidence of the economic gap between men and women, but it only reveals part of a larger picture and pattern.

Although earnings are important in their own right—they largely determine a woman's economic well-being—they also, like education, reflect how much women's lives have changed. Age, education, and the presence of children (to the extent that child care influences occupational choice) all affect earnings, just as earnings, in turn, affect schooling and family structure. The income gap results in many other inequalities, such as those in net worth, social security payments, and the nature of assets owned. For example, women's lifetime earnings which are markedly lower than men's, translate into significantly less retirement income for women: "[W]omen . . . have lower earnings, experience higher job turnover, and are employed in industries with low or no pension coverage." Beyond lower overall earnings, women live seven years longer than men on average, and work fewer years overall, resulting in lower contributions to both social security and pension plans, and a longer time period to live on those reduced payouts. Women's average social security checks are just over $600, while men's are more than $800. Pension plans are rare among women: "Nearly two out of three working women have no pension plans—and pension coverage in the jobs most common to women of color is especially low." Only twenty percent of women over sixty-five, including African American

46. See U.S. CENSUS BUREAU, CPS: MARCH, supra note 41.
47. SPAIN & BIANCHI, supra note 8, at 108.
50. [T]he time many women spend away from the workplace to raise a family or care for an aging relative diminishes the number of working years that pay into a retirement plan. Staying out of the work force for only seven years during a 40-year career may cut your retirement benefits in half. That's because you often lose more than your retirement benefits when you aren't on a payroll: You lose the seniority and experience that lead to promotions and raises.
women, draw pension checks. Latinas over sixty-five are less likely to receive pension checks, with a mere one in nine, just over eleven percent, receiving pensions.

Women's income relative to men's tells a meaningful story. We get another angle on that story by looking at the gendered breakdown of the rich and poor, and seeing where most women reside. In 1996, fewer than 2% of all working women earned more than $75,000, while fewer than 1% each of African American and Latina working women earned more than $75,000. By comparison, approximately 7.4% of working men earned more than $75,000. A quick look at the 2000 Forbes 400 list of the wealthiest Americans reveals the names of 354 men with an average net worth of $3 billion and the names of 46 women with an average net worth of $2.6 billion. If we eliminate those who received their wealth through death or divorce and narrow the list to the self-made wealthy, the number of men drops slightly from 354 to 329 (still constituting 82.25% of those on the list), and the number of women drops from 46 to a mere 7 (1.75% of those on the list).

On the flip side, in 1996, approximately 70% of all working women earned less than $25,000 annually, with 73% of African American women earning less than that amount, and a staggering 82% of Latinas. Where are these women working? Two-thirds of white women and three-quarters of African American women and Latinas work in three main areas: sales and clerical, service, and factory jobs. The most common jobs for African American women are as nursing aides, orderlies, and attendants, paying a

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53. Id.
54. Id.
55. Id.
56. See U.S. Census Bureau, Statistical Abstract of the United States 481 (1999). Approximately 7,451,000 men earned $75,000 or more, while only 1,947,000 women earned that amount including 99,000 Black women and 61,000 Hispanic women. Id. Accordingly, nearly four times as many men as women earned in excess of $75,000, with over 75 times as many men as Black women, and over 122 times as many men as Hispanic women. Id.
57. By the Numbers, Forbes, Oct. 9, 2000, at 361.
58. Id.; Forbes Index, Oct. 9, 2000, at 370.
60. It's High Time, supra note 52. I could not locate similar information for men for 1996. However, in 1997, approximately 46% of men earned less than $25,000, compared with almost 66% of women. See U.S. Census Bureau, supra note 56, at 481.
61. It's High Time, supra note 52; see also Spain & Bianchi, supra note 8, at 91 ("In 1990, women held seventy-seven percent of clerical administrative support positions.").
meager $286 weekly. Latinas make even less in their most common occupation of cashier—$240 weekly. Most women of color did not earn enough in 1996 to keep a family of four above the poverty line. In fact, in 1996, nearly 8% of all working women lived below the poverty line, as did 16% of both African American women and Latinas. The poverty risks are higher still for single mothers and their children.

Despite the drop in child poverty [in 1999], children under age 6 remained particularly vulnerable to this condition; those living in families with a female householder and no husband present experienced a poverty rate of 50.3 percent, more than five times the rate for children under 6 in married-couple families (nine percent).

Regardless of which measures we use, women earn less than men. "[T]he Institute for Women’s Policy Research estimates that the average 25-year-old woman who works full time, year-round for 40 years will earn $523,000 less than the average 25-year-old man, if current wage patterns continue." Just think about what a difference equal pay would make for all women. It could be the difference between poverty and middle class status. The difference between a high school education and college. The difference between renting and home ownership. The difference between mediocre day care and educational pre-school. The difference between a social security-only retirement plan and a pension plan plus social security. The difference between survival stress and an occasional vacation.

This part has demonstrated that the economic gap between men and women exists at many different levels as measured by income, retirement funds, and other wealth indicators. Women’s work that is undervalued relative to men’s work represents a gap. For men and women in similar jobs with similar experience, there is a wage gap. Every bit of women’s unpaid work results in a larger gap. Single mothers’ gap is larger still, with women

62. *It's High Time*, supra note 52.
63. *Id.*
64. *Id.* (indicating that the poverty line was $16,036 in 1996).
65. *Id.*
68. "[H]omeownership rates for younger female family householders have declined since 1982 for every age group except those in their late forties. The absence of homeownership is especially pronounced for female householders most likely to have young children (those in their thirties)." *Spain & Bianchi, supra* note 8, at 38 (citation omitted).
of color typically suffering yet more. The existence of the gendered economic gap has been widely documented, and this part merely recounted the gap’s persistence, but did not offer specific reasons for the disparate economic status of men and women. The following part will describe and critique the most commonly proffered reasons for the economic gap.

II. WHY THE GENDERED DISPARITIES IN WEALTH?

This article has confirmed that even with gender-neutral laws, women continue to be disproportionately over-represented among the poor and under-represented among the rich. Although the economic gap between men and women has narrowed, it remains significant.\textsuperscript{69} To the extent that the economic gap has narrowed, we should not be too hasty to celebrate women’s gains, the reduction is partly explained by men’s losses.\textsuperscript{70} This part will delve into various explanations for women’s economic inferiority, starting in the first section with a discussion of how one’s marital and parental status impact one’s economic well-being. It also explores how women’s dependence affects their economic status. The second section hones in on the continuing impact of gender discrimination and how it plays out economically. Additionally, this section discusses discrimination that maintains sex-segregated workplaces and stifles women’s advancement, discrimination that devalues anything woman-associated, including traditionally female jobs, statistical discrimination, and the discrimination faced by women who work without pay. The third section explores this country’s systematic under-investment in women, the cumulative effect of which economically disadvantages women in myriad ways. The fourth and final section briefly critiques whether our “gender-neutral” laws are really neutral.

A. Marital & Parental Status

1. Introduction

Martha Fineman believes “that marriage often conceals or masks the poverty of women in this country and that divorce removes this mask. The care of children produces dependency, not only for the children, but also for

\textsuperscript{69} See supra notes 32-40 and accompanying text.

\textsuperscript{70} “[A] significant portion of the decrease [in the gap] resulted at least as much from the receding position of men as from improvements in the labor market conditions of women.” Selmi, supra note 1, at 716.
the primary caretaker."\textsuperscript{71} It is well known that one's marital status is an indicator of one's economic status: "Married women have higher household incomes, are more likely to own their homes, and are less likely to live in poverty than unmarried women."\textsuperscript{72} The 2000 Census reported that in 1999, married-couple family households earned a median income of $56,827, compared with female-headed families with no husband present, which earned $26,164, and male-headed households with no wife present, which earned $41,838.\textsuperscript{73} Thus, regardless of whether single-parent families are headed by a man or a woman, their median income is lower than that of married-couple families, even when both spouses in a married couple do not work.\textsuperscript{74} The differences are more glaring when one compares married-couple families with single men or women who are not part of a family household.\textsuperscript{75} Married couples' average income of $56,827 is nearly three times as much as single females' average income of $19,917, and more than one and three-quarter times as much as single males' average income of $30,753.\textsuperscript{76} These statistics do not suggest that there are no rich single persons or poor married persons. But economies of scale tend to favor the married or joint adult households.\textsuperscript{77}

As well off as she is relative to other women, the married woman suffers economically relative to her husband. Aside from typically earning less than her husband, when children arrive, the wife/mother typically bears the economic brunt of parenting: "[T]he wife, the parent statistically more likely to be at a disadvantage in the market, will more likely also be the parent who must adjust career activities to accommodate childrearing. This adjustment will result in potentially immeasurable costs to her career and personal development."\textsuperscript{78} Those costs are mild compared to the costs single mothers incur.\textsuperscript{79} Regardless of marital status, mothers are disproportionately


\textsuperscript{72} See SPAIN & BIANCHI, supra note 8, at 25.


\textsuperscript{74} Id.

\textsuperscript{75} Id.

\textsuperscript{76} Id.

\textsuperscript{77} Of course, it is clear that this conclusion holds true for married or unmarried cohabitants.

\textsuperscript{78} FINEMAN, supra note 71, at 43.

\textsuperscript{79} This article does not detail the economic burdens of single motherhood, but many other academics and commentators have researched and elaborated on those burdens. See, e.g., FINEMAN, supra note 44; MICHAEL B. KATZ, THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE
impacted economically by the decision to have children.

Our economy is divided into mothers and others. Having children has a very strong negative effect on women's income, an effect that actually increased in the 1980s despite the fact that women have become better educated. The more dramatic figure is that mothers who work full time earn only sixty cents for every dollar earned by full-time fathers. Single mothers are most severely affected, earning the lowest percentage of men's average pay. Moreover, though the wage gap between men and women has fallen, the gap between the wages of mothers and others has widened in recent years. As a result, in an era when women's wages are catching up with men's, mothers lag behind. Given that nearly 90 percent of women become mothers during their working lives, this pattern is inconsistent with gender equality.

It is expensive to have a child. All parents are familiar with the costs of having and raising children, and women are peculiarly burdened by that cost.

In contemporary America, the greatest barrier to economic equality [for women] is children. Most women want to bear children and are concerned about their well-being once they are born. Whether this "maternal instinct" is primarily biological or some complex interaction of biology and culture, is not critical for framing public policy. What is important is that the "propensity to mother" is present and strong, and puts women at a disadvantage.

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80. **JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 2 (2000).**


82. **FUChS, supra note 31, at 147; see also Selmi, supra note 1, at 755. Fuchs elaborates:**

In addition to... well-known, obvious costs [of children], there is another that falls particularly on women in the form of lower wages. This happens for several reasons. First, many women leave the labor market during pregnancy, at childbirth, or when their children are young. These child-related interruptions are damaging to subsequent earnings because three out of four births occur to women before the age of 30 at the same time that men are gaining the training and experience that lead to higher earnings later in life. Second, even when mothers stay in the labor force, responsibility for children frequently constrains their choice of job: they accept lower wages in exchange
Married women are uniquely burdened by the economic, time-commitment, emotional, and physical costs of having children; women are more extensively burdened, even to the point of poverty, when they are single parents. 83

It is noteworthy that the economic disadvantages for mothers who delay childbirth are not so pronounced. "Women who wait to have children until their thirties are more committed to market work and have higher educational attainment and wages than women who have babies in their twenties." 84 Although these women as a group are economically better off than women who have children at younger ages, I post two cautionary notes. First, as a group, these women are still subject to a wage gap. 85 Second, not all women who delay childbirth into their thirties have invested that time in their own human capital, and hence will not necessarily be in better positions vis-à-vis market work. As much of a disadvantage as the married mother has relative to her husband, she is in a vastly superior position to unmarried mothers, who are discussed further in the following sub-section.

2. Women’s Economic Dependence, Gender-Neutral Divorce Laws, and Other Half-Truths

Unmarried mothers find themselves at the bottom of the economic well, striated by color, getting darker as one descends. 86 Although never married and divorced mothers face similar challenges, they also have unique hurdles. 87 This section partly addresses concerns common to all women and

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83. See supra note 79.
84. SPAIN & BIANCHI, supra note 8, at 11.
85. See, e.g., notes 32-34 and accompanying text (illustrating that on average all women are subject to a wage gap, regardless of educational attainment).
86. To be more precise, the median income was highest in 1999 dollars for Asian and Pacific Island women, followed by white women, Black women, and Hispanic women. U.S. CENSUS BUREAU, TABLE P-2. RACE AND HISPANIC ORIGIN OF PEOPLE BY MEDIAN INCOME AND SEX: 1947 TO 1999 (2001), available at http://www.census.gov/income/histinc/people/p02.pm.
87. While this article does not focus on those who become mothers outside of marriage, it is not out of disrespect for those mothers or their struggles. However, the length of this article will not permit a detailed analysis of those struggles.
all mothers, but will also focus on divorced mothers and the hand that gender-neutral divorce laws has dealt them.

Economic inequalities persist in our society in spite of decades of attempted reforms. The rules governing economics at divorce perpetuate and contribute to this persistence of inequality. In the first instance, women are disadvantaged in the market. They earn less than their male counterparts and, even if freed from the pink-collar ghetto, do not advance as quickly and as far as men. In addition, cultural images and socially constructed expectations compel women to assume unequal responsibilities within the family.88

For decades, feminists blamed women’s financial dependence on men as a chief source of their economic subordination.89 Many liberal feminists urged women to become independent by focusing their efforts on eliminating sex-based classifications,91 urging equality of opportunity in the educational, professional, and workplace realms,92 pushing for greater equality in the home,93 and drafting gender-neutral laws such as those that

88. FINEMAN, supra note 71, at 36-37.

89. See MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 174 (1999). Modern feminists were not the first to blame this dependence as a chief source of women’s inequality. Professor Siegel wrote that following the Civil War “growing numbers of feminists came to emphasize an adequate and independent source of income as the most promising avenue to economic autonomy for women—both within and without marriage.” Siegel, supra note 5, at 1191.

90. Patricia Cain defines liberal feminism as

rooted in the belief that women, as well as men, are rights-bearing, autonomous human beings. Rationality, individual choice, equal rights and equal opportunity are central concepts for liberal political theory. Liberal feminism, building on these concepts, argues that women are just as rational as men and that women should have equal opportunity with men to exercise their right to make rational, self-interested choices.


92. See also Christine Littleton, Reconstructing Sexual Equality, 75 CAL. L. REV. 1279, 1292 (1987) (explaining that the symmetrical approach to sexual equality is necessary to avoid returning to the theory that male/female differences necessitate different societal positions); Deborah L. Rhode, The “No-Problem” Problem: Feminist Challenges and Cultural Change, 100 YALE L.J. 1731, 1745-46 (1991) (chronicling the advances in women’s formal rights since the 1960s but concluding that inequalities between men and women still exist in such areas as the social, economic, and political). See generally Wendy Williams, The Equality Crisis: Some Reflections on Culture, Courts and Feminism, 7 WOMEN’S RTS. L. REP. 175 (1982) (showing that courts have been the source of change guaranteeing for women the privileges bestowed on men).

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They registered many successes, but also admitted several failures respecting both unachieved goals, and achieved goals where their hoped-for results did not materialize. For example, many harbored the belief that if women were not dependent on men, their economic status would naturally improve. Several feminists accordingly devoted themselves to reforming divorce laws to: equalize property distribution on divorce, make joint custody the default rule, and transition from long term alimony to rehabilitative alimony.

Although many people successfully worked in good faith for the passage of gender-neutral divorce laws, the laws did not produce the desired economically independent woman, and instead frequently have had the devastating effect of impoverishing women who had been, and continue to be, economically inferior to their husbands and ex-husbands. “Even the most cursory review of data... supports the contention that divorce is an economically advantageous enterprise for men but disastrous for women and children.” As noted,

94. See, e.g., Fineman, supra note 71, at 3, 20-21; Deborah L. Rhode & Martha Minow, Reforming the Questions, Questioning the Reforms, in Divorce Reform at the Crossroads 191, 195 (Stephen D. Sugarman & Herma Hill Kay eds., 1990).

95. For example, the Equal Rights Amendment (ERA) was defeated. See generally Donald G. Mathews & Jane S. De Hart, Sex, Gender and the Politics of the ERA (1990) (discussing the development of the ERA and reasons for its failure); Janet J. Mansbridge, Why We Lost the ERA (1986).

96. While it is hard to argue with that assertion, it oversimplifies both how women come to be dependent and the challenges to asserting economic independence. There are many reasons for economic dependence, ranging from the overt to the unconscious, and the systemic to the systematic. Amy Christian writes that

[[This vicious circle [within the tax law] reveals the gendered nature of the tax code and shows how the rate structure contributes to denying economic independence to women. Eliminating gender-based wage discrimination alone will not solve the problem of women’s economic inferiority because the current tax system operates on income patterns that exist, in part, for nondiscriminatory reasons.]

Amy C. Christian, The Joint Return Rate Structure: Identifying and Addressing the Gendered Nature of the Tax Law, 13 J. L. & Pol’y 241, 301-02 (1997). Like Professor Christian, we must attempt to uncover as many sources of economic dependence and economic inferiority as possible, exposing, critiquing, and challenging those sources, while offering viable alternatives.

97. See, e.g., Kay, supra note 27, at 299 (emphasizing that equality between the sexes was not an original goal of no-fault divorce, but that once no-fault developed, divorce reformers explicitly sought equality); see also Herma Hill Kay, Beyond No-Fault: New Directions in Divorce Reform, in Divorce Reform at the Crossroads 6, 16, 17 (Stephen D. Sugarman & Herma Hill Kay eds., 1990) (discussing alimony and joint custody). But see Joanne Schulman & Valerie Pitt, Second Thoughts on Joint Child Custody: Analysis of Legislation and Its Implications for Women and Children, 12 Golden Gate U. L. Rev. 539 (1982) (criticizing joint custody as a default rule); Jana B. Singer & William L. Reynolds, A Dissent on Joint Custody, 47 Md. L. Rev. 497, 502-18 (1988).

98. Fineman, supra note 71, at 174; see also id. at 61 (citing the warnings of women
The consequences [of divorce] are fairly simple: a woman's economic well-being typically falls, while a man's typically rises. It is true that family income declines for both women and men after divorce but the drop is much greater for women (24 percent) than for men (6 percent), and former husbands are more likely to see their income (relative to their household's needs) increase than are former wives, who usually retain custody of children from the marriage.99

What happens on divorce that causes such consequences? Although divorce laws vary from state to state and are dependent in large part on whether a state has adopted a community property or separate property marital system,100 divorce laws tend to be gender-neutral and can be summarized fairly simply. In a community property state such as California, courts are required to equally divide a divorcing couple's community property,101 and each spouse never loses title to his or her separate property.102 In a separate property state, each spouse separately owns the products of his or her labor during the marriage, unless they choose to jointly own property.103 On divorce, most separate property states provide for an equitable distribution of property, meaning that a court can award property to either spouse, regardless of how the property is titled.104 Most courts start with a presumption of fifty-fifty property division. Alimony can be awarded, but "is largely viewed today as support for a limited period of time until the spouse can enter the job market and become self-sufficient..."105 In practice, alimony is infrequently awarded, and even when awarded, tends to be for very short periods of time.106 Professor Littleton criticizes standard alimony practices and results as follows:

In case after case, women who have spent most of the marriage as full-time homemakers and mothers are treated as "equal" to their male partners who have spent those years developing a career. In

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99. SPAIN & BIANCHI, supra note 8, at 31 (citation omitted).
100. See supra note 15 (defining community and separate property).
102. CAL. FAM. CODE § 770 (West 1994).
104. For a general discussion of equitable distribution and how divorce laws have evolved in separate property states, see id. at 376-79.
105. Id. at 378.
setting alimony awards, courts have refused to even consider the possibility that the woman might find herself at a competitive disadvantage in the job market—a disadvantage directly related to the work she performed during the marriage. Instead, the parties are treated “equally,” and any prior disadvantaging of the woman vis-à-vis the workplace is completely ignored.  

Although most divorce laws are gender-neutral, studies indicate that “equal division at divorce has not worked to put divorcing wives in as good a position as their husbands.” Martha Fineman states with exasperation that “it should be apparent . . . by now that need cannot be alleviated by equal divisions so long as other factors between men and women remain unequal.” Equal division of property on divorce does not solve other inequalities. To illustrate, suppose a mother receives half of the marital property on divorce as well as custody of the children. During the marriage, the couple decided it was in the family’s overall interest to invest in the husband’s career, which could best be accomplished if the wife stayed at home taking care of the children and supporting the husband’s career. Equal division of property on divorce does not then give the ex-wife economic parity with her ex-husband. She will have foregone opportunities to invest in her human capital, and on divorce, virtually no state recognizes a property interest in the ex-husband’s human capital, the primary source of the couple’s economic well-being to which each spouse contributed during the marriage. Moreover, as the custodial parent, she will be primarily responsible for the costs of raising their children on less income than her ex-husband will earn.

If the divorce rules do not give . . . [an ex-wife] a share of his enhanced earning capacity . . . and if divorce rules expect her to enter the labor market as she is, with few skills, outdated experience, no seniority, and no time for retraining, and if she continues to have the major burden of caring for young children after divorce, it is easy to understand why the divorced woman is likely to be much worse off than her former husband.

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107. Littleton, supra note 92, at 1307-08 (citations omitted).
108. See Dukeminier & Krier, supra note 103, at 378; see also Weitzman, supra note 79.
109. Fineman, supra note 71, at 178.
110. For a more detailed illustration of typical gender consequences on divorce even with equal property division, see June Carbone & Margaret Brining, Rethinking Marriage: Feminist Ideology, Economic Change, and Divorce Reform, 65 Tul. L. Rev. 953 (1991).
111. See, e.g., Williams, supra note 80, at 134-36.
112. Weitzman, supra note 79, at xi.
Divorced custodial mothers often find themselves flirting with poverty. "The 'new poor' are single-parent families headed by women, many placed there as a result of divorce."\textsuperscript{113}

The lesson is that married women are relatively better off than single women, and that motherhood economically burdens all mothers, regardless of marital status. Yet, even with gender-neutral laws that promote women's independence, women as a group remain economically inferior to men, a disadvantage that is exaggerated on divorce. If women, on average, are economically inferior to men, regardless of educational, marital or parental status, then clearly much work remains to be accomplished to eliminate the economic gap.

\textit{B. Discrimination and the Wage Gap}

1. Introduction

One's gender has always been a strong indicator of whether one will be rich or poor.

If... [valuing]... the male from twenty years even to sixty years old, then your valuation shall be fifty shekels of silver,... Or if it is a female,... thirty shekels. And if it be from five years even to twenty years old, then your valuation for the male shall be twenty shekels, and for the female ten shekels. But if they are from a month even up to five years old, then your valuation shall be five shekels for the male, and for the female... three shekels... And if they are from sixty years old and upward, if it is a male, then your valuation shall be fifteen shekels, and for the female ten shekels.\textsuperscript{114}

In more recent times, simply being a woman meant that on average, you would earn 73.2 cents for every dollar that a man earned,\textsuperscript{115} and if your fate was to be born an African American woman, that number declined to 67 cents, with Hispanic woman earning even less, 58 cents.\textsuperscript{116} Why?

On the one hand, the observed differences between men and women might be viewed as the product of social forces, including

\textsuperscript{113} FINEMAN, \textit{supra} note 71, at 38.

\textsuperscript{114} Leviticus 27:3-7.

\textsuperscript{115} See \textit{supra} note 34 and accompanying text (applying 1998 statistics).

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discrimination, that limit the opportunities of women in a number of complicated ways. Alternatively, the results might be explained as the product of personal choices, a view that is common within economic models, and increasingly common among some female legal scholars.\textsuperscript{117}

Discrimination and personal choice\textsuperscript{118} indeed partly explain the economic gap between men and women.\textsuperscript{119} But the explanation cannot so simply be characterized as either/or, or as not resulting from other forces. This section will introduce how discrimination continues to hurt women economically, and the sections that follow will weave discrimination into other phenomena that hurt women, including personal choice. These sections critique both the voluntariness of those choices and how women are penalized for consequences of choices, which consequences frequently do not materialize.

Discrimination continues to haunt women. Although old-fashioned discrimination has been supplanted for the most part by more subtle forms, blatant discrimination has not altogether vanished.\textsuperscript{120} And for women, discrimination operates on many levels: "[T]he pattern of sex discrimination differ[s] . . . from that of race discrimination; women face . . . discriminatory differentials not only among different occupations but also within occupations."\textsuperscript{121} Studies of intersectionality demonstrate that women of color suffer more intense discrimination resulting from the intersection of their gender and race.\textsuperscript{122} "When there is an intersection between two or more of these [subordinated] identities, then people with multiple subordinated identities are often subject to more intense discrimination than

\textsuperscript{117} Selmi, supra note 1, at 738 (citations omitted).


\textsuperscript{119} But see FUCHS, supra note 31, at 3 (concluding that women’s economic inferiority is not due to employer discrimination). Fuchs also notes that it is a huge leap from the conclusion that sex has a major effect on earnings to the inference that employer discrimination is the major source of the wage differential. Such a leap ignores discrimination from other sources such as employees and consumers, and, more important, ignores all the social and familial forces that depress women’s earning power.

\textit{Id.} at 54.

\textsuperscript{120} See, e.g., Rhode, supra note 118, at 1218; SPAIN & BIANCHI, supra note 8, at 127-29.

\textsuperscript{121} FINEMAN, supra note 71, at 37.

the single axis discrimination suffered by those associated with a single category of subordinated identity.\footnote{123} It is no surprise that women of color occupy the worst economic position. While gender-based discrimination of any form harms all women through its monetary penalties, women of color are hurt even more through the multiple forms of discrimination which they experience at every step of their educational and career paths.\footnote{124}

Discrimination is a complex force, sometimes conscious and often unconscious.\footnote{125} Some who intentionally discriminate attempt to explain their behavior on economic efficiency grounds. They might, for example, engage in statistical discrimination as an efficiency tool which happens to penalize women. Statistical discrimination has been described as "discrimination premised on generalizations that are inaccurate in a large percentage of cases, but are cheaper to indulge than to ignore."\footnote{126} In practice, employers could pay all women less than they pay men for similar work based on the statistical probability that women of child-bearing years will take time off to have children and possibly not return to work. While there is some logic to this behavior, economic efficiency mechanisms of this sort remain disingenuous: "[W]e . . . should not assume that the market is a frictionless machine grinding its way toward maximizing social welfare. On the contrary, the use of statistical discrimination perpetuates gender stratification and inequality and, therefore, reduces our social welfare."\footnote{127} Although statistical discrimination might seem somewhat justified by the modest gains it provides employers, the potential costs to its victims are great enough that it should be targeted for change. "Even a relatively small amount of initial labor market discrimination can have greatly magnified effects if it discourages women from making human capital investments, weakens their attachments to the labor force, and provides economic incentives for the family to place priority on the husband's career."\footnote{128}

Statistical discrimination is only one form of discrimination justified on economic grounds. The next section returns to economic efficiency arguments and elaborates on how they often are not statistically supported and mask continuing discrimination which may be driven by the desire for

\footnote{123. See Padilla, supra note 122, at 848.}
\footnote{124. See, e.g., id.}
\footnote{125. See generally Charles R. Lawrence III, The Id, the Ego, and Equal Protection, 39 STAN. L. REV. 317 (1987) (discussing the doctrine of discriminatory purpose and its implications on constitutional challenges to facially neutral laws).}
\footnote{126. See Rhode, supra note 118, at 1219; see also Fuchs, supra note 31, at 53 (explaining the implications of statistical discrimination).}
\footnote{127. Selmi, supra note 1, at 754.}
\footnote{128. Francine Blau & Marianne Farber, The Economics of Women, Men, and Work 261 (1986).}
the privileged to preserve their power. Discrimination disappears very slowly, partly because "those in power, in this instance men, are reluctant to relinquish that power and, thus, utilize a variety of often subtle strategies to preserve their privileged positions."  

2. Undervaluation of Women's Work

Women also suffer discrimination when female-dominated jobs routinely pay less than male-dominated jobs. Ironically, when many of these jobs were male-dominated, they were more prestigious and better paying. "The job of secretary was, when performed almost exclusively by men, one of high status as well as a primary route into management. When the job became female-dominated, it somehow lost status, relative pay, and upward mobility." Women have long been segregated from men by profession, with women almost always earning less than men. As in many societies at any point in history, people employed in "women's jobs" are systematically underpaid regardless of their gender. For women who work, odds are high that they will be employed in female-dominated fields. Modern examples of occupations that are considered female-dominated include nursing and teaching. These occupations generally pay

129. Selmi, supra note 1, at 753.
130. Littleton, supra note 92, at 1316.
131. Id.
132. See FUCHS, supra note 31, at 32-33.
134. One economist states more emphatically that regardless of the gender-based composition of a given profession, women within that profession have always earned less than men. FUCHS, supra note 31, at 49.

Cleopatra was the absolute ruler of Egypt, but men's wages were more than double those of women in Egyptian workshops and manufacturies during her reign. . . . According to economic historian Claudia Goldin . . . American women working in manufacturing in 1820 earned only 35 percent as much as their male counterparts; and in mid-nineteenth century England, male spinners were paid more than twice as much as female powerloom weavers. . . .

Id. (citations omitted).
135. Rhode, supra note 118, at 1209 (stating that “[m]ost women employees are crowded into a small number of existing job categories, and about three-fifths are in occupations that are at least seventy-five percent female.”).
136. See AFL-CIO, EQUAL PAY BY OCCUPATION, at http://www.aflcio.org/women/eqp--cc.htm (last visited Sept. 11, 2001); WOMEN'S INTERNATIONAL CENTER, supra note 9, at 4.
less than men's jobs that require similar experience in terms of education and skill level.\textsuperscript{137} Even more insulting is that men who dare to work in female-dominated fields earn more than women. Although ninety-five percent of nurses are women and only five percent are men, the women on average earn $30 less per week than the men.\textsuperscript{138} While more elementary teachers are women than men,\textsuperscript{139} women on average earn $70 less per week than men.\textsuperscript{140}

How can we explain this sex-segregation in the workplace and the concomitant devaluation of women's work? One explanation is that consciously or not, women who are mothers or hope one day to be, often enter professions which they perceive to be more flexible or easier to move in and out of; these tend to be lower-paying "women's jobs."\textsuperscript{141} Women's lower wages have thus been justified as the result of women's choice, but the situation is not so simple.

One analytical problem with the emphasis on preferences is that it is difficult to know whether women's occupational choices, or their human capital investments, are products of actual preferences or responses to labor market opportunities—what has been aptly labeled the "chicken-or-egg" problem. In many instances, it would seem rational for women to reduce their investments to the extent those investments fail to yield returns comparable to those of men who make similar labor-force investments.\textsuperscript{142}

To illustrate, even though women typically earn a return on their educational investments, men earn a higher return.

The more educated a woman, the more likely she is to work outside the home, although the returns to higher education for women generally lag behind those for men. Women with some college education are as likely to work as secretaries as women

\textsuperscript{137} See \textit{Equal Pay by Occupation}, \textit{supra} \textsuperscript{note 136}.

\textsuperscript{138} Id.

\textsuperscript{139} See \textit{Women's International Center}, \textit{supra} \textsuperscript{note 9}, at 4 ("In the late 1980s, more than twice as many women as men taught in elementary and high schools.").

\textsuperscript{140} Id.

\textsuperscript{141} As mothers of young children entered the job market, they tended to work in the growing service sector in predominantly "female" jobs. For these women, a major obstacle to economic independence was not the lack of equal treatment with male co-workers in the same positions, but the low pay scales generally assigned to "women's" jobs or occupations. \textit{Chamallas}, \textit{supra} \textsuperscript{note 89}, at 185.

\textsuperscript{142} Selmi, \textit{supra} \textsuperscript{note 1}, at 739 (citation omitted).
who stopped at a high school degree. In 1990, a college-educated woman who worked full time and year round earned only as much as a man with a high school degree.\textsuperscript{143}

To continue with the argument, women's low pay has been justified by their purported weak labor force attachment,\textsuperscript{144} and related choices that one with a weak labor-force attachment might make. For example, one might invest less in training or education if one did not plan to remain in the market following the birth of children.\textsuperscript{145} To put it another way, women make sex-segregated labor choices which result in lower pay, not because they want lower pay, but because they will settle for lower pay as a trade-off for other benefits such as flex-time or quality insurance.\textsuperscript{146} "These choices, the argument goes, may help explain the severe segregation that exists in the U.S. labor market, where it remains rare for a woman to work in a job that is integrated on the basis of gender."\textsuperscript{147} One academic writes that

women's supposed tendency to exit the labor market for periods of time to have and to care for children, as well as their choices about careers, are said to explain generally why women often end up in different jobs than men or are paid significantly less than their male counterparts in the same occupation.\textsuperscript{148}

As with most theories, there is some truth and some fiction to this one.

At one level, it may seem rational for women to back into lower paying

\begin{flushright}
\textsuperscript{143} SPAIN & BIANCHI, supra note 8, at 76.
\textsuperscript{144} I write "purported weak labor force attachment" because women's labor force attachment has grown stronger over time. “Longitudinal surveys suggest that the proportion of women who chose to work while raising their families—or, more technically, those displaying continuous labor force attachment—increased during the 1970s and 1980s among women from all educational and family backgrounds.” Id. at 87 (citation omitted).
\textsuperscript{145} See, e.g., GARY S. BECKER, A TREATISE ON THE FAMILY 41-42 (1991). Economist Fuchs also theorizes that social conditioning for women to successfully fulfill the roles of wife and mother influence them to invest less in education and to choose jobs that will allow them to best perform role expectations. FUCHS, supra note 31, at 43. But when women resist social conditioning, they still struggle: “[t]hey are likely to encounter difficulties in the labor market simply because they are women and are often evaluated and treated according to gender norms.” Id.
\textsuperscript{146} When describing why women prefer service sector jobs (which tend to pay less), Fuchs explained that

hours of work are frequently more flexible and there are more opportunities for part-time work, and service-sector jobs are more likely to be located in or near residential areas, thus making them more attractive to women who bear large responsibilities for childcare and homemaking, even when they also work outside the home.

FUCHS, supra note 31, at 25.
\textsuperscript{147} Selmi, supra note 1, at 717 (citation omitted).
\textsuperscript{148} Id. at 730.
or part-time jobs; after all, women remain primarily responsible for child rearing.

The reason that it currently makes sense for women to sacrifice their incomes, to the extent it makes sense at all, is because they are paid less than men, but an important reason they are paid less than men is that they have the primary responsibility for child rearing. If this pattern were broken, women’s earnings would likely rise and—as long as men’s income did not suffer a proportional decline—overall wealth would increase.149

We thus have this logic that women are paid less than men because they will probably get married, they are primarily responsible for child rearing, and they are less likely to be permanent workers.150 While the first two reasons remain accurate, evidence does not support the third. “[M]arried women generally continued on their jobs for many years and were not a transient, temporary, or undependable work force.”151 Moreover, women take less time off work for childbirth and recovery and return to full time work more often and sooner than predicted.152 Their productivity does not suffer when employers are flexible, and in fact productivity tends to suffer when there is little employer flexibility.153 A woman’s gender does not necessarily translate into stereotyped negative consequences for employers; therefore, women should not be asked to pay penalties for phantom consequences. Women admittedly take time off to have children, and for women of child-bearing age, that is their most common reason for leaving.154 Yet most women return to work, many within three months of giving birth.155

149. Id. at 757 (citation omitted).

150. Even though men participate in child rearing in greater numbers and to a greater degree than men in any other recent period, pragmatism warns us that we cannot soon expect anything approaching an average of truly shared child rearing. So we can expect women to continue to be primarily responsible for child rearing.

151. WOMEN’S INTERNATIONAL CENTER, supra note 9, at 5.

152. See infra notes 155-57 and accompanying text.

153. A 1987 study . . . found that women working for family-friendly companies were sick less often, worked more on their own time, worked later into their pregnancies, and were more likely to return to work after birth. Moreover, the study found that workers who took advantage of family-friendly policies were among the best performers, and the least likely to have disciplinary problems.

ARLIE RUSSELL HOCHSCHILD, THE TIME BIND: WHEN WORK BECOMES HOME & HOME BECOMES WORK 31 (1997) (citations omitted) [hereinafter HOCHSCHILD, TIME BIND].

154. Selmi, supra note 1, at 732-33 (analyzing the inequality of the gender labor market vis-à-vis women’s labor force attachment).

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general, most women return to work in some fashion—as of 1992, nearly 80% of women with school-age children were working. Even women with very young children have high participation rates; more than 60% of women with children under two are working.' 156 Michael Selmi concluded that "women with a continuous labor force attachment prior to childbirth tend to return to that pattern within six months of the birth of the child." 157 In other words, a woman’s pre-birth labor force attachment best predicts the pattern of her post-birth labor force attachment.

Statistical discrimination in the form of lower wages for women assumes that all women are mothers, since it penalizes all women because it assumes motherhood will disrupt employment for childbirth and childrearing. While most women are mothers at some point in their lives, 158 not all women are mothers, much less working mothers; and for those who are, they do not have the same degree of competing family demands throughout the time that their children remain at home. The devaluation of women’s wages based on statistical possibilities is unfair to women because it imperfectly calculates risks and appropriate pay for women. That is, it groups all women into a category, who are treated differently than all men, based on the information that women are more likely to leave paid work following the birth of a child. And even though some women will leave, all women do not. 159 Moreover, men and women alike leave their jobs for many reasons, with more men leaving jobs in a given year than women. 160 For a particular employer whose employee leaves, the costs are similar whether the employee leaves for another job or to exit the work force. 161 Turnover negatively impacts employers, regardless of an employee’s gender and

(1991) (discussing patterns of employment before and after a woman’s first child is born).

156. Selmi, supra note 1, at 733 (citations omitted).
157. Id. at 734 (citation omitted).
158. See supra note 80 and accompanying text.
159. See, e.g., supra notes 155-56 and accompanying text.
161. Skilled workers who leave voluntarily cost companies dearly. On average, for each skilled employee who quits, it costs a company $40,000 to hire and train a replacement. A study of Merck and Company found that losing an exempt employee costs the company one and a half times that employee’s annual salary. . . . Also it takes a new worker at least one year to perform as well as the worker he or she replaces.

HOCHSCHILD, TIME BIND, supra note 153, at 31.
regardless of the reason for leaving.\textsuperscript{162}

Nevertheless, discussions concerning statistical discrimination and the gender gap often treat childbearing as if it were the only condition that employees bring to the labor market that may impose costs on employers. There are, however, numerous other conditions that may impose equal or higher costs, yet rarely seem to be taken into account.\textsuperscript{163}

Accordingly, it does not make sense for women as a group to be punished with lower wages because of the perception that they are more likely to leave their jobs when employees of all stripes leave their jobs for any variety of reasons. Thus, women should not be penalized through lower wages for female-dominated jobs because of the possibility that some women have a weak labor-force attachment.

Christine Littleton provides a different perspective on the under-valuation of women. She posits that women’s inequality results in part from society’s devaluation of femaleness or difference from the male norm, whether that difference is socially or biologically constructed.\textsuperscript{164}

A history of almost exclusive male occupation of dominant cultural discourse has left us with more than incompleteness and bias. It has also created a self-referencing system by which those things culturally identified as “male” are more highly valued than those identified as “female,” even when they appear to have little or nothing to do with either biological sex.\textsuperscript{165}

According to Littleton’s theory, as jobs become female-dominated, they inevitably become devalued and wages in those jobs deflate, even if the jobs themselves remain exactly the same except they are being performed by women.\textsuperscript{166}

Littleton suggests that we can undo the devaluation conundrum by

\textsuperscript{162} Id.

\textsuperscript{163} Selmi, supra note 1, at 749.

\textsuperscript{164} See Littleton, supra note 92, at 1280 (theorizing that male dominance has created residual bias regarding females’ roles). For a more general discussion of the way women or women-associated tasks are devalued, see MARGARET MEAD, MALE AND FEMALE: A STUDY OF THE SEXES IN A CHANGING WORLD (1949). Deborah Rhode reports that

surveys of a wide variety of decision makers have revealed that identical resumes are rated significantly lower if an applicant is a woman rather than a man. In analogous studies, both male and female subjects have often given lower ratings to the same scholarly works when the artist or author is thought to be a woman.

Rhode, supra note 118, at 1219-20 (citations omitted).

\textsuperscript{165} Littleton, supra note 92, at 1280.

\textsuperscript{166} Id.
changing our valuation system pursuant to an "equality as acceptance" model which would make differences cost less and eventually costless.\textsuperscript{167}

To achieve this form of sexual equality, male and female "differences" must be costless relative to each other. Equal acceptance cannot be achieved by forcing women (or the rare man) individually to bear the costs of culturally female behavior, such as childrearing, while leaving those (mostly men and some women) who engage in culturally male behavior, such as private law firm practice, to reap its rewards.\textsuperscript{168}

In other words, she proposes a significant cultural shift which asks people and institutions to change their gender-based valuations. It is a radical proposal worthy of attention on its own merits and even more so because the legal system offers little recourse for women's devaluation.\textsuperscript{169} We must, therefore, look beyond law for changes toward equality.

The under-valuation of women's work tells only part of a story that must be juxtaposed against our cultural tendency to overvalue men's work. Joan Williams has perceptively written about the systematic but often unconscious way that fathers economically benefit from being ideal workers while mothers find it nearly impossible to obtain those benefits.\textsuperscript{170} She describes ideal workers as those with the ability to work long hours, including working late on short notice, and to relocate for work.\textsuperscript{171} In addition, ideal workers receive domestic services which benefit them both indirectly by freeing them from having to perform those services, and directly by obtaining the labor of a spouse who can fix one's meals, entertain one's clients, and otherwise perform services that enhance one's career.\textsuperscript{172}

Men's traditional ability to work longer hours has benefited them economically and women can subsidiarily benefit if they are married to those men. Yet it is unlikely women can directly enjoy ideal worker status because it requires both the ability to work long hours and receipt of one's spouse's unpaid services.\textsuperscript{173} Suppose a woman can work long hours, can travel for business, and has the flexibility to transfer to another location. She

\textsuperscript{167} Id. at 1284-85.
\textsuperscript{168} Id. at 1285.
\textsuperscript{169} Martha Chamallas reminds us that courts have been reluctant to recognize devaluation as discriminatory behavior. CHAMALLAS, supra note 89, at 189.
\textsuperscript{171} See Joan Williams, Married Women and Property, 1 VA. J. SOC. POL'Y & L. 383, 390-91 (1994).
\textsuperscript{172} Id.
\textsuperscript{173} Id.
is still not an ideal worker unless she also has someone who is primarily responsible for laundry, running errands, scheduling children's activities, planning menus, cooking, and otherwise tending to the ideal worker's needs so she can be free to focus on her career. Typically, she does not have a spouse who plans and hosts dinner parties for her colleagues or clients. And more often than not, once women have children, it is harder for them to attain the first part of the ideal worker definition because the additional responsibilities of family, not all of which can be outsourced, make it difficult to work longer, inconsistent hours, and travel for business.

Employers make women pay the price by penalizing them through lower wages. Researchers typically find a family penalty of 10-15 percent for women with children as compared to women without children. Therefore, women are not only limited in their ability to achieve ideal worker status, even worse they are slapped with family penalties regardless of whether their work is negatively impacted by family responsibilities. Joan Williams suggests altering how we conceive of the ideal worker, while simultaneously changing the nature of the workplace to make it more responsive to the needs of those who are caregivers or otherwise have demands beyond the workplace.

The inflexibility of many work environments has disadvantaged women, and in response, women have been asking for changes in the workplace for decades. Employers, to their credit, have implemented a number of changes, including flex-time, part-time, job-sharing, and tele-

\[174. \text{See, e.g., supra notes 153-54.}\]

\[175. \text{See, e.g., WILLIAMS, supra note 80, at 54.}\]

\[176. \text{Selmi, supra note 1, at 726 (citing Jane Waldfogel, Understanding the "Family Gap" in Pay for Women with Children, J. ECON. PERSP. 137, 143 (1998)).}\]

\[177. \text{Id.}\]

\[178. \text{We need to end the marginalization of caregivers by changing the definition of the ideal worker so that it reflects the norm of parental care. Instead of simply allowing women to work on the same terms traditionally available to men, we need to change the conditions under which both men and women work.}\]

\[179. \text{For women, the inadequacy of flexible scheduling options, temporary leave provisions, and childcare services carry significant occupational consequences. Short-term losses result when female employees find it necessary to forgo promotional and training opportunities, or to leave a particular job, together with its seniority and benefit provisions. Long-term costs result from women's discontinuous work history, which makes advancement within high-paying job sectors more difficult.}\]

\[\text{Rhode, supra note 118, at 1225.}\]
Gendered Shades of Property

commuting. What has been problematic is that few people are taking advantage of these programs.

A 1990 study of 188 Fortune 500 manufacturing firms found that while 88 percent of them informally offered part-time work, only 3 to 5 percent of their employees made use of it. Six percent of the companies surveyed formally offered job sharing, but only 1 percent or less of their employees took advantage of that. Forty-five percent of these companies officially offered flex-time, but only 10 percent of their employees used it. Three percent of the companies offered flexplace-work at home-and less than 3 percent of their employees took advantage of it.\textsuperscript{180}

One reason is the fear that one's career will suffer if anything less than total commitment is demonstrated.\textsuperscript{181} Yet, current circumstances may alter people's reluctance to take advantage of these programs.

First, the booming economy and record low unemployment rates of the late 1990s have caused some alarm about the massive numbers of people approaching retirement.\textsuperscript{182} Concern about the talent drain has led to responses ranging from retaining employees on the verge of retirement on more flexible terms, to "job sculpting."\textsuperscript{183} "In a tight labor market and with an aging work force, employers are starting to look at ways to hold on to older workers who want to stay employed but who want less responsibility and fewer hours."\textsuperscript{184} With low unemployment and a looming exodus of retirees, employers will have to give greater consideration to phased-in retirement,\textsuperscript{185} which they seem, at last, to be recognizing.\textsuperscript{186} Women have been requesting flexibility in employment for years but have typically either

\begin{itemize}
  \item 180. Hochschild, Time Bind, \textit{supra} note 153, at 27.
  \item 181. See, e.g., \textit{id.} at 29. Hochschild also discusses other commonly offered reasons why employees do not take advantage of family friendly policies: they cannot financially afford those policies (\textit{id.} at 28); they do not realize they have access to those policies (\textit{id.} at 29-30); they believe the policies are mere window-dressing (\textit{id.} at 30-32); they are concerned that their co-workers will resent them (fear more pronounced for women and minorities) (\textit{id.} at 32-33); and strangely enough, because workers want to spend more, not less, time at work where they are respected for what they do and have clearly defined roles (\textit{id.} at 33-52).
  \item 182. Diana Kunde, \textit{The Age of Retirement: Y2K Fears, Now This: Employers Face Talent Drain as Baby Boomers Think About Riding Into Sunset}, \textit{San Diego Union-Trib.}, Feb. 7, 2000, at C-1 [hereinafter Kunde, \textit{The Age of Retirement}].
  \item 183. \textit{Id.}
  \item 185. Kunde, \textit{The Age of Retirement, supra} note 182. Phased-in retirement plans "allow older employees part-time alternatives that permit them to keep their benefits." \textit{Id.}
  \item 186. Kunde, \textit{Retiring in Phases, supra} note 184.
\end{itemize}
been turned down, or obliged and then penalized through demotions or stagnation.\textsuperscript{187} Now that flexibility is being offered by employers to potential retirees, there is a genuine possibility of restructuring career patterns and the workplace; these changes can become part of the fabric of the workplace. Another reason such changes may be sustained beyond the current labor shortage is the attitude of many younger employees. Several have become wealthy overnight in the dot.com mania and others simply do not put wealth before quality of life, thereby demanding flexibility in the work environment.\textsuperscript{188} Even those who are neither on the verge of retirement nor starting careers, yearn for more flexible workplaces and career structures:

Polls show that strong support exists for the strategy of redesigning work. A 1989 survey found that nearly eight out of ten people preferred a career path that would offer slower advancement in return for being able to schedule their own full-time hours and give more attention to their families, in contrast to a fast track that allowed less time for family life. Fifty-four percent of those surveyed in a Gallup poll—men as well as women—identified flexible work hours as their highest priority. A number of recent polls of employees and college students identified policies such as flextime and family-oriented sick leave as the most preferred benefits, more popular than on-site child care.\textsuperscript{189}

To the extent that workplace and career patterns can be altered to accommodate a variety of needs, women and others seeking more flexibility in their work and home lives will be better off. This alteration must include more options for restructuring career trajectories and the workplace, with intentional efforts to undo the devaluation of female difference and the overvaluation of male difference. In establishing new norms, we must creatively visualize an occupational environment designed beyond the ideal worker and the stereotypical homemaker. This requires deconstructing both the environments built around those norms and men’s and women’s traditional roles. In reconstructing occupational environments, from the physical space and geography of the workplace, to terms of employment, advancement, and career paths, to recognition of care giving and other responsibilities beyond the workplace, we must include the voices, the stories, and the lived experiences of many different types of workers.

Thus far, the under-valuation discussion has focused on work that

\begin{footnotesize}
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\item \textsuperscript{187} See, e.g., HOCHSCHILD, supra note 153, at 239-42.
\item \textsuperscript{188} “College students and recent graduates prefer lifestyle benefits over compensation. Thirty-five percent of the 3,000-plus people surveyed said flexible work hours are the benefit they want most. . . .” Bulletin Board, Mostly It’s About Lifestyle, SAN DIEGO UNION-TRIB., Feb. 7, 2000, at C-1.
\item \textsuperscript{189} WILLIAMS, supra note 80, at 55.
\end{itemize}
\end{footnotesize}
women do for pay. Clearly unpaid work represents the most serious form of
department of women’s undervaluation. In the United States, women spend more of
their productive work hours in unpaid labor than in paid labor, and the
credible estimates of the economic value of unpaid labor range from the
equivalent of 24% to 60% of the U.S. Gross Domestic Product.” Some
commentators have written about the possibility of quasi-commodifying
unpaid labor, that is, putting a value on it and giving those who perform the
labor some credit for it, either in the form of wages or tax credits, or to tax
housework for the purpose of establishing social security

The major practical consequence of the legal categorization of
housework as love and affection, rather than productive labor, is
that home labor does not lead to financial security. The problem is
not simply that homemakers are not paid for their work, either by
the state, family members, or others who derive economic benefit
from their labors. It is that the “choice” to devote substantial time
to housework, analogous to the choice to work part-time, often
results in cumulative economic penalties that may appear only after
a marriage or relationship has dissolved or a woman has grown

I do not mean to suggest that women, or men for that matter, should not
perform household labor from their hearts. On the other hand, women should
not continue to be economically disadvantaged by performing
disproportionate amounts of unpaid housework for their families, with such

190. Men also do much unpaid work, ranging from housework, to cooking, childcare,
coaching, and other volunteer activities. But women still perform disproportionately more of this
work. See Silbaugh, supra note 30, at 8; Amy L. Wax, Bargaining in the Shadow of the Market: Is
There a Future for Egalitarian Marriage?, 84 VA. L. REV. 509, 519-20 (1998) (arguing that “[t]he
average wife in a dual-earner couple devotes significantly more time to work of one form or another
(domestic or wage work) than does her husband. The difference in the number of hours spent
working by members of dual-earner couples has been dubbed by sociologists the ‘work-leisure
gap.’”). See generally ARLE HOCHSCHILD, THE SECOND

191. Silbaugh, supra note 30, at 3.

192. See, e.g., Goodwin Liu, Social Security and the Treatment of Marriage: Spousal
the implications of imputing wages to housework. Id. at 53-58. In addition, he analyzes the
implications of taxing housework. Id. at 58-60.

193. CHAMALLAS, supra note 89, at 192; see also Silbaugh, supra note 30, at 4 (arguing
“the U.S. legal system conceptualizes housework as solely an expression of affection, the currency
of familial emotions.”).
work completely removed from the realm of labor because it is performed in
the private sphere of family.

[C]ourts and other legal actors repeatedly decline opportunities to
treat housework as work because of the affectionate familial
context in which the work is performed. Economists and
sociologists argue that housework—unpaid household labor for
consumption by a family—may have as much in common with
paid work as it does with leisure, consumption, or emotional
exchange. Yet housework’s integral connection to family life
exempts it from the benefits and protections that other value-
producing labor receives across a surprising range of legal
doctrines.\textsuperscript{194}

Women will always do unpaid housework, and so long as it contributes
to women’s economic inferiority to men, this problem will require attention.
“The gender gap in wealth cannot be remedied through a focus on paid labor
market policies alone.”\textsuperscript{195} The most obvious way to ameliorate the problem
is to move toward an equalization of housework, but this is easier said than
done for many reasons, including men’s distaste for housework, and their
willingness to either live with a reduced standard of cleanliness or tidiness,
or to outsource it.\textsuperscript{196} Moreover, power dynamics in relationships continue to
control how housework is divided, with power frequently derived by
income. “The earliest explanation for the disparity between the time men
and women spend on household labor was that the person with more power
or resources—money, education, social standing—will spend less time on
housework than the person with less power.”\textsuperscript{197} Until men and women
jointly decide to work toward fairer sharing of housework, an equal
distribution of this work will not happen, it simply cannot be externally
forced. Thus, we must consider other possibilities such as commodifying
household labor. According to Goodwin Liu’s analysis of Gary Becker’s
work, “the household is a site of production as well as consumption. It
functions like a small factory or firm, using market-purchased goods and
time as factor inputs to produce non-marketable ‘useful commodities’ (i.e.,
finished goods such as a cooked meal) for its own consumption.”\textsuperscript{198} Thus, as
a site of production and not just consumption, “[h]ousework produces wealth

\begin{itemize}
\item \textsuperscript{194} Silbaugh, \textit{supra} note 30, at 5.
\item \textsuperscript{195} \textit{Id.} at 6.
\item \textsuperscript{196} \textit{See, e.g.,} Williams, \textit{supra} note 170, at 1618-21.
\item \textsuperscript{197} \textit{Id.} at 14.
\item \textsuperscript{198} Liu, \textit{supra} note 192, at 54 n. 206.
\end{itemize}
that is critical to a family's material well-being.199 Accordingly, we should consider the implications of household production as we develop relevant laws and policies. We might not decide to attribute a wage to household labor,200 but we need to recognize the value of household labor in law, economics, and beyond.201 Until we do so, the under-valuation of women's waged and domestic work will continue to contribute to women's economic inferiority.

3. Equal Pay for Equal Work

Women are entering formerly male-dominated fields of study and occupations in greater numbers than ever before. Researchers Daphne Spain and Suzanne Bianchi found that women are increasingly pursuing traditionally male majors at the undergraduate level, thus reducing gender segregation from 1970 to 1990 in fields such as architecture (women received 5.2% of all bachelor's degrees in architecture in 1970 and 39.1% of those degrees in 1990), business (from 8.7% to 46.8% of all business degrees), and physical sciences (from 13.6% to 31.3% of all physical science degrees).202 The segregation level in many traditionally male areas of concentration at the graduate level also shrank, but remains significant in math and the sciences, particularly at the doctorate level.203 Not surprisingly, gender segregation persists in traditionally female study areas.204

With larger numbers of women in formerly male-dominated fields, comparable worth problems surface. "Statistical data consistently indicate that women are systematically paid considerably less than men with similar qualifications."205 This phenomenon is hardly new; in the 1850s, Wendell

199. Silbaugh, supra note 30, at 17.
200. Reva Siegel reported how early feminists indirectly sought a wage for housework, believing a wife's labor in the home entitled her to share in ownership of the family's wealth. See Siegel, supra note 5, at 1086-94.
201. The law presently disregards the productive nature of housework, treating it only as an expression of love not subject to legal protection or interference, "as when a court refuses to enforce a housework contract between spouses on the theory that housework should be done in 'loving and devoted ministrations.'" Silbaugh, supra note 30, at 26 (citation omitted).
202. SPAIN & BIANCHI, supra note 8, at 62-63. Although the number of degrees which women earned in engineering grew more than thirteen-fold, from 0.7% to 13.8%, the gender gap for all levels of engineering remain huge. Id.
203. Id.
204. Id. For example, women continue to receive the vast majority of the degrees conferred in home economics and library sciences. Id.
205. FINEMAN, supra note 71, at 37.
Phillips stated that "[t]he woman of domestic life receives but about one third the amount paid to a man for similar or far lighter services. The woman of out-door labor has about the same. The best female employments are subject to a discount of some forty or fifty percent on the wages paid to males." Although one might have expected those pay gaps 150 years ago given the social, political, and economic climate, they are inexcusable in 2001. As one economist queried, "How is it possible for the wage gap between women and men to be so large within occupations when equal pay for equal work is the law of the land?" Gender wage gaps are visible in professions across the board. For instance, female lawyers' median weekly earnings are approximately $300 less than male lawyers' earnings, female doctors' median weekly earnings are approximately $500 less than male doctors' earnings, female professors' median weekly earnings are approximately $170 less than male professors' earnings, and female food service supervisors' median weekly earnings are approximately $60 less than male food service supervisors' earnings.

Fuchs explains that "[t]he major reason [for the wage gap] is that the Census occupations usually include heterogeneous groups of workers who have different tasks." For example, even though women have made significant inroads into previously male-dominated fields like accounting, business, law, and medicine, the ascension of women to positions of power in those fields is disproportionately low when compared to the total number of women in the field.

At the highest levels of professional status and financial achievement, significant disparities have remained. For example, in the late 1980s, females were still only half as likely as males to be partners in law firms, held only eight percent of state and federal judgeships, and occupied only two percent of corporate executive positions in Fortune 500 companies. If so few women make it to the top within a given profession, then it is clear why average income disparities persist between men and women within that

207. FUCHS, supra note 31, at 51.
208. EQUAL PAY BY OCCUPATION, supra note 136.
209. Id.
210. FUCHS, supra note 31, at 51.
211. See, e.g., Rhode, supra note 118, at 1210.
212. Id.
profession. Spain and Bianchi suggest that more detailed information about specific jobs would lead to a finding of gender occupational segregation more closely tied to the earnings gap than the occupational data suggests. Women in the occupational category of "baker," for example, tend to hold jobs in store bakeries while male bakers are concentrated in more lucrative production baking jobs. Women in real estate sales tend to sell homes and men dominate the more expensive commercial sales. . . .

They then cite other research for the proposition that "after controlling for education, work experience, industry, size of firm, and job characteristics, such as supervisory authority, task complexity, unionization, and hours of work—that is, after controlling for an array of factors that might explain the gender gap—job segregation explained almost half . . . of the earnings differential between women and men."214 This latter explanation illuminates how a general occupational category cannot adequately explain different jobs within that category. However, that explanation only accounts for one half of the gendered earnings differential; it does not justify the persistent wage gap between women and men who have similar backgrounds and perform similar jobs within a given occupational category.

Although women have penetrated many male dominated professions, their advancement is not satisfactory, and in many areas has stagnated. "In the 1990s, it is becoming increasingly clear that the barriers to fuller integration of high-level jobs are different from, and more subtle than, those that were apparent in the 1960s and 1970s when the push for racial and gender integration began."215 At one level, women are frustrated because they often receive lower wages for doing the same work as men.216 At another level, they are frustrated by continued obstacles to their advancement in fields previously dominated by men.217 These realities require us to revisit pay equity issues as Professor Rhode recommends. It starts with laws requiring equal pay, but goes beyond those laws because by themselves, those laws have proved largely ineffective as a tool for gender equity.218 She suggests a broader-based strategy at the legislative, judicial, political, educational, employer, and employee levels, with implementation

213. SPAIN & BIANCHI, supra note 8, at 125.
214. Id.
215. CHAMALLAS, supra note 89, at 183.
216. See, e.g., supra notes 201-208 and accompanying text (original notes).
217. See supra note 215.
218. See generally Rhode, supra note 118 (discussing occupational gender equality).
over a longer time period to ameliorate the costs on those impacted by changes.\textsuperscript{219}

If occupational equity is to become a serious national commitment, expressed in social policy as well as in political rhetoric, we need an array of strategies that extend beyond antidiscrimination and pay equity mandates. Women’s subordinate labor force status is a function of various factors, including sex-role socialization, workplace structures, and domestic constraints. Effective policy responses will require an equally varied set of public- and private-sector initiatives, and a more systematic attempt to assess the relative success of these initiatives.\textsuperscript{220}

We also need an array of strategies to address continued obstacles to women’s advancement in what were traditionally men’s jobs. A number of entities have explored the glass ceiling issue at length, so I will not duplicate that effort here.\textsuperscript{221} However, I will note that studies still consistently find road blocks to women’s advancement even after they have established a foot in the door.\textsuperscript{222} As long as significant road blocks exist to women’s advancement in previously male-dominated professions, job and wage inequality are inevitable. Hence, we need to not only document these road blocks, but more importantly consider both legal and extra-legal steps to overcome those road blocks.

Discrimination is tied to the wage gap, but manifests itself in many forms. It occurs through reduced wages that women receive for “women’s work,” the refusal to attach economic benefits to the work that women do without pay, and the unequal pay that women often receive for the same jobs that men perform.\textsuperscript{223} Clearly each of these areas require attention, as do the systems which create and perpetuate discrimination. Gendered economic gaps resulting from the complex forces of discrimination will narrow over time, but not naturally, and only with active efforts to uncover and change discriminatory conduct and systems.

\textsuperscript{219} Id. at 1240.

\textsuperscript{220} Id.

\textsuperscript{221} For example, the ABA has studied and reported on challenges that women face in the legal profession. See, e.g., ABA, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION (1996); ABA, OPTIONS AND OBSTACLES: A SURVEY OF THE STUDIES OF THE CAREERS OF WOMEN LAWYERS (1994); ABA, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR (1995).

\textsuperscript{222} Supra note 221.

\textsuperscript{223} See supra notes 201-08 and accompanying text.
C. Systematic Under-Investment in Women

In many ways, women and others systematically under-invest in women. For example, women tend to invest less in human capital than men. As a society, we invest less in issues and policies that more directly impact women. Institutions throughout the financial world routinely invest less in women, providing them with less information, credit, and venture capital. Moreover, women are still barely represented in corporate America, holding fewer managerial positions and board seats than men. Finally, women are inclined to take care of themselves only after others' needs have been met.\footnote{224} This section will address how each of these disinvestments individually and collectively harm women economically.

Women do not invest as much in their human capital as men do, but they have made much progress over the past few decades, and there is no question that their increased investments have yielded measurable gains.\footnote{225} "The significant decrease in the wage gap that occurred in the 1980s is often attributed to improvement in women's education, experience, and training—what are defined as human capital factors—as well as to a reduction in levels of discrimination."\footnote{226} Women with higher education levels, not surprisingly, have a lower rate of unemployment.\footnote{227} Attaining a higher level of education is also linked with postponed childbirth or childlessness.\footnote{228} Statistics reveal that the higher a woman's educational level, the more likely she is to be employed at a better paying job, to have children later, and fewer children overall.\footnote{229} It is evident that as one's educational level increases, one's

\footnote{224} See, e.g., HOCHSCHILD, supra note 190, at 3-4.

\footnote{225} To illustrate, from 1970 to 1990, women's high school graduation rates increased from 52.9% to 75%, and their college graduation rates rose from 7.9% to 17.8%. SPAIN & BIANCHI, supra note 8, at 73. Although the rates increased for all women, there is still a noticeable gap between the rates for white women and both Black and Hispanic women, with 1970 high school graduation rates of 55%, 32.5%, and 34.2%, respectively, and 1990 rates of 78.5%, 64%, and 49.9%, respectively. Id. College graduation rates followed a similar pattern with 8.4%, 4.6%, and 4.3% of white, Black, and Hispanic female college graduates, respectively, in 1970, and 18.8%, 11.8%, and 8.2%, in 1990. Id.

\footnote{226} Selmi, supra note 1, at 718 (citation omitted).

\footnote{227} See FACTS ON WORKING WOMEN, supra note 42, at 2; see also SPAIN & BIANCHI, supra note 8, at 66 ("In 1990, over three-quarters of women with postgraduate degrees were in the labor force compared with one-half of those with a high school degree (and less than one-third of those without a high school degree).”).

\footnote{228} “[O]ne of the clearest relationships is between educational attainment and the timing of births: more highly educated women postpone first births longer and are more likely to remain childless than less well educated ones.” SPAIN & BIANCHI, supra note 8, at 12.

\footnote{229} I promote neither childlessness nor limiting the number of children solely for economic reasons: these are decisions for a woman and her partner. Although one can quantify the costs incurred by having children, children nonetheless remain beyond economic measure And one's reasons for having children at all, much less the number of children, are beyond rational explanation.
economic well-being is likely to improve because of a confluence of factors at work and home.

Clearly, educational attainment and other human capital investments remain stepping stones not only for employment, but employment that pays well and narrows the wage gap. Hence, there must be a continued emphasis on the need for investments in human capital. At the same time, we need to renew the commitment to affirmative action, improve failing schools and inferior teaching, close the digital divide, and alter educational systems which condone under-achievement in female students by channeling them toward economic dead-ends.

It is also clear that even though investments in human capital have reduced the economic gap between men and women, and will continue to do so in the future, human capital investments alone will not be enough to close the gap.230 “[T]he general consensus is that human capital factors explain about one-third to one-half of the pay differentials between men and women—not an insubstantial amount, but far from a complete explanation either.”231 Thus, investment in human capital is only one investment area that requires attention.

Under-investment in women also occurs in the financial realm. Many institutions, ranging from banks to stock brokerages, provide inferior service, less information and fewer options to women than men.232 On the home front, it is harder for women to establish credit, and on the business front, women receive less funding than men.233

Even as venture capitalists shower billions of dollars on start-up companies, only a trickle of that money is being invested in the estimated 9.1 million businesses owned by women. About 38 percent of U.S. businesses are owned by women, yet just 2 percent of the money invested by venture capital firms goes to women-owned firms. . . .234

With fewer investments in women-owned businesses, those businesses, and the women who run them, suffer in multiple ways, such as “being saddled

230. Selmi, supra note 1, at 718.

231. Id.

232. See, e.g., Gary Strauss, Financial Services Firms Begin to Cater to Women, USA TODAY, Jan. 15, 1999, at B1 (“58% of respondents thought stockbrokers and financial planners treated women with less respect than men. . . .”).


with cumbersome debt that restricts their ability to grow.\textsuperscript{235} having fewer opportunities to develop new products, innovations, or marketing strategies, and being declined the initial credit that often leads to later acquisition of the requisite capital needed to expand.\textsuperscript{236}

Women suffer a related disadvantage insofar as they tend to have less training and experience in financial matters.\textsuperscript{237} Although this is changing and women are gradually taking more control of their finances,\textsuperscript{238} for a number of reasons, they are still less financially savvy than men.

Women complicate their money problems [such as earning less than men] by saving too little and investing too conservatively. Women who save at all typically put aside 1.5\% of their income-half of what men usually save and woefully short of the 10\% suggested by most advisers. Then, while their male counterparts invest in the stock market, women tend to squirrel their money away in safe, insured savings accounts and certificates of deposit (CDs).\textsuperscript{239}

One noted problem is women's tendency to not have a financial plan, and apparently divorced baby-boom women are among the worst offenders:

Many of these women... define themselves as spenders rather than savers. They do not budget or save on a regular basis, and their investing is inadequate. Two-thirds expect Social Security to be their primary retirement income. At least two-thirds have no defined pension... plan... When researchers asked them, "What is your priority as you get older?" the top priorities were cosmetic surgery and remaining attractive.\textsuperscript{240}

\textsuperscript{235} Liedtke, \textit{supra} note 234.

\textsuperscript{236} \textit{See, e.g.,} Teri Cavanaugh, \textit{Women Business Owners, Debt Isn't An Enemy,} BOSTON GLOBE, July 7, 2001, at A11; Jim Hopkins, \textit{A Woman's Work is Rarely Funded,} USA TODAY, Aug. 15, 2001, at 1B.

\textsuperscript{237} Toddi Gutner, \textit{Investment Analysis & Personal Finance,} PRINT EDITION: INDUSTRIAL/TECHNOLOGY EDITION, at 192 ("Unfortunately, most women still abdicate investing responsibilities to their husbands—or worse, wait until a crisis before they are snapped into financial-planning reality.").


\textsuperscript{239} Hannon, \textit{supra} note 49.

Although I am skeptical of the response to the question about aging concerns and wonder about the line of questioning that led to that response, I agree that many women remain in denial about their financial futures. Even if the wage gap closed, the economic gap between men and women would persist if women did no financial planning and remained more risk averse than men. One financial adviser noted that "[m]en in their 50s are twice as likely as women to make stocks their main savings vehicle. Women choose bonds. . . . If life expectancy were the only thing influencing the decision, women should be taking a more aggressive stance."241

We also invest less in women in many indirect ways, as reflected by women's low profile in corporate America.242 Although women make up approximately half of our population, "[n]ationally, women hold 10 percent of the board of director seats in Fortune 1,000 companies. . . ."243 Women of color are even more invisible on corporate boards and are said to face a "concrete ceiling."244 In the banking industry, even though women represent between sixty-seven and sixty-nine percent of the total work force, they "represent only 13 percent of the top executives at the country's largest 50 publicly held banks."245 Needless to say, we need to make vigilant efforts to increase the number of women in management and board positions. Women of color face especially strong entry challenges and hence require more intentional steps to include them at the top levels of corporate America.

As women shatter the ceilings on their way to board seats, we will see a gradual transformation of corporate America which will affect all of America. Our corporations clearly influence each of us in many ways and when those who run the corporations better represent the diversity of our population, they are more likely to take into consideration a broader range of concerns and policies. It will also be good business for the corporations to have their managing officers and board members speak to the needs of all segments of our society. The corporations can learn from each officer and board member, which in turn will uniquely assist with marketing, product development, and other business practices.

There are other indirect ways that our investments, in terms of both money and policy, hurt women. We give low priority to women's issues and

241. Hill, supra note 50.

242. See, e.g., supra note 211 and accompanying text.


244. Id.

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general issues that disproportionately impact women, such as child care.\footnote{246} Women’s health care issues have garnered less attention, research, and investments than men’s health care issues.\footnote{247} We are more willing to vilify welfare mothers than provide job-training, better paying jobs, and child care.\footnote{248} Even philanthropy disfavors women: "[w]hen it comes to charitable giving, women are shortchanged. Only a tiny sliver of the philanthropic pie goes to programs aimed at women. Even more startling is that this discriminatory underfunding is virtually unacknowledged."\footnote{249}

City planning decisions about future growth can also hurt women. In his research on how regional planners target growth industries for their region, Enrico Marcelli discussed the primary industries that San Diego had targeted.\footnote{250} What I realized when reviewing a list of San Diego’s targeted industries is that they were overwhelmingly male. Of course I do not believe that the choice to target those industries was made with the intent to perpetuate the gendered wage gap, but such targeting exacerbates that gap by providing well paying jobs in areas dominated by men with no concomitant effort to integrate women into those industries or to target industries that are less male-dominated.

Under-investment in women takes place in many forms, at many levels, and by many different parties, including women themselves. Wage gaps and discrimination in all forms economically penalize women at the front end. These penalties are exaggerated by women’s under-investment in their own human capital, their reluctance to financially plan and manage their property, and in a more fundamental way their inclination to take care of their needs last, if at all, only after others’ needs are met. I cannot speak for all women, or even for all Latinas, but I can relay my experience growing up as a Mexican-American female. The expectation was that mothers took care of their husbands first, their children second, and only if their needs were met, could she take care of her own.\footnote{251}

\footnote{246} For a piercing look at our country’s hypocritical attitudes toward care-giving, see ANN CRITTENDEN, THE PRICE OF MOTHERHOOD (2001).
\footnote{247} See, e.g., Sharon Lerner, GendeRx: What the Medical Field is Learning about Women’s Bodies, and Why It Will Change Your Next Doctor’s Visit, Ms., Feb./Mar. 2001, at 40.
\footnote{249} Empowering Women in Philanthropy, at \url{http://www.feminist.org/research/p_toc.html} (last visited Sept. 11, 2001).
With so many forms of under-investment in women, a variety of approaches are necessary to undo this disinvestment. The wage gap must be closed as a starting step, but interwoven in that step are many others, such as eradicating discrimination and equalizing human capital investments. As crucial as those steps are, more is required to close the economic gap. First, jobs must be accompanied by retirement plans. This means that employers must offer plans to more women, and women must participate in them. Second, women must be offered more sophisticated financial planning. Financial institutions must offer more complete advice to women and women must be less risk averse. Third, we need policy planning which understands that women are more likely to be caregivers, that care giving is valuable, and that policies should reward women for willingly taking on this often thankless role along with their willingness to take care of their own needs without guilt. A woman empty from taking care of others’ needs is not as valuable to herself or others as a fed woman.

D. How Neutral is Neutral?

Although gender-neutral laws are not necessarily a cause of gendered inequality, sometimes they are, and even when not causal, they can perpetuate that inequality. In addition, they can result in misplaced complacency about the need for reform in the law. To counter this complacency, many feminists urge a critical analysis of gender-neutral laws that have a disparate, negative impact on women. Christine Littleton writes that “an institution structured so that women are inevitably disadvantaged by its facially neutral policies is itself phallocentric,” meaning that its very design largely advantages men and disadvantages women. Thus, she exhorts us to challenge “the assumed gender-neutrality of social institutions, as well as the notion that practices must distinguish themselves from ‘business as usual’ in order to be seen as unequal.”

The scholarship critiquing gender-neutral laws is rich, and the

252. CHAMALLAS, supra note 89, at 205.

253. Littleton, supra note 92, at 1307.

254. Id.

255. See, e.g., Christian, supra note 96, at 245 (analyzing the gendered nature of the joint tax return: “While neutral on their face, joint return tax rates have a substantially biased effect against women in their application. For a variety of reasons, seemingly neutral tax principles consistently disadvantage women more than men and, therefore, lack real neutrality”); Lucinda M. Finley, Breaking Women’s Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning, 64 NOTRE DAME L. REV. 886 (1989) (analyzing the structural way that the legal system is gendered based on male norms and values); Liu, supra note 192, at 2 (discussing the gendered nature of social security and how it privileges “one-earner couples over two-earner couples, wives who work at home over wives who work for pay, married women over divorced women, and men over women.”);
brevity of this article precludes a detailed analysis of gender-neutral laws which have a built-in bias against women. Yet because facially neutral laws that have a disparate economic impact on women remain, feminists must continue to uncover these laws, detail their disparate impact, and work with law and policy makers for reform.

This section has detailed some of the many reasons that there is a gendered disparity in wealth. There are still other known explanations and it is probably impossible to uncover all the factors which lead to economic gaps between men and women. But we know many reasons and any strategy to narrow the gap has to start with reducing the wage gap. Even this is not simple, calling for a multi-faceted approach requiring commitment and change from policy makers, employers, and women. Women need to better position themselves for higher-paying jobs, and we all need to think about how to restructure the workplace and careers so that those who are not ideal workers can prosper. While we are re-thinking these issues, we must diligently review laws for built-in biases and challenge those biases, ultimately removing them from the books. Obviously laws will always have some biases—it is difficult to privilege one group without discriminating against others. But, women have been subordinated since laws were first reduced to writing, and it is time to undo this historical form of discrimination.

III. CONCLUSION: WHAT DOES THE FUTURE HOLD?

As I arrive at the conclusion of this article, I lack the optimism which I had hoped to feel at this point. I am in the middle of the academic trimester and teaching a class entitled “Gender, Property and Law,” which I have taught about half a dozen times, both at California Western School of Law and while visiting at the University of California Hastings College of Law. As a class, we have traced the origins of women’s economic inferiority in the United States and arrived at the present, the time of gender-neutral laws and continued economic inequality. Many students were surprised that women remain economically inferior to men, and even those who were not surprised, were not prepared for the breadth and depth of the inequality. I am not sure they would have believed it without facts—statistical information provided by the US government no less. Yet through their journals, these same students unintentionally revealed why change will be slow to come. Several wrote that they were conceived when their mothers were teenagers, and some years later, their fathers left their mothers, usually in economic, Sym.

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256. See supra section A2, which discussed the disparate impact that gender-neutral divorce laws have had on women.
and perhaps emotional, despair. These were clearly not isolated incidents. Several students wrote that women cause their own economic crippling—also not an isolated sentiment. As a nation, we consume, maybe even devour, the myth that welfare mothers deserve their fate and the billionaires deserve theirs. As if it were so simple. I am saddened by the uncritical way that each of us, at some level, accepts this, but I refuse to give up.

In the remainder of this part, I will muse over possibilities for the future. Muse is not the most accurate word for what I will do here—my thesaurus first defines “muse” as: “[t]o consider carefully and at length.”257 While I have considered many of the possibilities that I will list in this conclusion, I will not describe all the pros and cons of those possibilities, and certainly will not describe them at length; I only plan to summarize them. My thesaurus next defines “muse” as: “[t]o experience dreams or daydreams.”258 To illustrate, it states, “[t]he condition of being so lost in solitary thought as to be unaware of one’s surroundings.”259 What I will offer in this part is something in between the first and second definitions of muse. I have dreamt of these materials in isolation, even to the point of being unaware of my surroundings, but I have also considered them carefully and at length in the context of real people and real families. It is the experience of what was real that first prompted my interest in gender, property, and law, though I probably did not then name it. I understood from a young age that every time my mother divorced, we became financially vulnerable. I vowed that would not happen to me. My reasons for going to law school were not so noble—I was not going to save the world, but I was going to save myself.

Although I have some misgivings about the likely success of the proposals and possibilities which follow, change is incremental, and we must start with some steps, knowing full well that we may engage in a one step forward, two steps back process along the way. Consciousness-raising is crucial. Contrary to fact and against all logic, the belief persists that “the woman problem” has been solved; we are now equal. Even students in a seminar on gender, property, and law believed that. Some of us believe because we uncritically accept what we are told, and others simply want to preserve the status quo.

[O]ld habits die hard. Practices that may be inefficient in some sense can become an accepted part of a business practice and thus can be difficult to uproot.... Individuals also tend to resist information that contradicts their existing beliefs or stereotypes,

257. ROGET'S II THE NEW THESAURUS 622 (1980).
258. Id.
259. Id.
providing yet another reason why ... discrimination may outlast its empirical foundation.\textsuperscript{260}

We need to carefully study and disseminate statistics which reveal women’s economic inferiority, and understand that even then, there will be resistance to what is uncovered.

We must also better understand the root causes of women’s economic inferiority, considering the complex and interrelated reasons that women remain economically marginalized. That will lead to more nuanced and interconnected proposals for change. Of course, we must continue to press on in the fight for equal pay. Many parties are currently involved in this fight and one of the requisite steps in this battle is to make sure that these parties are in touch with each other, and working efficiently together toward common ends.

When considering equal pay we need to include a review of benefits. Women must be cognizant of the value of pension plans, negotiate for the inclusion of pension benefits, and then contribute to their plans. We must also consider benefits for women in non-waged work, such as establishing social security credit for those in non-waged work, or providing at-home parents with social security credit. Clearly it is time to revisit social security policy. While doing so we need to revisit tax policies that harm women. While a number of academics have given deep thought to these issues, it is time for politicians to take seriously proposals which will work toward a genuine equality of result in the social security and tax arenas.

We will have to restructure work and workplaces, a process which has already begun. It is important for everyone to realize that face time does not reveal as much about productivity as actual results. Employers must not only offer flex-time and telecommuting, they must make them genuinely available by not penalizing employees for taking advantage of these work options. Society must also encourage and accept a variety of career paths beyond those of the ideal worker.

Child-centered policies will become increasingly important, especially as the number of single mothers continues to rise, either because of divorce or the increasing number of children born outside of marriage.\textsuperscript{261} “In the portrait of contemporary women's lives, children are in the foreground, marriage is in the background, and employment occupies an ever-expanding middle landscape.”\textsuperscript{262} It has become evident that even though many of our public policies are based on a model of an enduring marriage, marriages

\textsuperscript{260} Selmi, \textit{supra} note 1, at 752-53.

\textsuperscript{261} See \textit{Spain & Bianchi, supra} note 8, at 38-39. “Almost one in three births took place outside marriage in 1993 compared with one in five in 1980 and one in ten in 1970.” \textit{Id.} at 1.

\textsuperscript{262} \textit{Id.} at x.
have proved likely to be short-lived, yet motherhood endures. While I do not intend to make light of marital institutions, I urge more policies that recognize the longer commitment that parenthood entails than the typical marriage. In other words, programs and policies that directly impact children and their custodial parents, such as child care, after school care, welfare, public transportation, and child support reform, should move to center stage.

To the extent that these issues [children’s welfare and impact on women] are related to women’s quest for economic equality, all Americans have a stake. . . . The desire for children and concern about their welfare contributes significantly to women’s economic disadvantage. In the past, they could mitigate that disadvantage by accepting the constraints of a hierarchical marriage. Many still do. But the country as a whole is not likely to go back to the gender roles and relationships of an earlier era. . . .

Times have changed but our policies have not responded very well to our new realities. We should not expect miracles from conservatives’ proposal that poor mothers solve their problems by just getting married. Instead, we should form policy with the needs of the most vulnerable in mind, knowing that the interests of the powerful will continue to be tended.

Women will continue to experience economic inferiority as long as their access to credit is hindered. Credit must be more generally available to women for both their personal and business needs. A number of entities have started funds specifically for women, and financial institutions would be well advised to provide more comprehensive and better quality service to one half of their clients.

If I could provide a solution to women’s economic inequality, or even a step-by-step guide to economic equality, I would. Obviously I cannot offer that. In this article, I have simply reported on women’s economic status relative to men’s, sources of women’s material inequality, and areas which require attention in order to improve women’s economic position. It is essential that parties interested in change work together. Their agendas may not perfectly align, but there is enough widespread interest in economic problems common to women, and by extension, their children, that these groups must work in collaboration with each other. I have enough optimism to hope that with time and the concerted, dedicated efforts of many people, change will occur.

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263. Fuchs, supra note 31, at 116.


265. These entities range from those providing modest loans to full scale venture capital firms. See, e.g., WOMEN’S VENTURE FUND, 240 West 35th Street, Suite 201, New York, NY, 10001, and CAPITAL ACROSS AMERICA, 501 Union Street, Suite 201, Nashville, TN 37219.
elderly, they will read this article and laugh/sigh at how things used to be.