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## Reframing the Work-Family Conflict Debate by Rejecting the Ideal Parent Norm

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# REFRAMING THE WORK-FAMILY CONFLICT DEBATE BY REJECTING THE IDEAL PARENT NORM

JENNIFER H. SPERLING\*

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## INTRODUCTION

Despite the steady advance of women into the paid market sphere, it is widely recognized that women with parenting responsibilities are not succeeding in the workforce on equal terms with men who also have parenting responsibilities. Scholars and activists engaged in work-family conflict discourse have proposed a wide variety of measures to combat the inequities women encounter when trying to juggle workplace and parenting demands. However, overwhelmingly, these proposals seek to address work-family conflict in only one of two ways: either by redefining workplace culture and norms to accommodate working mothers or by redistributing parenting labor by incentivizing increased participation in (and acceptance of) caretaking by fathers. While these efforts are valuable and necessary, I argue that they are ultimately insufficient to solve the work-family conflict problem because they fail to critically examine or address the burdensome and obsolescent normative assumptions about parenting that have come to dominate work-family conflict discourse both academically and in the popular press.

Part I of this Article describes why work-family conflict solutions have stalled, and how normative assumptions about parenting, what I call the “Ideal Parent norm,” have contributed to this stalemate. The Ideal Parent norm prevalent in work-family conflict discourse today valorizes a time-intensive, parent-centric, and maternal-dependent model of childrearing that demands more resources than ever before from those individuals carrying the biological, legal, and/or cultural label of “parent.”

This has not always been the case. Over the last few decades, the so-called “minimum needs” of children have expanded and become more complex, specialized, demanding, and expensive; yet parents alone have been expected to assume these additional obligations and fulfill these ballooning needs, whatever the economic or personal cost to parents.

Reflecting on the evolution of parenthood in the United States is instructive for this project, which I undertake in Part II. The benefit of viewing this historical narrative in retrospect is that it becomes clear that this expansion of parental expectations and responsibilities has not evolved in direct response to any evidence-based consensus about the developmental needs of children. Rather, various parenting norms have been championed at different times to advance socially and historically specific agendas, often at the expense of women’s political agency, workforce participation, or ability to self-fashion as anything other than a mother or potential mother.

The Ideal Parent norm that dominates the mainstream today sets an

impossibly high bar for individual parents of non-delegated, mother-dependent, resource-intensive care. I unpack each of the normative assumptions underlying the Ideal Parent norm in Section III, which I shorthand in this Article as Non-Delegation, Maternal Bias, and Exhaustive Care. Part IV provides examples of how the Ideal Parent norm is assumed into work-family conflict discourse in the ways in which parenting responsibilities are conceived of, understood, and described. These uncritical descriptions of parenting in the context of work-family conflict scholarship often lead to calls for either more workplace flexibility or a better division of labor between mothers and fathers, so that parents can continue to shoulder the burdens of parenting, while participating in the paid labor market. As a result, the universe of solutions proposed to help women cope with work-family conflict are designed to support individuals who are parenting in a specific and idealized way: i.e., providing Non-Delegated, Exhaustive, Maternal Care. Making it easier for working mothers to be Ideal Parents does not challenge the overburdened and self-sacrificial model of childrearing that imagines women at its center, parenting intensively, without meaningful options for delegation whatever the cost to their individual selves. The majority of work-family conflict solutions that have been championed to date reflect and reaffirm the Ideal Parent norm, while signaling values about what kinds of parenting is compatible with working and which types of parents will be supported in their efforts to do both.

This Article argues that, in order to move the work-family conflict debate forward, the parenting norms currently driving work-family conflict discourse must themselves come under scrutiny. In other words, work-family conflict discourse should undertake a reassessment of modern parents, not just modern workers. I also suggest that those engaged with work-family conflict scholarship examine the solutions they are proposing, and ask whether those solutions tend to accommodate or privilege only certain types of parents, or certain values of parenting that may not be shared by all communities in need of work-family conflict support. Part V concludes by highlighting some solutions and institutions that I believe could begin to reframe work-family conflict discourse in a way that does not rely on the Ideal Parent norm, and supports an expanded conceptualization of the role of parent and the responsibilities of parenthood in the United States.

#### I. WORK-FAMILY CONFLICT: WHY CURRENT SOLUTIONS ARE NOT WORKING

The primary focus of work-family conflict discourse to date has been on women's disproportionate share of childrearing responsibilities and the

market-sphere disadvantages that follow from this inequitable division of parenting duties.<sup>1</sup> Women continue to enter the work force in record numbers,<sup>2</sup> and as the number of dual-worker and single-parent families continue to rise, it is clear that effectively redressing the ongoing issue of friction between workplace and childrearing responsibilities will require social, political, and legal intervention.

The interventions that have been championed or implemented to date have taken many forms. Writ large, these proposals have been meaningful attempts to address the inequalities working women face in negotiating their relationship with paid employment after having children. A sample of these proposed reforms include increasing alimony and child support payments to women following divorce,<sup>3</sup> increasing employee access to “flectime” to provide parents more autonomy to fit work in around their parenting responsibilities,<sup>4</sup> advocating for a reduced workweek that would

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1. See Sharon Rabin Margaliath, *Women, Careers, Babies: An Issue of Time or Timing?*, 13 UCLA WOMEN’S L.J. 293, 307-08 (2005) (highlighting the so-called “success penalty” which tracks the disadvantage that obtaining an education and a career creates for women in the marriage market); Debbie Kaminer, *The Child Care Crisis and the Work-Family Conflict: A Policy Rationale for Federal Legislation*, 28 BERKELEY J. EMP. & LAB. L. 495, 509-10 (2007); see also Sylvia Ann Hewlett, *Executive Women and the Myth of Having it All*, 8 HARV. BUS. REV. 66, 66-73 (2002) (documenting how men’s labor market success was positively correlated with having a wife and children, whereas women’s were not).

2. In 2012, women made up 47% of the United States labor force, and 65% of women with children younger than six years of age were either employed or looking for work. Married mothers with children in the labor force increased from 37% in 1968 to 65% in 2011. PEW RESEARCH CENTER, BREADWINNER MOMS (2013), available at [http://www.pewsocialtrends.org/files/2013/05/Breadwinner\\_moms\\_final.pdf](http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf) (explaining data results from Pew Research analysis based on multiple years of Census Bureau data and a telephonic survey of 1,103 American adults).

3. See Joan Williams, *Is Coverture Dead? Beyond a New Theory of Alimony*, 82 GEO. L.J. 2227, 2246-53 (1994) (championing a theory of income equalization post-divorce that would give wives a property right to the husband’s family wage and reframe women’s and children’s claims to family wealth following divorce in terms of entitlement, not need).

4. Traditional “flectime” allows an employee to start and end their workday at times of their choice, within a range of core operating hours. Other forms of flectime allow employees to work additional hours over a number of days to “earn” a day or several hours of paid time off later in the same pay period. Flexible schedules for parents seek to alter parents’ schedules to coincide with children’s school schedules, appointments, or sports activities. See Shara L. Alpern, *Solving Work-Family Conflict by Engaging Employers: A Legislative Approach*, 78 TEMP. L. REV. 429, 430 (2005). Other forms of flexible work arrangements include telecommuting, job sharing, and part-time management track positions. Telecommuting ideally would bridge the gap between unpaid work in the home and paid work for an external employer by making the employee’s home the location for both occupations. But see Katherine Silbaugh,

leave more time for parents to attend to domestic needs,<sup>5</sup> incentivizing equal use of parental leave for men and women,<sup>6</sup> giving tax credits to employers willing to provide family-friendly workplaces,<sup>7</sup> and providing subsidies for women to retrain after a period of absence from the workforce following childbirth.<sup>8</sup>

The bulk of these proposals advocate for reform in one of two ways: (1) by redefining workplace culture and the existing “Ideal Worker” norm<sup>9</sup> so

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*Women’s Place: Urban Planning, Housing Design, and Work-Family Balance*, 76 FORDHAM L. REV. 1797 (2007) (pointing out telecommuting’s shortcomings for “pink-collar” low-wage and hourly workers in particular). Job sharing facilitates balance between work and family by allowing two or more workers to voluntarily share the responsibilities, salary, and benefits of one full-time position by each working part-time.

5. See Vicki Schultz & Allison Hoffman, *The Need for a Reduced Workweek in the United States*, in PRECARIOUS WORK, WOMEN, AND THE NEW ECONOMY: THE CHALLENGE TO LEGAL NORMS 131 (Judy Fudge & Rosemary Owens eds., 2006) (arguing for a standardized thirty-five hour workweek as a mechanism to discourage the overutilization of some workers and underutilization of others, and instead encourage widespread opportunities for both genders to balance among home responsibilities, work responsibilities, and other life pursuits); see also Margaliath, *supra* note 1, at 315-16 (arguing that a reduced workweek for all employees would reduce stigmatization of employees who are parents, and are less able to work extended hours than their childless colleagues).

6. See Darren Rosenblum, *Unsex Mothering: Toward A New Culture of Parenting*, 35 HARV. J. L. & GENDER 57, 72 (2012) (noting that Sweden incentivizes paternal leave through a policy that provides the greatest total leave benefit to families in which both parents take at least two months of parental leave).

7. Under 26 U.S.C. § 45F(a)(2), employers can claim a tax credit of 10% of the amount spent on child care resource and referral services. See Nicole Buonocore Peter, *Why Care About Caregivers? Using Communitarian Theory to Justify Protection of “Real” Workers*, 58 U. KAN. L. REV. 355, 381-82 (2010); Alpern, *supra* note 4, at 430.

8. Ann Alstott’s proposal for “caretaker resource accounts” would provide parents \$5,000 annually, which could be used for the caretaker’s own education, retirement, or child care. See, e.g., Ann Alstott, *What Does a Fair Society Owe Children—And Their Parents?*, 72 FORDHAM L. REV. 1941, 1979 (2004) [hereinafter Alstott, *Fair Society*].

9. The “Ideal Worker” norm forms the basis of Joan Williams’s rich and compelling theory of the dominant family ecology, which describes a norm of work devotion that is framed around the traditional life patterns of men and excludes most women of childbearing age. The “Ideal Worker” has no daytime child care responsibilities and can be away from home and completely available to their employer for nine to twelve hours a day. Bluntly, the “Ideal Worker” is a man with a wife at home providing child care. These “men with wives at home” are able to “perform as ideal workers while the children are raised according to the norm of parental care.” JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* 115 (2000). Williams has long advocated for a radical restructuring of wage labor as a solution to the quandary for mothers that the “Ideal Worker” norm poses; see also IRIS MARION YOUNG, *INTERSECTING VOICES: DILEMMAS OF GENDER*,

that mothers are better able to participate in the paid labor market *and* perform their parenting functions, what I call “Mommy *and*” policies,<sup>10</sup> or (2) by alleviating some of the burden on mothers by incentivizing increased participation in caretaking by fathers, what I call “Redistribution” policies.<sup>11</sup> The efforts of work-family conflict reformers to restructure our workplaces to be more accommodating to employees’ non-work commitments should be supported, as should efforts to incentivize a redistribution of child care labor between genders. Yet both of these approaches rely heavily on employer-based solutions, which have their own specific shortcomings,<sup>12</sup> and neither articulation is sufficient to address the full scope of the problem. Meanwhile, these reforms do not fundamentally challenge entrenched normative assumptions about parenting, norms that are—importantly—not tied to any consensus about the actual developmental requirements of children and, even more importantly, are increasingly out of touch with the ways in which most modern families actually parent. As the demands of parenting become more resource- and labor-intensive, restructuring work or home becomes less realistic as a form of lasting relief. This is particularly true for those families starting out with fewer financial resources, low and middle-income families, and fewer sources of labor, i.e., single parent or dual-worker families.

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POLITICAL PHILOSOPHY, AND POLICY (1997). Young argues that the model of the “hale and hearty” wage worker denigrates those who might be able to contribute usefully to society if there were only more flexible norms and practices in place to support them.

10. Vicki Schultz has also documented the shortcomings of “Mommy *and*” policies, which she refers to as “work-family accommodation models.” Vicki Schultz, *Life’s Work*, COLUMBIA L. REV. 1882, 1954 (2000). In Schultz’s view, the underlying assumption of accommodation policies is “that women are more committed to family relations than men, so if we want to ensure that women can participate in the workplace, we must acknowledge this difference and provide special accommodation for women’s domestic roles.” *Id.*

11. Susan Moller Okin, for example, argues that women’s dependency within the family stems from a failure to distribute domestic responsibilities equally among family members. Okin suggests that because of this mal-distribution, women are prevented from participating fully in other important areas of life. She argues that “until the unpaid and largely unrecognized work of the household is shared equally by its adult members, women will not have equal opportunities with men either within the family or in any of the other spheres of distribution.” SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* 116 (1989); *see also* Margaliath, *supra* note 1, at 294 (explaining how work-family tradeoff is often framed “within a theoretical framework that highlights the unequal sharing of childrearing work among spouses which results in less time for women to invest in paid work”).

12. *See* Margaliath, *supra* note 1, at 322-23 (discussing how labor market forces make mandated employer-based accommodations ineffective).

Suspiciously absent from much of the literature on work-family conflict is a sustained critique of the demands and reasonable expectations of parenting on individuals. While scholars have exhaustively identified how the “Ideal Worker” norm contributes to the difficulty of addressing women’s equality in the workplace and at home, somehow the Ideal Parent norm has escaped notice. This leaves uncontested the huge emotional, economic, social, psychological, and physical burdens of parenting that are currently considered normative and reasonable to expect of all parents. The responsibilities of modern parents are ever expanding, and yet these unrealistic burdens are routinely accepted as the standard expectation of “good” parents. This idealized conception of parenting roles and labor is what I refer to as the Ideal Parent norm, and its effect on work-family conflict discourse cannot be overstated, and can no longer be overlooked.

Exposing the instability of parenting norms over time is crucial to the project of understanding the significance of the current Ideal Parent norm’s impact on work-family conflict discourse. The next section documents the swings in mainstream parenting ideals in the United States since the 1800s. While a complete historical analysis is beyond the scope of this Article, even this brief overview of the history of parenting and child care in the United States is sufficient to expose “[t]he very idea that haunts many working mothers today—that children need a full-time mother” for what it really is; “a creation of the urban middle-class in the early nineteenth century.”<sup>13</sup> Moreover, once it becomes clear that the Ideal Parent has been constituted and reified by social and political forces, rather than the developmental imperatives of children, it becomes an open and vital question as to how, whether, and to what extent normative assumptions about parenting should be taken for granted in the continuing discourse around work-family conflict.

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13. ELIZABETH ROSE, *A MOTHER’S JOB: THE HISTORY OF DAY CARE 1890-1960* 6 (1999).



## II. MYTHOLOGIZING THE IDEAL PARENT: A HISTORY OF CHILDREARING IN THE UNITED STATES<sup>14</sup>

### *A. 1800-1900: Pre-Industrial Parenting*

In the pre-industrial period, sheer survival was the parental mandate. With child mortality resulting in the deaths of half of all children before age five, it is no surprise that there was “a mood of resignation among parents” or that popular child care advice focused almost entirely on infant health.<sup>15</sup> Because so many children died from disease, neglect, or malnutrition, parents were very concerned with the spiritual and religious development of their offspring; the cognitive or psychological aspects of child development as we understand them today did not exist, and thus were not the responsibility of parents.

In the seventeenth and early eighteenth centuries, responsibility for child care was an expression of male superiority; women were not considered intellectually or morally strong enough to make such decisions autonomously, and therefore men were considered more apt for childrearing.<sup>16</sup> Thus, it was the father, as head of the household, who was

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14. The history of parenting in the United States is far more complex and nuanced than the necessarily truncated account presented here. Attitudes peaked, waned, spread, retreated, and melded together over time, and were seen differently through the lenses of class, race, and geography. For example, African-American motherhood has its own unique history, which more often than not did not run parallel to the mainstream trends, policies, and institutional options for child care available to white mothers at any given time. Black mothers have historically had far greater and more consistent labor force participation than white mothers, although slated into lower-skilled and lower-paying jobs by discrimination. Black motherhood has also been distinctively affected by slavery—many enslaved women were denied the right to mother their own children, or forced to mother their master’s children in addition to (or more likely instead of) their own. Immigrants and the working poor also experienced a different narrative of parenthood ideals over time. Indeed, the problem of poor women taking care of other people’s children in lieu of their own still exists. *See generally* Evelyn Nakano Glenn, *Cleaning Up/Kept Down: A Historical Perspective on Racial Inequality in “Women’s Work,”* 43 *STAN. L. REV.* 1333, 1340-33 (1991); *see also* Russ Buettner, *For Nannies, Hope for Workplace Protection*, *N.Y. TIMES* (June 2, 2010), <http://www.nytimes.com/2010/06/03/nyregion/03nanny.html>. The impact of class and race cannot be taken for granted in any discussion of mainstream trends in parenting, and it is critical to recognize that for many African-Americans, the right to mother is seen as a positive right they have long been denied. A full treatment of these issues is beyond the scope of this Article; *but see* Dorothy E. Roberts, *Motherhood and Crime*, 79 *IOWA L. REV.* 95, 130-35 (1993) and accompanying footnotes for a succinct treatment of some of the particular historical issues affecting black mothers.

15. CHRISTINA HARDYMENT, *DREAM BABIES: CHILD CARE FROM LOCKE TO SPOCK* 7 (1984).

16. MARY FRANCES BERRY, *THE POLITICS OF PARENTHOOD: CHILD CARE,*

responsible for most of the major decisions about childrearing including education, occupation, and marriage. Colonial fathers “were deeply involved emotionally and personally in the lives of their children . . . He decided what they would learn, eat, and wear. In addition, fathers were typically home most of the day, and were thus able to provide actual physical care such as rocking, walking and cuddling.”<sup>17</sup> Instead of these duties falling to the mother, middle and upper class families routinely hired servants to help with child care.<sup>18</sup> In particular, mothers often hired other women to assist with breast-feeding. At this time, a disproportionate number of infant deaths were caused by improper feeding, and while delegating this maternal duty to other women may strike many as a strange concept today, the common use of wet nurses during this era saved lives.<sup>19</sup>

Early American mothers often combined childrearing with their other daily responsibilities, and their “productive labor [functions were valued] at least as highly as their child-rearing functions.”<sup>20</sup> For example, swaddling, the widespread practice of immobilizing infants in a snugly bound cocoon, was used to keep children safe from cold and to keep them from getting hurt by rolling or kicking around too much. It had the added benefit of making infants docile and sleepy, and “because infants could easily be set on a chair, or suspended from a peg, it allowed parents more freedom to be engaged in other tasks—freedom they took advantage of as a matter of course.”<sup>21</sup> No one “questioned or criticized these women for shifting some of the responsibility for children to others,” though they often did.<sup>22</sup> Considered economic assets, children were part of the family economy and

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WOMEN’S RIGHTS, AND THE MYTH OF THE GOOD MOTHER 45-46 (1993); see also Joan Williams, *From Dominance to Domesticity: Care as Work, Gender as Tradition*, 76 CHI.-KENT L. REV. 1441, 1444 (2001).

17. BERRY, *supra* note 16, at 45.

18. HARDYMENT, *supra* note 15, at 4-6.

19. Hardyment describes the fatal shortcomings in infant feeding: lack of fruits and vegetables in the diet, Vitamin C deficiencies, “distrust” of animal milks, and over reliance on starchy milk supplements that were being treated as milk substitutes. *Id.* By the nineteenth century, middle-class women were able to afford and rely on healthier wet nurses, thus sidestepping many of the feeding issues faced by poor women. JANET GOLDEN, *A SOCIAL HISTORY OF WET NURSING IN AMERICA: FROM BREAST TO BOTTLE* 215 (1996).

20. HARDYMENT, *supra* note 15, at 14.

21. HARDYMENT, *supra* note 15, at 3. For a detailed discussion of the practice of seventeenth and eighteenth century swaddling see Karin Calvert, *The Material Culture of Early Childhood: The Upright Child*, in *CHILDHOOD IN AMERICA* 619-624 (Paula S. Fass and Mary Ann Mason eds., 2000).

22. HARDYMENT, *supra* note 15, at 14.

worked alongside their parents, often at ages as young as six or seven.<sup>23</sup> There was no concept of “childhood” as the stage of life we understand it to be today; children were “hurried into adulthood” and took on responsibilities for sibling care, housework, and other chores as soon as they were physically able.<sup>24</sup>

It was not until the late eighteenth and early nineteenth century that childrearing began to take on the “all-encompassing” aspect and occupational status that it enjoys today.<sup>25</sup> As developments in obstetrics and prenatal care stabilized child mortality rates in the 1900s, the goals of parenting diversified. No longer a spin-off from medical concern for infant mortality, child development and child psychology emerged as fields of scientific inquiry in their own right, adding the emotional and mental well-being of their children to the list of attributes parents were responsible for developing.<sup>26</sup> In fact, the term *parent* only came into widespread usage in the 1920s, at which point it was associated with the “parent education movement,” which fueled the notion that parenting skills were not natural or instinctual—they had to be studied to be acquired.<sup>27</sup>

An onslaught of advice on baby’s every move, from sleep to breast-feeding, began to impress upon women the idea that mothers could not rely on intuition alone. There were rules to follow for proper infant development, and good mothers followed them. Additionally, a burgeoning interest in phrenology and the functioning of the brain added a previously unknown dimension to parenting—the crucial development of the young mind.<sup>28</sup>

During the late 1800s, women began to enjoy newfound scholastic and career opportunities, including higher education and teaching.<sup>29</sup> Middle class women were postponing motherhood, family size was decreasing, and “[i]n a flush of feminist enthusiasm, [women] considered their own roles in life rather than the immortal souls of their children.”<sup>30</sup> This new sense of

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23. BERRY, *supra* note 16, at 6.

24. HARDYMENT, *supra* note 15, at 6.

25. SONYA MICHEL, CHILDREN’S INTERESTS/MOTHER’S RIGHTS 14 (1999).

26. *Id.* at 36.

27. James W. Croake & Kenneth E. Glover, *A History and Evaluation of Parent Education*, 26 FAMILY COORDINATOR 152 (1997).

28. DAVID R. SHAFFER, SOCIAL AND PERSONALITY DEVELOPMENT 7-8 (2009). Shaffer describes the history of child psychology and traces it back to “baby biographies,” the observation of a single child, beginning in the late nineteenth century.

29. Rachel F. Moran, *How Second Wave Feminism Forgot Single Women*, 33 HOFSTRA L. REV. 223, 251-52 (2004).

30. HARDYMENT, *supra* note 15, at 89.

freedom coincided with the Darwinian influence on childrearing—the view that children were “unholy young apes” that had to be civilized.<sup>31</sup> For many middle and upper-class women, domesticating children was a job they would just as soon hand over to someone else. According to historian Christina Hardymont’s account, the late nineteenth century comprised “the true, unchallenged years of the nanny.”<sup>32</sup> However, instead of providing primary care for infants as they had in the previous decades, nannies and servants were discouraged from interfering with the directives of mothers who were heralded as the only appropriate “moral guides and physical guardians of their children.”<sup>33</sup>

Poor families had fewer options for delegating parenting responsibilities. If children became unsupportable economically, it was not uncommon for families to place their little ones in orphanages for short or long term stays as a form of child care. Having children “placed out” on a permanent or semi-permanent basis into other families when their own family could not care for them was a regular practice through the 1880s, and many children in orphanages still had one or both parents living.<sup>34</sup> Unlike the current child welfare system, the decision to orphan a child was an action initiated from within the family, rather than a demand from an outside agency based on a minimum standard of care, and orphanages were commonly used by poor families when their lives were disrupted by “poverty, illness, or unemployment.”<sup>35</sup>

### *B. Industrialization’s Impact on Parenting*

The Industrial Revolution moved work, and workers, out of the home. For women with fewer means, nannies were not an option, but neither was staying home without an earned wage. Many women, especially immigrant and African American women, left their children at home while they went to work in factories. Children would take care of their siblings, work as peddlers, or spend the days playing in the streets, watched by extended family or neighbors. Seeing this as a horror of circumstance that deprived these new American families of a “normal” family life, meaning a mother at home with her children living off a family wage earned by a male breadwinner, wealthy women philanthropists opened the first day care

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31. *Id.* at 92.

32. *Id.*

33. *Id.* at 62-63.

34. Sonya Michel reports that by the late 1800s, the children in orphanages who really had no parents were outnumbered by “half-orphans,” or children with one living parent. MICHEL, *supra* note 25, at 14.

35. ROSE, *supra* note 13, at 53; *see also* MICHEL, *supra* note 25, at 43.

facilities as a charity for immigrant women forced to work by economic need.<sup>36</sup> The charities saw their mission as Americanizing immigrant children and helping mothers out of what was expected to be a temporary situation.<sup>37</sup> The day nurseries were not set up as a substitute for maternal care, and most focused on keeping the children sterile, clothed, fed, and regimented until they could be picked up and taken home. The expectation was always that eventually the impoverished mother would be able to save enough money to stay home with her children, and in the meantime, the nurseries would teach the children cleanliness and discipline so they could grow up to be productive citizens. It was a charitable service borne out of an unfortunate necessity, and only those with dire need were afforded access.<sup>38</sup> At the same time, the stigma attached to using charitable day care services was so severe, only mothers with no other child care options utilized them.<sup>39</sup>

Furthermore, immigrant women themselves considered their wage work a meaningful sacrifice made for their children. To them, work was just as much a valid form of mothering as full-time home care. Even though their contribution was primarily economic and they could not provide a “continuous presence and involvement in all aspects of their children’s lives,” they “prided themselves on being good mothers.”<sup>40</sup> Most of the working poor seemed able to reconcile obligations outside of the home with their own view of themselves as good mothers, and many immigrant women resented the patronizing scrutiny of the day nursery managers and resisted the stigma of charity that came along with it.<sup>41</sup>

In general, the attitudes of reformists and policymakers toward child care during this era depended on their attitudes about its impact on children. There was a growing sentiment, especially among day nursery managers,

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36. ROSE, *supra* note 13, at 32.

37. Elizabeth Rose documents how the day nurseries in her Philadelphia study emphasized service to children, and not paid employment for mothers. Only mothers in dire economic need were admitted, and as the President of the Franklin Day Nursery put it, “The Nursery must never deteriorate into a mere receiving station for children, to free mothers from their duties.” *Id.* at 29. African American children, although just as in need of these services, were excluded by discrimination, as they had also been excluded from many infant schools and Kindergartens.

38. Kaminer, *supra* note 1, at 504.

39. *Id.*

40. ROSE, *supra* note 13, at 6.

41. ELIZABETH EWEN, *IMMIGRANT WOMEN IN THE LAND OF DOLLARS: LIFE AND CULTURE ON THE LOWER EAST SIDE, 1890-1925* (1985). Elizabeth Rose also points out how “[b]y emphasizing the sacrifices that working women made in order to help support their children, commentators reinstated these women as ‘good mothers’ despite their daily absence from home.” ROSE, *supra* note 13, at 44.

that the only right way for mothers to care for their children was with devoted and continuous maternal care. Many believed that mother-child separation was detrimental to children. These women were a part of the “[r]ebirth of motherhood as woman’s greatest purpose,” an assumption that became more entrenched as the century marched on, and was clearly at odds with women’s rapidly increasing involvement in the paid work force.<sup>42</sup> The perceived plight of working mothers qua mothers led to dissatisfaction with institutional child care as a solution for employed mothers. Thus, the needs of children were held up as a rallying cry to discredit the idea that work—whether out of necessity or personal preference—was compatible with responsible mothering. As a result, “maternal employment came to be seen as psychologically abnormal just as it was approaching a sociological norm.”<sup>43</sup>

Reform rhetoric turned away from providing public nurseries to embracing the idea of a mother’s pension, which would provide government funding to impoverished mothers to reduce their need to work outside the home. Between 1911 and 1920, three-fourths of states adopted mothers’ pensions, which in 1935 were taken over by the federal government as Aid to Dependent Children.<sup>44</sup> The National Association of Day Nurseries disbanded in 1931 under pressure from “neomaterialist” reformers like the Child Welfare League of America, who believed that day care “undermined the family” and “regarded mothers applying for day care with suspicion or presumed that they were pathological.”<sup>45</sup> A federally funded nursery school program was enacted in 1933, but as its primary purpose was to provide jobs for unemployed teachers, the quality of care was poor, and the funding ended with the onset of the Depression.<sup>46</sup> In 1941, the White House held a conference on the Care of Dependent Children, which celebrated motherhood as a civic value.<sup>47</sup> Mothers should not be forced to go out and work, the argument went; motherhood was a patriotic duty, like military service, and it should be compensated as would service to the state.<sup>48</sup>

Even though pensions would win out ideologically over nurseries as a

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42. HARDYMENT, *supra* note 15, at 116.

43. MICHEL, *supra* note 25, at 111.

44. *Id.* at 74.

45. *Id.* at 105, 136-37.

46. ROSE, *supra* note 13, at 145.

47. MICHEL, *supra* note 25, at 80.

48. ROSE, *supra* note 13, at 75. This argument has never been made with the same fervor on behalf of poor, immigrant, or black women seeking to perform their patriotic duties by remaining unemployed to raise children.

cause for public spending, “pensions were never implemented in such a way as to eradicate the need for wage-earning” among mothers.<sup>49</sup> Instead, the under-funded program “ended up limiting mothers’ options and slotting them into the least desirable sectors of the labor market.”<sup>50</sup> These policies ultimately limited women’s ability to structure their lives to include both economically productive work and motherhood as they designated only one type of woman, middle-class white mothers, worthy of government protection, and only one type of mother, the stay-at-home-kind, worthy of state support.<sup>51</sup> Protectionist legislation aimed at protecting women in the workplace also limited the labor opportunities of mothers and steered them toward the home. Meanwhile, the idea that the man of the house would, by working, be able support his family on a living wage took root and sprouted.<sup>52</sup>

The shift of men away from the domestic sphere paved the way for a cultural change in fathers’ roles as well. Before 1800, “fathers spent a great deal more time with their children by simple proximity” and men were “more engaged in their [children’s] care and the household.”<sup>53</sup> By the late 1800s, the Industrial Revolution had fueled the departure of fathers from the home into factories and plants. As work moved outside the home and men became more exclusively economic providers, “a new literature supported the exclusive role of mothers as children’s caregivers. Men were to be breadwinners, and secondarily, disciplinarians.”<sup>54</sup> The idea of the breadwinning male would go on to flourish unabated for decades, despite the fact that the participation of women in the labor force, including married women and mothers, would increase exponentially into the twenty-first century.<sup>55</sup>

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49. *Id.* at 83.

50. MICHEL, *supra* note 25, at 86.

51. Normative assumptions surrounding how “domesticity was supposed to be” served to exclude “unqualified” mothers from receiving pensions, including families who had a healthy father living with them, divorced mothers, and mothers who had never married. Jill Elaine Hasday, *Parenthood Divided: A Legal History of the Bifurcated Laws of Parental Relations*, 90 GEO. L.J. 299, 347-53 (2002).

52. BERRY, *supra* note 16, at 99.

53. NANCY E. DOWD, REDEFINING FATHERHOOD 22-23 (2000).

54. *Id.* at 22; see also ELIZABETH H. PLECK & JOSEPH H. PLECK, *Fatherhood Ideals in the United States: Historical Dimensions*, in THE ROLE OF THE FATHER IN CHILD DEVELOPMENT 39 (Michael E. Lamb ed., 1997); Cynthia A. McNeely, *Parenthood, Custody, and Gender Bias in the Family Court*, 25 FLA. ST. U. L. REV. 891, 898 (1998) (citing DAVID BLACKENHORN, FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM 14 (1995)).

55. See Lucie E. White, *Closing the Gap that Welfare Reform Left Behind*, 577 ANNALS AM. ACAD. POL. & SOC. SCI. 131, 134 (2001).

### *C. The Rise of Modern Parenting*

In the early twentieth century, the pressure mounted for mothers to have “well-behaved, polite children, with regular habits, who could easily be disciplined to fit into the assembly-line culture of the new metropolis.”<sup>56</sup> Nursery schools built on the Montessori model emerged, which were advertised to middle-class families as an educational experience necessary to produce well-adjusted children.<sup>57</sup> The success of nursery schools rested on convincing parents that the “skillful nurturing of children’s personalities and social development was beyond the capability of most ordinary mothers in the home.”<sup>58</sup> Suddenly, “[m]other-love, previously seen as the source of all social good and the rallying point for maternalist reformers, was no longer enough—indeed, it could even be dangerous.”<sup>59</sup> Behaviorism came into vogue with its premise that maternal overprotection was detrimental to child development. Overprotective or overbearing mothering was blamed for juvenile delinquency, and all manner of psychological disorder and neurosis. Separation was now recognized as beneficial to children, and thus the time children spent in nursery schools provided a new pro-child rationale for day care.

The closing decades of the nineteenth century witnessed the development of infant schools and the introduction of the German Kindergarten movement to the United States. The mission of the infant schools was to protect children whose mothers had to work from “bad and immoral influences,” whereas Kindergarten was supposed to “support [the] mother’s role by educating the child.”<sup>60</sup> Neither institution considered or advertised itself as a substitute for maternal care, or an opportunity to

56. HARDYMENT, *supra* note 15, at 229.

57. Montessori education was developed by an Italian physician and educator, Maria Montessori, in the early 1900s, and it was first introduced in the United States in 1911. Montessori pedagogy utilizes a constructivist or “discovery” model of education, characterized by an emphasis on independence, where students learn concepts from working with materials, rather than by direct instruction. Although Montessori’s popularity waned after her methods were criticized by an influential American education teacher, William Heard Kilpatrick, Montessori education returned to the United States in 1960 and remains a popular pedagogy for young childhood education today. See Alice Burnett, *Montessori Education Today and Yesterday*, 63 *ELEMENTARY SCH. J.* 72, 75 (1962).

58. ROSE, *supra* note 13, at 103-108.

59. *Id.* at 105.

60. BERRY, *supra* note 16, at 76-79. By the 1960s, children in Kindergarten in the United States were expected to learn how to interact and socialize with other children and develop important motor skills. Lisa Kelly, *Yearning for Lake Wobegon: The Quest for the Best Test at the Expense of Education*, 7 *S. CAL. INTERDISC. L.J.* 41, 38 (1998).



encourage or increase the participation of mothers in the workforce.<sup>61</sup> Although some mothers would take advantage of the hours their children spent in school to work or do other things, the schools flourished because they were ultimately “intended to benefit children, not their mothers.”<sup>62</sup>

Fathers too were now expected to play with their children, show affection, and—for the good of the children—forgo the “lodge” or the bar after work in order to spend more time at home.<sup>63</sup> While the idea that women were not born to be mothers and that fathers had an important role to play in childrearing had liberating potential, it was a double-edged sword: “[t]he principle that maternal expertise was achieved, not inborn, easily produced the corollary that mothers should study for it and nothing else.”<sup>64</sup> In addition, making childrearing a scientific study made it an area requiring specialized expertise. Parents could no longer trust their instincts, ask their own parents, or figure out for themselves the best way to parent given their unique circumstances and goals; now they had to rely on “experts with professional training in medicine, psychology, mental health, sociology, education, or social work” or risk screwing up their children irretrievably.<sup>65</sup>

Notably, as in previous decades, class and race were highly relevant to the ability of parents to fulfill the dominant parenting ideals of the time. In the late nineteenth and early twentieth centuries, black women and single, indigent mothers often performed domestic duties for primarily white, middle-class families, including child care responsibilities.<sup>66</sup> White women were able to fulfill gendered expectations of maintaining the home and family through the assistance of black servants, to whom they assigned the most arduous household tasks. Six-and-a-half day workweeks and fifteen-hour days were not uncommon for black, live-in servants.<sup>67</sup> Many black

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61. HARDYMENT, *supra* note 15, at 74.

62. *Id.* at 100; *see also* Carol Sanger, *Separating from Children*, 96 COLUM. L. REV. 375, n.154 (1996) (discussing that, despite the increase in women’s labor force participation by 1950, the belief that motherhood is a woman’s most important role remained unchanged, and delegating maternal duties to day care facilities undermined maternalist ideals).

63. HARDYMENT, *supra* note 15, at 41.

64. NANCY F. COTT, *THE GROUNDING OF MODERN FEMINISM*, 168 (1989).

65. *Id.* Elizabeth and Joseph Pleck also note the role of psychologists, counselors and social workers, home economists, as well as the popular media in “invent[ing] the ideal dad” who could provide “a true model of manhood” for their children. Pleck & Pleck, *supra* note 54, at 42.

66. P.F. Clement, *Nineteenth-Century Welfare Policy, Programs, and Poor Women: Philadelphia as a Case Study*, 18 FEMINIST STUDIES 35-58 (1992).

67. Glenn, *supra* note 14, at 1340-43.

female servants were mothers themselves, and thus, had to delegate care for their own children through family networks, churches, fraternal organizations, and “elaborate locally organized social welfare networks” that often operated on a non-cash barter economy.<sup>68</sup>

#### D. WWII to Modernity: Maternity Reigns

The Second World War and its aftermath brought dramatic changes to parenting. During the war, many mothers were, by necessity, encouraged to work, taking the places of men who were now fighting overseas. In 1942, over fifty million dollars was appropriated from the Lanham Act to build child care centers for mothers employed by the war effort.<sup>69</sup> Many government leaders felt that this appropriation was a misuse of federal resources, “preferring instead that mothers assume primary responsibility for rearing children.”<sup>70</sup> Yet, the 2,240 centers serving over 66,000 children were insufficient to meet the demand from working women.<sup>71</sup> Despite the protests of women in many cities, all funding for day care was cut in 1946 when the men came home from the war.<sup>72</sup> First told that duty to their country required them to work, now that the men wanted their jobs back, women were told that their new patriotic duty was to give up their jobs and return to the home.<sup>73</sup>

Not all women went willingly; poor women were especially reluctant to give up more remunerative skilled and technical work to return to underpaid clerical or domestic labor. Between 1946 and 1970, the percentage of working mothers nearly tripled.<sup>74</sup> The women who did return home were instructed that their patriotic duty as mothers lay in the post-war challenge of raising a new generation of anti-fascist, anti-communist children. In practice, this translated to “a determination . . . to allow the children of the free world to be more free than children had ever been.”<sup>75</sup>

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68. White, *supra* note 55, at 134.

69. David E. Bloom & Todd P. Steen, *Minding the Baby in the United States, in WHO WILL MIND THE BABY? GEOGRAPHIES OF CHILD CARE AND WORKING MOTHERS* 25 (Kim England, ed., 1996).

70. SALLY S. COHEN, *CHAMPIONING CHILD CARE* 23 (2001).

71. *Id.* at 24.

72. *Id.* Washington, D.C. continued receiving funds until 1953. New York continued funding its Lanham child care programs with state funds until 1948, and California gradually integrated its Lanham programs into a state regime.

73. ROSE, *supra* note 13, at 195 (describing post-war advertising that warned mothers of the “unhappiness and instability” of children without full-time mothers).

74. COHEN, *supra* note 70, at 24. In 1970, over half of all women with children over six were employed. *Id.* at 27.

75. HARDYMENT, *supra* note 15, at 224-25.

The post-war boom allowed parents to allocate more time and money to their offspring than ever before, and the new family consumers were encouraged to purchase the latest “necessities” for both child and home.<sup>76</sup>

The post-war mentality dovetailed well with Freudian analysis, which focused on the importance of infant psychological development from birth to two years and paid increased attention to the psychological disposition of the mother. Good mothers, in tune with their natural nurturing abilities, stayed home and concentrated on childrearing while “[b]ad mothers, those who did not fit the ideal, would be betrayed by their children’s pathological, cranky behavior.”<sup>77</sup> Taken to the extreme, Freud’s ideas “meant that mothers had to devote themselves wholeheartedly to their babies to ensure their inoculation against the danger of emotional hang-ups and unfulfilled intellectual potential in later life.”<sup>78</sup> John Bowlby’s widely known study on maternal deprivation typified the influential thinking prevalent in the 1950s “that exclusive mother[ing] and that alone, would ensure the healthy growth of a child.”<sup>79</sup> This marked a stark rejection of the Behaviorism of previous decades and ushered in a new era of “fun morality” and “permissive mothering”—whatever makes the baby happy is good for the baby, and a mother who delights in her child is good for the baby, too.<sup>80</sup> Permissive mothering was both more time consuming and more emotionally draining than the stricter and more scheduled childrearing methods of earlier times.<sup>81</sup> Fathers and mothers and their role in the child’s upbringing were conceived very differently. Important only insofar as they served as role models for proper gender differentiation among children, fathering was marginalized, but mothering was a full-time

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76. *Id.* at 226. Elizabeth Rose notes that one of the reasons why women increased their labor participation so significantly during this period was the widespread feeling that having a middle-class lifestyle that included owning a home was the most important goal for families, even if that meant the mother would work. ROSE, *supra* note 13, at 198-99.

77. BERRY, *supra* note 16, at 112.

78. HARDYMENT, *supra* note 15, at 238.

79. Joseph Bowlby produced a study of homeless children for the World Health Organization in 1953, which cautioned against the disastrous effects of “maternal deprivation.” HARDYMENT, *supra* note 15, at 236-37. Jerome Kagan also espoused the duties of motherhood as physical attention, sacrifice of self-interest, consistency of care, and enjoyment of the interaction. *Id.* at 238. “Taken literally, these ideas meant that mothers had to devote themselves wholeheartedly to their babies to ensure their inoculation against the danger of emotional hang-ups and unfulfilled intellectual potential in later life.” *Id.*

80. *Id.* at 225.

81. ROSE, *supra* note 13, at 195.

career that demanded education, dedication, devotion, and self-sacrifice.<sup>82</sup>

The work of Genevan psychologist Jean Piaget in the 1950s and 1960s added another time and energy consuming aspect to mothering—infant stimulation.<sup>83</sup> Piaget’s work focused on infant cognitive development and suggested appropriate ways to stimulate the infant’s mind in the right ways at the right time.<sup>84</sup> Now, mothers who left their children alone or with alternative care risked not only their child’s emotional development, but their intellectual development as well. In the 1950s and 1960s, only two rationales for leaving your children in day care were perceived as legitimate: educational purpose, therefore the mother is doing what’s best for the child, not for herself, or economic necessity, as poor mothers could be excused the rigor of full-time motherhood. The 1960s put a “new emphasis on a child’s environment during the first five years of life” which led to the creation of programs like Head Start.<sup>85</sup> Momentum for publicly funded day care grew throughout the decade as married-with-children women continued their unrelenting influx into the workforce, but the political justification for government intervention continued to be framed as the best interests of the child.

At the same time, the late 1960s and 1970s saw feminism reemerge with new vigor and an agenda of asserting women’s rights, particularly in the context of sexual freedom, but also in the arena of parenting. Some feminists championed a new model of “co-parenting” that envisioned fathers as “an equal participant with his wife in the physical care of the child.”<sup>86</sup> Many feminists also demanded increased public support for child care not exclusively in the interest of children, but to “allow women to enjoy greater autonomy and expanded rights.”<sup>87</sup> Meanwhile, Jerome Kagan’s widely published studies demonstrated that day care did not affect

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82. Nancy Pottishman Weiss, *The Mother-Child Dyad Revisited*, in *CHILDHOOD IN AMERICA* 58-59 (Paula S. Fass and Mary Ann Mason eds., 2000) (“The job description for both mother and child changes considerably in permissive literature. From a rough equality, at least in psychological terms, in the shared work of childrearing, now the mother is required to bear a disproportionate amount of the emotional labor attending the process.”).

83. HARDYMENT, *supra* note 15, at 246.

84. *Id.* at 245. Piaget now “overshadows Freud as the authority behind baby care.” BERRY, *supra* note 16, at 116.

85. COHEN, *supra* note 70, at 26. In 1970, the White House Conference on Children announced “comprehensive family-oriented child development programs” as its number one priority, and President Nixon expressed his concern for all children under five. *Id.* at 44.

86. PLECK & PLECK, *supra* note 54, at 45.

87. BERRY, *supra* note 16, at 150.

maternal attachment or cognitive development in children.<sup>88</sup> Even conservative child care guru Dr. Spock acknowledged Kagan's insights by including a much expanded chapter on working mothers in the 1976 edition.<sup>89</sup> Nonetheless, these feminists faced continued opposition from conservative opponents like the New Right, who preferred "that women stay home to care for their children" and put family issues at the center of its political agenda.<sup>90</sup> The recurrent criticism from conservatives that child care threatened the mother's role in childrearing led President Nixon to veto a national child care bill in 1971 that, if passed, would have "provided the framework for a universally available comprehensive child care program."<sup>91</sup>

After the Equal Rights Amendment failed to pass in 1982, liberals shifted tactics, backing away from autonomy arguments and invoking "children's issues" as a vehicle to advance affordable child care programs.<sup>92</sup> This rhetorical move had the undermining effect of situating children's issues squarely within the ambit of women's responsibility, reinforcing traditional gender roles, and "accept[ing] an emphasis on mothers' child-care responsibilities."<sup>93</sup> This tacit concession that child care was a woman's worry led to a focus on successfully combining work and family responsibilities. However, a rise in "national hysteria regarding alleged abuse in day care centers and preschools" put working mothers back on the defensive and affirmed the notion that there is no acceptable

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88. HARDYMENT, *supra* note 15, at 278. Kagan's 1970 study found that "separation anxiety" was not a pathology caused by absent mothers, but rather a normal stage of child development. His study revealed that well designed day care did not disturb cognitive development, nor did it affect maternal attachment.

89. In his book *Baby and Child Care*, child expert Dr. Spock, initially referred to day cares as "baby farms." In the 1976 edition, Dr. Spock revised his statements that day cares do not provide infants with adequate attention and recognized every parent's right to a career. BETTY HOLCOMB, NOT GUILTY: THE GOOD NEWS FOR WORKING MOTHERS (1998) (citing BENJAMIN SPOCK, M.D., *BABY AND CHILD CARE* 568 (1968)).

90. COHEN, *supra* note 70, at 72; *see also* BERRY, *supra* note 16, at 150-52.

91. This bill, called the Comprehensive Child Development Act, would have provided significant federal funding for early child care programs nationwide. Kaminer, *supra* note 1, at 504; *see also* Heather S. Dixon, *National Daycare: A Necessary Precursor to Gender Equality with Newfound Promise for Success*, 36 COLUM. HUM. RTS. L. REV. 561, 618-20 (2005). The United States has not made day care a significant part of its national agenda since 1990, when Congress considered over one hundred child care bills. *Id.*

92. COHEN, *supra* note 70, at 72; *see also* BERRY, *supra* note 16, at 172 (noting how women's organizations fighting for a national child care policy in the 1980s "downplayed concern for the rights of women" and became more "mother and child centered" to advance their agenda with the conservative public).

93. BERRY, *supra* note 16, at 173-75.

substitute for maternal care.<sup>94</sup> As a result of this ideological push and pull, “biological mothers [came] to have an increased role in the exclusive nurturing of their children, just as the biological aspects of motherhood, due, for example, to the increasing availability of manufactured baby foods, were adapting and lessening.”<sup>95</sup>

*E. 1990s to Now: The Move to Exhaustive Care*

The 1990s ushered in the era of the “supermom,” the woman who had it all and did it all.<sup>96</sup> A 1988 *New York Times* article noted that despite the changing demographics in the workplace,<sup>97</sup> “women are still being pressed to keep on meeting all, or most, of their old responsibilities to home, family, and community.”<sup>98</sup> Despite the increased sensitivity to the issue of working mothers in the political arena, “[t]here was a slapdash approach to melding these disparate roles, usually reflected in the iconic women at a business meeting with spit-up on her shoulder.”<sup>99</sup> Moreover, this superhero designation belied an internal tension for many working women: “[t]hey enjoy the sanction the ‘supermom’ image gives to their commitment to caring for their families, but they are also aware that women remain unequal competitors in the world of work and still lack enough autonomy in their lives.”<sup>100</sup>

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94. Kaminer, *supra* note 1, at 504.

95. JENNIFER MARCHBLANK, *WOMEN, POWER AND POLICY: COMPARATIVE STUDIES OF CHILD CARE* 35 (2000) (comparing child care in the United States, Great Britain, and Europe).

96. The “supermom” is expected to work outside of the home, assume primary child care responsibilities, perform household duties, and be a good wife. Marie Ashe & Naomi R. Cahn, *Child Abuse: A Problem for Feminist Theory*, 2 *TEX. J. WOMEN & L.* 75, 83 (1993); see also Jennifer Roback Morse, *Beyond “Having it All,”* 18 *HARV. J.L. & PUB. POL’Y* 565, 569 (1995).

97. By this time, over half of all married women worked, 74% of those full-time, most of whom also had children. BERRY, *supra* note 16, at 171.

98. *Mothers With Babies—and Jobs: When Will Society Escape the Myths*, N.Y. TIMES (June 19, 1988), [hereinafter *Mothers*] <http://www.nytimes.com/1988/06/19/opinion/mothers-with-babies-and-jobs-when-will-society-escape-the-myths.html>.

99. Judith Warner, *Mommy Madness*, NEWSWEEK, Feb. 21, 2005, at 48. By the 1970s, white and black women were working outside the home at the same rate, and the majority of working women were married with children. *Id.* Yet, attention to the “plight” of working women had only increased alongside the labor participation of white career women. BERRY, *supra* note 16, at 149. Thus, the ubiquitous white-collar images of white career women served as another reminder to poor women and women of color that their motherhood was less valued.

100. BERRY, *supra* note 16, at 5.

The normalization of super-human parenting has continued in the last decade with the rise of the “Helicopter Parent.”<sup>101</sup> Also characterized by the media as “overparenting,” “smothering mothering,” “child-centered parenting,” or “invasive parenting,” these terms describe “the phenomenon of a growing number of parents—obsessed with their children’s success and safety—who vigilantly hover over them, sheltering them from mistakes, disappointment, or risks.”<sup>102</sup> This micromanagement involves parents in nearly every aspect of their children’s lives, often beginning at pregnancy, and can continue well into young adulthood. One consequence of this trend is that many parents are now intensively involved in childrearing well past the age at which previous generations of children were considered independent decision-makers.<sup>103</sup> Parents are also expected to acquire sophisticated knowledge of all stages of their child’s physical and emotional development, and actively foster their child’s creativity, talents, and intellect. While some have argued that helicopter parenting is a specifically white and middle-class phenomenon,<sup>104</sup> other evidence suggests that parents of all backgrounds feel the pressure to conform.<sup>105</sup> Alongside the “Helicopter Parent,” the last decade has also witnessed resurgence in “Attachment Parenting,”<sup>106</sup> as well as a renewed interest in homemaking and other time-intensive tasks historically associated with the domestic sphere, like sewing, canning, and gardening. These trends have been documented as the “new domesticity”<sup>107</sup> or “new maternalism.”<sup>108</sup>

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101. The term “Helicopter Parent” came into widespread usage in the mid-1990s to refer to a style of overly attentive, involved, and competitive child-rearing. See generally Margaret K. Nelson, *Parenting Out of Control: Anxious Parents*, in UNCERTAIN TIMES (2010).

102. Kathleen Vinson, *Hovering Too Close: The Ramifications of Helicopter Parenting in Higher Education*, 29 GA. ST. U. L. REV. 423, 424 (2013); see also Gaia Bernstein & Zvi Triger, *Over-Parenting*, 44 U.C. DAVIS L. REV. 1221, 1225 (2011) (describing what the authors call an “Intensive Parent” as one “who actively cultivates her child, acquires sophisticated knowledge of the best childrearing practices, and utilizes this knowledge to closely monitor the child’s development and daily activities”).

103. Vinson, *supra* note 102, at 429; Bernstein & Triger, *supra* note 102, at 1232.

104. Bernstein & Triger, *supra* note 102, at 1231.

105. Nancy Gibbs, *The Growing Backlash Against Overparenting*, TIME, Nov. 20, 2009.

106. Bernstein & Triger, *supra* note 102, at 1231-32 (noting that the trend toward Intensive Parenting stems both from the writings of attachment theorists and from “the competitiveness of contemporary society”).

107. Emily Matchar writes about women’s fascination with reviving “lost” domestic arts like canning, bread-baking, knitting, and chicken-raising, in her book, *HOMEWARD BOUND: WHY WOMEN ARE EMBRACING THE NEW DOMESTICITY*. She investigates this groundswell of highly-educated women turning away from traditional careers and

What all of these parenting trends have in common is an increase in the scope, expense, labor, and intensity of the obligations and responsibilities that are considered reasonable and normative for “good” parents.<sup>109</sup>

### III. UNPACKING THE IDEAL PARENT NORM

The Ideal Parent norm that dominates today is just the most recent of a long line of mutable ideas about what it has meant to be an Ideal Parent throughout history. In this Section, I unpack the core components of the currently dominant Ideal Parent norm—Non-Delegation, Maternal Bias, and Exhaustive Care—and demonstrate how these normative assumptions have become embedded in work-family conflict discourse. As a result, the universe of work-family conflict solutions is narrowed, non-conforming parenting models are marginalized, and the solutions that are proposed do not offer sufficient meaningful relief to the majority of working parents.

#### *A. Only a Mother’s Love: The Norm of Maternal Care*

That there is a maternal bias in normative assumptions about parenting perhaps goes without saying: “[i]n our society, as in most societies, women not only bear children, they also take primary responsibility for infant care, spend more time with infants and children than do men, and sustain primary emotional ties with infants.”<sup>110</sup> Thus, the first assumption of the Ideal Parent norm is that mothers provide child care that is inherently superior and therefore preferable to child care by any other provider, including fathers. Despite the gender-neutral language concerning child care that is sometimes employed, it has been “an implicit assumption of Western political theorists [and mainstream commentators alike] . . . that it is the *mother’s* responsibility to raise children who are well-adjusted

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embracing labor-intensive domestic tasks and explores its implications for women. For reviews of Matchar’s book see <http://newdomesticity.com/>.

108. See generally Naomi Mezey & Cornelia T.L. Pillard, *Against the New Maternalism*, 18 MICH. J. GENDER & L. 229, 295-96 (2012) (“New maternalism embraces motherhood as special and distinct from fatherhood and other forms of non-parental caretaking . . . . By propagating a traditional, neo-maternalist image of the mother, new maternalism helps to reproduce a culture in which men are presumed not to have the duty, desire, or ability to be equal or engaged parents.”).

109. See Bernstein & Triger, *supra* note 102, at 1231 (“Since the mid-1980s, parents have been increasingly involved in their children’s lives.”).

110. Nancy Chodorow, *Mothering, Male Dominance, and Capitalism*, in CAPITALISTS PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM 83 (Zillah R. Eisenstein ed., 1979); see also DOWD, *supra* note 53, at 51 (“At the first moment of sharing, mothers and fathers confront an immediate challenge to egalitarian goals by virtue of their physically different places at childbirth, differences imposed by breastfeeding and assumptions of women’s innate superiority as parents.”) (emphasis added).



citizens.”<sup>111</sup> In practice, too, most parents still adhere to the rule of, or at least preference for, female hegemony over parenting and child care,<sup>112</sup> and study after study demonstrate that working fathers consistently perform less direct child care work than working mothers.<sup>113</sup> Even when biological mothers do not parent, “other women, rather than men, take their place.”<sup>114</sup> Despite having been repeatedly debunked, anxiety over the harmful effects of maternal separation still looms large in the popular press, both exaggerating the primacy of motherhood over parenting, and creating a lot of psychologically harmful guilt and anxiety among working mothers.<sup>115</sup> The Maternal Bias narrative is further perpetuated by the popular press in the myriad of “Opt-Out” articles and books which are published regularly, usually written by a beleaguered working mother celebrating, or defending, her “choice” to leave work and stay home, as the only decision she could have made as a “good” mother.<sup>116</sup> For some women, the normative pull of

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111. Naomi Cahn, *The Power of Caretaking*, 12 YALE J. L. & FEMINISM 177, 203 (2000) (emphasis added).

112. PEW RESEARCH CENTER, BREADWINNER MOMS (2013), available at [http://www.pewsocialtrends.org/files/2013/05/Breadwinner\\_moms\\_final.pdf](http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf) (reporting that half of surveyed respondents said that children are better off if a mother is home and does not hold a job, whereas only 8% said the same about fathers).

113. See JOAN C. WILLIAMS ET AL., “OPT OUT” OR PUSHED OUT?: HOW THE PRESS COVERS WORK/FAMILY CONFLICT 20 (2006) (reporting that mothers spend nearly twice as much time as fathers caring for children as a primary activity); JANET C. GORNICK & MARCIA K. MEYERS, FAMILIES THAT WORK: POLICIES FOR RECONCILING PARENTHOOD AND EMPLOYMENT 34 (2003) (showing that mothers continue to be much more likely than fathers to have primary responsibility for child care); Mary Becker, *Caring for Children and Caretakers*, 76 CHI.-KENT L. REV. 1495, 1516 (2001) (noting that when wage work and care work are combined, women reportedly put in an additional one month of work compared to men) (citing ARLIE HOCHSCHILD, SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME 164 (1989)); Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 UCLA L. REV. 1415, 1435 (1991) (“The average father living with his child spends less than ten minutes a day caring for his child, while the average mother spends several hours. These figures do not change significantly in families where both parents are fully employed outside the home.”).

114. Chodorow, *supra* note 110, at 83.

115. Nancy Dowd describes how women in a 1987 Diane Ehrensaft study “perceived motherhood as an expected primary role and felt they had to explain any departure from that role. They often felt guilty when they crafted a different relationship between work and family.” DOWD, *supra* note 53, at 51.

116. See WILLIAMS ET AL., *supra* note 113, at 20; Cahn, *supra* note 111, at 195-98 (discussing popular books that use a three part “hysterical narrative” to ultimately affirm women’s “inevitable” desires to stay at home to parent their children). Specific recent articles include Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES MAG., Oct. 26, 2003; Louise Story, *Many Women at Elite Colleges Set Career Path to Motherhood*,

Maternal Bias is so strong that they experience feelings of guilt even in delegating child care to the child's father, a phenomenon described by Joan Williams as "the doctrine of nondelegation."<sup>117</sup>

When mothers are catered to as the Ideal Parent within work-family conflict discourse, other institutions or individuals, including fathers, are under-utilized as resources for childrearing and caretaking. The predominance of family-friendly work policies as a solution to work-family conflict offers a rich example. Despite being heralded as gender-neutral, family friendly work policies are often marketed—both by and to employers—as a solution to a problem that continues to be framed primarily as a women's issue. The result is that mothers are more likely to be able to negotiate a family-based accommodation with their employer, so they are incentivized to take advantage of it, reinforcing Maternal Bias.<sup>118</sup> Indeed, studies show that these accommodations are disproportionately utilized by mothers, and the few fathers who do seek family-based accommodations are often refused, or face employment consequences as a result.<sup>119</sup>

The Family Medical Leave Act (FMLA), the nation's only federal policy that accommodates the childrearing responsibilities of working parents, is illustrative.<sup>120</sup> While this federal statute provides an important gender-neutral employment protection for working parents, a growing body of

N.Y. TIMES (Sept. 20, 2005); Ann-Marie Slaughter, *Why Women Still Can't Have It All*, THE ATLANTIC, July/August 2012.

117. See WILLIAMS, *supra* note 9, at 124; see also Cahn, *supra* note 111, at 205-09 (discussing the Non-Delegation doctrine, also called "gatekeeping"). Cahn's article posits that women must feel safe giving up some of their power in the domestic sphere to men in order to achieve equality.

118. See Buonocore Peter, *supra* note 7, at 357 (writing about the "special-treatment stigma" that makes employers unwilling to hire or promote employees who require special benefits or accommodations in the workplace. Caregivers are one such set of employees, and "[b]ecause most caregivers are women" she observes, "any suggested reforms that help caregivers may have the perverse effect of causing employers to hire and promote fewer women.").

119. See Stephanie Bornstein, *The Law of Gender Stereotyping and the Work-Family Conflicts of Men*, 63 HASTINGS L.J. 1297, 1323 (2012) (documenting the rise of gender discrimination lawsuits brought by men against employers based on gender stereotyping related to men's role as breadwinner versus caretaker); Cahn, *supra* note 111, at 185 ("[E]ven in those couples where the man earns the same or less than his partner, he may be reluctant to leave the workforce because of the substantially greater penalties imposed on fathers.").

120. 29 U.S.C. §§ 2601-2654. The Family Medical Leave Act (FMLA) provides qualified employees working for companies of 50 or more employees with up to twelve weeks of unpaid, job-protected leave from employment to care for a new child; a seriously ill child, parent, or spouse; or the employee's own serious health condition.

evidence indicates that in the twenty years since its implementation, the law has not improved, and may in fact have worsened, the status of working mothers relative to working fathers.<sup>121</sup> Part of the issue is that in practice, the FMLA, like all family-friendly work accommodations, is under-utilized by men.<sup>122</sup> Meanwhile, evidence is mounting that the few men who do take FMLA leave for a child's birth or health issue often face formal or informal penalization by their employers.<sup>123</sup> The employer response affirms Maternal Bias in that it signals to both men and women that formal equality in these matters is superficial, and taking responsibility for parenting and child care should not be a father's concern.<sup>124</sup>

In theory, gender-neutral family friendly employment policies appear to increase the flexibility and autonomy offered to at least some strata of the modern workforce,<sup>125</sup> allowing individuals to more successfully combine work with parenting. In practice, however, a different picture has emerged. Parental accommodations are much more readily available to mothers, and men are discouraged from taking advantage of them.<sup>126</sup> This dynamic

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121. See WILLIAMS, *supra* note 9.

122. Joanna L. Grossman, *Job Security Without Equality: The Family and Medical Leave Act of 1983*, 15 WASH. U. J.L. & POL'Y 17, 53-54 (2004).

123. Chuck Halverson documents the difficulties men have had requesting leave pursuant to the FMLA in order to care for a new child. For example, some law firms reportedly require men to prove their role as primary caregiver to their children prior to taking paternal leave. In a survey of employers who were financially able to provide an extended leave, including the 12 week leave available under FMLA, 63% thought it was unreasonable for a male employee to take *any* days off following the birth of a newborn. A similar study conducted by the Wisconsin Maternity Leave and Mental Health Project found that 63% of male employees felt they would be stigmatized by their employers for taking a four-week leave. Also, these men felt they would miss out on promotions or be "daddy tracked" by taking a leave. Chuck Halverson, *From Here to Paternity: Why Men are not Taking Parental Leave Under the Family and Medical Leave Act*, 18 WIS. WOMEN'S L.J. 257, 261-64 (2003).

124. Buonocore Peter, *supra* note 7, at 378; see also Joan Williams, *Jumpstarting the Stalled Gender Revolution: Justice Ginsburg and Reconstructive Feminism*, 63 HASTINGS L.J. 1267, 1284-86 (2012).

125. This qualification is important, as the FMLA is insufficiently flexible to address the needs of differently situated parents following childbirth. It is uniquely designed to address the needs of parents willing and able to leave work altogether, without pay, for a rigid one twelve-week period following childbirth, and dedicate themselves exclusively to child care. Compare this model to Sweden's for example, which offers parents 480 days of paid parental leave per child, which can be claimed at any point before the child turns eight years old. See Annie Pelletier, *The Family Medical Leave Act of 1993—Why Does Parental Leave in the United States Fall So Far Behind Europe?*, 42 GONZ. L. REV. 547, 570 (2007).

126. Micahael Selmi has postulated that informal workplace norms can also influence a father's decision to use the leave legally available to him. See, e.g.,

looms large in all gender-neutral work-family conflict solutions implemented at the employer level, yet work-family conflict scholars and activists continue to champion the workplace as the primary arena to implement reforms. Failing to affirmatively confront and challenge Maternal Bias in this context allows employers to become complicit in privileging and fetishizing feminized caretaking models, while confirming patriarchal assumptions about the natural role and capabilities of mothers as workers.

Additionally, employer-based solutions address work-family conflict as an issue between individual workers and their employers, which reinforces the idea that work-family conflict is a problem that should be borne by individuals, rather than the public, or community. As a result, there is little political space to encourage exploration of more collectivist solutions to work-family conflict.<sup>127</sup> Critical race theorist Dorothy Roberts has observed, “mothering in nineteenth and twentieth century America has become an increasingly isolated experience . . . . Most women view the burdens of motherhood as their own private problem and, consequently, may not think of joining with other mothers to address maternal hardships.”<sup>128</sup> At the same time, many modern parents “think it’s high time that government and employers stepped in to help them. They don’t see why raising children has to be such a lonely and thankless struggle.”<sup>129</sup> Parents “know how much they are overextended, and they are ready to reach out for new kinds of external support.”<sup>130</sup> Work-family conflict scholars and activists should consider how the current focus on workplace accommodations encourages and reinforces Maternal Bias, and may come

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Micahael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C. L. REV. 707 (2000); see also Martin H. Malin, *Fathers and Parental Leave*, 72 TEX. L. REV. 1047, 1048-49 (1994) (arguing that parental leave still remains “de facto maternal leave” and so long as this remains the case “the need to accommodate workers’ family responsibilities will remain a significant source of discrimination against women”).

127. Warner, *supra* note 99, at 46 (“[M]ost women in our generation don’t think to look beyond themselves at the constraints that keep them from being able to make *real* choices as mothers. It almost never occurs to them that they can use the muscle of their superb education or their collective voice to change or rearrange their social support system.”).

128. Roberts, *supra* note 14, at 128-129; see also Warner, *supra* note 99, at 46 (“Women today mother in the excessive, control-freakish way that they do in part because they are psychologically conditioned to do so. But they also do it because, to a large extent, *they* have to. Because they are unsupported, because their children are not taken care of, in any meaningful way, by society at large.”).

129. ANN HEWLETT AND CORNEL WEST, *THE WAR AGAINST PARENTS* 216-19 (1998).

130. *Id.*

at the expense of more collective, community-based, and publicly subsidized solutions.<sup>131</sup>

*B. Don't Worry, Mommy's Here: The Norm of Non-Delegation*

Non-Delegation is the assumption that Ideal Parents should not delegate childrearing responsibilities to non-parents on anything but a temporary basis, and even then, should do so only reluctantly. Despite the reality that the delegation of child care to non-parents is widespread,<sup>132</sup> extra-parental child care resources are often characterized, by society and by the law, as qualitatively different than parental care, and rarely as equivalent substitutes for it.<sup>133</sup> Mothers who willingly outsource the care of their

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131. See also Cornelia T.L. Pillard, *Our Other Reproductive Choices: Equality in Sex Education, Contraceptive Access, and Work-Family Policy*, 56 EMORY L.J. 941 (2007) (noting that work-family reforms aimed at alleviating gender bias in the workplace may actually reinforce traditional gender stereotypes if women, rather than men, are predominately taking advantage of facially gender-neutral policies like family leave).

132. There is ample evidence that Non-Delegation does not reflect the reality of modern families. Almost all families utilize one or more forms of extra-parental care for their children. See, e.g., U.S. Dep't of Commerce, U.S. Census Bureau, *Who's Minding the Kids? Child Care Arrangements: Spring 2010—Detailed Tables* (2011), [http://www.naccra.org/sites/default/files/default\\_site\\_pages/2012/whos\\_minding\\_the\\_kids\\_feb\\_2012\\_0.pdf](http://www.naccra.org/sites/default/files/default_site_pages/2012/whos_minding_the_kids_feb_2012_0.pdf). These delegated child care sources can include private or employer-based day care, babysitters, nannies, summer camp, before- or after-school programs, and other structured or ad hoc caregiving arrangements. Notably, race and class often stratify these arrangements. Nannies and domestic workers continue to provide a great deal of child care to the upper classes, whereas working class families rely more heavily on local in-house arrangements or sliding-scale centers. In fact, low-income families are more likely to be utilizing the in-home non-delegated parental child care model favored by the Ideal Parent norm, because they typically lack the education to achieve positions earning enough money to make working outside the home and paying for childcare economically worthwhile. See generally ROSE M. KREIDER & DIANA B. ELLIOTT, HISTORICAL CHANGES IN STAY-AT-HOME MOTHERS: 1969 TO 2009 4 (Fertility & Family Statistics Branch U.S. Census Bureau 2010), [http://www.census.gov/population/www/socdemo/ASA2010\\_Kreider\\_Elliott.pdf](http://www.census.gov/population/www/socdemo/ASA2010_Kreider_Elliott.pdf).

133. See Melissa Murray, *The Networked Family: Reframing the Legal Understanding of Caregiving and Caregivers*, 94 VA. L. REV. 385, 386-389 (2008). Murray examines the law's understanding of caregiving as the work of the nuclear family (i.e. parents) and notes the ways in which family law "cleaves to the ideal of an exclusive and autonomous nuclear family in which parents alone care for their children." Murray sees this linking of parental rights with caregiving responsibilities as a failure of the law to recognize that parents do not provide care as isolated islands, but as part of a broader network of caregivers. See also Tali Schaefer, *Disposable Mothers: Paid In-Home Caretaking And The Regulation of Parenthood*, 19 YALE J. L. & FEMINISM 305, 322-23 (2008) (noting that "courts, parents, and scholars seem to share a belief that paid caretakers are inherently different from parents. On the rare occasions that courts consciously characterize paid caretakers' performance, they are

children to others are often put in the position of defending their choice, characterized as lacking maternal qualities, or not adequately caring for their children.<sup>134</sup> Many working mothers express feelings of intense guilt or remorse over leaving their children in day care settings and “are opposed to formal group care and instead choose child care that is as home-like as possible.”<sup>135</sup> Some commentators, including many women, attribute these feelings to biology, but there is also a forceful cultural component at work that reproaches mothers who delegate their parental responsibilities.<sup>136</sup> These critiques have not diminished, despite multiple studies concluding that extra-parental child care is not detrimental to children’s development, and can, in fact, enhance it.<sup>137</sup>

When Non-Delegation is assumed within work-family conflict discourse, the solutions it leads to are those that support or expand the ability of parents to provide direct, non-delegated child care. Again, many of these proposals involve incentivizing family-friendly structural changes in the workplace that offer parents more opportunities to engage in direct parenting and have increased face-time with their children, while keeping

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quick to rule that the functions paid caretakers fulfill do not resemble parental duties.”).

134. Because the first day care centers in America provided low-quality care and were used only by poor mothers, a stigma remains for mothers who delegate child care responsibilities to day care facilities in the United States. Kaminer, *supra* note 1, at 504. See also Rosenblum, *supra* note 6, at 72 (noting that for mothers, these social norms leave no room for a woman to “juggle family and work in a way that favors the former,” or “style herself as the Baroness in *The Sound of Music*, who confronts the possibility of raising all those children with the quip: ‘Darling, haven’t you ever heard of a delightful little thing called boarding school?’”).

135. Kaminer, *supra* note 1, at 515.

136. See generally Sanger, *supra* note 62, at 378 (documenting how the law continues to treat mothers who made deliberate decisions to “part physically from their children under circumstances that require substitute care” as “evidence of self-interest and assumed antithetical to the welfare of children”).

137. Social science data suggests that working outside the home can be a good thing for both the mother and the child, breaking up the isolation of household labor, and providing role models for children. See, e.g., Lois Wladis Hoffman, *The Effects of the Mother’s Employment on the Family and Child*, UNIV. OF WISC., <http://parenthood.library.wisc.edu/Hoffman/Hoffman.html> (summarizing research published in LOIS HOFFMAN & LISA YOUNGBLADE, *MOTHERS AT WORK: EFFECTS ON CHILDREN’S WELL-BEING* (1999)). Hoffman finds that the mother’s employment status “does have effects on families and children, but few of these effects are negative ones. Indeed, most seem positive—the higher academic outcomes for children, benefits in their behavioral conduct and social adjustment, and the higher sense of competence and effectiveness in daughters.” See also Rachel G. Lucas-Thompson, Wendy A. Goldberg & JoAnn Prause, *Maternal Work Early in the Lives of Children and Its Distal Associations with Achievement and Behavioral Problems: A Meta-Analysis*, 136 PSYCHOL. BULL. 915, 917-38 (2010).

up with work at the same time: i.e., “Mommy *and*.”<sup>138</sup>

However, most employer-based work-family conflict solutions are successful only for those individuals who can bargain with their employers for increased flexibility on an individual basis. As discussed, *supra*, these employer-based options work well only for a small percentage of, primarily, working mothers, who are not concerned with, or have just accepted, the marginalizing effects participation in family friendly programs can have on their careers.

Another consequence of the Non-Delegation norm is that very few options are generated for parents who might have to, or wish to, delegate a larger share of the necessary work associated with having children. Less than 10% of families still reflect the single income/full time caregiver at home “breadwinner” model that had its heyday in the 1950s.<sup>139</sup> At least 70% of American children live in households where all adults are employed and almost all families utilize one or more forms of extra-parental care for their children.<sup>140</sup> Despite its rhetorical (or even normative) appeal for some, these statistics show that most parents will not, cannot, or do not wish to, return to a model of full-time, non-delegated, maternal child care. Yet, the lack of alternatives to “Mommy *and*” solutions makes it difficult for women to demand access to child care assistance from outside the nuclear family. This inhibition is especially problematic given that *within* family bargaining units, fathers have been able to delegate much of the hands-on, time-intensive and emotional labor of childrearing to mothers, whereas mothers (due largely to the effects of Maternal Bias), have been far less successful in distributing child care responsibilities to men.<sup>141</sup>

Further, the idealization of non-delegated child care also marginalizes communities who are already utilizing non-parental models of childrearing, without accruing any of the benefits presently accorded to parental caretakers. For example, in many black and Latino communities, “othermothering,” “child-keeping,” and other forms of extended kin and non-kin childrearing have a long history,<sup>142</sup> and are still commonly relied

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138. Such employer-based changes include increasing the availability of flexible scheduling, telecommuting, job sharing, part-time management track positions, or expanding the scope and applicability of existing workplace supports like the FMLA.

139. DOWD, *supra* note 53, at 29.

140. Press Release, Bureau of Labor Statistics, Employment Characteristics of Families (April 26, 2013) available at <http://www.bls.gov/news.release/pdf/famee.pdf>; U.S. Dep’t of Commerce, *supra* note 132.

141. DOWD, *supra* note 53, at 2.

142. For an overview of these issues, see generally Murray, *supra* note 133, at 455, n.18 (2008); Roberts, *supra* note 14, at 128-29.

on in many communities as reliable, affordable, quality child care.<sup>143</sup> However, these alternative child care models remain largely undervalued, and the act of delegating child care to non-parents remains needlessly stigmatized.<sup>144</sup>

### C. *Love's Labor: The Norm of Exhaustive Care*

The third assumption of the Ideal Parent norm is the notion that children, viewed as sacred and fulfilling, should rightly be the center of their parents' world<sup>145</sup> and cannot flourish without intensive and continuous attention being paid to their intellectual, physical, and emotional development by an Ideal Parent.<sup>146</sup> Exhaustive Care is a labor and resource-intensive childrearing ideology that expects parents to pay constant attention to enhancing the development of their children. It "fosters the expectation that the child's needs and desires be met as they occur, shifts from an

143. PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT* 178 (2d ed. 2000) (noting that "othermothers—women who assist bloodmothers by sharing mothering responsibility—traditionally have been central to the institution of Black motherhood"); see also CAROL B. STACK, *ALL OUR KIN: STRATEGIES FOR SURVIVAL IN A BLACK COMMUNITY* 62-66 (1974) (noting that maternal poverty in the African American community has led to the institution of "child-keeping," in which children are cared for by a network of family and close friends, rather than—or in addition to—their biological parents); Laura T. Kessler, *Transgressive Caregiving*, 33 FLA. ST. U. L. REV. 1, 18-19 (2005) (noting that othermothering "has operated not only informally, but also through well-developed institutions and movements such as black churches, black women's clubs, black community service organizations, and the black civil rights movement") (footnotes omitted); Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647, 1690 (2005) ("For many Blacks and Latinos 'family' extends beyond the traditional nuclear-family model of mother, father, and children."); Roberts, *supra* note 14, at 128-29.

144. See generally Sacha M. Coupet, *Ain't I A Parent?: The Exclusion of Kinship Caregivers From the Debate Over Expansions of Parenthood*, 34 N.Y.U. REV. L. & SOC. CHANGE 595, 648-49 (2010); see also David R. Katner, *Delinquency and Daycare*, 4 HARV. L. & POL'Y REV. 49 (2010) (showing that community based child care is effective and efficient).

145. Although the Maternal Bias still holds sway, increasingly, the Exhaustive Care norm is being applied to fathers, too. New research shows that 60% of fathers experience pressure to be "breadwinners and involved fathers." Ruth Davis Konigsberg, *Chore Wars*, TIME, Aug. 8, 2011 (citing a July 2011 report from the Families and Work Institute, called "The New Male Mystique" which concluded that "long hours and increasing job demands are conflicting with more exacting parenting norms")  
*available* *at*  
<http://www.time.com/time/magazine/article/0,9171,2084582,00.html>.

146. See generally Bernstein & Triger, *supra* note 102, at 1235-48 (documenting the current trend in modern parenting from "quality time" to "quality and quantity time" and tracking the law's endorsement of this trend in custody disputes).



obedience-based model of education to a reasoning-based one, and relies on a frustrating and taxing process of setting limits to encourage children to self-discipline.”<sup>147</sup> Exhaustive Care expects parents to be perpetually present in the child’s world, committed to the child’s sustained care, and prepared to sacrifice their own desires, material goods, or personal achievements if it will better the lives of their children.<sup>148</sup> Exhaustive Care demands an “all-encompassing engagement” with parenting, and fetishizes feminized models of emotional and self-sacrificial caretaking.<sup>149</sup>

One particularly concerning hazard of idealizing Exhaustive Care within work-family conflict discourse is that mothers who seek or provide non-conforming care for their children are made vulnerable to the cultural and legal penalties associated with being labeled a “bad mother.” As the lives of children have become increasingly complex, parents have been expected to keep up and keep providing an ever-expanding roster of resources. In addition to unfathomably deep love, devotion, and adoration for their children, many parents are also overworked, overextended, over-stressed, unprepared, unappreciated, under-supported, and under-funded. Childrearing has become too taxing a job for parents alone. Yet the dominant ideology in the United States is that rearing children is an individual, not a community responsibility. This gradual increase in the kind and scope of parental responsibility has happened without any meaningful recognition on the part of child care experts, scholars, activists, or policy makers that it is nearly impossible for most parents to meet the demands of the Ideal Parent without experiencing it as an unjustified burden on autonomy, having a disparate impact on women. Instead, the

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147. Schaefer, *supra* note 133, at 338.

148. JOAN WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* 23 (2011); *see also* Roberts, *supra* note 14, at 107. Roberts has examined how criminal law in particular “reinforces the image of mother as a selfless being.” *Id.* Roberts documents the particularly harsh treatment mothers receive when they abdicate traditional roles, specifically, how criminal courts often refuse to acknowledge mitigating circumstances in child abuse cases. As victims of domestic abuse themselves, many times these women are not in a position to protect themselves or their children, yet the assumption “that a woman’s obligation to her children always takes precedence over her own interest in independence and physical safety,” leads courts to “generally attribute child abuse to maternal deficiency.”

149. *See* Czapskiy, *supra* note 113, at 1449 (finding that the judiciary subscribes to an Exhaustive Care norm in that it treats fathers as “volunteers” but assumes “a mother, by definition, is a person who would not consider not doing her job. In short, she is a draftee”). Czapskiy chooses the term draftee because it implies a denial of autonomy, self-direction, and choice. *Id.* at 1459. Czapskiy reflects on how this phenomenon plays out in joint custody arrangements, where “constraints on parental self-determination are justified, once again, in the name of the child’s best interest.” *Id.* at 1438.

impossibly high parenting standards of Exhaustive Care make it easy to frame—or allow the opposition to frame—work-family conflict as the failure of private individuals to perform as parents or make the right choices for their families, as opposed to acknowledging parenting as an ever-increasing burden of resources that demands, and is worthy of, more public or collective forms of assistance.

#### IV. HOW THE IDEAL PARENT NORM LIMITS WORK-FAMILY CONFLICT DISCOURSE

Work-family conflict discourse has done much to deconstruct the unrealistic demands of the modern workplace, but the demands of modern parenting are equally overwhelming, and deserve equal attention. Without undertaking a sustained critique of the Ideal Parent norm, the current proposals advanced by work-family conflict scholars will become increasingly stop-gap and insufficient to address the growing challenges to gender equality posed by working parents, whose reality of parenting day-to-day looks very little like the Ideal Parent norm. The solutions will also continue to be largely homogenous and applicable only as solutions to a select group of Ideal Parents.<sup>150</sup> Championing solutions to work-family conflict that rely on the Ideal Parent norm to define the problem, whether intentionally or unthinkingly, creates an untenable and circular situation, where the solutions address a problem that itself is part of the problem to be addressed.

Anne Alstott's 2004 proposal for "caretaker resource accounts" is one example of this phenomenon.<sup>151</sup> Alstott acknowledges that society's demands on parents have increased over time, transforming modern parenthood "into an extraordinarily demanding social role."<sup>152</sup> However, instead of questioning the scope and nature of the demands that modern parenting imposes, Alstott assumes it into the framing of the problem. She states that there is "near-consensus on children's need for continuity of care," which is described as the "intensive, intimate care that human beings need to develop their intellectual, emotional, and moral capabilities."<sup>153</sup>

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150. This defect has important class and race implications. A common and well-placed critique of employer-based solutions is the reality that they are most likely to benefit parents working at the management class or professional level. Again, the FMLA is a good example. As FMLA is unpaid leave, many low-income workers who might otherwise be eligible cannot afford to be without a salary for that long.

151. Alstott, *Fair Society*, *supra* note 8, at 1949.

152. *See id.* at 1942; *see also* Anne Alstott, *What We Owe to Parents*, BOSTON REVIEW, Apr./May 2004, at 8 [hereinafter Alstott, BOSTON REVIEW].

153. Alstott bases her endorsement of Continuity of Care on the work by Joseph Goldstein in collaboration with Anna Freud and Albert Solnit, written in 1973.

Alstott also expresses skepticism of the ability of non-parents to be adequate substitutes for parental care: “[w]e will never be able to create impersonal care that mimics personal care—we will never train teachers who know our children as we do, or doctors or nurses who remember every critical detail of the child’s medical history.”<sup>154</sup> Her premise is that “[o]utside of science fiction, there simply is no acceptable substitute for parental care.”<sup>155</sup> This formulation of the parental role echoes the all-encompassing mandate of the Ideal Parent.

Alstott’s proposed solution is a publicly funded mechanism to help parents offset some of the financial sacrifice inherent in the sacrificial concept of parental caretaking she describes. This solution is not without value, indeed, I support shifting more childrearing responsibilities to publicly funded sources. However, the language Alstott uses to frame the problem is a useful illustration of how underlying assumptions about the general ability and desire of parents to provide non-delegated, exhaustive care leads to solutions that support primarily those parents who are willing and able to parent in that particular and idealized way.

Even Joan Williams relies on Ideal Parenting assumptions in her powerful critique of the “dominant family ecology.” Williams is critical of the traditional work and family structure, which enables fathers to perform as “ideal workers” while children can be raised according to the “norm of parental care.”<sup>156</sup>

Initially, Williams is careful to make clear that the “norm of parental care” she invokes is a descriptive, not a normative one. She takes specific issue with Maternal Bias, or the “mother-as-sole-source” model of parental care, noting that “full-time mothercare” can be inefficient, ineffectual, and most importantly, can link caregiving with disempowerment.<sup>157</sup> She suggests, as I do, that it is time “to open a debate on how much parental care children truly need given the trade-offs between providing money and providing care.”<sup>158</sup> By defining the norm of parental care, Williams expresses her hope that “discussions of how much delegation is too much will replace conversations in which mothers protest that they ‘chose’ to cut back or quit when further investigation reveals that they did so because they could not find quality care, or because the father works such long

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154. Alstott, *Fair Society*, *supra* note 8, at 1946.

155. *Id.* at 1949.

156. WILLIAMS, *supra* note 9 at 85. Williams’s more recent book, *Reshaping the Work-Family Debate: Why Men and Class Matter*, continues her focus on dismantling masculine norms in the workplace.

157. *Id.* at 52.

158. *Id.* at 53.

hours that without a marginalized mother the children would rarely see a parent awake.”<sup>159</sup> Ultimately, she hopes that identifying a norm of parental care will empower mothers “in situations where their partners meet demands for equal contributions to family work by claiming that virtually all child care is delegable.” But this only begs the question: Is not virtually all child care delegable?

Williams acknowledges that “[b]eyond the fifty-hour week, little consensus exists about how much child care is delegable,” but she is only willing to go so far in challenging the norm of nondelegated parental care. She draws the line at stating that “children are not best served if both parents are away from home eleven hours a day,” therefore “jobs that require fifty-hour workweeks are designed in a way that conflicts with the norm of parental care.”<sup>160</sup> In *Unbending Gender*, Williams dismisses the proposed work-family conflict solution of one father to hire two sets of nannies for a combined sixteen hours of child care coverage so no one’s career is hurt. She also rejects the suggestion of another father who suggests that his wife hire a baby sitter to care for their children during a weekend when he had promised to be available. Williams finds the solutions of these fathers problematic because they illustrate, in her view, that many fathers “do not accept the ideology of close attention to children. Instead of questioning the mother’s “do more with less” model of self-sacrificial parenting, Williams expresses discomfort with the father’s ideology of just doing less. As a result, Williams’s preferred solution for supporting working parents is to restructure the workplace or redistribute caregiving between genders to maximize the time parents are available to provide direct child care to their children.

Pushing employers to provide flexibility to parents at work so they can be Ideal Parents at home is not a victory so long as the Ideal Parent norm continues to champion exhaustive care performed by the mother. This is because, even if flexibility in the workplace is achieved, the Ideal Parent norm still limits the ability of women to restructure their parenting responsibilities at home.

Williams acknowledges that women have internalized a gendered sense of how much child care can be delegated,<sup>161</sup> and in recent scholarship, has come to recognize the limitations of employer-based reform. However,

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159. *Id.*

160. *Id.*

161. See WILLIAMS, *supra* note 9, at 124 (“Because fathers delegated virtually all of child care under traditional domesticity, many fathers retain a sense that virtually all child care is delegable. Most mothers do not. These gender traditions form the background of powerful cultural expectations that frame the attitudes of the current generation.”).

instead of identifying the unrealistic demands of the Ideal Parent norm as the reason why workplace reforms come up short, Williams blames the gender pressures placed on fathers in the workplace that prevent them from functioning as Ideal Parents, too.<sup>162</sup> These efforts to redistribute child care labor between parents will also fail to solve work-family conflict, because the current Ideal Parent norm is as unrealistic for two parents to achieve, as it is for one. The workload associated with modern parenting has simply grown too immense, and work-family conflict solutions that fail to acknowledge this compound the problem.

There are other feminist and work-family conflict scholars who are working specifically to reassess parenting as an institution. Karen Czapanskiy, for example, advocates for challenging what she has described as the volunteer/draftee dichotomy in family law by changing the legal definition of a parent to be the person(s) who makes “a commitment to a dependent human being to provide all the nurturance, whether financial or nonfinancial, of which the person is capable.”<sup>163</sup> Czapanskiy’s conduct-based reconceptualization of parenting is broad enough to support a range of parenting styles; she does not define nurturance too narrowly, acknowledging that it could take the form of financial or non-financial provisions. She recognizes the limits of individual capabilities and the necessity of respecting the parenting practices of individual caregivers. However, Czapanskiy’s solution is still situated within the family—she hopes to encourage a redistribution of parenting tasks between parents, and does not discuss possibilities for delegation to non-familial institutions.<sup>164</sup> In addition, Czapanskiy advocates for melding the caregiver and child into a “single unit, whose interests are indistinguishable.”<sup>165</sup> This

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162. Williams, *supra* note 124, at 1283 (The conventional wisdom is that the persistence of work-family conflict reflects women’s failure to bargain effectively in the family. My hypothesis, instead, is that the stalled gender revolution reflects the fact that gender pressures on men [at work] remain largely unchanged . . . . Americans see being a good provider as an integral part of being a good father, according to another study; gender pressures on men to be good fathers send them away from home, rather than towards it.”).

163. Czapanskiy, *supra* note 113, at 1464. The definition also includes a responsibility to “deal respectfully and supportively with another person or persons who are in a parental relationship with the same child.” *Id.*

164. Karen Czapanskiy, *Interdependencies, Families and Children*, 39 SANTA CLARA L. REV. 957, 962 (1999) [hereinafter *Interdependencies*] (adhering to this view in a later article, stating that “[s]ociety entrusts children to caregivers because we believe that society cannot raise children as well as individuals can”).

165. *Id.* at 962 (stating interdependency theory “requires that the child be viewed as a member of a care-giving unit, not as an independent being whose ‘best interests’ can be determined separate from the need to be cared for”); see also Calvert, *supra* note 21, at 619-24 (writing on the history of childhood in America takes note of this ideological

reconceptualization challenges the form, but not the substance, of the Ideal Parent norm, as it still privileges a model of exhaustive, nondelegated parental care.

As these examples illustrate, when the Ideal Parent norm is relied on in work-family conflict discourse—either intentionally or unwittingly—those assumptions become embedded in the problem as the fixed set of parental responsibilities that must be accommodated to resolve work-family conflict. In other words, work-family conflict becomes the problem of working women not being able to simultaneously function as Ideal Parents. This formulation of the problem limits the scope, creativity, and efficacy of the solutions proposed. Meanwhile, this fixed set of duties that parents are expected to perform to stay in good standing as ideal parents continues to expand without any attention to individual resources. Most work-family conflict solutions try to skirt the problem with “Mommy *and*” policies, which focus on altering workplace culture to accommodate the assumptive childrearing values of Ideal Parents, or “Redistribution” solutions, which try to redistribute the burden of child care labor onto fathers. However, few suggest, as I do, that it is the modern baseline responsibilities of parenting that need retooling.

#### V. REFRAMING WORK-FAMILY CONFLICT

Rejecting the Ideal Parent norm does not mean ignoring that children have some specific and identifiable developmental needs; nor does it mean denying that children are entitled to have those needs met. It is pivotal to recognize that society as a whole benefits when children are well taken care of—they are more able to be productive contributing members of society, and less likely to engage in socially or self-destructive behavior.<sup>166</sup> Yet, even if we agree that there are features of childrearing that are ubiquitously beneficial for all children, it is still not clear that parents are always the best individuals to provide them. As work-family conflict scholars and activists continue to address these issues, the discourse needs to take as fundamental

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trend as it developed: “The dissonant note in the [child care] literature is a reinterpretation and expansion of maternal obligation and a winnowing of the mutuality of interest between mother and child”).

166. See Daniel Lichter, *Poverty and Inequality Among Children*, 23 ANN. REV. SOC. 121, 127 (1997) (discussing the positive spillover effects that accrue to communities when children are well cared-for as an argument for the fairness of shifting child care costs from individual families to communities as a whole); ANN HEWLETT & CORNEL WEST, *supra* note 129, at 93 (“We increasingly expect parents to spend extraordinary amounts of money and energy on raising their children when it is society at large that reaps the material rewards.”); see also Alstott, *Fair Society*, *supra* note 8, at 1942 (“Continuity of care is good for children and for society too, because well-cared-for children can grow into autonomous adults.”).

the question of how we might change childrearing to better balance the goal of raising happy and healthy children without homogenizing parenting models, and without sacrificing the autonomy rights of individual parents, particularly mothers.

A. BEYOND NON-DELEGATION: INCREASING COMMUNAL AND  
COMMUNITY-BASED CHILD CARE OPTIONS

Historically, parents have always parsed and delegated aspects of childrearing outside of the family unit when it would benefit the child, the family, or the community. Given the growing number of single-parent and dual-worker families, a more community-wide distribution of parental responsibilities offers clear benefits to working parents. Yet, group or communal parenting models, like the Israeli *kibbutzim*, are virtually unheard of in the United States.<sup>167</sup> There are some groups of women who share in child care, but these operations are not undertaken with the same mindset as sharing *parenting* would be. In fact, “shared parenting” is a term most commonly used to refer to post-divorce parenting arrangements between a father and a mother.<sup>168</sup> It remains a private arrangement, with private consequences. It is much more radical to imagine “shared parenting” as a society-wide commitment to decentralizing parenting, and redistributing the responsibility of raising socially productive and mentally healthy children to the community at large—the very community that ultimately benefits from a stable and secure youth.

I propose that work-family conflict discourse move beyond the Ideal Parent norm by characterizing childrearing as a public and collective endeavor, and insisting that more aspects of childrearing could be delegated to trained professionals and well-designed institutions. I do not suggest that parents be mandated to make use of such institutions, but I do argue that so long as the Ideal Parent norm goes unchallenged, it will be difficult for work-family conflict discourse to even begin the work of imagining them. Instead of continuing to focus energy on workplace accommodations by individual employers for individual parents, work-family conflict scholars should assess whether these solutions are being advanced at the expense of more collective, community-based, and publicly subsidized

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167. *Kibbutzim* are communal settlements in Israel that rely on collective child rearing practices, where children are cared for by multiple caregivers in multiple settings. See generally Sharone Maital & Marc H. Bornstein, *The Ecology of Collaborative Child Rearing: A Systems Approach to Child Care on the Kibbutz*, 31 *ETHOS* 274 (2003).

168. Marygold S. Melli, *The American Law Institute Principles of Family Dissolution, the Approximation Rule and Shared-Parenting*, 25 *N. ILL. U. L. REV.* 347, 354 (2005).

solutions.

One arena that is ripe for more creative and collective solutions is public schools. Compared to the workplace, the public education system and institutions are under-utilized by work-family conflict scholars as sources of inspiration for reform. Yet schools are places where the basic functions of childrearing can, and often do, take place. Much more could be done to capitalize on the potential dual function of public schools as education providers and day care environments for young children. Many public schools are financially hurting right now, but if the mandate of public education were expanded to include child care, that might provide a basis for states to reallocate resources to these struggling institutions.

Changes to the school system that I would propose include year-round schooling with expanded hours, at least comparable to most families' average working day (6 a.m. to 8 p.m.),<sup>169</sup> and an intensive curriculum of developmentally appropriate extracurricular activities to engage children's minds, occupy them in a safe environment, and expose them to influences, authorities, and caretakers beyond their parents.<sup>170</sup> This extracurricular programming could also create opportunities for collaboration with private enterprise or non-profit community groups. For example, lessons might be provided by private instructors on a sliding scale subsidized by the locality, or by community-based volunteers who could receive a tax credit if their participation met certain guidelines. These community volunteers might be college students, retirees, community members, or parents and grandparents who want to share their time and experience with youth.

The growing Community Schooling movement is already doing many of these things. The Community School model capitalizes on the infrastructure of existing public schools while partnering with other community resources to integrate opportunities for growth, achievement, and learning. The Community School model turns existing public school spaces into centralized hubs, not only for traditional classroom learning, but for health and social service agencies, youth development

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169. I acknowledge this does not accommodate the needs of parents who work other shifts or night jobs.

170. Similar changes to the school day have been proposed by Michael Selmi & Naomi Cahn, *Caretaking and the Contradictions of Contemporary Policy*, 55 ME. L. REV. 289, 308-10 (2003). Importantly, Selmi and Cahn rate the benefit to children of such policies as of "secondary importance" and remain focused on "developing policies that would be best for women" in terms of supporting their workplace participation. *Id.* at 309. As discussed in Part II, *supra*, children's "best interests" have often been used by policy makers and legislators to discourage women from workforce participation; acknowledging that women also have autonomy interests at stake that cannot be automatically sacrificed for the needs of children is an important first step toward developing meaningful reform in this area.



organizations, and civic and faith-based groups. In addition, adult and parent education, employment training, and leadership development are part of the community school vision.<sup>171</sup> Each school is uniquely responsive to that community's individual needs, allowing for diversity in programming and partnerships.<sup>172</sup> While community schooling advocates primarily focus on the academic and community-building advantages of these types of collaborative arrangements, their mission can and should be expanded to explicitly include child care.<sup>173</sup> If executed well, Community Schools could help destigmatize the delegation of parenting responsibilities outside the family and elevate the value of communal childrearing environments.<sup>174</sup>

### *B. Beyond Maternal Bias: Reviving the Call for Universal Infant Care*

The needs of infants are undeniably more time intensive than those of

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171. See COALITION FOR COMMUNITY SCHOOLS, MAKING THE DIFFERENCE: RESEARCH AND PRACTICE IN COMMUNITY SCHOOLS 2 (2003) available at <http://www.communityschools.org/assets/1/Page/CCSFullReport.pdf>.

172. The largest community school system in the nation is the Community Schools Initiative (CSI) located in Chicago, Illinois. The CSI model is based on a belief that every child deserves a one-on-one relationship with a caring adult. Notably, that adult does not have to be a parent. Nevertheless, there is evidence that the Community School model actually increases parental involvement at home and at school, because families feel more supported in their parenting role. See COALITION FOR COMMUNITY SCHOOLS, *supra* note 171, at 2. One of CSI's stated goals is to "transform and maintain selected public schools to become the centers of their communities, with campuses open mornings, afternoons, evenings, weekends and into the summer." CHICAGO PUBLIC SCHOOLS, DISTRICT INITIATIVES: COMMUNITY SCHOOLS INITIATIVE, <http://www.cps.edu/PROGRAMS/DISTRICTINITIATIVES/Pages/CommunitySchoolsInitiative.aspx> (last visited July 17, 2013).

173. The School of the 21st Century (21C) model, created by noted education expert Edward Zigler, is doing just that. EDWARD ZIGLER CENTER IN CHILD DEVELOPMENT AND SOCIAL POLICY, SCHOOL OF THE 21ST CENTURY (2002) <http://www.yale.edu/21c/history.html>. Also known as Family Resource Centers in some communities, 21C specifically markets itself as a school-based child care and family support system providing year-round services from early morning to early evening. The 21C model utilizes sliding scale fees to achieve universal access, and provides non-compulsory programming that can be utilized (or not) at the discretion of individual families. *Id.* at 2. Presently, Kentucky, Connecticut, and Arkansas have provided state funding for 21C programs.

174. Quality group child care has been linked with improving young children's cognitive and linguistic skills, as well as improving test scores. Children from underprivileged backgrounds have been shown to reap the most benefits from formal early child care. Kaminer, *supra* note 1, at 501 (citing Jay Belsky, *Early Child Care and Early Child Development: Major Findings of the NICDH Study of Early Child Care*, 3 EUR. J. DEVELOPMENTAL PSYCHOL. 95 (2006)).

other age groups: they need to be fed, changed, held, and interacted with more often, and in more regular patterns. On this, experts are in relative agreement. What experts continue to disagree on is whether it matters if *parents* perform these acts. There is a growing body of work that suggests that “separation involving regular contact with nonparental caregivers do[es] not interfere with the development of a secure attachment relationship when high-quality substitute care arrangements are used.”<sup>175</sup> In other words, so long as infants are fed, held, and have regular contact with a caregiver, it does not matter whether that caregiver is a parent. The Ideal Parent norm discourages parents in the United States from outsourcing infant care to non-parental individuals or institutions. As a result, work-family conflict solutions have largely relied on the FMLA and other employer-based initiatives that support individual parents in providing non-delegated care after birth. Comparing the United States to other countries where infant child care has been universally outsourced exposes the Ideal Parent norm’s constraints as antiquated and unnecessary, even for newborns.

The French, for example, have not had the same difficulties as the U.S. in establishing national policies on care methodologies and caregiver training.<sup>176</sup> This is largely due to France’s evolving parenting norms, which do not assume that childrearing is exclusively the domain of biological/legal parents or that child care per se is detrimental to the development of healthy children.<sup>177</sup> French Public Day Care Centers for 0-3-year-old infants in France operate from 7 a.m. to 7 p.m. during the workweek, and are subsidized by a combination of municipal and regional government and employer funds.<sup>178</sup> There are national requirements and regulations that ensure these facilities maintain an appropriate caregiver to child ratio (5-1), and at each facility there is a pediatric nurse, a child-counselor, and a kindergarten teacher on staff.<sup>179</sup> Despite the fact that having children under two in nursery school “has not met with universal

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175. Robin Harwood, *Parental Stress and the Young Infant’s Needs*, in THE PARENTAL LEAVE CRISIS: TOWARD A NATIONAL POLICY 58 (Edward F. Zigler and Meryl Frank eds., 1988). See generally Alison Clarke-Stewart, *Infant Day Care: Maligned or Malignant?*, 44 AMERICAN PSYCHOLOGIST 266 (Feb. 1989); Judith Rubenstein & Carolee Howes, *Caregiving and Infant Behavior in Day Care and in Homes*, 15 DEVELOPMENTAL PSYCHOLOGY 1 (1979).

176. Josette Combs, *France*, in INTERNATIONAL HANDBOOK OF CHILD CARE POLICIES AND PROGRAMS 192 (Moncrieff Cochran ed. 1993).

177. *U.S. Child Care Seriously Lags Behind That of Europe*, ASCRIBE NEWSWIRE (Nov. 19, 2002).

178. Combs, *supra* note 176, at 196.

179. *Id.*

approval either by early childhood specialists or by parents,” France has endeavored to provide this service as “a viable solution for families that must have the child cared for outside of the home, and many families take advantage of it for this reason.”<sup>180</sup>

Universally accessible infant care is one way to allocate the social costs of parenting rather than continuing to impose them on individual parents, as the Ideal Parent norm does. Robin Harwood has found that parental stress “may influence quality of caregiving more than does the actual number of demands” and that a universal infant care policy “would reduce over-all stress and thus promote the well-being of a large number of families.”<sup>181</sup> Work-family conflict scholars and activists should challenge the outdated and narrowly drawn notions of the Ideal Parent and focus instead on the widespread agreement that the specific physical needs of infants can be met by a range of caregivers and revisit universal child care access as a viable solution to work-family conflict.<sup>182</sup>

### *C. Beyond Exhaustive Care: Empowering Non-Parental Caretakers*

To get beyond Exhaustive Care, work-family conflict discourse must reassess parenting as an institution, and empower non-parental caretakers. This work is already underway by feminists and scholars such as Katherine Franke, who has questioned the notion of the “ideal parent” by recognizing motherhood as a cultural, rather than a biological, preference that is “incentivized and subsidized in ways that may bear upon the life choices women face[.]”<sup>183</sup> By calling into question the biological sources we attach to a cultural practice, Franke opens space to question the institution of parenting as a cultural phenomenon as opposed to a natural one. Dorothy Roberts also has an incisive awareness of the rhetorical and political power of the Ideal Parent norm which leads her to advocate for the “release [of] motherhood from an institution that negates women’s selfhood and uses

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180. *Id.* at 193. Numerous countries around the world, including Norway, Sweden, France, Germany, Spain, and Japan, have national day care programs that operate efficiently. Heather S. Dixon, *National Daycare: A Necessary Precursor to Gender Equality with Newfound Promise for Success*, 36 COLUM. HUM. RTS. L. REV. 561, 562 (2005).

181. Robin Harwood, *supra* note 175, at 71.

182. *But see* Selmi & Cahn, *supra* note 170, at 305 (questioning whether France’s system of extensive state support for child care has improved gender equality). I do not endorse France’s system as a means to improve gender equality per se, but as a means to challenge the norm of non-delegation and support mothers who need to or wish to outsource a greater portion of their child care responsibilities.

183. Katherine Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 183 (2001).

children as hostages to compel women's obedience."<sup>184</sup> As the history of parenting demonstrates, raising children has always required that parents sacrifice for their children, but "[t]his connection need not mean self-destruction; society, not biology, determines the nature of this sacrifice and the degree to which motherhood annihilates a woman's individual identity."<sup>185</sup>

The strategy of professionalizing child care is essential to this project. The people who are in the best position to take care of children are those who really love the work, have gone through a fairly rigorous screening and application process, been appropriately trained and educated—and are appropriately paid—for their labor-intensive jobs. Professionalization reduces the fears and stigma associated with delegation, and relieves parents from the overwhelming responsibility to do and provide everything for their children themselves. Professionalization also serves to break down the public/private divide that has cloistered childrearing under the rubric of domestic labor, and creates opportunities for new innovations in private child care design.

#### CONCLUSION

"Society strongly regulates the content of parenthood, and it demands more of parents than ever before. Individuals can choose whether or not to be parents, but society fixes the terms of that choice."<sup>186</sup> Once that pre decision is made, mothers-to-be should know what they are in for—self-sacrifice is simply part of this freely-made bargain. The state doesn't interfere with parents unless it has to in order to protect children, and parents in return do not ask for help from the state in taking care of kids. Parents know up front that this is what parenting requires, and if you can't handle it, the message is do not have kids.<sup>187</sup> This is an unsatisfactory answer. Different parents have different competencies and resources. The conditions under which individuals must parent, and their ability to parent successfully can vary drastically. Each may have different philosophies about what it means to parent and different amounts of time to dedicate to it.

A child's supposed right to a non-delegable duty of self-sacrificial maternal care "ignore[s] the wide variety of child-rearing styles that

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184. Roberts, *supra* note 14, at 237.

185. *Id.* at 102-03.

186. Alstott, *Fair Society*, *supra* note 8, at 1962-63.

187. *See id.* at 1962 ("In America today, almost everyone can decide whether or not to be a parent. Parents do have special responsibilities, but it is easy enough to avoid the duties of parenthood: just don't have kids.").

families across the country use[] in nurturing their children and assum[es] that there [is] only one way to meet children's needs."<sup>188</sup> The reality is: there is not, and trying to define the ideal parent "is a misguided enterprise at this point in legal and social history."<sup>189</sup> The "techniques of handling children do not seem to have made the steady progress toward improvement that historians of childhood suggest. Nor does there seem to be any agreement on what constitutes ideal children."<sup>190</sup> Idealizing an unnecessarily restrictive and self-sacrificial model of parenting subordinates the autonomy of women, not for the good of her husband, as in ages past, but for the good of her children. Offering work-family conflict solutions that cater to an unrealistic and romanticized norm of ideal parenting compounds the problem for most modern families. At this point in the evolution of parenthood, changing work or home to accommodate Ideal Parents is not good enough. The Ideal Parent norm simply does not reflect the reality of most families today. It is important that those engaging in work-family conflict discourse recognize these realities and begin to seriously question the value of idealizing, preferencing, or even countenancing the Ideal Parent norm in formulating responses to work-family conflict.

Eliminating the intimate joys of being a parent who knows and cares deeply for your own child is not the goal. The goal is to provide more options for parents—all parents, not only mothers providing the norm of full-time, non-delegated child care. Creating new institutions like universal infant care, enhancing the childrearing functions of existing institutions like public schools, and supporting the other ways in which parents choose to outsource care will provide parents a range of options to do what they believe is best for themselves and their children. Parents who are satisfied with the status quo do not have to change anything about their parenting values or methodologies. As the current work-family conflict situation continues to hamper equality and force parents to make impossibly difficult and ultimately self-sacrificial choices, we need to offer more alternatives to the status quo. It is incumbent on the scholars and activists who care about work-family conflict to challenge themselves to examine whether and which parenting norms are being embedded, reified, accommodated, valued, or privileged in their work on this critical issue, and to move toward solutions that can be utilized by all parents, not just Ideal Parents.

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188. ROSE, *supra* note 13, at 157.

189. *Interdependencies*, *supra* note 164, at 1470.

190. HARDYMENT, *supra* note 15, at 294.