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FOREWORD

STRAIGHTENING IT OUT: JOAN WILLIAMS ON UNBENDING GENDER

ADRIENNE D. DAVIS*

As most men and women acknowledge, gender is a battleground. Most of us are fairly clear on biological sex: who bears children, who ejaculates sperm, even whose (big) hands might open a stuck jar and whose (smaller ones) could pull that cufflink out of the garbage disposal.¹ What remains less clear is how social gender roles flow from this: Does lactation result in eighteen years of primary caregiving?² Should the chemical realities of testosterone shape the law

* Professor of Law, *University of North Carolina School of Law*. At the time of this Symposium, I was Professor of Law and Co-Director of the Gender, Work & Family Project, *American University, Washington College of Law*. The Symposium was co-sponsored by the Gender, Work & Family Project and the *American University Law Review*. I'd like to thank the *Law Review*, which provided expert research and administrative support, as well as lending much-appreciated creativity and enthusiasm. Frankie Winchester and Sharon Wolfe offered their usual invaluable planning, graphic, coordination skills, including (and most valuably) daily crisis management, advice, and friendship. The Project's research assistants, Stephanie Rainey and Julia Miller, were energetic and diligent in helping to plan the event. WCL students Carolyn Pitt-Jones, Nadine Stocklin, and Sheryl Kaye and UNC student Keischa Lovelace did painstaking work editing the transcript of my remarks and this Foreword. Comments from Leti Volpp, who served as conference reporter, were very helpful. Finally, I'd like to thank my co-director and colleague, Joan Williams, for her feminist friendship in developing the Gender, Work & Family Project over the last two years, and throughout my time at American University.

1. Some theorists argue that the organization of sex around such characteristics is itself a social construction. They argue that gender so infiltrates our minds that it affects our understanding even of biology. *See generally* JUDITH BUTLER, *BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF SEX* (1993); *see also* Katherine M. Franke, *Putting Sex to Work*, 75 *DENV. U. L. REV.* 1139 (1998) (arguing that a similar process is at work in denoting something as "sexual").

2. I don't have biological (or any) children, but from what I understand, the nine months of pregnancy and concluding labor and breast feeding could warrant an opposite conclusion: the birth parent has done her part and the next ten years are the primary responsibility of the non-birthing spouse.

governing sexual assault?³ Should the dynamics of heterosexual relationships mirror the physics of heterosexual intercourse (penetration equals power)?⁴ Does the reality of the menstrual cycle mean that women shouldn't engage in public life? Of course I am being somewhat flip in choosing examples that have long since been resolved by most thinking people in our culture, but we all, young and old, white and non-white, queer and straight, know that gender is serious and contested business requiring a gentle touch.

With my colleague at the Washington College of Law ("WCL"), Joan Williams, I have plunged head-first into these gender wars, but engaging on a new front. Since the 1980s, gender has been excellently theorized through the sex/violence axis.⁵ Theorists and activists have shown how men as a group benefit from sexual violence, and how the eroticization of sexual violence is a key part of its normativity. In 1998, Joan and I created the Gender, Work &

3. Feminists and thoughtful lawmakers thought this had been shut down along with the argument that hormones make some people violent so the law of assault must permit them to hit others. However, this year it was resurrected with the appearance of a new book arguing the evolutionary biological bases of rape. See RANDY THORNHILL & CRAIG T. PALMER, *NATURAL HISTORY OF RAPE: BIOLOGICAL BASES OF SEXUAL COERCION* (2000). Compare Jerry A. Coyne, *Of Vice and Men*, THE NEW REPUBLIC, Apr. 3, 2000, at 27 (reviewing RANDY THORNHILL & CRAIG T. PALMER, *NATURAL HISTORY OF RAPE: BIOLOGICAL BASES OF SEXUAL COERCION* and criticizing the book as dealing in dogmas, not specific propositions), and Barbara Ehrenreich, *How "Natural" Is Rape?*, TIME, Jan. 31, 2000, at 88 (discussing Thornhill and Palmer theories on rape), with Kenan Malik, *Evolutionists Behaving Badly*, FIN. TIMES, Mar. 18, 2000, at 4.

4. Some have argued that representing intercourse as "penetration" is itself a linguistic capitulation to male power. They've suggested that alternative understandings of the sex act, such as enclosure, could alter cultural understandings of heterosexual sex. See generally MARY BECKER ET AL., *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 163-64 (1994); ANDREA DWORKIN, *INTERCOURSE* (1987).

5. For the past two decades, with rigor and profound social commitment, feminist jurisprudence has conducted a rigorous and sustained inquiry into how rape, sexual harassment, domestic violence, and pornography subordinate women. Scholars in this field have skillfully linked the production of sexual norms of desire, sexuality, and attraction to the production of gender; that is, what it means to be a man or a woman in our culture. These feminists have shown how the eroticization of dominance systematically empowers men, while subordinating women and endangering their lives and bodily integrity. This inquiry into what might be called the sex/violence axis of gender formation has been elegantly, if contentiously, theorized, at times with stunning brilliance. Joan and I describe the sex/violence axis in Adrienne D. Davis & Joan C. Williams, *Foreword—Gender, Work & Family Project Inaugural Feminist Legal Theory Lecture*, 8 AM. U. J. GENDER, SOC. POL'Y & L. 1 (2000).

The most well-known and influential of these feminists is, of course, Catharine MacKinnon. Her development of dominance theory effected one the most significant paradigm shifts in feminist legal theory. Showing how dominance is eroticized, she has argued for reform of harassment, rape, and pornography law. See generally CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCUSSIONS ON LIFE AND LAW* (1987); CATHARINE A. MACKINNON, *TOWARDS A FEMINIST THEORY OF THE STATE* (1989); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward a Feminist Jurisprudence*, 8 SIGNS 635 (1983).

Family Project at WCL to confront gender on the battleground of its economic meanings. Our goal is to expose work/family conflict as in need of the same theoretical attention and complex gender analysis that has been brought to bear on the sex/violence system of gender power. Increasingly, women are economically marginalized or impoverished as they seek to balance their market work (paid) and their family work (unpaid). The most dramatic instance of this is when couples divorce and mothers and their children lose their economic status while the children's fathers do not. Reliance on a male wage is increasingly normative as women are told that getting and staying married is the best way to provide economically for their children. The Gender, Work & Family Project incorporates the gender theories generated by a variety of disciplines to offer a richer understanding of the unyielding nature of mothers' economic marginalization.⁶ In the process, we uncover how gender is produced through economic as well as sexual encounters.

This Symposium, "Unbending Gender: Why Work and Family Conflict and What to Do About It," co-sponsored with the *American University Law Review*, is part of the Project's effort to effect a paradigm shift in how we view gender. It takes its title from my co-director's recently published book, which focuses on the economic meanings of gender, and gives special attention to how those meanings are inflected by race and class.⁷ Joan Williams' *Unbending Gender* offers a concrete example of how the literature on gender as a social construct exposes intricate and often masked family negotiations between parental care and market work.⁸ For this Symposium we adopted Williams' book as a road-map and invited scholars from diverse academic and activist backgrounds in gender theory, labor law and family law, sociology, and tax law and policy to consider the economic meanings of gender by approaching work/family conflict as a site of intense gender production. What follows in this issue is a transcript of the rich, and at times

6. For a description of the origins of the Gender, Work & Family Project following the 1997 Critical Race Theory Conference at Yale, see Davis & Williams, *supra* note 5.

7. JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000) [hereinafter UNBENDING GENDER]. For a thoughtful review of UNBENDING GENDER, see Kathryn Abrams, *Cross-Dressing in the Master's Clothes*, 109 YALE L.J. 745 (2000) (book review).

8. One of the values of UNBENDING GENDER is that it brings together academic dialogues that don't happen enough: those who do critical theory and those who generate hard data, feminism, and what I call market logic. Williams realizes that much contemporary gender theory is often dense, and that its statistics are lifeless, so she infuses her data with anecdotes, interviews, and popular cultural references, and grounds her critical theory with policy implications.

contentious, results.

In *Unbending Gender*, Williams identifies a three-step process by which gender ideology creates and then mediates work/family conflict to the economic detriment of women. First, gender norms align masculinity with “the size of the paycheck” and femininity with unpaid family work.⁹ Employers rely on these same gender norms in designing workplaces that work for most men, but not for most women. Parents with children will find it almost impossible to perform ideally at the workplace and adhere to what Williams identifies as the equally powerful norm of parental care.¹⁰ In response to this (step two) mothers often economically marginalize themselves, basing their decision on some combination of considering their own paycheck as less essential than the father’s because it is typically smaller; feeling guilty about being away from their children; feeling anxiety about paying for child care as opposed to providing it themselves; and getting frustrated from failed negotiations with their partners over dividing family work.¹¹ Society offers a buffet of options for these women: part-time work, mommy track jobs, and low-paying and dead-end pink collar positions that offer more flexibility than more lucrative blue-collar work. Each results in economic marginalization of a sort.¹² The final cruel step occurs if a woman divorces. Mothers often find themselves impoverished, or otherwise economically vulnerable, as a result of

9. UNBENDING GENDER, *supra* note 7, at 25 (citing HARD-HATTED WOMEN: STORIES OF STRUGGLES AND SUCCESS IN THE TRADES 195 (Molly Martin ed., 1988)).

10. UNBENDING GENDER does have a heterosexual emphasis. Early on Williams explains:

[One] proviso concerns a lack of focus on gay families. This reflects the fact that the literature on the gendering of gay families is still young. From talking with divorce lawyers who specialize in gay partners, my sense is that many gay male couples often play quite traditional gender roles. In sharp contrast, the growing literature on lesbian parenting suggests that fewer lesbian couples track domesticity’s gender roles than do other types of couples. . . . It is important to remember that ideal workers and marginalized caregivers come in different body shapes; gender roles are logically independent of sexual orientation.

UNBENDING GENDER, *supra* note 7, at 8-9.

11. Williams summarizes this as the current “domestic ecology that consists of three elements: the gendered structure of market work, a gendered sense of how much child care can be delegated, and gender pressures on men to structure their identities around work.” *See id.* at 124.

12. *See id.* at 81-84. Williams notes that the “data suggest that, very conservatively, at least two-thirds of the wage gap between men and women reflects women’s load of family work. (This is not to deny that part of the remaining gap reflects good old-fashioned sex discrimination.)” *See id.* at 15 (using statistics by Professor Ureta from BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, CURRENT POPULATION SURVEY MARCH SUPPLEMENT, PUBLIC USE FILES (1996) (footnote omitted)). “[O]ne study found that women lose 1.5% of earning capacity for each year out of the labor force.” *Id.* at 127 (citing Jacob Mincer & Solomon Polachek, *Family Investments in Humans Capital*, in *ECONOMICS OF THE FAMILY* 397 (Theodore W. Schultz ed., 1974)).

both their workforce marginalization while married, and an unwillingness at divorce of judges to re-distribute what is viewed as the father's property. Judges do not recognize the mother's economic marginalization as a result of a family decision to distribute market and family work to achieve mutual goals; instead, the mother's economic marginalization is viewed as a result of her individual "choice."¹³ Once framed in this way, the mother is viewed as responsible for the consequences, including her own impoverishment. (Notably, "choosing" *not* to economically marginalize offers a different "consequence." Williams notes that many women who refuse to economically marginalize themselves lose custody of their children to their ex-husbands, even if *he* also worked full time.)¹⁴ Within the realm of choice, there is no gender dynamic to blame, no sex discrimination, no social responsibility for child care, only individual women whose decisions to provide care for their children in retrospect appear foolish in the cold harsh light of divorce court.

Williams points out that all of this occurs against the backdrop of a "first principle" of child care: the United States' determination that dependency should be supported within the family (meaning by women). Our country offers fewer social subsidies than any other industrialized nation.¹⁵ Feminists such as legal scholar Martha Fineman and philosopher Eva Feder Kittay have developed strong and persuasive critiques of this "first principle," arguing that supporting dependency is a public obligation.¹⁶ Fineman persuasively argues that the emphasis of benefits and subsidies should be to support bonds of dependency, rather than the sexual bond of two independent adults.¹⁷ In *Unbending Gender*, Williams concurs that "strong forces propel American families toward domesticity in a society without publicly supported child care."¹⁸ But if Fineman and Kittay challenge and seek to redefine the external parameters of the work/family debate (need, dependency, privacy), Williams re-

13. Essentially, this is socially understood, *including by women themselves*, as their choice. *See id.* at 37-38.

14. *See id.* at 139-41.

15. *See id.* at 49.

16. *See generally* MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995); EVA FEDER KITTAY, *LOVE'S LABOR: ESSAYS ON WOMEN, EQUALITY, AND DEPENDENCY* (1999); Symposium, *Gender, Work & Family Project Symposium on Inaugural Feminist Legal Theory Lecture: "Cracking the Foundational Myths,"* 8 AM. U. J. GENDER, SOC. POL'Y & L. 1 (2000).

17. *See* Martha A. Fineman, *Dependency and Social Debt: Making Caretaking Count* (unpublished manuscript, copy on file with author); *see also* Symposium, *supra* note 16.

18. *UNBENDING GENDER*, *supra* note 7, at 157.

examines this debate within the context of the market, thereby attempting to redefine its internal discursive structure.

One of the major contributions of *Unbending Gender* is its systematic assault on liberalism's retreat to choice. Williams correctly identifies the rhetoric of choice as a major impediment to feminist reformation of the work/family conflict.¹⁹ Because choices are essential to liberalism's ideals of autonomy and respect for the individual, legal and popular culture declines to interrogate them.²⁰ If women are impoverished because they prefer lesser market work that enables them to perform higher quality family work, then they must bear the consequences of their actions, like any other bad deal.²¹ Choice rhetoric erases the two prior steps in women's economic marginalization. It focuses attention instead on the final result, viewed as a reflection of individual values and "tastes."

The centrality of Williams' critique of choice parallels the assault by sex/violence feminists on the normativity of sexual desire. Within the sex/violence system of gender power, much critical inquiry into women's sexual subordination was deflected by liberal representations of sexuality as a matter of personal taste and individual expression. "Desire" was incommensurable. Respect for the individual shielded sexual practices from criticism about their implications for social power. Within the work/family arena of gender power, choice may operate as the economic equivalent of desire. Like desire, it's the show stopper, deflecting political critique. Feminists working within the sex/violence system of gender power have generated complex and diverse critiques of desire. In creating a rich and intensely contested literature, feminists have rescued desire

19. However, choice is a central problematic in feminist theory because much of the agenda of second-wave feminism was to enable women to be respected as agents and autonomous of their husbands. With debates about abortion funding, day care, welfare, domestic violence movements, etc., choice remains a core rhetoric in feminist theory, ideology, and politics. One consideration is whether this means that feminist theory remains intractably liberal. See sources cited *infra* note 20.

20. See generally Kathryn Abrams, *From Autonomy to Agency: Feminist Perspectives on Self-direction*, 40 WM. & MARY L. REV. 805 (1999); Kathryn Abrams, *Ideology and Women's Choices*, 24 GA. L. REV. 761 (1990); Linda C. McClain, "Irresponsible" Reproduction, 47 HASTINGS L.J. 339 (1996); Linda C. McClain, *Reconstructive Tasks for a Liberal Feminist Conception of Privacy*, 40 WM. & MARY L. REV. 759 (1999); Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797 (1989).

21. In my first-year Contracts class, I teach *Marvin v. Marvin*, an early palimony case based on implied contracts. 8 Cal. 3d 660 (1976) (appearing in RANDY E. BARNETT, *CONTRACTS: CASES AND DOCTRINES* 636-47 (2d ed. 1999)). I am always surprised by how many students, male and female alike, argue that because a woman's staying home is a "choice," she must suffer any consequences stemming from the decision. Given all of the casebook contracts doctrines that exist primarily to salvage people from "bad deals," it is intriguing that progressive students remain in the grip of choice in the arena of the sexual family.

from the banality of “tastes”; instead, desire has emerged as one of the most theorized concepts in contemporary philosophy. Paralleling her sisters’ efforts in the sex/violence gender system in *Unbending Gender*, Williams deconstructs choice in the truly Derridean sense. Unraveling the discourse of work/family, she finds the traces of a complex system of gender ideology that has proved lethal for mothers, not great for fathers, divided women, and sustained racial and class divisions.

Williams’ work rests on her identification of a powerful norm governing the American workplace.²² Employers expect and demand what she calls “the ideal worker.” Such a worker can organize life to accommodate the demands of employers. Williams draws compelling portraits of how the demands imposed on the ideal worker vary in blue- and white-collar contexts. In the former, the work ideal includes overtime and flexibility regarding shifts, including swing shifts. In more professional contexts, ideal workers are available to travel on short notice and work sixty and even eighty hour weeks, including early mornings, evenings, and weekends. In neither workplace does the ideal worker take time off for childbearing or lactation. Nor does such a worker take sick children to the doctor, leave work at three o’clock in the afternoon to drive a child to ballet, or take phone calls during meetings because this worker is the baby-sitter’s initial point of contact. The ideal worker can arrive at work at 7 a.m. and not leave until 8 p.m., even if that means leaving home when children are still asleep and returning when they are on their way to bed. In other words, this worker does not have primary or even equally shared responsibility for dependents. This worker is hopelessly gendered—it goes without saying—as male.

No doubt many men reading this description of market work recoil from it and reject their embodiment of such “ideal workers.” They are not, nor do they wish to be. Indeed, early in *Unbending Gender*, Williams points out that the primary beneficiaries of the ideal worker are employers; increasingly fathers no more than mothers (and childless men no more than childless women) want to be confined to “gray lives of hard labor.”²³ Yet her most devastating critique is to

22. *UNBENDING GENDER* is mainly an analysis of work/family conflict and gender performance in the United States. Some parts are comparative, in particular, contrasts between European and American subsidies for child care and a consideration of Latin American feminist rhetoric. See *UNBENDING GENDER*, *supra* note 7, at 49, 51, 100, 232-33, 235, 236, 238-39, 240.

23. See *id.* at 59. Hours required in the work week have been steadily increasing in both the blue- and white-collar contexts. See *id.* at 50-51. One interesting British study found that “employers build gender into the way they structure hours: in male

show how it is overwhelmingly men who embody the ideal worker. First, the ideal worker is not burdened by a proportionate share (say fifty percent) of family work.²⁴ Second, and crucially, the ideal worker is actually *supported by* the family work done by another adult. This distinction proves essential to why, although not all men can, do, or seek to perform as ideal workers, overwhelmingly it is *only* men who are capable of doing so (a crucial point in the liberal realm of choice). While some women can avoid primary responsibility for dependents, either by remaining childless or by finding a mate willing to share family work, the great majority of women cannot access the flow of domestic labor so crucial to performing as an ideal worker.

In jobs structured around a flow of family work men have but women don't, women must choose between work and family while men can have both. Nine out of ten men in upper-level corporate management have children and a nonworking spouse. As Deborah Rhode has pointed out, most female executives have neither. Almost one-third of women in senior positions, but only 6 to 8 percent of men, never marry. Only about 30 percent of women in senior positions have children, as compared to 90 percent of men. Ninety-three percent of married women lawyers have spouses who work full time, a disproportionate number of them as high-level professionals; these husbands do not provide their wives with the flow of family work available to the nearly half of married male attorneys who are married to housewives. Female executives also tend to be married to same-class males who work full time, but the men are often married to homemakers. A recent DuPont study found that its male executives are now *more* likely to have an at-home wife than they were ten years ago.²⁵

Students are often stunned when I share these realities in discussions of marital property and Feminist Jurisprudence. But if some male students are alarmed by these statistics, women students find these prospects utterly chilling. Most young women in law school have always been peers with male classmates. Yet, given their self-articulated goals of marrying other professional males, they confront the fact that their professional futures as mothers will almost certainly be different from their male classmates' economic futures as fathers.²⁶

jobs, they achieve flexibility through overtime; in female ones, they do so through part-time work." *Id.* at 82 (citing T. BEECHY, A MATTER OF HOURS: WOMEN, PART-TIME WORK AND THE LABOUR MARKETS (1987)).

24. "[T]he ideal worker is defined as someone with immunity from family work." *Id.* at 24.

25. *Id.* at 72-73 (footnote omitted).

26. Interestingly, a much higher proportion of male students express openness

Unbending Gender argues a persuasive case for the proposition that, as long as workplaces are organized around employers' demands for men's bodies and social capacities, the ideal worker inevitably will remain a gendered creature.²⁷ "The result is a dominant domestic ecology that enhances men's market potential while eroding women's. Fathers earn 10 to 15 percent *more* than men without children, while mothers earn 10 to 15 percent *less* than women without them."²⁸ With her revelation of the ideal worker, Williams strongly suggests that mothers' marginalization is not the result of their individual choices, but rather workplace norms that she argues constitute illegal discrimination against women.²⁹

Williams also uncovers traces of the ideal worker norm in family law. When mothers do part-time work, leave partnership track for mommy track, or seek lower paying service jobs over blue-collar ones, they often do so after a period of trying to balance market and family work. Sometimes mothers' leaving/marginalizing results from joint decisions with their husbands to maximize family income with male earning power while sustaining a mutually desired quality of child care.³⁰ But Williams' research shows that women's decisions are neither mutual nor explicit:

I have found that when mothers quit, they often say that it was because "it just wasn't working": everyone was grumpy and rushed, there never seemed to be anything clean to wear or anything for dinner, every childhood illness created a family crisis of who would miss work. Not that many of these things related to family work. When a mother stays home "because it just wasn't working," she

(although typically not preference at our very feminist school) to having a wife stay at home than female students indicate that they would desire a stay-at-home mate. Rhona Mahony argues that this is an essential dynamic to women's economic marginalization. See generally RHONA MAHONY, *JUST KIDDING OURSELVES: BREADWINNING, BABIES, AND BARGAINING POWER* (1995).

27. Williams explains how the mechanisms of exclusion from blue-collar jobs differ from those in white-collar work. Whereas women typically have little trouble stepping onto the job ladders for managerial and professional positions, typically they are excluded up front from blue-collar positions by three types of masculine norms: equipment and industrial processes designed around men's bodies, schedules designed around men's access to a flow of family work from women, and eligibility for the jobs defined in terms of masculine gender performance. *UNBENDING GENDER*, *supra* note 7, at 76.

28. *Id.* at 125. Children can be seen as almost a proxy for access to family work.

29. "Employers discriminate against women when they structure work to require employees not only to be competent but also to have gender privileges typically available only to men." *Id.* at 76.

30. "The sense that child rearing demands a mother's presence reflects, in part, the very practical point that children can miss out on important learning and social opportunities if their mothers as well as their fathers perform as ideal workers." *Id.* at 34.

avoids the increased level of conflict often found in households where men are required to do significant amounts of domestic work. Instead, her husband receives the clean clothes, meals, and childcare required to support his ability to perform as an ideal worker.³¹

Whether it is an explicitly joint decision or an obscured resolution of an unarticulated gender dynamic, women's concern for child care and the resulting workforce marginalization finds strong cultural support—until divorce. At that point, mothers often find their claims to distribution of the marital estate measured against ideal worker norms rather than caregiver norms.

In the average divorce the major family asset is future wages.³² Moreover the home is sold, either initially as part of the estate distribution, or subsequently because of the mother's inability to meet mortgage payments on her own.³³ Distribution of the family wage then becomes crucial to each party's economic future. Williams unpacks how the ideal worker's wage reflects the combination of (his) market work and (her) family work.

The ideal-worker norm produces a wage gap not only between mothers and others but also between men whose wives do market work and men whose wives don't. This gap reflects the fact that although men with working wives do not share equally in family work, they do considerably more than men whose wives stay at home. This leaves the husbands of housewives free to 'go the extra mile' at work.³⁴

Strikingly, Williams shows that this dynamic continues *after* the divorce. "[I]n the nearly 90 percent of divorces where mothers retain

31. *See id.* at 33.

32. "Very few divorcing families have substantial property because most have invested in the ideal-worker's wage. One study found that the average family had only \$3,400 in savings upon divorce." *Id.* at 129. Because of contemporary demographics (mortgage structures and the relatively short amount of time people remain married), there is typically little equity in the family home.

33.

Less affluent wives often find that 'equal division' means they have to sell the family home so that the husband can get his equity out of it, while his children and their mother move to an apartment or smaller home in a cheaper neighborhood. One study found that two-thirds of the children of divorce move to less affluent surroundings within three to five years after divorce. Thus 'equality' is imposed in contexts where that gives wives less than they would have gotten under the old dependence-based fault system in which custodial mothers typically were given the family home.

Where the estate is a substantial one, equality goes out the window. One study found that three-fourths of wives in families where the husband owned a business or professional license received less than half of the family assets. *Id.* at 121 (footnote omitted).

34. *See id.* at 59.

custody, the father continues to be supported by a flow of family work from the mother of his children even if she is not his wife.”³⁵ Yet, despite statutes to the contrary, courts distribute future income disproportionately to the ideal worker husband.

Williams links their outcome to liberal legal theory which she argues is susceptible to the ideal worker norm. A defining characteristic of Anglo-American property ideology is the distinction between claims that stem from entitlements and claims that do not. The ideal worker is able to articulate his claims to the income in language that resonates with entitlements and property rights. He projects the income stream as a reflection of his compensated work in the market. The income paid to the ideal worker for market work is construed by courts as “owned” by him. In contrast, because her claims are now being measured against a standard she does not embody (the ideal worker), caregiving mothers find it difficult to access the language of rights. In a system that measures work against wages, caregiving mothers find it difficult to show how their uncompensated family work supported the family wage. The value of her family work disappears, as does her apparent entitlement to the wage. Deprived of the language of market work and property entitlements, mothers often end up defending their claims in the language of need. Her claims to distribution are represented as charitable ones.³⁶ Williams identifies this as a critical rhetorical shift with devastating material consequences.

The result is a system that places men’s claims in the nondiscretionary realm of property, while it relegates women’s and children’s claims to the discretionary realm of family law. This means that women’s and children’s claims are dependent on courts’ willingness to redistribute a man’s property. Given Americans’ reluctance to redistribute wealth, this gendered allocation places women and children at a severe disadvantage.³⁷

Although the ideal worker’s wage was, and will continue to be, the product of two adults, courts award it to only one.³⁸ At this stage, choice delivers the final blow. Many divorced mothers find

35. *Id.* at 9. Significantly, Williams notes this is also true “[i]n virtually *all families headed by never married mothers.*” *Id.* (emphasis added); *see also id.* at 126-27.

36. *See id.* at 120; *see also* Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 *STAN. L. REV.* 221, 249-50 (1999) (examining rhetoric of rights versus charity in claims made by formerly enslaved persons).

37. *See* UNBENDING GENDER, *supra* note 7, at 120.

38. “Thus, a wife is entitled to half an estate if that is necessary to meet her reasonable needs. But she is not entitled to half if her needs can be met with less.” *Id.* at 121. This preference for need-based assertions is reflected in alimony statutes. *See id.* at 122.

themselves blamed for what was once applauded when they were married—their efforts to meet norms of parental care. What were family decisions to distribute market and family work are reconstrued as *her* choice. Accordingly, his economic future should not be burdened by her prior choices.³⁹ At divorce, as in the workplace, women suffer economically for their inability to meet the ideal worker standard.

In defining the ideal worker norm, *Unbending Gender* exemplifies rich uses of gender theory. It offers a satisfying and grounded account of how the ideal worker is embodied as male. As she works her way through immense piles of data, statistics, and anecdotes, Williams identifies the contours of a complex gender ideology she calls domesticity. She proffers domesticity as an essential tool in the economic construction of gender. A standard feminist account of nineteenth-century gender patterns holds that with industrialization and urbanization men's work increasingly moved out of the household.⁴⁰ This introduced a critical distinction between the paid work that men now performed outside of the home and the uncompensated work that women continued in the household. Moreover, with the rise of a market for consumer goods, women decreasingly produced the actual goods used in the household. Women found their work increasingly invisible as such. Williams shows that this physical and demographic shift was accompanied by a

39. "Courts typically do not require husbands to pay alimony in amounts that would diminish the husband's lifestyle." *Id.* at 122. Williams identifies another powerful rhetoric at work in women's marginalization: the idea of the "clean break." "A central thrust of the no-fault revolution was to introduce the view that divorce was simply the unfortunate break-down of a love relationship; once the marriage was dead, both parties should be free to make a 'clean break' and a 'fresh start.'" *Id.* at 127. But Williams argues "[m]others have always understood that having children decreases future freedom. Fathers need to learn the same lesson. Mothers never have had the option of disinvesting in existing children in favor of having new ones. Offering this option to fathers seems equally bizarre." *Id.* at 127 (footnote omitted).

40.

We tend to think of [the breadwinner/homemaker dyad] as the traditional family, but that is a misnomer. Before the nineteenth century, it would have made no sense to think of a breadwinner, with its connotation of someone who leaves the house to work for money. Inhabitants of small family farms throughout the country, and of the great plantations of the South, raised much of their own food. They produced not only their own bread but the yeast to raise it; made not only their own clothing but the thread to sew it; not only washed the clothes but produced soap and starch for laundering.

In this context both parents "stayed home," but neither focused primarily on child care. To keep a household fed, shod, healthy, and housed required the full-time work of both parents—and of the children as well. Apart from a very small elite, men, women, children, apprentices, and servants worked side by side to produce much of what they needed to live.

Id. at 20 (citing JEANNE BOYDSTON, HOME AND WORK 10-20 (1990)).

new gender ideology:

Domesticity introduced not only a new structuring of market work and family work but also a new description of men and women. The ideology of domesticity held that men “naturally” belong in the market because they are competitive and aggressive; women belong in the home because of their “natural” focus on relationships, children, and an ethic of care. In its original context, domesticity’s descriptions of men and women served to justify and reproduce its breadwinner/housewife roles by establishing norms that identified successful gender performance with character traits suitable for these roles.⁴¹

Like many feminists, I had (blissfully) relegated the cult of domesticity to the nineteenth century. However, *Unbending Gender* reveals its on-going normative power. Many of us are often somewhat perplexed by the continued grip of conventional masculinity and femininity in our culture. As Williams points out, “[f]eminists sorely need a theory of conventionality.”⁴² Domesticity offers one.

Domesticity associates masculinity with earning power outside of the home, and femininity with the unpaid provision of care within the home.⁴³ Many men as well as women would prefer the “daddy track,” but fear loss of masculine identity.⁴⁴

A recent literature review concluded “[v]irtually all men believe that being a good father means first and foremost being a good provider.” [One] study of dual-earner families found that both men and women attach different meanings to the employment of wives than to the employment of husbands. Reports from men indicated that, even when their wives were employed, they still felt a special obligation to provide.⁴⁵

Domesticity’s ideal of a breadwinner/homemaker dyad increasingly is unavailable for most families. Yet it remains normative. For instance, a recent study found that

most women (83 percent of women and even higher a percentage of child rearing mothers) felt their husbands should be the primary providers (even when economic circumstances made this

41. See *id.* at 1 (citing NANCY COTT, *THE BONDS OF WOMANHOOD* 63 (1977)). Williams notes that the cult of domesticity was more of an ideological construct than a sociological description. It was widely aspirational though, far beyond its descriptive power. See *id.*

42. *Id.* at 246.

43. This understanding of masculinity illustrates gender’s economic as well as erotic dimensions.

44. “[T]he association of masculinity with breadwinning, so that manhood became contingent on success in market work, was a sharp shift whose significance is often underestimated.” *Id.* at 25.

45. *Id.* at 27 (citing JEAN L. POTUCHEK, *WHO SUPPORTS THE FAMILY?* 4 (1997)).

impossible) or had husbands who were primary providers (even when they regretted this). In other words, even among women who work, few are breadwinners. The data linking men with breadwinning are even more dramatic. Roughly three-fourths of men in dual-earner families either performed as breadwinners or wished they could. Those who didn't included few fathers.⁴⁶

Meanwhile, contemporary women continue down the paths of their nineteenth century sisters—to leave or to cut back on market work in order to work for the home. Although most women do market work, it has not come to define femininity in the ways it continues to define masculinity. “A 1995 study found that 88 percent of the women surveyed believed it was their primary responsibility to take care of the family.”⁴⁷ Women describe themselves as homemakers, even when they do market work.⁴⁸ For many women (and their men), the breadwinner/homemaker dyad remains aspirational, if not descriptive.

Domesticity supports and coerces men's market work. It associates (conventional) masculine identity with the economic sphere. But why doesn't domesticity also economically value women's domestic work, so crucial to their families and society?⁴⁹ Why is it that market work yields economic entitlements and family work does not so that at divorce, “a wife is entitled to half an estate if that is necessary to meet her reasonable needs,” but “she is not entitled to half if her needs can be met with less.”⁵⁰ Williams shows how domesticity erases women's family work as work and engenders it as noncompensable. Efforts to challenge this construction trigger what Williams labels “commodification anxiety.”⁵¹ *Unbending Gender* identifies two ways this

46. *Id.* at 27. Williams also cites Ellen Israel Rosen's 1987 study in which blue-collar women articulated their market work as “helping their husbands” so that the men could continue to believe they were the primary breadwinner. *See id.* at 28.

47. *Id.* at 31 (citing NANCY LEVIT, *THE GENDER LINE* 33 (1998)).

48.

[T]he most common approach among employed wives was the *employed homemaker*, who does not see her job as occupying a central role in the lives of her family and sees her husband as the breadwinner. In only 20 percent of the dual-earner couples studied did the women consider themselves co-breadwinners or committed workers; these women were also less likely to have children at home. *Id.* at 27 (citing JEAN L. POTUCHEK, *WHO SUPPORTS THE FAMILY?* 45-48 (1997)).

49. “Credible estimates place the value of unpaid family work at between 20 and 60 percent of gross national product.” *See id.* at 120.

50. *Id.* at 121; *see also supra* notes 32-39 (discussing the way in which property is divided during divorce proceedings and concluding that husbands are awarded the bulk of the property at issue).

51. There is a rich and complex debate on commodification. Williams notes that “[c]ommodification anxiety serves several different purposes and does not always signal the policing of gender boundaries. But it often does, in ways that rarely have been recognized.” *UNBENDING GENDER*, *supra* note 7, at 118.

anxiety manifested through domesticity: the logic of the separate spheres and emerging class pressures.

Williams establishes how the separate spheres imagery replaced coverture in delineating power between men and women. Coverture established married couples as a single legal and economic unit, which was headed by the husband. He was entitled to her property and her labor, both justified in explicitly hierarchical terms. But in the nineteenth century,

[w]ith the shift away from open hierarchy to new imagery of men and women sovereign in their separate spheres, the fact that men still owned the right to their wives' services became a fact that needed to be explained. The solution . . . was the 'pastoralization' of women's work, its depiction as the 'effortless emanations of women's very being.' The notion that women's spinning, weaving, sewing, soap and candle making, laundering, gardening, livestock tending, cooking, canning, and child rearing were not really work eliminated the need to explain why men still owned the right to such services.⁵²

Women's family work was as important as men's market work, but they were essentially different, justifying compensation of one but not the other.⁵³ Separate spheres imagery represented the home as the antithesis of the market.⁵⁴ In the separate spheres model, homes were havens from grubby markets and women keepers of civic virtue.⁵⁵ The economic rewards of market work were replaced with representations of family work as service to the nation. "Turning labor into love preserved men's traditional access to women's work by arguing that any attempt to link such work with entitlements would sully the home sweet home with market values of a 'selfish and

52. *Id.* at 32-33 (citing JEANNE BOYDSTON, *HOME AND WORK* 158 (1990)). The erasure of household work "defuse[d] the tension between the ideology of equality and the persistence of male entitlements originally described in the language of gender hierarchy." *Id.* at 33.

53. "Whereas in classical republican thought virtue referred to the manly pursuit of the common good in the public sphere, under domesticity the preservation of the republic was thought to depend on the success of women in raising the next generation of citizens in the domestic sphere." *Id.* at 4.

54. The separation of home and work is a central tenet of domesticity. The physical separation of work and home life came about in the nineteenth-century commercial and industrial economy by separating market work from family work both geographically (into factories) and temporally (into a preset "workday" in sharp contrast to earlier patterns, which interspersed work and family life.

Id. at 31.

55. "Domesticity created a symbolic world that divided into a private sphere of selfless women and public sphere of market actors pursuing their own self-interest." *Id.*

calculating world.”⁵⁶ Women’s work could not be commodified lest the home fall ill to market norms. What had been viewed for centuries as productive *work* essential to sustaining an agricultural household was represented as a labor of love, or even denied to exist.

Williams also shows how emerging class pressures joined the rhetoric of gendered virtue and service to the nation in normalizing uncompensated mother care.⁵⁷ She points out that children had longed been raised by adults who were not their parents, relatives and servants.⁵⁸ But as the class structure shifted, families became more concerned about market-provided childcare.

Mothers stayed home both to signal class directly, for “ladies” did not work, and to transmit middle-class status to their children. This was part of an important shift in the organization of class. So long as this remained true, upper-class parents felt they could rely on servants to raise their young, because the crucial education consisted of class-appropriate decorum. That, and money, ensured that children would step into their parents’ social position. With the rise of the middle class, in sharp contrast, class status depended on parents’ ability to transmit skills, because each generation had to earn its living on its own. This engendered the “fear of falling”: the fear among middle-class families that their children would not develop the self-discipline and skills needed to gain personal access to middle-class life Thus arose the sense that mothers should care for their own children.⁵⁹

Domesticity became a central middle-class value; mothers found themselves the buffer between children and class slippage.⁶⁰ Under these circumstances, market care could not be trusted to ensure children’s futures.⁶¹ Williams argues that domesticity yielded the

56. *Id.* at 117 (footnote omitted).

57. Williams notes that today, while there is a rhetoric of distrust for child care, within individual families fathers are more comfortable defying cultural norms and delegating child care to the market than are mothers.

[W]hen mothers refuse to follow docilely in domesticity’s care-giver role, a game of chicken emerges in which fathers advocate higher levels of delegation than mothers consider appropriate. The classic example is the high-status father who advocates hiring two sets of nannies to give sixteen hours of coverage so that no one’s career is hurt.

Id. at 53. Elsewhere Williams speculates that “[b]ecause 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.” *Id.* at 124.

58. Williams describes Harriet Beecher Stowe’s upbringing. *See id.* at 20-21.

59. *Id.* at 35.

60. “Domesticity not only makes mothers the primary delivery system for services to children; it also links access to middle-class status with conventional gender roles.” *Id.* at 34.

61. “If child care is in the market, then it is consigned to the market realm, where strangers pursue their own self-interest.” *Id.* at 32.

same allocations as coverture. In both instances, it enabled men to claim rights to their wives' labor but in rhetoric consonant with emerging norms of men and women as equals.⁶²

Today, the ideology of gender equality is even stronger. And so, not surprisingly, is commodification anxiety. Importing market values into relations between family members (or at least husbands and wives) continues to be repugnant. Williams detects modern day commodification anxiety in recent divorce cases⁶³ as well as in the rise in rhetoric about fears of day care.⁶⁴ Domesticity's denial of family work as (potentially compensable) work is even more critical. Contemporary images erase family work through the rhetoric of parental care. One can detect elements of both the separate spheres and class anxiety in the following:

The notion that mothers' family work is not "work" serves to gloss over the fact that mothers at home not only care for the kids but clean the shirts. When a wife stays home full or even part time, her husband's contributions to family work typically decrease. As a result, husbands of homemakers earn more and get higher raises than similarly educated men whose wives do no market work. But women at home typically insist they are there to pay "rich attention" to their children . . . not to do the housework.⁶⁵

Women as well as men have an investment in understanding mothers' economic marginalization as a result of personal "choices" and priorities rather than conventional gender roles that continue to preserve men's rights to women's family work.⁶⁶

Domesticity is a key gender ideology that shapes women's economic relationships, whether they are doing work in the market,

62. *See id.* at 116.

63. *See id.* at 117-20.

64. *See id.* at 31-32. Later Williams notes:

[T]he imagery and reality of day care are different here than elsewhere. Where child care is prevalent and government-sponsored, it is seen as an expression of social solidarity and national investment in the next generation. In sharp contrast, in the United States, day care is seen as an expression of the market.

Id. at 49. She points out, "If teachers are not strangers, why are caregivers?" *Id.* at 32.

65. *Id.* at 33 (footnote omitted); *see also id.* at 125 (reiterating that the family work of wives allows husbands to concentrate more fully on market work, thereby increasing their value in the work place).

66.

The men, of course, get even madder, for feminists are reopening conflicts where men not only won the battle but the right to describe the war. For some outsider to barge in and define their hard-won career as the result of gender privilege, particularly when his own wife describes the situation as the result of her free choice, is maddening, especially in a culture where one of the key gender privileges men enjoy is the privilege of describing themselves as living in the most equal of worlds.

Id. at 242.

or at home.⁶⁷ In theorizing the economics of gender, Williams shows that the work/family system of power is not as susceptible to feminist organizing and coalition-building as was the sex/violence system. Unlike sexual violence, in domesticity women often do not understand themselves to be victims or subordinated. Rape and harassment are not attractive to any women; but domesticity is quite seductive for many.⁶⁸ And yet domesticity does not unite women across class, race, and sexual orientation the way that sexual violence does.⁶⁹ Instead, Williams argues the opposite. Domesticity's generation and resolution of work/family conflict exemplifies how "gender unites men but divides women."⁷⁰ In the process, it also feeds racial and class divides. Critically, both of these dynamics alienate communities from feminism.⁷¹

Assault on domesticity was a core part of feminism in the early 1960s. As Betty Friedan and others envisioned it, women would gain equality with men through market work.⁷² Importantly, Williams

67. Socialist feminists contend that the *sexual* division of labor is the precursor and prerequisite to all other divisions of labor, thereby challenging the conventional Marxist analysis of account of class struggle. See, e.g., Zillah Eisenstein, *Constructing a Theory of Capitalist Patriarchy and Socialist Feminism*, in *WOMEN, CLASS, AND THE FEMINIST IMAGINATION* 114, 114 (Karen V. Hansen & Ilene J. Philipson eds., 1990) ("It becomes necessary to understand that patriarchy (as male supremacy) existed before capitalism and continues in postcapitalist societies. And yet to say that, within the present system of power, either patriarchy or capitalism causes the other is to fail to understand their present mutually reinforcing system and dialectical relationship . . ."). For a more general description of socialist feminism see MARY BECKER ET AL., *supra* note 4, at 103-10.

68. See *UNBENDING GENDER*, *supra* note 7, at 18 (noting that 83% of women think men should be breadwinners).

69. Of course class, race, and sexual orientation shape women's relationship and susceptibility to sexualized violence. See, e.g., ANGELA Y. DAVIS, *WOMEN, RACE, & CLASS* 172-201 (1981) (analyzing the impact of racism on the issue of rape); MACKINNON, *FEMINISM UNMODIFIED*, *supra* note 5, at 217-18; Kimberle Crenshaw, *Mapping the Margins: Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991) (examining the race and gender aspects of violence against women); Leti Volpp, *Talking "Culture": Gender, Race, Nation, and the Politics of Multiculturalism*, 96 *COLUM. L. REV.* 1573 (1996) (arguing that refusing to consider race or culture in the legal system will not result in fair "colorblind" justice). But overwhelmingly in the sex/violence paradigm, women understand themselves to be disadvantaged by virtue of their sex, although often complicated by other identity characteristics.

70. *UNBENDING GENDER*, *supra* note 7, at 7.

71. See, e.g., Crenshaw, *supra* note 69, at 1242-44 (explaining how women of color are marginalized within the discourse of feminism, as well as the discourse of racism).

72.

Friedan's dream [was] of a professional job; her anger is that of a woman whose gender has blocked her from claiming the job that otherwise would be hers by virtue of her race and class. Gender has always seemed the most important axis of social power for privileged white women because it is the only one that blocks their way.

UNBENDING GENDER, *supra* note 7, at 152-53.

argues that Friedan and others envisioned that women's entrance into the workforce would be part of broader structural shifts that would lead to subsidized child care and shared allocations of market and family work between men and women.⁷³ Unfortunately, neither came to pass. "[M]others' entrance into the labor force has not been accompanied by fathers' equal participation in family work"⁷⁴ and "[t]he early feminist vision of two parents working forty-hour weeks did not come to pass; neither did the vision of child-care centers being as common and as respected as public libraries. What we have instead . . . is an economy of mothers and others, where many fathers work overtime and a majority of mothers are not ideal workers."⁷⁵ Those who continue to endorse Friedan's strategy have adopted what Williams calls the full-commodification strategy. They "delegate" their childcare to the market (almost always to a woman of a lesser class, and often different ethnicity).⁷⁶ Williams argues that this full-commodification of childcare does not challenge the essential structure of domesticity and results in several conflicts.

First, not surprisingly, such a resolution pits ideal worker women against caregiver women over the value of family work.⁷⁷ Williams describes "the mommy wars" as, increasingly, women are performing as ideal workers.⁷⁸ While most women fall somewhere in between the poles of ideal worker women and mothers who do no compensated work outside the house, "[t]hese infinite gradations are divisive, as each woman judges women more work-centered than herself as insensitive to her children's needs, and those less work-centered as having 'dropped out' or 'given up.'"⁷⁹ Many feminists have pointed out how the market delegation solution remains insensitive to the issue of who will care for the children of the child care workers. This foments race and class divisions among women. But *Unbending Gender*

73. "Friedan strategically avoided issues such as child care in the beginning of the sex-role revolution" but later sought structural changes in the workplace, the home, the family, and marriage. *Id.* at 44-45.

74. *Id.* at 45.

75. *Id.* at 63. It does seem that they could have taken a cue from working-class women of all colors about the unyielding nature of work/family conflict.

76. I am conscious here of how the language of delegation itself establishes a "responsibility" with women that is then assigned to someone else. In this sense it reinforces the image of child care and other family work as women's obligation.

77. *See id.* at 145. "Domesticity's organization of market work and family work pits ideal-worker women against women who have made a conscious, often painful, decision to reject the ideal-worker role in favor of a life defined by caregiving." *Id.* (footnote omitted).

78. *See, e.g., id.* at 146 (describing the anger of homemakers towards Hillary Clinton when she defended her decision to pursue her career and made a comment which seemed to devalue care-giving).

79. *Id.* at 147.

offers a more complex synthesis of gender, race, and class. Its analysis demonstrates the flaws in mainstream feminism's embrace of market solutions, which left domesticity intact.

Williams points out that market-provided childcare is unappealing to working-class women (of all colors) because they cannot afford consistent care of the quality they desire.⁸⁰ The only hope for working-class families to be able to offer the kind of childcare that middle-class children enjoy is through mother care or parental care. The full-commodification response to domesticity turns class disenfranchisement into poor childcare for their children. It also expresses the elitism of mainstream feminism. Williams asks:

Does the full-commodification model embed class privilege? Upon reflection, it does. Its imagery of market work as liberating and of domesticity as drudgery is framed around the kinds of jobs available to women from the professional middle class. Its vision of the market as a benign force that can enhance family life is one most often held by women with enough wealth to gain access to rewarding work and quality child care.⁸¹

Many families of color experience a similar dynamic. The fear is that children of color will experience overt racism and/or benign neglect in market care. In a variation on working-class strategies, only through parent care will a child of color be psychologically and socially equipped to confront and withstand systemic racism. For black families in particular, "[b]ecause one of the key expressions of white supremacy, from slavery until today, is the assault on the black family, African-Americans have often seen the preservation of family life as a deeply important political goal."⁸²

For non-elite and non-white women, mainstream feminism's endorsement of full-commodification does not offer viable or desirable solutions to their work/family conflict. In addition, mothers in these communities may feel alienated from feminism's

80. As Bonnie Thornton Dill describes in roundtable II, many black women in rural areas have complex networks of relatives. See *infra* transcript of Panel II: Who's Minding the Baby? "In general, child care used by middle-class parents emphasizes child development and learning opportunities, while working-class parents often can afford only the most basic services from unlicensed providers." UNBENDING GENDER, *supra* note 7, at 154 (footnote omitted).

81. *Id.* at 150.

82. *Id.* at 165. For a more general description of the treatment of enslaved families, see *id.* at 164-65. Based on this, Peggy Davis has argued for the constitutional recognition of families. See PEGGY COOPER DAVIS, NEGLECTED STORIES: THE CONSTITUTION AND FAMILY VALUES 9 (1997) (drawing upon stories of individuals who sponsored the Fourteenth Amendment to show that they viewed the rights of family as a fundamental part of defining freedom and citizenship). Williams describes similar insights by other women of color. See UNBENDING GENDER, *supra* note 7, at 167-68.

criticism of the nuclear family. Families in marginalized communities are often havens from demeaning class dynamics and/or racism. The feminist endorsement of ideal worker strategies and market solutions does not take full account of the race and class dimensions of domesticity. And with its recommendation for women to leave family work to the market, the full-commodification model may appear to devalue such work, alienating caregiving women of all backgrounds.⁸³ Instead of being unified, women can be deeply divided by their relationship to domesticity and market-based solutions. So can men.

By associating masculinity with breadwinner status, the norm of domesticity has devastated working class and non-white men. Part of what enabled working-class men to be in solidarity with elite white men (as opposed to men of color who shared their class interests) was that they could embody the dominant cultural image of masculinity. Williams reminds us that

[f]or a short period after World War II, working-class men in good blue-collar jobs could deliver the “good life”—the house, the car, the washing machine—on their salaries alone, or with only intermittent, part-time work from their wives. Those days are gone. The family wage today is what it was originally: a prerogative of the middle class.⁸⁴

Many can no longer find “ideal worker” jobs, and for those who can, the economic rewards are not what they once were.⁸⁵ Unfortunately, the bitter residue of class disfranchisement has often been digested as anger against people of color and women for “taking their jobs.”⁸⁶ Although some of these men publicly express frustration as opposition to affirmative action or xenophobia, *Unbending Gender* argues that they privately understand their class disfranchisement through racialized gender disfranchisement.

“I know she doesn’t mind working, but it shouldn’t have to be that way,” said Doug, [a] white thirty-year-old forklift operator. “A guy

83. “In the popular imagination, feminism still is linked with the glorification of market work and the devaluation of family work.” *Id.* at 41.

84. *Id.* at 153.

85.

Blue-collar males have seen their hourly wages shrink since 1978. . . . Even when employed, working-class men today often earn less than their fathers. . . . Today’s working class men were born a generation too late. Their fathers could, with luck, deliver the basic accouterments of middle-class life—the house, the car, the washing machine. Today they can’t.

Id. at 29.

86. At least with regard to gender, Williams’ data show that: “The best blue-collar jobs, in precision, production, and craft occupations, have the largest concentration of white males of any job category. White females hold only 2.1 percent of such jobs. Black women hold about 2.2 percent.” *Id.* at 76 (footnote omitted).

should be able to support his wife and kids. But that's not the way it is these days, is it? Well, I guess those rich guys can, but not some ordinary Joe like me."⁸⁷

Thus the economics of gender (here, economic definitions of masculinity) complicate pre-existing race/class tensions.

Working class white men are only now experiencing the pressures that men of color have long suffered. In addition to the above labor and economic dynamics, many men of color can't achieve domesticity's norm of the breadwinning ideal worker because of discrimination.

The situation is particularly acute for African-American men. From emancipation on, a key way of effecting white supremacy has been to cut black men off from steady work. This pattern continues up to the present: the earnings of black men are only two-thirds those of white men, and the gap between black and white men's earnings has widened significantly since 1979. Black men's relative inability to get good, steady jobs often bars them from the provider role that provides the conventional basis for male dignity. To the (significant) extent that racial prejudice cuts men of color off from good jobs, they experience the hidden injuries of class in ways that are linked with race and ethnicity.⁸⁸

Following the work of many insightful feminists of color, Williams notes that to many black families, domesticity does not symbolize a capitulation to patriarchy. Instead, they see it as active resistance to racist assaults on the black family. Following slavery, as whites and blacks wrestled over black women's on-going role as field workers, "gender remained a battleground in the struggle over whether blacks were full people."⁸⁹ For many blacks today, "respectability" is an important signal of racial dignity.⁹⁰ Adherence to domesticity

87. *Id.* at 153. Williams also notes how blue-collar women's market work has itself resulted in more gender equity in their households, which often results in family conflict, but also challenges domesticity. *See id.* at 29-30.

88. *See id.* at 30.

89. *Id.* at 165.

In view of the symbolic and material dimensions of slaves' exclusion from domesticity and stable family life, it is hardly surprising that once slavery was abolished, freedmen not only married but also placed high priority on withdrawing wives from field work. . . . Former masters belittled freedmen's attempts to claim for black women a "true womanhood," which whites saw as appropriate only for white women.

Id. *See generally* Davis, *supra* note 36; Katherine Franke, *Becoming a Citizen: Reconstruction Era Regulation of African American Marriages*, 11 YALE J.L. & HUMAN. 251 (1999); *see also* AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE, AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION 23-45 (1988) (describing rhetoric of enslaved women, marriage, and domesticity in abolitionist rhetoric).

90. *See, e.g.*, RANDALL KENNEDY, RACE, CRIME, AND THE LAW 17-21 (1997)

remains a primary way to achieve such respectability.

Earlier, I summarized how the endorsement of ideal worker strategies achieved by market-based solutions could alienate many groups of women from feminism. In addition, when viewed through the lens of masculinity, feminism's assault on domesticity also is off-putting. The "image of men as oppressors reflects a view held by the partners of privileged men; less privileged women are more likely to see their men as vulnerable and in need of solidarity."⁹¹ In the economic arena, men of color and working class men typically are not viewed as "the enemy."⁹² While women in these communities may be actively resisting patriarchy, they often will be alienated by an undifferentiated economic critique generated by feminism.⁹³ While "anxiety [has become] a permanent feature of masculinity," class and race may intensify it in ways feminists need to attend to.⁹⁴ Through complex analysis, *Unbending Gender* shows how responses to domesticity that encompass only attack or market-based solutions generate both class and race tensions which are articulated through the rhetoric of gender wars *and* gender anxieties that are expressed through race and class anger. Both solutions cripple efforts to build feminist coalitions to solve work/family conflict.

One of the insights that this conclusion yields is that, even as gender theory sheds light on work/family conflict, so viewing gender through the lens of its economic meanings also complicates feminist perspectives on the social construction of masculinity and femininity and sexual desire. As we begin sustained investigation into work/family conflict as a site of gender production, we might learn much from comparing it to the sex/violence system of gender production. In many ways, the pull of gender in these economic encounters may be more subtle. Williams contests:

(examining the "politics of respectability" within the African American community); see also CLAUDIA TATE, *DOMESTIC ALLEGORIES OF POLITICAL DESIRE: THE BLACK HEROINE'S TEXT AT THE TURN OF THE CENTURY* (1992) (discussing how African American women writers of the late 1800s used stories of "ideal domesticity" to promote the advancement of their race).

91. *UNBENDING GENDER*, *supra* note 7, at 150-51.

92. See *id.* at 169-72.

93. See, e.g., *id.* at 171 (stating that African American feminists use a different approach than traditional feminists when demanding equality). In my own experience, black women, feminist-identified or not, are much more likely to express criticism of black men for behavior that is gendered along the axis of sex rather than economics, e.g., sexual abuse, exploitation, infidelity, emotional capacity, black "machismo," sensitivity, etc. When describing the economics of gender exploitation, like white women, black women emphasize their position in comparison to white men. For black feminists, when focusing on the economics of gender, it is typically not the men of their own community who are identified as the problem.

94. See *id.* at 26.

Gender power may well feel like men with their feet on our necks in the context of rape, domestic violence, and sexual harassment, but in the work/family context it more often feels like a force field pulling women into traditionally feminine roles by making them implausible in traditionally masculine ones.⁹⁵

Exploring the economic production of gender will also enrich understanding of how the erotics of economics emerge and function.⁹⁶

Also, the sex/violence axis emphasizes how gender unites women.⁹⁷ Engaging gender in its economic meanings requires considering how gender *divides* women: working mothers versus stay-at-home mothers (or mothers who *wish* they could stay at home); those who hire others to care for their children and those who *care for* those children while their own receive lesser care; differing norms of visions of the home as a “gender factory of oppression” versus visions of the home as a haven from a racist or capitalist world. In all of these contexts, women find themselves at odds with each other as well as men, negotiated through gender discourse.

One of the strengths of *Unbending Gender* is its attention to rhetoric and discursive structures. Williams identifies several debates that have fallen into a discursive loop. One of the most significant interventions is into the sameness/difference debates. She offers rich (and fair) descriptions of special treatment and formal equality feminists, reconsidering and linking key debates that previously had been viewed through discrete lenses. *Unbending Gender* posits what Williams calls “reconstructive feminism,” which self-consciously builds on earlier models.⁹⁸ She envisions feminism evolving into a language

95. *Id.* at 248. Understanding the economic aspects of masculinity and femininity also yields insights into the nature of desire itself—why masculine sexiness even today is so often linked with market success.

96. *See, e.g., id.* at 128 (describing how the desirability of women in a marriage may decline as they get older whereas the desirability of men increases because of men’s acquisition of wealth at an older age).

As Lloyd Cohen puts it, “[W]omen in general are of relatively higher value as wives at younger ages and depreciate much more rapidly than do men,” in large part because “physical beauty and sexual attractiveness of women, while subjective in nature, is a sharply inverse function of age.” Feminists would agree, although they attribute this phenomenon to the fact that different things are eroticized in men. This practice increases the desirability of successful older men while decreasing the desirability of their wives. Statistics show that men in general find it easier to remarry than do women; successful men probably enjoy even greater comparative advantages.

Id.

97. *See supra* note 5 and accompanying text (illustrating how women share similar sentiments on the issue of violence).

98. “From sameness feminism it draws its vision of equal parenting; from difference feminism it draws its respect for family work.” *See UNBENDING GENDER*,

of persuasion. “The twin goals of reconstructive feminism are to use domesticity in strategic and self-conscious ways to destabilize it from within.”⁹⁹ Rather than attack domesticity, she investigates its potential rhetorical power, and concludes feminists should endorse “domesticity in drag.”¹⁰⁰ These insights and arguments are provocative, and will stimulate much debate in the feminist community.

Throughout *Unbending Gender*, Williams makes arguments to challenge and resolve work/family conflict in ways that are beneficial to women, men, and children. She starts by inviting public debate about appropriate norms of market and family work.

We need to open a debate on how much parental care children truly need given the trade-off between providing money and providing care. A good place to start is with the consensus that children are not best served if both parents are away from home eleven hours a day. This means that the jobs that require fifty-hour workweeks are designed in a way that conflicts with the norm of parental care.¹⁰¹

Unbending Gender challenges the ideal worker standard from the “market-side” and the “family-side.” First, she shows how Title VII and other workplace law should construe the ideal worker standard as sex discrimination.¹⁰² Similarly, she offers recommendations for reform of divorce law.¹⁰³ Finally, she confronts commodification anxiety head on.¹⁰⁴ She argues that feminists ought to take a fresh look at commodification and its potential effects.¹⁰⁵ Williams’ goals

supra note 7, at 141 (footnote omitted).

99. *Id.* at 198.

100. *Id.* at 198-99.

101. *Id.* at 53.

102. *See id.* at 101.

Domesticity’s organization of market and family work leaves women with two alternatives. They can perform as ideal workers without the flow of family work and other privileges male ideal workers enjoy. That is not equality. Or they can take dead-end mommy-track jobs or “women’s work.” That is not equality either. A system that allows only these two alternatives is one that discriminates against women.

Id. at 39. She asserts that “[a]n effective test for whether a flexible policy marginalizes the workers who use it is to see whether men as well as mothers use it, for virtually no men will use policies that offer flexibility at the price of marginalization.” *Id.* at 275.

103. “Once family work is acknowledged as *work*, a new rationale emerges for income sharing after divorce: An asset produced by two people should be jointly owned by them.” *Id.* at 125.

104. “The issue is not over *whether* the family wage will be owned, but over *who* shall own it.” *Id.* at 132 (emphasis added).

105. Williams argues that

the legal literature on commodification rarely notes that women’s key problem has been too little commodification, not too much. While too much

for reform are admirable if ambitious; she argues “a system of restructured work would yield children raised by two parents, rather than by an overburdened and absent father and a marginalized and economically vulnerable mother.”¹⁰⁶

This Symposium was convened to consider *Unbending Gender's* description of the economic meanings of gender and the implications of its proposals. We convened three roundtable sessions, each designed to address a particular aspect of the economics of gender. The first session, “Redesigning Paid Work and the Benefits Related to It,” takes on Williams’ notion of the ideal worker. Participants in this session argued about the normativity of the ideal worker, thus expanding the discussion beyond the workplace and into the structure of social benefits and the tax code. This roundtable squarely confronted Williams’ paradigm: choice or discrimination? (Or something else entirely?) Should feminists permit choice to appear as the showstopper it is in liberal theory? Participants engaged the class dimensions of work/family conflict, often disagreeing about their manifestations and sources. Participants also debated whether domesticity is an accurate and helpful description of work/family conflict and whether it has continued into the twentieth century, albeit in the different form posited by *Unbending Gender*.

The second session, entitled “Who’s Minding the Baby,” turned our attention to how working women and families grapple with child care needs. Participants vigorously debated where feminists should focus their energies. Some disagreed with Williams’ proposals, arguing that work/family conflict ineluctably follows from the political decision to privatize dependency; once the burden of caretaking is shifted to the family, then by default women disproportionately will take on care-giving work. They argued that feminists should emphasize changing the relationship of the family to the state. More moderate reforms would merely make socialist subsidies less feasible and act as a palliative, thereby “skimming” elite women and leaving feminists politically weakened. Some members of the audience felt strongly that feminists should continue to endorse the delegation of childcare to the market. Participants also identified and compared the strategies that different class and racial groups use

commodification has the potential for harm, so does too little: women’s historic poverty stems in significant part from the way successive legal regimes have turned their labor into love, leaving property the province of men.
Id. at 118 (footnote omitted).

106. *Id.* at 100.

to resolve work/family conflict. Of particular interest were the rich variations they noted in the very language used to describe the conflict. Participants also were asked to consider Williams' argument that communities of color respect family work as important political work to sustain community and shield children from racism versus the mainstream feminist representation of the gender factory.

Finally, the third roundtable session considered how an analysis of the economics of gender fits within feminist legal theory more broadly. This contentious session tackled the methodological and ideological commitments feminists should be undertaking in the twenty-first century. Panelists raised questions about the relationship of feminism to what I call "market logic": Should feminists utilize law and economics?; Is the ideal worker inevitable in late capitalism?; Ought feminists take account of profits in our critiques? Panelists also debated the dangers and advantages of commodifying women's domestic work and whether there should be a single feminist approach to commodification (and if so, what might that be). Finally, the panel debated the normativity in feminist theory of what Martha Fineman calls the sexual family. Some argued that there was the tension between Williams' assumption that the heterosexual family is a social and economic norm and destabilizing that same family. Relatedly, concerns were expressed about the normativity of child rearing itself. This led to the larger issue for feminist theory about whether using children's welfare to argue for women's equality retreats from asserting that women's welfare should be defended on its own terms. Also, might such rhetoric alienate feminists who have chosen to be childless? Both of these implicate whether feminists should be trying to re-socialize gender roles. This implication leads to the larger goal of the Gender, Work & Family Project and this Symposium—to consider how gender might appear more complex when filtered through both the axis of feminist work linking sexual desire and social power and the axis stressing the economics of gender.