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Work, Welfare, and Women's Role as Mothers

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During the twentieth century, public dialogue regarding women's roles in society shifted dramatically. Welfare and labor laws passed during the Progressive Era reflected pervasive views of women's primary role as mothers and justified restrictions on women's labor force participation under the guise of protecting children. Social welfare policies demanded that a woman's duties to her children required her presence in the home and buttressed support for state assistance. However, as the demand for equality and images of working women began to pervade public and legal disputes over earlier law and policy, policies originally aimed at protecting children by keeping women at home increasingly demanded that women enter the workforce to protect their children by working outside the home. By the end of the twentieth century, welfare policies would stipulate a woman's duties to her children required her presence outside the home, in the workforce, obviating the need for state support. While history, economy, and technology all contribute to the changing image of women in labor and welfare laws, the impact of the women's movement on welfare and labor policy should not be understated:

Discussions of women's capabilities and legal rights to work were echoed in the dismantling of labor legislation and welfare policies in the second half of the century.

Suffrage had given political existence attendant with political voice to women, engendering and emboldening a new movement for women. Two groups of women emerged, one committed to preserving women's place in the home and protecting them

from the vagaries of the market, the other committed to undermining the protections and liberating the market for women's full participation. The first recognized the contextual arrangements and barriers that women faced as mothers and caretakers and was reflected in their struggle for welfare and labor protections. This group called for legislative and judicial protections that treated women fairly. The second group, however, sought to capitalize on newfound citizenship privileges by demanding both legal and social equality. These women placed the locus of women's marginalization on existing legal structures that treated them differently than men. Therefore, they sought *de jure* and *de facto* elimination of barriers that kept women from participating fully in the marketplace. In so doing, their aim was to undermine notions of women solely as caretakers of the home. Their demands failed to recognize poor women's needs in society.

The competing demands for policy regarding women and work bring to focus the dramatic divide in the women's movement following suffrage, staging the battleground for the fifty-year struggle for an Equal Rights Amendment (ERA) and attempts to garner support for it.

This paper analyzes the outcome for poor women as dictated by welfare law in the struggle to establish equality for women. Our study illuminates the structural problems generated by the establishment and implementation of both statutory and case law that ignore real needs and the economic diversity of women. The tensions created by the two visions of women – worker and mother – manifested themselves through competing policy and legal aims of securing equality and protecting motherhood. This research is a first step in evaluating the impact of the equality movement during the twentieth century on policies advancing the protection of women as mothers.

The Suffrage Movement: A House Divided

United in the cause for voting rights, the women's movement split soon after ratification of the Nineteenth Amendment. The struggle between the two movements staking claims on "women's rights" that emerged was unavoidable. However, the foundation was cracking even before women had secured the right to vote. In defense of protective legislation (including the welfare policies of the Progressive Era), progressive organizations including the Women's Christian Temperance Union (WCTU) and the Women's Trade Union League (WTUL) organized to promote the "fair" treatment of women while the National Woman's Party (NWP) struggled for equal treatment of women. The two goals in contention made the realization of either goal much more difficult. Those seeking equality intended to strike down all legislation that treated women differently from men and interfered in their right to work and contract; those adhering to the traditional notions of women as caretakers of the home and mothers sought policies that would treat women fairly to protect them from the abuses of the market.

In Pursuit of Fairness: Welfare and Labor Legislation

The crusade for fairness was conducted through protection under the paradigm of separate spheres, promoting the notion that women's maternal nature and "the sexual division of labor" were eternal (Zimmerman 1991, 192). Progressive reformers demanded special protective legislation, which characterized women as dependent and in need of state protection, capitalizing on the separate spheres and maternal roles

embedded in American culture at the time. Reformers wanted to preserve and expand protective legislation through the use of state police powers by framing the debate in terms of harms to mothers and children by the forces of capitalism (Mansbridge 1986, 8). Advocates believed social policy for women would help prevent juvenile delinquency.

The movement, under the direction of the progressive reformer and National Consumers League (NCL) General Secretary, Florence Kelley, adopted a two-pronged approach to preserve protections for women: the first as legislative efforts and the second through the courts. The judicial branch proved to be an important outlet for reformers seeking protection. The first case came on the heels of *Lochner v. New York* (198 U.S. 45, 1905), in which the Supreme Court held New York's maximum hours law for male bakers unconstitutional as an "unreasonable, unnecessary and arbitrary" interference with the liberty of contract and therefore void under the Constitution. Kelley enlisted the support of future Supreme Court justice and then-lawyer Louis Brandeis to submit the "Brandeis brief" in support of the Oregon law limiting women's work hours in *Muller v. Oregon* (208 U.S. 412, 1908). The Brandeis brief argued that overwork and fatigue were dangerous for the health of women, emphasizing the importance of women as mothers of the race (Zimmerman 1991, 199). The approach was overwhelmingly successful, as the Court upheld the restrictions rooted in the belief that the difference between the sexes justified a different rule respecting hours of labor. The Court conclusively asserted, "Men and women remain men and women forever" (*Muller v. Oregon* 1908, 422-423). As Kelley struggled to erect policies to protect women and children, she dubbed the burgeoning struggle for equality "topsy – turvey feminism" (Mansbridge 1986, 8) as it proceeded to undermine her accomplishments.

Social Welfare Policies

The evolution of welfare in the United States is intertwined with shifting notions of women as both mothers and providers in American society. Early social policies were created to protect women who, it was assumed, were mothers left impoverished by the death or disability of their husbands. The assumption during the early 1900s that “virtually all women would marry, remain domestic and be supported by their husbands imbued virtually all our welfare programs” (Gordon 1994, 3). Thus, early welfare policies by design, kept women from entering the workforce and emphasized the notion that proper women’s work consisted of duties in the home. State and local governments provided the first assistance during the 1910s and 1920s in the form of mothers’ aid. The sentiment toward adding a workforce component to the female sphere is best summarized by the conclusion of the 1914 New York State Commission on Relief for Widowed Mothers that “no woman, save in exceptional circumstances, can be both homemaker and breadwinner in her family” (cited in Skocpol 1995, 191). The authorizations were made to single mothers to “defray the costs of raising children in their own homes and to deter child labor and institutionalization of fatherless children” (Gordon 1994, 37).

The passage of the Social Security Act of 1935 made provisions for the social welfare of poor mothers with children by including the Widows’ Pension Act and the Aid to Dependent Children (ADC) program. Perhaps seamlessly, the laws wove the normative family into the fabric of welfare, construing poverty as a result of lapses in male wages. Given the caretaker roles of women, the title and language of social welfare during the Progressive Era clearly emphasized providing for dependent children as the

fundamental tenet of social welfare policy (Lopata and Brehm 1986, 81; Mink 1998, 35; Skocpol 1995, 191). With Widows' Pensions and ADC, the state sought to preserve traditional family arrangements by preventing women from entering workforce activities that might detract from their roles as mothers and homemakers by compensating them for the loss of their husbands through monetary assistance programs (Skocpol 1995, 315; Koven and Michel 1990; Abramovitz 1988). The welfare policy, aiming to provide assistance to female-headed families, shifted dependency to the state in the absence of a male breadwinner so women could maintain their proper roles in the home as mothers (Skocpol 1995; Miller 1990). To ensure women would meet their obligations in the home, the policies penalized female heads of households who entered the workforce, making economic dependency a requirement for receiving state assistance (Abramovitz 1988, 28-36).

Progressive Era Labor Policies

Labor legislation for women emerged during the Progressive Era as a response to the existent conditions of work at the turn of the century. Employers felt no need to compensate women on a comparable scale to men. First, the paradigm of a two-parent family subsistent on the husband's wage was pervasive, and women's wages were perceived as "supplemental pin money"; men were the primary breadwinners (Dunn 1997; Boris 1985). Second, segregated into specific female-appropriate industries such as textiles, domestic household work, and industrial homework, women's work was deemed unskilled and therefore undervalued and underpaid.¹ Thus, women's work delivered the poorest pay and some of the hardest and most unsavory work conditions,

including long hours. The tragic irony in this was that the neediest and least politically mobile were forced to endure the worst of working conditions.

The paradigm of the Muller Court pervaded labor legislation at the time and was consistent with early welfare laws, characterizing women as mothers seeking ultimately to protect children. Reforms included regulations on the kinds of jobs women could perform, maximum hour restrictions, prohibitions on night shifts, and a prohibition on jobs requiring lifting.² As women were kept out of the factory and saddled with responsibilities of home life, many turned to industrial home work. However, reformers soon targeted home work for reform under the guise of securing a proper environment for raising children. The Women's Bureau argued that industrial home work commercialized the home, undermining "normal demands of home and children upon the housewife and mother" (Boris 1985, 745).³

In Pursuit of Equality: Rejecting Difference

Despite the early gains made by reformers seeking protections for women as mothers, suffrage represented a watershed for advocates of equality, opening an era in which full equality for women could be realized. For the most part, those pursuing equality focused their efforts on legislation and the hopes of an amendment to the Constitution demanding equal rights for women. The eventual passage of the Equal Rights Amendment (ERA) in 1972 by Congress was the result of a fifty-year struggle beginning in 1921 by women in movements stressing equality, feminism, and liberation. The vision in 1921 was to dismantle state laws and common law rules that prohibited women from full enjoyment of their newfound citizenship privileges including

restrictions on women's jury service; limits on their rights to control their own property; limits on rights to contract, sue, and keep their own name and domicile if married; and restrictions on guardianship rights over their children. The Equal Rights Amendment (ERA) was first written in 1921 by Alice Paul, and introduced into each session of Congress between 1923 and 1972, when it was finally passed and sent to the states to be ratified.⁴ Early discussions of the ERA sought to incorporate protective legislation to keep the movement from splintering, but eventually a full-scale attack was launched against it. The movement recognized that a complete abandonment of "special" legislation was necessary if women were to achieve equality with men. The paradigm for equal rights was the Fourteenth Amendment, facilitating women's full citizenship privileges, as the Fourteenth Amendment served the newly emancipated and enfranchised during Reconstruction.

For those seeking equality, protective legislation that stereotyped women as weak and "institutionalized a sex-segregated labor force" (Zimmerman 1991, 191-192) was unacceptable and incompatible with the goals of achieving true equality. The expanding notion of equality engendered demands for full citizenship rights equal to those of men.

While the struggle to establish protections for women in the labor market continued, the first signs of weakness emerged in *Adkins et al., v. Children's Hospital Of The District Of Columbia* (261 U.S. 525, 1923). The case challenged the Minimum Wage Act of 1918, which established minimum wage standards for adult women in any occupation in the District of Columbia. The government argued the standards were necessary to meet the cost of living for women workers to maintain good health and protect their morals and home life, and likened the regulations to those set for maximum

hours. The court found the two wholly unrelated in terms of health and safety concerns, asserting the standards were an unconstitutional interference with the liberty of contract. The Nineteenth Amendment, which recast citizenship as gender-free and entitling women to Fifth Amendment protections, influenced the Court to find “in view of the equality of legal status, now established in this country, the doctrine that women of mature age require, or may be subjected to, restrictions upon their liberty of contract which could not lawfully be imposed on men in similar circumstances, must be rejected” (*Adkins v. Children's Hospital* 261 U.S. 525 1923, 552). The ruling was a direct attack on the Court’s earlier holding in *Muller v. Oregon* (1908) and helped establish a legal foundation for the equality movement. History would prove even more beneficial as the call to war left an employment vacuum only woman could fill.

Working Women During WWII: Laying the Foundations for Equality

World War II brought a unique opportunity to suspend protective labor laws and renew interest in both the ERA proposed by Alice Paul in 1923 and working women. As the United States entered World War II, the government began a campaign to recruit women to fill factory and labor positions vacated as men went to serve in the armed services. Rosie the Riveter represented the mythical housewife-turned-patriot, contributing in the factories to support the war effort. Many of the protective labor policies established in earlier decades were set aside to help facilitate industry. More than five million additional women entered the labor force in 1944, breaking down the sex-based division of labor in manufacturing (Palmer 1987; Dunn 1997). The war committee’s efforts called on suburban mothers to temporarily make an exception to their

duties as mothers, but in so doing women's presence on defense industry factory lines emphasized the myth of a woman's inability to perform the functions of her husband.

While many historians claim the war transformed the economic outlook of women, others have asserted that "wars as well as other historical watersheds were superimposed on an underlying dynamic of women's increasing involvement in wage labor and their persistently marginal relationship to the labor market" (Helmbold and Schofield 1989, 504). Rosie the Riveter, it turns out, represented working-class women already in the labor market who improved their lot with the vacancies rather than the mass entry of suburban housewives (Helmbold and Schofield 1989). In either case, the shift began to undermine women's economic dependence on men and helped deconstruct the pervasive stereotype that the survival of the American family was dependent on women's presence in the home. Their employment en masse served the interests of the feminist movement that was now concentrated on ensuring women's place in the market. However, it also undermined the very foundations of the welfare legislation that sought to keep women from leaving the home.⁵ The decades following World War II were energized by a strident women's movement that had tasted economic independence and was intent on establishing women's equality.

In Pursuit of Formal Equality: A Feminist Movement

While the drive to pass a constitutional amendment was stalled by successful efforts of the reformers and unions during the 1950s and 1960s, feminists achieved statutory conciliation for formal equality. One of the key components of the feminist movement was to shift the focus from women as mothers to women as workers via

demands for marketplace equality. Their success came by way of the Equal Pay Act of 1963, requiring that similarly situated men and women receive equal pay. The act initially read, “equal pay for work of comparable worth,” but was changed to “equal pay for equal work.” The change was supported by equal rights defenders as appropriate to the continuation of equal treatment in the workforce and a deconstruction of the developing pink ghetto, while comparable worth supporters believed it would give room to employers to continue to devalue “women’s work.”

The following year Congress passed Title VII of the 1964 Civil Rights Act, which secured at least statutory protection against sexist hiring and firing practices in the work force (Ford 2002; Mansbridge 1986; Cain 1990). The act prohibited discrimination on the basis of sex by the federal government, unions, firms with fifteen or more employees, and employment agencies.⁶ Initially the act had no effect on protective legislation, but by 1970 the federal courts and the Equal Employment Opportunity Commission (EEOC) began to interpret Title VII as invalidating the legislation. The courts became major players in the debate, as Congress left the EEOC to fend for itself with enforcement, choosing adjudication over administrative action.⁷ Part of the 1972 Amendment allowed the administrative agency to bring suit on the individual's behalf.

The legislation portended the wholesale participation of women in the market. The success in enacting Title VII for the women’s movement played a role in making paid work desirable to married women. At the same time the economy was shifting from goods production to a service-based economy with opportunities for lower tier service such as retail and personal services, available for women (Dunn 1997). As a result, the 1960s and 1970s saw dramatic increases in the number of women in the paid labor force,

particularly married women. Increasing divorce rates and rising numbers of impoverished displaced homemakers made clear to full-time homemakers risks of economic dependence on men (Dunn 1997; Mansbridge 1986).

In 1972 Congress passed the Amendments to the Equal Pay Act to incorporate state and county governments; small firms not covered by minimum wage laws; and executive, administrative, and professional workers, including teachers and other professionals in education. While the legislation was initially enforced by the Department of Labor's Wage and Hours Division of Employment Standards Administration, in 1978 the responsibility was shifted to the EEOC. The federal government empowered the EEOC to investigate and work towards conciliation to bring employers into compliance with the law.

Much of the legislation passed during the 1970s was against a backdrop of ratification efforts for the Equal Rights Amendment (ERA). Although the idea of an amendment to the Constitution to secure legal equality for women modeled after the Fourteenth Amendment was first introduced to Congress in 1923, it would take nearly fifty years to come to fruition; the U.S. House of Representatives garnered enough support in 1971, and in 1972 the Senate did so as well. By 1977 the ERA was ratified by thirty-five states, just three shy of adoption; Congress extended the deadline for ratification by the states to June 30, 1982, but no state ratified after the extension was passed.

Attempts to secure equality through the courts met with mixed success and was further limited by the attempts to ratify the ERA.⁸ Feminists challenged laws that treated men and women differently in a variety of settings hoping to secure from the Supreme

Court the highest standard of review used in issues of fundamental liberties cases and classification schemes. *Frontiero v. Richardson* 411 U.S. 677 (1973) presented the court with an opportunity to include women in the suspect classification scheme and secure for women the strict scrutiny standard used in race based classifications that demand that states demonstrate a compelling interest in establishing legal classifications by race; in such cases, the burden shifts to the state to prove that its classification is supported by a compelling government interest. While the law at hand was overturned, the court fell short of one justice to secure suspect classifications and strict scrutiny for women. Justice Powell's concurrence with the four-member judgment of the court argued that it was unnecessary and inappropriate to determine whether sex was a suspect classification requiring strict judicial scrutiny, "particularly since the Equal Rights Amendment, which would resolve the question if adopted, had been submitted for ratification by the states" (692). By the mid 1970s the court had settled into a system whereby classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives (*Craig v. Boren* 429 U.S. 190, 1976).

The greatest threat and ultimate nemesis of the ERA came from politically conservative women organized to oppose the likely overturning of the protections and privileges enjoyed by American women (Delsman 1975, 59; Mansbridge 1986). Efforts to mobilize conservative groups to stop the ERA were advanced during the late 1970s and early 1980s and accompanied the presidential campaign of Ronald Reagan. Reagan expressed disdain for the passage of the ERA and placed the Republican Party for the first time in clear opposition of the ERA (Daniels, Darcy, and Westphal 1982, 581-583). The most prominent battle here was waged between those who sought to retain the

remaining “protections” for women and those who sought to eliminate them. This is not to say the political climate had remained the same. Many of the advocates for protections opposed welfare benefits to poor women without a work requirement. The conservative tenor of the times became clearer during the ratification period and subsequent discussions over welfare during the Reagan administration as discussed further below.

The failure to ratify the ERA was not a complete loss for the feminist movement. As Mansbridge (1986) explains, the debate animated the country, giving prominence to discussions of women’s equality in the workforce. As the feminist women’s success in fighting discrimination based on notions of women’s maternal roles continued, a new type of protection emerged, based on women’s capacity to reproduce rather than on their duty to the home. The pregnancy and reproductive protections were couched in language similar to earlier protective legislation, based on women’s duties to care for their born children. However, the feminist movement, now incorporating notions of superwoman, able to do it all, fought back. As a response to law and policy differentiating women based on their potential to become pregnant, Congress passed the Pregnancy Discrimination Act (PDA) of 1978, prohibiting discrimination on the basis of pregnancy. The PDA was a response to the Supreme Court’s holding in *Geduldig v. Aiello* 417 U.S. 484 (1974). The case highlights the dangers inherent in demands to be treated the same as men, a distinction the ERA movement was encountering with much difficulty.

At issue in *Geduldig* was whether pregnancy discrimination constituted sex discrimination. The Supreme Court argued California's disability insurance plan, which excluded pregnancy from coverage, was constitutional because it found that the disability plan discriminated against pregnant persons, not women per se, and pregnant persons do

not comprise a protected classification. According to Torrey, “This was not a difficult result for a Court that defines equality as treating similarly situated people the same; after all, pregnant people (women) are not similarly situated to non-pregnant people (men)” (2001, 149). Congressional response made applicable in the workforce simply held that workplaces could not discriminate on the basis of pregnancy or the ability to become pregnant.

Two decades later, the court would use similar reasoning to strike down marketplace restrictions that discriminated against women because of their potential to become pregnant in *UAW v. Johnson Controls, Inc.* 499 U.S. 187 (1991). The company’s policy demanded that women of childbearing age be sterilized so as to prevent potential harms to the unborn caused by lead exposure, forcing women to choose between their livelihoods and the biological ability to bear children. In striking down the policy, the court based its decision on the inequitable practice of “protecting” fertile women but not fertile men, an exclusionary practice that instituted sex discrimination.

The Breakdown of Fairness: Poor Women and Protective Legislation

While the promotion of formal equality and an end to protective legislation suited advocates of equality who were middle to upper class, it had deleterious effects on poor women receiving welfare benefits. Poor women were incapable of achieving the equality sought by the women’s movement because they did not have an adequate support system aside from state-sponsored aid.⁹

The drive for equality prompted changes in the construction of poor women as “deserving” mothers to the stigma of poor lazy mothers who refused to participate in the

workforce. The trajectory of changing images accompanied by the 1962 Public Welfare Amendments led to the eventual stipulation that able-bodied mothers should be working and that a rehabilitative component should be added to welfare law. The centerpiece of welfare reform was the creation of Aid to Families with Dependent Children (AFDC) under President Lyndon Johnson's War on Poverty and Great Society programs. New theories asserting that the needs of impoverished families could not be met by strictly by money informed the change from Aid to Dependent Children to Aid to Families with Dependent Children (AFDC). The change was not in name alone – the act reflected a shift in images of poor women as potential workers. The policy broke dramatically with the traditional notion of women as mothers by imposing work requirements on recipients and mandating participation in the job-training programs of the Work Incentives Program (WIN). This change transformed welfare policy from one that subsidized the reproductive and maintenance functions of “deserving” poor mothers at home to one that directly subsidized the low-paid employment of AFDC mothers (Skocpol 1995, 337-338).

The changing political views of welfare and women's role made it difficult for legislators to create policies that increased benefits to welfare recipients, but justified welfare policy that instead “focused on rules and tests for eligibility that were increasingly stringent and directed to disqualify those easiest to construct negatively” (Schneider and Ingram 1995, 226). The shift in welfare policy corresponded with changing public attitudes toward women and toward welfare recipients. Advocates of welfare reform constructed female welfare recipients as shirking their responsibilities, particularly to provide a wage from outside the home, claiming that Progressive Era welfare created a “culture of poverty” among recipients, which resulted in the refusal of

able-bodied women to take low-paying jobs to foster independence (Sidel 1996; Abramovitz 1988; Greenwell, Leibowitz, and Klerman 1998; Kintzel 2002). The view here was that poor women should heed the call for equality promoted by the women's movement and join the workforce as a means of becoming self-sufficient.

Post ERA Politics

The irony of the decade was as the feminist movement sought legal remedies to lift barriers to women's competition in the marketplace, the welfare reform movement sought legal remedies demanding that women do so. Feminists' demands for equality in law and policy were effective; framers of the new welfare were persuaded by the successes of women in the workforce that welfare mothers could and should support themselves.

The strategy was costly in the end. Women's duties as mothers in the workplace were sublimated in law and policy. The result was an informal and pervasive belief that women could and should be responsible for both. Furthermore, the spillover into welfare policy made women receiving welfare accountable to work and childrearing, women who could not afford to do both.

The collision of the competing views of women led to cultural changes throughout the 1950s, 1960s, and 1970s, and was evident in law and policy during the post-ERA years. By the mid 1980s, new conservative ideology had conflated the meaning of motherhood and a woman's responsibilities. Even as they demanded paid labor for poor mothers in welfare, policymakers promoted the domestic ideal of motherhood emphasizing the need for women to remain in the home to raise children.

The Family Support Act of 1988 amended the AFDC program with a “Family Support Program.” The law required education, training, and employment as strategies to “avoid long-term welfare dependence” (Family Support Act of 1988). The interpretation is complex: It both stressed the importance of paternal support as critical to family welfare and undermined it by demanding mothers enter the workforce. Because women comprised the vast majority of single parent households and AFDC, the work component of the amended AFDC fell overwhelmingly on them, and child support as provided by the father if available.

The message sent to mothers who were receiving aid was clear: “The single mother on welfare embodies immorality, deviancy, and the lack of will that gave rise to today’s massive social problems” (Murphy 1998). In other words, recipients were expected to perform the work of two people with fewer resources. The passage of the law and its demands on the father quelled dissent; symbolically, it illustrated congressional recognition of paternal responsibility. Yet the law failed to account for the double bind that mothers in the workforce would increasingly confront. As custodial parents, they would continue to endure the responsibilities of both work and home on their own.

Even so, welfare policy of the late twentieth century has vestiges of progressive notions of the “deserving” families as those that adhere to the traditional nuclear family with a male breadwinner and a female caregiver. No piece of legislation embodies this distinction more than the Personal Responsibility and Work Opportunity Reconciliation Act (PROWA) of 1996, of which Temporary Aid to Needy Families (TANF) was a major component. The act encouraged marriage by providing incentives allowing women of

impoverished dual-parent households to stay at home and care for their families, while compromising single women's roles as mothers by forcing them to enter the workforce (Mink 1998). In addition, the act made the receipt of aid contingent upon establishing the paternity of children born out of wedlock, thus punishing women who fell outside the traditional relationship.

The replacement of AFDC with TANF was an emphatic assertion by government that women were able to provide proper care for their children in the home and work outside the home. The vision reflected an idealized woman, based on the experiences of working, educated, professional upper- and middle-class white women who had significantly more choices than welfare recipients, the poor, and the working poor. Their cause was represented through legislation requiring equal pay and limits on discrimination based on pregnancy. Relatively speaking, their class had conferred privilege. Engaged in professional careers, these women could find day care and had skills and resources including higher education to compete in the market. Most unnerving, the new welfare policy took two competing visions of privileged motherhood, the professional mom who chose career and family and the soccer mom who chose to stay home with her children, and forced the two on poor women receiving aid. It is not surprising poor women on welfare often felt hopeless in the wake of the new law.

TANF mandated that poor mothers leave the home for the workplace through the imposition of strict caps on financial assistance and the expansion of work-force training programs like welfare-to-work (Abramovitz 1988; Albelda 2001). This focus did not solve the problem of female and child poverty, nor did it lessen dependence on the state for assistance; it instead created dire situations for women and children who were left to

pend with low-paying jobs that produced chronic occurrences of housing and food insecurity among female headed households (Burnham 2001).

Discussion: Wrestling with Equality

The demand for legal equality for women in the twentieth century has been fraught with challenges and dilemmas. While advocates for equality insisted laws preventing women from full contractual rights be eliminated and that women be compensated equally for their labor, the political and social tides swept poor women responsible for their children into the mix. In addition to the dramatic influence on social policy, the demands for market equality have been met with slow movement. Women continue to act as caretakers of the home and children, and earn significantly less than men. Attempts to change this through law are evident in the policies of the 1990s, but their effects will be slow to take hold. Under President Bill Clinton, Congress passed the 1993 Family and Medical Leave Act (FMLA), which permits both men and women workers in companies of fifty or more employees to take up to twelve weeks of unpaid leave for illness; birth or adoption; or caring for an ill child, parent, or spouse. The exceptions are notable: If the employee falls within the top 10 percent of pay scale she or he can be denied leave if the business considers the person to be essential and leave would result in “substantial and grievous economic injury.” While on its face the bill is neutral, the exceptions are dramatic. The top earners are still men, thus companies can legally keep men from their parental duties. The Office of Federal Contract Compliance Programs (OFCCP) found that on average “the highest paid woman in each company still had only the 20th highest salary in the organization” (United States Department of Labor

1999, 5). This is noteworthy as the highest-ranking woman in each company averaged two reporting levels from the Chief Executive Officer, not twenty levels from the CEO.¹⁰ The wage gap for women has improved from sixty cents for every dollar men earned in 1980, to seventy-six cents in 1997, and that number has remained unchanged according to the 2004 Census Bureau. The figures are even more disturbing for women of color, as African-American women earn 66 cents and Hispanic women earn 54 cents to every dollar earned by men (Business and Professional Women's Foundation 2005).

While women realized some success in pursuit of equality, it is unclear whether this was a good thing for women generally. The barriers to compete in the workforce that were lifted through case and statutory law certainly helped those seeking to do so. However, there is collateral damage from the struggle. The movement can be considered a success if the criteria are changing the previous legal understanding of women from dependent and unable to survive the public sphere; however, how this change affected women whose dependence has been situationally and institutionally prescribed lends the absolute push for equality to further scrutiny.

Contrary to women's actual experiences, law situated in equality assumes mothers enjoy both an autonomy that permits them to make choices without regard to their children's needs and an equality of economic opportunity between mothers and fathers. The rhetoric of equality compares women to men. Simone de Beauvoir articulated the conundrum over half a century ago:

[T]he relation of the two sexes is not quite like that of two electrical poles, for man represents both the positive and the neutral, as is indicated by the common use of man to designate human beings in general; whereas woman represents only the negative, defined by limiting criteria, without reciprocity ... Thus humanity is male and man defines woman not in herself but as relative to

him... She is defined and differentiated with reference to man and not he with reference to her” (1989 ed.).

Equality-defining law does not easily admit contexts of social arrangements which veer into the world of difference. The predominant role mothers play in child rearing means that they are particularly disadvantaged in the labor force, despite laws preventing discrimination. More often women sacrifice career advancement for parental responsibilities; therefore, legislation protecting women from discrimination in advancement and promotion loses its significance as women sacrifice seniority or forgo the higher-demanding (well-paying) jobs. As Abrams notes, “Mothers, not fathers, opt for the ‘mommy track’ rather than succumbing to the open-ended availability that most high paying, demanding jobs require” (Abrams 1997, 870). Women necessarily take time off for childbirth and, more often than fathers, work part time after their children's birth. All of these circumstances limit the work choices of mothers with children at home and disadvantage many mothers in the workplace.

Prominently, ignoring the interrelationship between child-rearing responsibilities and economic self-sufficiency leads to public policy that hurts families, particularly women and children. Welfare-to-work policies fall short. They are inadequate in assuring transportation for those seeking employment; inadequate in providing childcare for children of poor mothers or efficient job training programs; and incapable of placing women in living wage earning jobs. They also fail to acknowledge women’s duties as a mother.

Researchers have found that the incorporation of work requirements into state assistance programs has yielded reductions in welfare use, but has done little to impact income and poverty among single female-headed families (Karoly 2001, 14) who are still

overwhelmingly at or near the poverty line (Albelda 2001, 68). A study of Harlem's female welfare population in the 1990s (which is approximately 69 percent of Harlem's population), found that 40 percent of single mothers transitioned into the work force held occupations that yielded wages below the poverty line (Goode and Maskovsky ed. 2001, 40-41). Further research has shown that one in three jobs filled by welfare recipients pays \$6.00 per hour or less; roughly one-third provide fewer than thirty hours of work a week; and one-third provide no health insurance (Holzer and Stoll 2001, 53). The "work first approach" places women in shift-driven jobs that require work during parts of the day that formal daycare is not in operation. This presents a dilemma for poor women, forcing them to choose between fulfilling their economic roles and fulfilling their family duties by staying at home and ensuring for the proper care of their children. Thus, like the FMLA, the victories of equal rights are bittersweet. Though couched in neutral language, the impact is disproportionate, and in many ways benefits men more than women.

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Notes

1. Employers successfully characterized women's industrial work as unskilled, ensuring themselves of a cheap supply of labor. The work was devalued because it was not mechanized, "which obscured the extent to which unmechanized work could require a degree of skill too high for machines to replicate, and the fact that unmechanized work fulfilled functions necessary to factory production" (Kerber 1988, 30).

2. While these reforms were passed under the guise of protecting "fragile" and "delicate" women, it denied the fact that many of these women were returning to their homes and caring for children and families until the late hours, and, of course, lifting their own children.

3. The language in the Blue Eagle Code provisions of the National Recovery Administration (NRA) targeted not just women's degradation but men's as well. As Clara Beyer, the Labor Department's officer of Children's' Bureau, explained: "[I]n some instances where it might be possible for a woman to support (more or less) a family by homework, this would be too great a temptation for a husband who loved leisure more than honor to continue idle" (cited in Boris 1985, 749).

4. The amendment was first introduced to Congress in 1923. It read: "Section 1: Men and women shall have equal rights throughout the United States and in every place subject to its jurisdiction; Section 2: Congress shall have power to enforce this article by appropriate legislation." The language was very similar to the amendment passed by Congress in 1972, which read: "Section 1. Equality of Rights under the law shall not be denied or abridged by the United States or any state on account of sex. Section 2. The

Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.”

5. Despite their success at factory jobs, women were displaced from previously male-dominated jobs when men returned from war. As the war drew to a close, protective legislation was reinforced, and several corporations began to prohibit married women from working. Reliance on notions of proper motherhood persisted as the economy of the 1950s was booming and male wages could provide enough money to support the family.

6. Johnson passed an executive order in 1967 prohibiting discrimination against women in hiring by federal government contractors. The importance of this act should not be understated as nearly one third of the total labor force works for companies holding government contracts (McGlen et al. 2001).

7. Originally, the law required that if the administrative agency could not resolve the dispute through conciliation, the aggrieved individual had to file suit or rely on the attorney general of United States. Such judicial action initiated cease-and-desist orders, but several of the EEOC cases arrived in the Supreme Court.

8. The first of such cases, *Reed v. Reed* 404 U.S. 71 (1971), established that statutory preference for men over women of the same entitlement class in pursuit of administrative expediency constitutes an arbitrary legislative choice, forbidden by the equal protection clause of the Fourteenth Amendment, but it stopped short of subjecting the law to the strict scrutiny used in race-based classifications.

9. It is clear that racism motivated the changes in welfare as well. The 1964 Civil Rights Act banned racial discrimination in a variety of public goods settings, and the

welfare rolls swelled with women of color who were now legally protected in their applications for welfare benefits. In addition, the social conditions of the 1960s were dramatically different than those during and following the Great Depression. Widespread unemployment and a depressed economy were blamed for poverty during the 1930s; in the 1960s, relative prosperity and higher employment rates made poverty unacceptable.

10. A recent calculation of the 20 highest-paid males and females also demonstrates this inequality. The average total compensation of the 20 highest-paid male executives is \$138.5 million while the average total compensation of the 20 highest-paid female executives amounts to \$11.2 million (Lavelle 2, 2001).