Work, Caregiving, and Masculinities

Ann C. McGinley[†]

I. INTRODUCTION: WORKING TOWARD EQUALITY AT WORK AND HOME

In *Reshaping the Work-Family Debate*,[1] Joan Williams argues for progressive family-friendly laws and policies that enable men and women to succeed in their jobs and to care for their families responsibly. She explains that, contrary to media narratives, there is no onslaught of women "opting out" of working because they believe that staying at home with their children is natural.[2] Further, she challenges the sameness/difference dichotomy that has driven the debate about workplace reforms.[3] Those who advocate sameness posit that women and men are the same and should be treated the same at work, no matter their circumstances.[4] In other words, women and men should have equal opportunities in the workplace, but those equal opportunities do not permit any accommodation for the worker's caregiving responsibilities.[5] Because women still bear the burden of the majority of the child care and housework, this formal equality often ignores the reality of women's lives and has a disparate negative effect on women at work.[6]

Feminists advocating the difference approach, on the other hand, see women as different from men. While difference may arise naturally or as a result of society, and feminists advocating difference do not intend to harm women, the difference approach has nonetheless been used to justify inferior treatment of women, or at least refusals to examine

1. JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER (2010).

2. *Id.* at 20–22.

3. *See id.* at 110–50.

4. NANCY E. DOWD, THE MAN QUESTION: MALE SUBORDINATION AND PRIVILEGE 15 (2010).

5. *Id.*

6. Debbie N. Kaminer, *The Work-Family Conflict: Developing a Model of Parental Accommodation in the Workplace*, 54 AM. U. L. REV. 305, 313 (2004) (stating that women perform about eighty percent of child care for their children).

how the workplace creates difficulties for parents balancing work and family.[7]

Williams explains that instead of focusing on whether women are different from men, the new debate should interrogate masculine norms in the workplace.[8] Her proposal moves the debate from an examination of men and women to an interrogation of workplace norms developed during a time when middle class, nonworking mothers could afford to stay home to care for their children. Williams demonstrates that today, men, especially those in the working class, play key roles in family care.[9] Proposals for reform must take into account the lived circumstances of women and men of all classes, not merely of the professional-managerial class featured in news stories and magazines.[10] The debate must acknowledge a number of truths: (1) that families come in different shapes and colors; (2) that they all require caregiving; and (3) that most parents are engaged in caregiving as well as work. A new policy must recognize all types of households: dual parent, single parent, same-sex parent, and those with elderly grandparents or disabled children. In other words, the law must require sufficient flexibility in workplaces and quality care for dependent children and adults to meet the needs of today's workers.

Williams argues that meaningful reform cannot occur without an alignment of progressives from the professional-managerial class (what I call "progressive professionals") and working class men and women.[11] She blames the political rift between these groups on the condescending attitudes of the progressive professionals toward the working class.[12] These attitudes must change, she argues, to create an alliance that will further the interests of the working class and the politics of the progressive professionals.[13] Without this alliance, Williams observes that there will be no progressive agenda for the workplace.[14]

Besides attitudinal changes, Williams recommends substantive change through a rethinking of feminist theory toward work-family conflicts—a "reconstructive feminism" that shifts the discussion.[15] Reconstructive feminism focuses on masculine norms in the workplace that

---

7. WILLIAMS, *supra* note 1, at 139.

8. *Id.* at 5.

9. *Id.* at 59–60.

10. *Id.* at 12–13, 33–41.

11. *Id.* at 211–14. A note about terminology: I use "working class" to describe the persons who Joan Williams calls the "Missing Middle" and, at times, "working class" or "workers." *Id.* at 155–56.

12. *Id.* at 211–12.

13. *Id.* at 9–11.

14. *Id.*

15. *Id.* at 126–36.

place a burden on workers with caregiving responsibilities.[16] Williams examines the characteristics of the workplace that make it difficult for caregivers, men or women, to shoulder both family care and work responsibilities.[17]

Williams demonstrates the vulnerability of parent workers in working class America. In Chapter 2, "One Sick Child Away from Being Fired," she examines the records of ninety-nine union arbitrations to analyze the problems of working class parents who struggle to juggle their working and parenting responsibilities.[18] Because this chapter is a tour de force in an overall excellent book, and because it suggests an area that my research has focused on over the past number of years, in this Essay, I limit my discussion almost exclusively to this chapter. My approach is to use masculinities theory, a body of social science scholarship, to analyze Williams's study. Masculinities theory supports and reinforces Williams's conclusions and points toward a number of recommendations for addressing the problems of gender norms in the workplace. Part II describes masculinities scholarship. Part III analyzes the ninety-nine arbitrations studied by Williams using the lens of masculinities theory. Part IV considers cultural gender norms and makes a number of recommendations. The recommendations include the following: (1) further research; (2) union organizing around and bargaining about flexible scheduling for workers; (3) amendment of existing legislation and passage of new legislation that grants more comprehensive family leave, prohibits discrimination based on family care responsibilities, and grants employees reasonable accommodations; and (4) education about gender roles, caregiving, and social change. The Essay concludes that a combination of improved research, legal actions, and societal change should improve the working and living conditions of all types of families. While not all of these measures will happen instantaneously, working toward these changes is vital to ensuring a healthy economy, healthy citizens, and healthy families.

II. MASCULINITIES THEORY, WORK, AND FAMILIES

Williams analyzes a number of empirical studies that lead her to conclude that masculine norms in the workplace make it difficult for both men and women with family care responsibilities to function simultaneously as workers and as caregivers.[19] Many of Williams's conclusions are consistent with masculinities studies, an area of research that

---

16. WILLIAMS, *supra* note 1, at 77–108, 130–33.

17. *Id.*

18. *Id.* at 42–76 (Chapter 2, "One Sick Child Away from Being Fired").

19. *Id.*

focuses on men's roles in society. Masculinities research has recently received attention from feminists and critical race scholars because it explains why men engage in behaviors that are harmful to women and how competitive behaviors among men of different races, classes, and sexual orientations may also be gendered.[20] This Part provides a brief orientation to masculinities theory that places into context the stories of the working class men and women that Professor Williams describes in Chapter 2.

Masculinities theory evolved primarily from sociology and social psychology, but it also engages with other disciplines such as geography.[21] The term "masculinities" is used in the plural to denote that masculinity is not a fixed, natural reaction to a person's biological sex. In contrast, masculinities scholars posit that men achieve their masculinity through performances, or interaction with others (especially other men), and that there are varying ways to perform masculinity.

Early masculinities theorists developed the concept of the "hegemonic masculinity." R.W. Connell defines the hegemonic masculinity as "the configuration of gender practice which embodies the currently accepted answer to the problem of the legitimacy of patriarchy, which guarantees (or is taken to guarantee) the dominant position of men and the subordination of women."[22] Thus, hegemonic masculinity, rather than a particular type of masculinity performance, is a set of gender practices that confers power in a given context. While in some contexts, such as Congress and the boardroom, the hegemonic masculinity is frequently described as an upper middle class white form of masculinity, in other contexts, such as blue collar workplaces or prisons, alternative forms of performing masculinity may be dominant and more powerful. These alternative or subversive forms of performing masculinity may result from men's reactions to their inability to achieve the most powerful hegemonic masculinity in society.

---

20. *See* DOWD, *supra* note 4, at 57–71 (describing the relationship between feminist legal theory and masculinities studies of law). Over the past five years, at least twenty significant masculinities and law articles have been published; a comprehensive list of the scholarship regarding law and masculinities scholarship through 2009 can be found in Frank Rudy Cooper, *"Who's the Man?": Masculinities Studies, Terry Stops, and Police Training*, 18 COLUM. J. GENDER & L. 671, 672–74 n.7 (2009) (collecting scholarship). *See also* Angela P. Harris, *Gender, Violence, Race, and Criminal Justice*, 52 STAN. L. REV. 777, 798–99 (2000); Ann C. McGinley, *Creating Masculine Identities: Bullying and Harassment "Because of Sex,"* 79 U. COLO. L. REV. 1151 (2008) (using masculinities theory to analyze workplace harassment occurring "because of sex").

21. *See* Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GEND. & SOC'Y 201, 211–21 (2008).

22. R.W. CONNELL, MASCULINITIES 77 (2d ed. 2005).

More recently, masculinities theorists have urged the expansion of the concept of hegemonic masculinity.[23] Because masculinity is fluid, relational, and context dependent, notions of masculinity change constantly through interaction.[24] Some theorists prefer to talk about the "hegemony of men" as a more accurate description of men's power.[25] They note that the "hegemony of men" includes hegemonic forms of performing masculinity, but they emphasize the power of men as a group.[26] Jeff Hearn, for example, argues that looking merely at masculinities is too constricting and that we should consider seven different concepts under the hegemony of men.[27]

While the hegemony of men concept expands masculinities theory, it supports the key ideas of masculinities theory. These ideas challenge the view that masculinity is biologically predetermined or natural for men and unnatural for women,[28] and posit that masculinity is socially constructed through performances.[29] The concept acknowledges that men construct their masculine identities through relationships with others[30] and that there are various forms of masculinity.

Masculinities theory recognizes that certain practices are normative. Masculinity prescriptions affect men and women of different races, ethnic backgrounds, classes, and sexual orientations in different ways. For many men, defining oneself as "masculine" requires proof of two negatives: that one is not feminine or a girl, and that one is not gay.[31] Most men, however, cannot achieve the hegemonic masculinity ideal, and they

---

23. *See, e.g.*, Jeff Hearn, *From Hegemonic Masculinity to the Hegemony of Men*, 5 FEMINIST THEORY 49 (2004).

24. *See id.*

25. *Id.* at 59.

26. *Id.*

27. These concepts include the following: the social processes that create a "hegemonic acceptance of the category of men," the "system of distinctions and categorizations between different forms of men and men's practices," the men and men's practices that are most powerful in setting the agenda for those systems, the identification of the "most widespread, repeated forms of men's practices," the means by which women may support different practices of men and not support others, and the means by which men's practices form hegemonic notions of women and boys and how men's practices form differentiations among men and between men and boys. *Id.* at 60–61.

28. Michael S. Kimmel, *Masculinity as Homophobia: Fear, Shame, and Silence in the Construction of Gender Identity*, *in* FEMINISM & MASCULINITIES 182, 182–83 (Peter F. Murphy ed., 2004).

29. *Id.* at 182; *see also* JAMES W. MESSERSCHMIDT, MASCULINITIES AND CRIME: CRITIQUE AND RECONCEPTUALIZATION OF THEORY 174 (1993).

30. Kimmel, *supra* note 28, at 182–83.

31. *Id.* at 185. As Kenneth Karst states, "The main demands for positive achievement of masculinity arise outside the home, and those demands reinforce the boy's need to be what his mother is not. In the hierarchical and rigorously competitive society of other boys, one categorical imperative outranks all the others: don't be a girl." Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. REV. 499, 503 (1991).

respond by constantly struggling toward achieving the ideal[32] or by reacting to the ideal by engaging in subversive forms of masculinity.[33] While men as a group are powerful, individual men see themselves as powerless because of the constant competition to prove themselves to other men. Men attempt to gain control, a struggle that is rife with fear, shame, and emotional isolation.[34] These performances are homosocial—men engage in them to prove to other men that they are masculine.[35] The performances often involve mistreatment of nonconforming men and of women. These behaviors are particularly evident in exclusively male environments or workplaces that are traditionally dominated by men.[36]

An example will clarify these concepts. In many blue collar workplaces, men construct their masculinity by hazing men who are new to the job or harassing others who do not belong—e.g., members of racial minorities, gender nonconforming men, and women.[37] This behavior enhances the men's self-esteem by identifying the job as belonging to the majority, which bolsters their sense of masculinity and the masculinity of the job.[38]

The term "masculinities" also refers to masculine structures in the workplace. These structures create barriers to entry and to promotion and also affect the terms and conditions of employment based on gender, as well as race, national origin, class, and other individual characteristics. One example of a masculine structure to which Williams alludes is the requirement that employees work inflexible hours, regardless of their home care responsibilities.[39] The most problematic structure is mandatory overtime, which can have a devastating effect on working class families who have little access to quality child care outside of their social and family networks.[40]

In sum, masculinities theory assumes that men engage in homosocial behavior to prove their masculinity to each other and to assure that they are part of the group. The behavior's purpose is to solidify the men

---

32. Kimmel, *supra* note 28, at 186–87.

33. *See, e.g.*, David L. Collinson, *'Engineering Humor': Masculinity, Joking and Conflict in Shop-floor Relations*, 9 ORG. STUD. 181 (1988) (observing masculinities displayed by blue collar workers in shop culture).

34. *See* DOWD, *supra* note 4, at 31; *see also* John S. Kang, *The Burdens of Manliness*, 33 HARV. J.L. & GENDER 477, 496 (2010) (explaining that "manliness" is forced upon men in the military in that men are punished for being shameful and cowardly).

35. Kimmel, *supra* note 28, at 186–87.

36. *See* McGinley, *supra* note 20, at 1184 (describing hazing and gang rape in fraternities).

37. *See id.* at 1183–89, 1217–19, 1223–26.

38. *Id.* at 1223–24.

39. *See* WILLIAMS, *supra* note 1, at 44–46.

40. *Id.* at 52–56.

as a group and to identify women and others as outsiders.[41] Men who engage in this behavior construct and perform their masculinity at work.[42] Simultaneously, the workplace is also a site of structures of masculinities (or masculine norms, as Williams calls them) that have at least three deleterious effects. First, they have a disproportionate effect on women because women continue to be responsible for a disproportionate share of caregiving even as women increasingly work outside of the home.[43] Additionally, masculine structures harm individual men who are increasingly engaged in caregiving either because they are single parents or because they play "tag team" for child care with their employed spouses.[44] Finally, masculine structures encourage their own reproduction because employment discrimination against women and masculinity prescriptions for men reinforce women's "choices" to reduce their work hours and the requirement that breadwinning men sacrifice time with their families for work. Masculinities as work structures, therefore, interact with social masculinity prescriptions to lock in a system that harms women, men, and families.

But there is another side of men that masculinities theory reveals. Nancy Dowd explains that feminist theory views men as objects of gender study and this view has often been "essentialist," "universal," and "undifferentiated."[45] Dowd argues that feminists have not studied how men's privilege may actually cause disadvantage in some contexts, how men envision their interactions with women, and finally, how men interact with other men and how these interactions are affected by race, class, and sexual orientation.[46] Again, masculinities theorists note that although men are powerful as a group, individual men often feel powerless. These feelings result from the necessity to prove one's masculinity continuously, the fear and shame resulting from a belief that one is not a "real man," and the fact that privilege itself may deprive many men of the ability to spend more time with their families.

Williams's work is an exception to feminist work that sees men as unidimensional. As the next Part demonstrates, while recognizing that men have power in certain situations, Williams also describes situations in which men's privilege actually disempowers them. She explains, for example, that while male privilege gives men the right to perform as ideal workers, it also creates a duty for them to perform as ideal work-

---

41. McGinley, *supra* note 20, at 1223–27.
42. *Id.* at 1223–24, 1229.
43. *See* ARLIE HOCHSCHILD, THE SECOND SHIFT (1989).
44. WILLIAMS, *supra* note 1, at 46–48.
45. DOWD, *supra* note 4, at 13.
46. *Id.* at 14.

ers.[47] This observation is particularly poignant in the case of men who are fired or disciplined for fulfilling their caregiving responsibilities when a conflict arises with overtime or changes in work schedules. Williams's study demonstrates that despite the threat of a lost job or discipline, these men nonetheless refuse to acknowledge to their employers that they have care responsibilities.[48]

Men's limited options are caused by the interaction of social concepts of masculinity and the masculine workplace structures that lock men and women into traditional roles: roles that working class families are often unable to fulfill because of economic difficulties. For professional class families who can afford to have one member of the family at home, a different, but still problematic, story is told. For these families, the newspapers and magazines laud the women who are coming home to fulfill their natural propensities as women but ignore masculine workplace structures that force families to make the "choice" of creating a family structure that reifies gender difference and reproduces stereotypical gender roles. As Williams explains, the media coverage ignores the financial consequences many women pay for their "choice," interviewing women who "opt out" soon after the decision to leave the workplace without following up on the later penalties, especially those connected to divorce.[49] This narrative of "opt out" moms, which Williams successfully debunks, creates a destructive, inaccurate portrayal of reality.[50]

III. Masculinities Theory and "Caring in Secret"

Perhaps the strongest aspect of Williams's book is her focus on class. Williams explains that although the media portrays work-family conflict as a problem of the upper middle class, professional women are not alone in facing this conflict.[51] In fact, she notes that professional women are relatively lucky because they can afford to hire quality child care and housekeeping personnel.[52] White collar workers work long hours, but often there is flexibility in the hours they work.[53] Less affluent families, on the other hand, find their children and their jobs in much more precarious positions.[54] Blue collar workers have inflexible sche-

---

47. WILLIAMS, *supra* note 1, at 32.

48. *See id.* at 56–59.

49. *Id.* at 20–21, 26.

50. *See generally* Beth A. Burkstrand-Reid, *"Trophy Husbands" and "Opt-Out" Moms*, 34 SEATTLE U. L. REV. 663 (2011); Nancy Levit, *Reshaping the Narrative Debate*, 34 SEATTLE U. L. REV. 751 (2011).

51. WILLIAMS, *supra* note 1, at 42.

52. *Id.*

53. *Id.*

54. *Id.* at 45.

dules and little vacation or personal leave time.[55] Even when they have leave, they encounter difficulty getting leaves approved.[56] Because of these inflexible schedules, many working class women work part-time hours, but they pay for their reduced schedules—they make 21% less per hour than their full-time counterparts.[57]

The no-fault progressive discipline system exacerbates the effect of the inflexible schedules in many workplaces.[58] The point system accumulates points for missing work, no matter the cause, and places workers in the position of losing their jobs if they miss work for legitimate family care reasons.[59] Even leaves mandated under the Family Medical Leave Act are counted in some workplaces as absences that accrue points in the no-fault disciplinary system.[60] Because of the unavailability of quality, affordable child care, many working class families rely on relatives and spouses for child care.[61] Many of these relatives engage in "tag-teaming" to cover the child care because they, too, have job commitments.[62] And care for the elderly and the sick is also creating increasing burdens on working class individuals.[63]

Williams's Center for WorkLife Law studied ninety-nine arbitrations to consider the problems of working class parents who attempt to juggle the demands of their jobs and their families.[64] The results of the study, described in Chapter 2, "One Sick Child Away from Being Fired," offer a bird's-eye view of how working class parents respond to a child care crisis created by rigid work schedules.[65] Because the study uses arbitrations pursuant to collective bargaining agreements, these workers are necessarily working in unionized workplaces, environments that are more favorable to employees than most.[66] Currently, only approximately 12.6% of workplaces are unionized.[67] At least where there is a collectivebargaining agreement and a union, there will be an opportunity to go to arbitration if the employer fires or disciplines an employee. Where there is no collective bargaining agreement, virtually no protection exists unless the employee's case falls within one of the statutory exceptions to

---

55. *Id.*
56. *Id.* at 44–45.
57. *Id.* at 45.
58. *Id.*
59. *Id.*
60. *Id.* at 46.
61. *Id.*
62. *Id.* at 52.
63. *Id.*
64. *Id.* at 43.
65. *Id.* at 42–76 (Chapter 2, "One Sick Child Away from Being Fired").
66. *Id.* at 43.
67. MICHAEL D. YATES, WHY UNIONS MATTER 22 (2d ed. 2009).

the employment-at-will doctrine. Ordinarily, child care responsibilities do not fit within one of those exceptions.

And yet, despite the union representation in these circumstances, the arbitrations demonstrate that employees were fired or penalized for putting their families first in situations where work and child care conflicted, even though in the cases described, the workers had tried to arrange alternate care.

Williams weaves a counternarrative to the "opt out" stories. Her counternarrative demonstrates in vivid detail the difficulties experienced by working class men and women when work and home responsibilities conflict. The ninety-nine arbitrations demonstrate that blue collar workers do not have the work schedule flexibility enjoyed by white collar workers. Even a simple phone call, for example, is off limits.[68]

The examples Williams cites are chilling. A teacher was denied a day of personal leave she requested when her husband was out of town and her child's caregiver suddenly got sick.[69] A young mother who had just returned from maternity leave was told with only a week's notice that if she did not attend a two-week training program she would be fired.[70] The employee had agreed to attend a training program but had requested to go to a later program so that she would have time to arrange child care for her newborn in advance of the training period.[71] A single mother was disciplined for being absent without leave when her regular babysitter had car trouble and her backup babysitter's husband was hospitalized with a heart attack.[72]

Men were also affected by inflexible schedules. A factory worker took time off to care for his children when his babysitter was in the hospital because his wife's work had a stricter absenteeism policy.[73] A warehouse worker grieved when the employer attempted to change his hours because he would not have been able to pick up his child from school.[74] A carpenter left work to pick up his children even though the employer had ordered him to stay.[75] A divorced father, whose wife had left him and his four year old son, was fired for excessive absenteeism as he tried, with help of social service authorities, to get an approved daycare provider for his son.[76] Another father, a factory worker, whose wife

---

68. WILLIAMS, *supra* note 1, at 43.
69. *Id.* at 47.
70. *Id.*
71. *Id.*
72. *Id.* at 47–48.
73. *Id.* at 49.
74. *Id.*
75. *Id.*
76. *Id.*

had left him with small children, was suspended for leaving work after working only eight hours of a twelve-hour overtime shift to take care of his children.[77]

While arbitrators overturned many of the firings and other disciplinary measures in these examples, after-the-fact reinstatement orders did not cure the problem that men and women workers invariably faced: the choice between being fired or disciplined and fulfilling the needs of their families when their employers informed them with little notice that they had to work overtime.

Williams's research reveals a fascinating truth about child care and men. While middle class men speak the feminist language of equal opportunity and support for parents in the workplace, according to Williams, they "talk the talk but [do] not walk the walk."[78] That is, men in white collar jobs offer verbal support for working mothers but do much less child care in their own homes; men in blue collar jobs actually do much more child care and housework than the men in white collar jobs.[79] Ironically, the arbitrations Williams studied demonstrate that despite working class men's more complete engagement with child care, they do not readily admit to this division of labor. Williams coins the term "caring in secret" to describe working class men's unwillingness to discuss their child care responsibilities in the context of the workplace.[80]

Williams found that although there was no case involving a female worker who flatly refused to discuss the work-family conflicts with her supervisors, a number of men willingly risked discipline or firing rather than explain to the employer that they had to leave work to care for their children.[81] Male worker after male worker asked his employer to excuse his absence but, when pressed, refused to explain that he had family care responsibilities.[82] In one case, mandatory overtime was posted too late for a male worker to make up the overtime before his regular work hours, and the worker refused to stay after regular work hours because he had to care for his grandchild.[83] When the supervisor asked twice why the worker could not stay to work overtime, the worker told him twice that it was none of the supervisor's business.[84] The worker refused to work

---

77. *Id.* at 56.

78. *Id.* at 59. Professor Stefancic plays on this theme in her contribution to this Colloquy. Jean Stefancic, *Talk the Talk, but Walk the Walk: A Comment on Joan Williams's* Reshaping the Work-Family Debate, 34 SEATTLE U. L. REV. 815 (2011).

79. WILLIAMS, *supra* note 1, at 59.

80. *Id.* at 56–57.

81. *Id.*

82. *Id.* at 58.

83. *Id.* at 57.

84. *Id.*

overtime and was fired for insubordination.[85] In other cases, workers were fired or disciplined for refusing to work when they had major child or family care commitments. When asked their reasons for not working, the men told the supervisors that they had "obligations at home" or that "it was personal" or refused to explain, even though in at least one case the employer had permitted a failure to work if the excuse was reasonable.[86]

Williams attributes the men's failure to explain their predicaments to their employers to the men's sense of masculinity and the "hidden injury of class" that working class men feel when they are unable to support their wives and families on their salaries alone.[87] She explains that during the nineteenth century only middle class families could afford to have a wife and mother who stayed home to care for the family; working class wives and mothers had to work outside of the home.[88] It was only during the two generations after World War II that working class families, too, could afford to have their wives at home with their children.[89] Today, again, most working class families do not have a "stay-at-home" mom.[90] Many working class men see their inability to support their families on their salaries as a failure, in essence, a downhill slide from their parents' lives.[91] This sense of failure affects the men's self-concept of masculinity because the breadwinner role is key to their masculinity.[92]

Working class "caring in secret" is consistent with masculinities theory because of the different locations of professional and workingclass men in the hierarchy of men. Professional class men are, because of their positions at work and in society, generally more powerful than their working class counterparts. Professional class men are generally considered closer to achieving the hegemonic masculinity, although it can be argued that some specimens of working class men (such as firefighters) have earned a very masculine presence and reputation. Notwithstanding this caveat, it is undisputed that men who work in professional jobs generally have more power, prestige, and often, remuneration, than working class men.

David Collinson's study of shop culture in Britain revealed that working class men responded to their inferior power by engaging in

---

85. *Id.*
86. *Id.* at 58.
87. *Id.* at 59 (citing RICHARD SENNETT & JONATHAN COBB, THE HIDDEN INJURIES OF CLASS n.46 (1973)).
88. *Id.*
89. *Id.* at 59.
90. *Id.*
91. *See id.*
92. *Id.* at 59.

hypermasculine performances.[93] In shop culture, Collinson's study demonstrates, competing masculinities are stark.[94] Laborers, who are powerless to adopt the white collar hegemonic masculinity, perform their own forms of masculinity as a means of resisting their more powerful managers who are performing hegemonic masculinity.[95] Because the shop worker's masculinity is subjugated to the hegemonic masculinity of the white collar worker, shop workers react to and resist hegemonic masculinity. The resistance includes performances of hypermasculinity and comparisons of their white collar superiors to women ("pansies").[96]

A similar resistance to hegemonic masculinity appears in the memoir of a firefighter who saved many lives during the attack on the World Trade Center. Captain Picciotto described the white collar workers whom he helped escape the tower as "arrogant, entitled white-collar types"[97] and "stubborn old bond-trader types."[98] Describing a "well-dressed broker-type" he stated:

> I was stunned. During a fire, no one tells me to wait. This was a life-threatening situation. His life. My life. Lives all around. He might have felt he was free to do as he pleased, that someone like me had no authority over someone like him, but I wasn't leaving anyone behind, and I sure as shit wasn't waiting on this guy's well-dressed ass.[99]

The strategy of resistance as a means of performing masculinity that appears in both Collinson's study and Picciotto's account may explain male workers' unwillingness to admit that they, too, are "pansies" like their supervisors. Nancy Dowd explains:

> At the core of fatherhood . . . is a tension that resonates in the contemporary practice of fatherhood. Fatherhood is one of the critical life roles for men, but care of children is significantly at odds with the concept of masculinity. One of the core principles of masculinity is "Don't be a girl." Care is associated with women and girls. Hegemonic masculinity drives fatherhood away from care.[100]

Collinson found that, in addition to resistance to the white collar workers in management, working class men performed their masculini-

---

93. *See generally* Collinson, *supra* note 33. "Shop culture" refers to the environment in a blue-collar workplace in Britain. *Id.*

94. *Id.* at 184–85.

95. *Id.*

96. *Id.*

97. RICHARD PICCIOTTO, LAST MAN DOWN 81 (2003).

98. *Id.* at 91.

99. *Id.* at 76.

100. DOWD, *supra* note 4, at 105.

ties in competition with coworkers in various ways. For example, all men played practical jokes on one another to haze newcomers, to encourage them to conform to work norms, and to demonstrate their masculinity to the other men.[101] Younger men bragged about their sexual prowess while older men emphasized their role as breadwinners and providers for their families.[102] In fact, Collinson's research demonstrated that a number of the men did not tell their wives how much money they made because giving their wives that information would, in their view, undermine the men as providers.[103] Breadwinner identity is masculine and it differs from a feminine caregiving identity. Caregiving is slow and gentle. It operates at the pace of those requiring care. It takes time, patience, and sacrifice of one's own interests and needs. Breadwinning is competitive and economic. It makes a man a good father but does not designate a woman a good mother.

Masculinities theory suggests that Williams's class and gender argument is accurate. Ironically, it is a performance of masculinity for a working class man to refuse to discuss his child care responsibilities with his male coworkers. The injuries caused by an admission that a man has family care responsibilities may be invisible, but such an admission would undermine his masculinity in his own eyes and in the eyes of his fellow workers. Indeed, Collinson found men in the shop who revealed to him privately that their behavior at work was just a performance "designed to comply with the demands of the culture."[104]

IV. RECOMMENDATIONS FOR LESSENING WORK-FAMILY CONFLICTS

A. Further Research

While Williams's research on the ninety-nine arbitrations reveals invaluable information about men's behavior at work, it also raises fascinating questions that call for more research. Because of the nature of union jobs, arbitrations take place in working class workplaces where inflexible work schedules are particularly problematic. In this context, Williams's research suggests that men with caregiving responsibilities actually harm themselves and their families by refusing to acknowledge that they have child care responsibilities. The underlying assumption is that working conditions would improve for men if they were willing to explain their child care responsibilities to their supervisors. But it is possible that, because of the strength and endurance of masculinity prescrip-

---

101. Collinson, *supra* note 33, at 191–92.

102. *Id.*

103. *Id.* at 192.

104. *Id.* at 193.

tions, men's admissions that they have child care responsibilities would harm them in the eyes of their coworkers or their employers. Even in workplaces where a woman might benefit from giving her employer information about her child care responsibilities when she attempts to negotiate for more flexible hours, men who provide such information may be harmed because such admissions may diminish their masculinity in the eyes of their bosses. Thus, it would be useful to follow up on Williams's research with a study of the effect on a male employee's reputation and job security of revealing that he has child care responsibilities that conflict with an inflexible work schedule.[105] The study should also analyze whether employers would react differently to women and men who reveal they have child care responsibilities.

A study similar to "Goldberg" studies of resumes would be one way to accomplish this inquiry. In Goldberg studies, identical resumes with men's and women's names are sent to participants to judge the resumes. When the job is identified as requiring "male characteristics," participants consistently rank the men's resumes more highly than the women's, even though the resumes are identical.[106] Here, a study that describes a hypothetical scenario of an employee who wishes to leave work or to avoid overtime because of a family conflict could ask participants to play the role of employers and give their reactions. The hypotheticals should be identical, some identifying the employee's name as female and others as male. The results should reveal whether employers would be affected by the sex of the worker who has child care responsibilities that conflict with work rules.

Second, research into how men in white collar or professional jobs would respond in similar circumstances would be informative. One inference that can be drawn from the results of the ninety-nine arbitrations and Collinson's study is that working class men act differently than their

---

105. This situation is similar to that in which researchers studied women's negotiation practices. *See* LINDA BABCOCK & SARA LASCHEVER, WOMEN DON'T ASK: NEGOTIATION AND THE GENDER DIVIDE (2003). Their study demonstrated that women made much less money than men over a lifetime because of women's failure to negotiate for a higher salary for their initial jobs. This research led to advice in popular culture that women should negotiate over their entering salaries. A follow-up study, however, demonstrated that women who negotiated were penalized by both men and women for negotiating. The women's penalty was 5.5 times greater than that of the men who negotiated. WILLIAMS, *supra* note 1, at 136–38 (citing Hannah Riley Bowles, Linda Babcock & Lei Lai, *Social Incentives for Gender Differences in the Propensity to Initiate Negotiations: Sometimes It Does Hurt to Ask*, 103 ORG. BEHAV. & HUM. DECISION PROCESSES 84–103 (2007)). This situation should encourage caution concerning advice to men about whether they should tell their employers about their child care responsibilities. Without research, we do not know yet whether men who tell their employers about their family responsibilities will benefit or be harmed by giving this information to their employers.

106. Alice H. Eagly & Steven J. Karau, *Role Congruity Theory of Prejudice Toward Female Leaders*, 109 PSYCHOL. REV. 573, 582, 587 (2002).

female counterparts when discussing their caregiving responsibilities with their coworkers and supervisors. Masculinities theory tells us that white collar men perform their masculinity in ways that are different from their blue collar counterparts. Because white collar and professional men tend to "talk the talk" more about family responsibility, one would assume that they would not hesitate to tell their employers that they have family care responsibilities that conflict with their work responsibilities. But, it is possible that they, too, would be reluctant to admit that they have child care responsibilities. Some research exists that demonstrates that professional men are unwilling to take parental leave and that men are penalized more than women when they take parental leave.[107] Because working class men work under different and more inflexible work rules and professional class men have more access to better quality child care, this research might be difficult to replicate for professional class workers in a real workplace. But a study using questionnaires that create scenarios and ask respondents (both professional and working class fathers) how they would respond to different situations that placed their workplace obligations in conflict with their child care responsibilities may shed light on whether working and professionalclass men would respond differently when faced with work-family conflicts.

Third, further research should study women workers, both professional and working class. Similar questionnaires that create scenarios and ask how women would respond to situations that place their work responsibilities in conflict with their child care responsibilities would allow researchers to compare their responses to those of the men to see if the sex of the worker affected the person's reaction.

Finally, research should focus on the effects of race, class, and gender on employee response and on employer actions.[108] Additional research should consider a multidimensional analysis[109] that would ask how different work contexts and situations in combination with race,

---

107. *See* Kaminer, *supra* note 6, at 318; Martin H. Malin, *Fathers and Parental Leave*, 72 TEX. L. REV. 1047, 1071–80 (1994) (explaining the obstacles to paternity leave are availability, financing, and hostility); Martin H. Malin, *Fathers and Parental Leave Revisited*, 19 N. ILL. U. L. REV. 25, 39 (1998) (noting that many employers believe that the "wife should do it" and do not expect their male employees to take paternity leave).

108. For a discussion of the intersection of race, class, and gender analysis, see Robert S. Chang, *Joan Williams, Coalitions, and Getting Beyond the Wages of Whiteness and the Wages of Maleness*, 34 SEATTLE U. L. REV. 825, 828–30 (2011); Richard Delgado, *Race, Sex, and the Division of Labor: A Comment on Joan Williams's* Reshaping the Work-Family Debate, 34 SEATTLE U. L. REV. 835, 837–42 (2011); and Stefancic, *supra* note 78, at 823.

109. *See generally* Darren Lenard Hutchinson, *Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285 (2001).

gender, class, and a variety of other identity factors would affect the out-come.

B. Union Power

This is a difficult time for unions. Only 12.6% of the private work-force is unionized.[110] Williams argues that because child care responsibil-ities are so common for working class men and women, unions should use flexible hours as an organizing tool.[111] Moreover, in a unionized workplace, the union could bargain for flexible schedules.[112] This rec-ommendation may prove difficult to put into operation for a number of reasons. First, working class men, as Williams demonstrated, are reluc-tant to discuss their child care responsibilities, a reluctance that stems from their notions that child care is not masculine work.[113] Research sug-gests that historically patriarchal attitudes have kept unions from embrac-ing family issues.[114] Unions, however, are not monolithic, and the amount of effort devoted to family issues may depend on the percentage of women in the workforce and in union leadership.[115] Unions push the issues that concern their membership and many focus more on job secu-rity, healthcare benefits, and improving pensions over child care facilities and flexible work schedules.[116] Furthermore, many members see child care as their own burden, not the burden of the employer.[117] A union or-ganizing campaign around flexible work time to take care of family, therefore, would have to educate workers to overcome the notions that caregiving is feminine work, and that care is the responsibility of the in-dividual, not the employer. The educational campaign would ideally create an understanding that a masculine man takes care of his family not only by earning money, but also by being there when necessary, and that employers have responsibilities to workers' families.

But this campaign might encounter problems because of the ambi-valence of union organizers and members. Employers often require flex-time[118] and set the hours.[119] Thus, rather than promoting flexibility of the worker's schedule, flextime may merely decrease the worker's in-

---

110. YATES, *supra* note 67.

111. WILLIAMS, *supra* note 1, at 71.

112. YATES, *supra* note 67, at 165.

113. WILLIAMS, *supra* note 1, at 59.

114. Naomi Gerstel & Dan Clawson, *Unions' Responses to Family Concerns, in* FAMILIES AT WORK: EXPANDING THE BOUNDARIES 317, 318 (Naomi Gerstel et al. eds., 2002).

115. *Id.*

116. *Id.* at 330.

117. *Id.* at 330–31.

118. "Flextime" is flexible scheduling that permits an employer to ask an employee to work, for example, thirty-five hours one week and forty-five hours the next. *See id.* at 324–25.

119. *Id.* at 325.

come.[120] What employees really need is control over work hours.[121] Union members debate about whether flextime is valuable. Many unions oppose flextime because they see flextime and overtime in opposition to one another.[122] Overtime is paid at time and a half, whereas flextime allows an employer to ask employees to work irregular hours and to pay employees an hourly wage but no extra for overtime hours.[123] Union members often rely on extra money generated by overtime.[124]

Despite these obstacles, a movement to encourage union members to focus on the employer's responsibility for family care and the importance of the issue to families, combined with changes in social attitudes toward men and parenting, may well encourage some creative solutions. Unions should be at the forefront in solving these problems.

C. Legislation

A third recommendation is to pass legislation that grants more comprehensive family leave, prohibits discrimination based on family-care responsibilities, and grants reasonable accommodations to employees.

The Family Medical Leave Act (FMLA)[125] grants employees the right to take up to twelve weeks of unpaid leave because of a birth or adoption of a child; to care for a spouse, child, or parent of an employee; or for serious health conditions of the employee.[126] Leave can be taken intermittently, allowing parents to take time off of work to take family members to medical appointments. This legislation was an important step forward for American workers, but its reach is unavailable to many. To qualify for FMLA, the employee must go through a probationary period and must work for an employer with more than fifty employees; just over 60% of employers are covered.[127] Moreover, while unpaid leave is helpful to many covered employees, others cannot afford to take unpaid leave, especially long-term.

Due to the above problems, Congress should amend the Act to cover all employees working for all firms, with either no minimum number or a small minimum number of employees. Leave should be available from the time the employee begins work, and at least for some types of leave, there should be mandatory paid leave available. Even if the Act is

---

120. *Id.* at 324–25.
121. *Id.* at 325.
122. *Id.* at 324.
123. *See id.*
124. *Id.* at 324–26.
125. 29 U.S.C. §§ 2601–2654 (2006).
126. *See id.*
127. WILLIAMS, *supra* note 1, at 8.

amended in this way, American benefits would still lag behind European benefits. For example, in Sweden, the paternity-leave benefits are far more generous to employees.[128] In addition, if absences are permitted under FMLA, they should not be permitted to count as "absentee" days in progressive discipline systems.

Title VII of the 1964 Civil Rights Act forbids discrimination based on sex.[129] It also prohibits discrimination based on sex plus another characteristic, such as motherhood.[130] Moreover, it is illegal to discriminate against a person for the person's failure to live up to gender stereotypes.[131] But Title VII does not prohibit discrimination based on child care responsibilities alone. In other words, an employer who treats men and women with family responsibilities identically will not be liable under Title VII. If an employer treats a woman with child care responsibilities differently from the way it treats a man (or vice versa), or if it treats a woman or man differently because of the employer's conscious or unconscious stereotypes about how a mother or father should behave at home and at work, the employer will be liable for sex discrimination.

The Equal Employment Opportunity Commission (EEOC) has recently passed an enforcement guidance that explains an employer's liability under Title VII for disparate treatment of employees who have familial caregiving responsibilities.[132] The EEOC Enforcement Guidance demonstrates both the promise and the limits of Title VII. While Title VII protects parents from discrimination in many situations, its failure to prohibit discrimination based on child care responsibilities leaves gaps in coverage for families.

There are, however, a few states and a significant number of counties and cities that directly prohibit discrimination based on familial responsibilities.[133] These laws create a patchwork of protection that affects many employers and employees. But the laws do not necessarily solve the problems of the workers studied. The laws provide no reasonable accommodation or leave time to a parent who desperately needs to leave work because of a sick child. The laws merely prohibit discrimination based on a worker's status. The necessary protection will exist only if:

---

128. *Id.*

129. 42 U.S.C. §§ 2000e–2000e-17 (1990).

130. *See, e.g.*, Phillips v. Martin Marietta Corp., 400 U.S. 542, 544 (1971) (per curiam).

131. *See* Price Waterhouse v. Hopkins, 490 U.S. 228, 251 (1989).

132. EEOC, *EEOC Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*, Notice No. 915.002, May 23, 2007, *available at* http://www.eeoc.gov/policy/docs/caregiving.html.

133. Stephanie Bornstein & Robert J. Rathmell, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination*, CTR. FOR WORKLIFE L. (2009), http://www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf.

(1) familial discrimination statutes include a reasonable accommodation provision similar to that in the Americans with Disabilities Act;[134] (2) FMLA is expanded; and (3) employers are prohibited from counting family leave as "absenteeism" in progressive discipline systems.

Passage of legislation that would prohibit discrimination based on child care responsibilities and some type of reasonable accommodation would go a long way toward granting working parents the flexibility they need to work and care for their children.

D. Education and Social Change

Ultimately, while the law can be instrumental in furthering social change, the law often follows change in social attitudes or interacts with changing societal attitudes. Thus, the law alone cannot change workplace norms. Social attitudes about work and family care responsibilities must also change. Society must break down the rigidly held beliefs that gender and gender roles follow naturally from biological sex, and that men, as a normative matter, should be masculine and women should be feminine. Society must understand and accept that even biological sex is not always rigid or clear. Men need the freedom to discover their "feminine" side, just as women need the freedom to assert their "masculine" side. Intersex or transgender persons need to have the leeway to live their lives as workers who also have familial care responsibilities.

Changes must also incorporate an understanding that child care is not an individual responsibility, but that society, including employers, plays an important role in caring for families. Thus, work rules must no longer expect an ideal worker who has someone to care for him, for his needs, and for the needs of his children. Rather, work rules should acknowledge that workers come with other responsibilities that they must fulfill.

While law plays an important role, education, media, and organization also play vital roles in changing societal attitudes. Consider the rapid revolution in attitudes toward gays and lesbians over the past thirty or forty years. It is not merely the law effecting change. Social attitudes toward gays and lesbians have changed, sometimes aided by the law. Social attitudes have changed because of education, because of the media's treatment of gays and lesbians, and in large part because of gays and lesbians' decision to step out of the closet.

Workers need similar help. They need laws that protect them, and they need media attention and television programs to acknowledge the conflicts between work and family. They also need to stand up and ask

---

134. 42 U.S.C. § 12111(9) (2000).

for help; in particular, male workers need to step forward to communicate that parenting is not only a woman's job.

V. CONCLUSION

Joan Williams's *Reshaping the Work-Family Debate* urges progressive professionals and working class people to align to support and produce legal and societal change that enables workplace rules that accommodate families. Her book explains in detail the problems faced by working class families who have little access to quality child care and, through study of ninety-nine arbitrations, brings to life the struggles of working men and women who have family care responsibilities.

It does not have to be this way. Some of the problems are structural. Masculine workplace structures, built on the expectation of the ideal worker, who has a spouse who cares for him and his children, are unrealistic and outdated. Other problems relate to men's performance of masculinity at work—these masculinities may privilege men, but they also trap men into believing that men do and should act in particular ways that are antithetical to caregiving. Social views of workers about proper masculine and feminine behavior, as well as the need for men to prove their masculinity at work by hiding their child care responsibilities, must fall. Through further research, improved legal protections, and a change in societal attitudes toward the proper roles and behavior of men and women, working and living conditions can improve for all types of families. While not all of these measures will happen instantaneously, working toward these changes is vital to ensuring a healthy economy, satisfactory work, and happy families.