

Confronting Difference and Finding Common Ground

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On sitting down to write my contribution to this Colloquy, I found myself pulled in many directions, as Joan Williams's new book is rich with fascinating and provocative ideas. From the incredibly valuable documentation of how rigid masculine norms harm men who want to do right by their families,¹ to the highlighting of deep tensions between "femmey" and "tomboy" feminists,² to the courageous exploration of cultural and political tensions driven by class performance,³ there is much in *Reshaping the Work-Family Debate* to discuss.

One of the aspects of the book I deeply admire is Williams's attempt to spur different groups to make nice—femmes and tomboys, working-class parents and upper-middle-class progressives. This is driven not by a Pollyannaish desire to see us all get along, but by an acknowledgement of political reality. Without collaboration among these currently divided groups, the progressive policies that Williams hopes will improve the lives and chances of many will never gain wide enough support.

I'm admittedly skeptical about coming together with femmes or working-class parents, particularly in the context of the work-family debate, because I'm skeptical that we really share enough common ground to create policies all these groups can get behind.⁴ But there's no way that common ground, if it exists, could ever be discovered without confronting and examining our differences, and Williams is doing just that. Thus, this book is the only thing I've read in the past five years that even begins to mitigate my skepticism. Unwillingness to confront these differences is a major barrier that Williams is bravely breaking down. With

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1. JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* 59 (2010).

2. *Id.* at 123.

3. *Id.* at 151–214.

4. See 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, 841–42 (2011).

that in mind, in this Essay I hope to explore some of my hesitations, in the hopes of making finding common ground more likely.

Like education, access to a reasonable quality of child rearing can be valued by almost any social liberal or progressive as necessary for a healthy society. But I am not sure that social liberals and working-class people, nor even tomboys and femmes, can come to a broad agreement over how child rearing should be delivered and paid for.

Williams describes how many working-class people desire their child care to be performed by family, including tightly knit kin networks, rather than by professionals.⁵ They also desire a traditionally gendered breadwinner–homemaker model, in which one (male) parent performs wage labor and makes enough money to permit the other (female) parent to exclusively perform nonwage labor caring for and rearing children, cooking, cleaning, and the like, with perhaps occasional part-time wage work.⁶ It seems to me that this is also a model that many femmes, even upper-middle-class ones, would like to access, at least temporarily. This is the fantasy that the “Opt-Out” media narrative plays on and Williams so expertly deconstructs.⁷

As Williams explains, few working people can actually access this model, as not all parents are married, and jobs that actually pay enough to sustain this model are scarce.⁸ Almost all working-class parents need wage work. Unfortunately, those workers, male and female, with child-care responsibilities find it nearly impossible to conform to workplaces that assume all workers are breadwinners in a two-parent breadwinner–homemaker model with no child-care responsibilities.

Moreover, Williams describes how this model is dangerous for even upper-middle-class femmes to follow, as those who stay home to care for children become economically vulnerable in the long run, unable to return to the jobs they may have enjoyed before having children because they face discrimination for being mothers (or the type of fathers who take on significant child-care responsibilities).⁹

Thus, reducing the economic vulnerability and future workplace discrimination experienced by both women and men who stay home to care for children could make this model of child rearing work better. Workplace flexibility, such as the ability to take days off to care for sick children or take them to medical appointments, or to refuse overtime

5. WILLIAMS, *supra* note 1, at 46–49.

6. *Id.* at 59.

7. *Id.* at 20–27. 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).

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

9. *Id.* at 25–26.

shifts without sufficient notice, could also make this model of child rearing work better for working-class families, who likely cannot afford the luxury of having even one parent stay at home full time for long periods of time.

Williams argues that femmes who seek to change the breadwinner-masculine-worker norm could capitalize on the working-class norm of “family first,” which includes the value of staying close to home and to family, as well as the value of self-regulation as opposed to self-actualization.¹⁰ These feminine feminists could articulate how changing the breadwinner-masculine-worker norm would help working-class families transmit their values now that the model of one breadwinner and one homemaker is not feasible for most families.

But is this model a good one? *Should* we promote and encourage child rearing provided primarily by parents, and sometimes by tightly knit kin networks? Williams points out that many elements of working-class cultural norms—family first, self-regulation, staying close to home, and rigid, bright-line, often religiously rooted moral rules—are understandable risk-averse choices that create a tight social network and behavioral regulation, which can substitute for the financial safety net that many upper-middle-class people have been able to create for themselves and their children.¹¹ But an understandable choice is not necessarily the best choice.

One might object to any inquiry into whether these choices are the best or not, preferring to defer to them as private choices.¹² But while I agree that insulting and disrespecting working-class cultural values and femmes is needless and insensitive,¹³ it takes more to capitalize on those values and norms than just adopting a “live and let live” attitude. Remaking the workplace to better fit this model of child rearing in the modern era does in fact impose a cost in many workplaces. It may be that flexibility makes for more profits in some workplaces, but that can’t be true all the time.

I think of the Silicon Valley norm of work devotion that Williams describes.¹⁴ There are times when this kind of behavior is silly macho

10. *Id.* at 184–86.

11. *Id.* at 169.

12. See Melissa Murray, *Marriage Rights and Parental Rights: Parents, the State, and Proposition 8*, 5 STAN. J. C.R. & C.L. 357, 402–03 (2009) (describing and critiquing the myth that “the relationship between parents and the state [is] either . . . one of antagonistic intrusion and intervention or . . . one of detachment and disinterest. . . . Publicly supported child care, it would seem, is merely another avenue for allowing the state to intrude upon family privacy and usurp parental authority.”).

13. See WILLIAMS, *supra* note 1, at 125, 153–54, 212–13.

14. *Id.* at 83, 90.

posturing¹⁵ or poor management, but there are also times—crisis mode at a small startup with few employees—when intense long hours are right for the company. Workflow can be unpredictable, and it may be inefficient for a small company to over-hire in periods of less work simply to be ready for a crisis mode that will last only one month of the year. Having a small staff that is well-paid and willing to sacrifice if the need arises may be the best way to handle that situation.

When workplace flexibility does impose financial costs, either on businesses, their workers, or both, is the cost worth it? Every time workers exercise their right to paid leave, costs are imposed on others, either in the form of increased labor that other workers must perform, or reduced wages in the form of paying for a replacement worker. When workers exercise their right to refuse an overtime shift or to take unpaid leave to care for a sick child, the cost is of course much smaller. But there may still be costs. Another worker may be required to pick up the overtime shift, for instance, or the business may be small enough that there isn't someone suitable to pick up the shift, so the business suffers.

Providing these rights can be understood as fair when all workers have a relatively equal chance of being able to take advantage of them. But if these rights pertain only to those workers who conform to traditional gender and family-structure norms—those whose obligations are to their children and spouses, as opposed to their siblings, grandchildren, close friends, domestic partners, or some broader group in need—then we will have transferred wealth from social nonconformists to social conformists (from tomboys to femmes). If parental and kin-based child rearing is really the best way to raise kids, then this is the type of tax social liberals should be able to support anyway. But is it the best way?

My hesitations about providing these rights to all workers fall into two categories. First, in the long run, I'm not sure the working-class cultural norms one might capitalize on to subsidize this form of child rearing are wise. I don't want to encourage and capitalize on a cultural norm that is ruinous for those who subscribe to it. The norms Williams describes—staying close to home, self-regulation as opposed to self-actualization, not challenging authority but respecting it, rigid moral norms—these may seem risk averse in the short run, but in the long run they may also be a recipe for financial ruin for a family network. As soon as a recession hits, a suburb or factory town may no longer have enough jobs, and if an entire extended family lacks the education and broader social capital to move and find a good job, the results will be grim.

15. See Ann C. McGinley, *Work, Caregiving, and Masculinities*, 34 SEATTLE U. L. REV. 703, 714–16 (2011).

The Internet has changed our economy, such that moving and other forms of major change may be required to get a decent job. Clothes can be bought online, banking can be done online, and customer service can be performed over the phone. Self-regulation and valuing familiarity may, in the long run, lead to poverty due to lack of jobs, just as much as “hard living” that includes alcoholism and drug abuse does. In the long run, letting children take the risks entailed in flying away from home and learning new values and skills, as well as entering into new social networks, may be the better course for working-class families, especially in light of our changing world.¹⁶

Second, we must consider whether these norms are a recipe for lasting, gendered subordination that lingers long after formal equality is achieved. Just as Williams correctly notes that pandering to racism is unacceptable,¹⁷ pandering to social conservatism is unacceptable to many feminists as well because they see it as a key component in gendered subordination. Williams makes a good point that work, not just families, can be gender factories,¹⁸ but we can’t deny that families are a big part of the problem of boys and girls adopting rigid, imbalanced gender norms.

The model of providing child rearing through kin is one that carries with it the problem of families reproducing discriminatory prejudices and norms. When working-class families want child rearing to be provided by members of a kin network in order to ensure that their values are transmitted, those values may include things like teaching that “gayism”¹⁹ is wrong. Those values may also include conflating being gay or being a single parent with abusing alcohol and drugs.²⁰ They may even include teaching girls to make choices that make them economically vulnerable, like being passive and allowing a man to “feel like a man” and be in charge at home. Of course, upper-middle-class families transmit these values, too. The point is not that working-class parents are somehow worse parents or more likely to propagate harmful gender norms, but simply that the traditional child-rearing model, which seeks to maximize parental control over what values are transmitted to children, has the potential to transmit discriminatory values to which feminists should not pander.

This latter concern brings me to a skepticism I feel about capitalizing on a set of class culture norms that include rigid gender norms. The

16. For a discussion of how this theme plays out along the rural–urban axis, see Lisa R. Pruitt, *The Geography of the Class Culture Wars*, 34 SEATTLE U. L. REV. 767 (2011).

17. WILLIAMS, *supra* note 1, at 196.

18. *Id.* at 83–91.

19. *Id.* at 204.

20. *See id.*

working-class families that Williams describes don't just prefer to keep child rearing private, they prefer that it be done by mothers, with fathers taking on a breadwinner role. These families do not seem to be very interested in an equal-care norm where both parents can put family first, in a balanced way, with both providing financially and providing care. Williams, of course, wants to promote policies that would allow both men and women to put family first, by, for example, taking care of their children when sick and going to school and sporting events with them. But if families don't want that—if they want only one parent in two-parent households to have that ability—will they really support those policies, even if they are put in terms of “family first” values? Or will they stick to the strategy of the “guy unions” Williams describes,²¹ promoting only higher wages and benefits in the hopes of achieving the fantasy of a single (male) breadwinner able to provide for his family financially?

How one capitalizes on the family first norm matters, then. I feel that one must do so in a way that avoids reinforcing and encouraging gendered subordination and also avoids reinforcing and encouraging a set of norms that is causing some working-class families to be in increased danger of falling into poverty.

One way of finding that common ground may be universal benefits. Williams mentions the use of universal benefits as a means to gaining acceptance of social programs.²² Although universal benefits are more costly than needs-based benefits, they may at least make some benefits politically feasible that otherwise would not be. Just as it is easier for some white working-class people to accept benefits that are not strictly income-based than needs-based programs targeted at the very poor, I would suggest that taking a universal approach to workplace benefits might avoid the pitfalls I describe above.

Just as Williams points out that there is truth to the claim that people who are poor can end up receiving more public benefits than working-class people, that working-class people pay taxes that in part go to paying those benefits, and that some of those poor people bear a portion of responsibility for their poverty,²³ there is an analogous claim with respect to gender or family nonconformity. Nonconformists' lives are unaccommodated and are financially and socially disadvantaged. They also feel, accurately, that those who are conformists are often receiving all kinds of social, financial, and cultural privilege and advantage. Of course, many conformists are conformists only because it seems like the best option in a world of limited choices. But to take from nonconform-

21. *See id.* at 210.

22. *Id.* at 39–40, 199–202.

23. *See id.* at 199–202.

ists and give to conformists is painful and feels unfair when so many conformists already seem to get so much privilege as a result of their position.

A more universal type of benefit would help remake the workplace, and while it might cost more, it could help get nonconformists and the social liberals who support them on board with the work-life balance movement. I can imagine a number of possible benefits: a right to refuse overtime shifts, not only for child-care reasons, but for *any* reason; time-off options that are available whether the person uses that time for family-related reasons or other reasons; or perhaps even prohibition of employment discrimination against those who take time off from wage work for any reason at all, not just to stay home with kids or parents.

On the other hand, this may simply be too expensive. It may also be difficult to get those who believe in traditional gendered family structures to support something simultaneously so untargeted and so expensive.

But I don't mean to be too skeptical. Williams has compellingly demonstrated how and why the way we expect working people of all classes to care for children is not functioning. Reading *Reshaping the Work-Family Debate* is one of the first times I've felt optimistic that the major challenges in solving this problem can be confronted and explored. This confrontation is a crucial first step in getting to creative solutions for these challenges.