

## *The Law and Politics of the Gender Gap*

### Chapter 1: Introduction

What accounts for the persistent gap between men's and women's wages in the United States, even though equal treatment of women and men in the workplace has been taken for granted as a *fait accompli* for decades? Women earn on average 72% of what men do, and that gap is sturdy regardless of differences in pay levels, educational and training qualifications, areas of the economy, and workplaces and job descriptions.

Some argue that the gender gap is due to the tendency of women to take jobs in female-dominated job ghettos that pay less than jobs that are done primarily by men (Lindgren et al. 2005; Schultz, "Telling Stories..."; Jacobs, 1989; insert table 4-2 from Lindgren et al., 2005 on female-dominated workplaces here). Others point to differences in human capital—such things as education level, advanced degrees and licenses, training, apprenticeships, accumulated years of continuous experience.<sup>1</sup> But both of these explanations miss the deeper roots of the gender gap: women are more likely than men to interrupt their work lives—to take time off for a few months or years, or to have spells when they work part time or in marginal positions—in order to accommodate interruptions and spells where they want extra time to recover from giving birth and to raise small children. Such gaps in women's résumés partially account for both the job ghettoization and differences in human capital explanations: women are drawn to jobs and employers that treat their career interruptions as normal, routine, easily accommodated (e.g., retail sales, elementary school teaching, nursing, secretarial work), and by the same token, they are less likely than men or childless women to attain higher educational degrees and licenses, complete training programs, and amass accumulated years of continuous service. As Joan Williams points out, the really significant wage gap is not between women and men, but between mothers and non-mothers. Women who have no children are almost at parity with men when it comes to pay (95%), but mothers only earn 60% of what fathers do (Williams, 2000a).

This book argues that the wage gap is rooted in the different patterns of women's and men's lives with respect to childrearing and unpaid work of various kinds, a line of explanation that is at once familiar and contentious. Familiar, in that many have argued that women take primary responsibility for unpaid carework, often as a second shift on top of paid work (Hochschild and Machung, 1997; Hochschild, 2001; Crittenden, 2001; Williams, 2000; Folbre and Bittman, 2004; Kittay, 1999; Tronto, 1993). Contentious, because many believe gendered divisions of labor around child rearing and other care work are normal, natural, the way *their* mothers approached child rearing, a central source of meaning and pleasure, and freely chosen.

If we argue that the division of labor in the home is the chief reason why working women earn less money than do working men, does that mean we're advocating a feminist agenda that aims at shared parenting and androgynous gender roles, where both men and women are earners and both are responsible for significant (ideally, equal), amounts of the work of raising kids and running a household? Not necessarily: we think it is possible for women to be happy in traditional male breadwinner-female caregiver relationships. Many choose such relationships and express gratification and fulfillment in living them out. But such choices and decisions are undertaken in the context of gendered structures and expectations of workplaces and family life which people inherit and over which they have little control. Furthermore, there are problems and costs involved in arrangements where women spend more time in the private sphere of the home and family and earn less than men: such women, especially if they are mothers, are likely to be financially dependent on their husbands or partners; and women in lopsided earner-carer relationships may be left in a precarious financial situation should their marriages end in divorce

and they find themselves needing to support themselves and their children on what they can earn with atrophied or poorly-developed skills. Female-headed households are more likely to be poor or pinched for money. Furthermore, it is more difficult for those with substantial care responsibilities—usually women—to be fully engaged in public life or as citizens (Schultz, 2000).

Wage gap issues and women's primary responsibility for childrearing and housework matter, because they tell us how recalcitrant gender equality is, even in a society where many support anti-discrimination laws and equality between the sexes. There is still much that remains unquestioned about men's and women's work, and the absence of policies to ease work-family conflicts reflects the strong sense that arrangements between couples about the division of labor in paid work and raising children are private, not matter in which government should properly intervene.

They also matter because participating in paid work is important to our sense of selfhood, involves us in projects and groups of people beyond the perimeter of our own families and personal concerns, and supports our claims to full citizenship via public engagement in our workplaces and eligibility for work-related social welfare benefits like Social Security, unemployment, and health insurance. Vicki Schultz begins a law review entitled "Life's Work" by articulating why work mattered to her as a young woman:

When I was a girl, I dreamed of being a writer, an actress, or a missionary. I took it for granted that I would have a child along with my career one day. Not everyone shared this assumption. In college, I was shocked when my mother suggested I couldn't go to law school, because I would soon marry and have a baby; working families like ours couldn't afford to waste such an expensive education on a woman. But, I recall asking, why couldn't I still be a lawyer if I had a family? Wasn't my brother planning to have both a career and a family? If he could find a wife who would help him raise his children, couldn't I find a partner who would do the same? Couldn't we find people to help us while our children were young, people who saw nurturing children as their calling just as I was beginning to see ... lawyering as mine? After all, I dared, hadn't mom worked while we were growing up, just like dad - not simply because we needed the money, but also because she needed to do something she could call her own in the wider world, something that made her feel like she was more than just somebody's wife, somebody's mother? And hadn't she, in fact, reaped those rewards from working, even if some people had looked down on her work?

I use the phrase a 'life's work' to capture the central elements of a ... vision in which women and men from all walks of life can stand alongside each other as equals, pursuing our chosen projects and forging connected lives. In the process, we come to view each other as equal citizens and human beings, each entitled to equal respect and a claim on society's resources because of our shared commitments and contributions. As individuals, our work provides us with a forum to realize at least some of our aspirations, to form bonds with others, to serve society, and to project ourselves into the larger world beyond our own families and friends. ... I believe it is imperative to create a world in which all women and men can pursue their chosen callings and all working people can live with justice, equality, and dignity. I have been privileged to call this my life's work.

... [I argue] that people are shaped deeply by our work. Our historical conception of citizenship, our sense of community, and our sense that we are of value to the world all

depend importantly on the work we do for a living and how it is organized and understood by the larger society. In everyday language, we are what we do for a living.

[But] our society has been slow to understand this fundamental feature of socialization to be true for women (although we believe it is true for men). Our views of women have been distorted by family-wage ideology, "the sex/gender/family system that prescribes earning as the sole responsibility of husbands and unpaid domestic labor as the only proper long-term occupation for women." Family-wage thinking has left us with a mythologized but misleading image of women as creatures of domesticity - and not of paid work. This view inhabits labor economics, anti-discrimination law, and even some strands of feminist thought.

...In the United States (perhaps even more than in other Western democracies), work has been fundamental to our conception of the good life. It has been constitutive of citizenship, community, and even personal identity.

At least since the Industrial Revolution, work has been a central foundation for our notion of citizenship. Historically and theoretically, what we have called for in citizens is the perceived capacity for "independence." This, in turn, has been linked to the capacity to earn one's own living.... Work [is important] to our behavior, aspirations, and identity. ...The process of adapting ourselves to our work roles does not stop at the office door or factory gate. As human beings, we are not purely instrumental, and we cannot easily compartmentalize the selves we learn to become during working hours. In fact, most of us spend more time working than doing anything else. So, it should not be surprising that the strategies we use to succeed as workers become infused into our behavior, thoughts, feelings, and senses of ourselves - our very beings - with real spillover effects in our so-called "private" lives (Schultz, 2000, 1882-3, 1884, 1886-7, 1890-1).

Women's responsibility for childrearing matters too, for reasons that go beyond the personal satisfactions or rewards of having and raising children. Ann Crittenden and Nancy Folbre have argued that mothers contribute to the public good through their altruism and hard work of raising the next generation of diligent, law-abiding citizens who will work and pay taxes and support the social programs like Medicare and Social Security that all of us rely on when we retire. Yet their decisions to have and raise children are treated as though they were purely self-regarding and personal, not worthy of any recognition or public support, analogous to someone who devotes much of his spare time to preparing for and running in marathons: it's a hobby, the product of his quirky taste and choice, and if he enjoys spending a lot of time running, power to him (Crittenden, 2001, 49-50, 234; Folbre, 2001).

In sum, gender gap issues are important, not just because of the differences in pay between women and men, but because paid work is a key route to full citizenship and personhood. On the domestic side of the work-family tension, women's responsibility for childrearing and housework often interferes with their ability to work for pay and be fully involved in a life's work outside the home, and is wrongly viewed as a purely self-regarding, personal choice that has nothing to do with the collective good. But the importance of such issues is often obscured by the dominant discourse of personal choice.

I often ask my students to imagine a hypothetical pair of professors at their college, Bob and Sue. They both teach in the same department; both are in their mid-forties, both are married, with two children who are in their mid-teens. Bob and Sue have roughly comparable records (degrees from good universities, a number of good publications, good teaching evaluations, and

are “good citizens” who take an active part in university and community service). Both have tenure, and are widely considered to be doing reasonably well in their careers. But they differ in some important respects: Bob has been with the college 5 years longer than Sue, and has accumulated more seniority, although their ages are about the same. Bob makes \$66,000 a year, and Sue is paid \$60,000. Bob’s wife is employed, but she took a few years off when their kids were young, and her job pays about half what Bob makes. Sue’s husband is also employed, and is also a university professor, with a salary comparable to hers. What explains the pay difference between them? Is there anything that can or should be done about the situation Sue finds herself in of earning 10% less than a peer whom in most respects she resembles in terms of job performance?

I ask my students to think about why they are paid rather differently despite their apparent similarity in performance and seniority. They are allowed to ask questions to help figure out the explanation for the pay gap, and they soon figure out that Sue, unlike Bob, has taken time out from career development to move with her spouse, has been at two other colleges before the one they both teach at now, and has interrupted her career track to take four years off from “normal” tenure track positions, stretches when her children were preschoolers during which she worked part time and in guest lecturer positions. To put it simply, Sue has followed a version of a mommy track, and Bob has not: he has jumped through all the hoops cleanly, relying on his wife to stay home when the kids were little and to take care of their illnesses and school holidays and the like. He doesn’t have any gaps on his resume, and in fact he has published more than has Sue, though their work is comparable in terms of where it has appeared and the interest it generates, and both are invited to national and international conferences.

At the end of the day, students usually end up concluding that there is nothing to remedy here: Sue chose to stay home and work part time when her children were small, and even though she finds herself earning 10% less than an equally qualified colleague during middle age, the difference reflects what they’ve earned. She *chose* to take a mommy track, after all, and has put in fewer overall years than Bob in the college-teaching profession (at least the fulltime, tenure track version thereof), whereas Bob was conscientious and didn’t take any time out for extraneous family-related responsibilities. The university has no obligation to make up such differences; they are due to decisions that individuals make about balancing their personal, family obligations and their professional ones. Is there supposed to be a “mommy bonus,” for heaven’s sake? Surely that wouldn’t be fair.

But the story illustrates the different menus of choices available to men and women, and the real-life consequences of the choice that many women make to marginalize themselves from the workforce, albeit perhaps only for a short period of time, and to degrees that vary considerably from one job or profession to another, one individual to another. Sue is married to a man in the same field as she, who has faced the same pressures to be productive and publish during the most time-consuming years of childrearing; they are both committed to sharing responsibility for the home and kids, and have shared the work of running a household and raising kids fairly evenly. And that’s a lot: they talked about the issues related to kids-and-careers before marrying, and committed to try to approximate a 50-50 sharing approach from the outset, with full recognition that both wanted to have academic careers and to be parents who are closely involved with their children. More typical is the division of labor between Bob and his wife, which was more traditional, with Mrs. Bob taking time off from work when the kids were little and stepping up to the plate to be the primary parent, and when she returned to work, being the secondary earner in their household.

*Could Sue have chosen to lead a career like Bob's? Can any woman expect, the way that most men do, to marry someone who will put his career aspirations on the back burner, take a clerical job that doesn't pay much, and doesn't have much potential for being more remunerative or rewarding over time, and spend the lion's share of time taking care of the home and raising children? (One of my students will often venture that indeed, in their household, dad was the primary parent, and stayed home and cooked and took care of kids while mom worked and pulled down the bigger salary. I'm then tempted to counter: did they *plan* it that way? Did they enter into marriage and family formation with the *expectation* that he'd be the stay-at-home parent and she'd be the breadwinner? Or were there unanticipated layoffs or opportunities that led them into an unusual sharing arrangement? And planned or not, is this the *typical* pattern?)*

Students respond to the Bob and Sue scenario with complete and uncritical acceptance of the centrality of choice to their family lives, taking for granted the gendered expectations with which men and women commonly approach decisions about kids and career as something that cannot be questioned or interfered with. And that's important: the most common response is to shrug off the different career patterns that describe men and women's lives as simply part of the given, unchangeable character of being a man or a woman, so that economic marginalization and devotion to family work is just part of the human experience if one is born female. Gendered expectations of whose career is primary, who will be the primary parent (taking time off as needed to deal with doctors' visits, sick children, snow days, and all the rest), are so far below the surface that it's hard to pull them up and put them out on the table for examination, treating them as matters of social and political importance. Joan Williams describes these deeply ingrained gendered expectations as part of the ideology of domesticity, and uses the metaphor of an invisible gravitational field—powerful, invisible, and orienting our every motion—to explain why assumptions about who should do what are hard to question (Williams, 2000b).

When my children were growing up, I was finishing my dissertation and earning my stripes as a yet untenured faculty member, often juggling and stressing out over the multiple demands on my time as I spent considerable time at home caring for children and doing housework. The time pressures were such that the cleaning and tidying up tended to happen when we'd invited guests over for dinner, so much so that the kids would ask, if they saw me pull out the vacuum cleaner, "oh, who's coming over?" The story is interesting not just for what it says about the time pressures on working parents, but for what it says about the division of labor between women and men: my husband never pulled out the vacuum cleaner, and if I groused about how I was the only one who ever worried about how gross the carpets were looking, he'd say "look, there's too much else to do, and it doesn't matter if we vacuum or not, people aren't coming over to judge how tidy our house is." But I thought it mattered, and that people *were* going to judge how tidy our house was, and indeed, that they were going to think *I* was a slob, unable or unwilling to pull off a welcoming, tidy, presentable environment when we had company over. Whether they would have judged me in this way or not, I had thoroughly internalized gendered expectations about treating the house as the woman's responsibility, and I could not let go of those powerful messages, no matter how strong my feminist principles or devotion to egalitarian approaches to childrearing and housework. There was no housewife I could rely on to make sure the dust bunnies were swept up, the bathroom clean, and the toys and books and papers put away: if I didn't do these things, they wouldn't get done.

The Bob and Sue scenario and the vacuum cleaner story are useful vignettes for eliciting some thought about the context in which women and men make decisions about having children, who will take responsibility for raising them once they're born, and how partners or spouses

manage their jobs or careers once they have children to raise. As consequential as such decisions are, many women seem to assume that they can “do it all” without having to make major tradeoffs: a brilliant career, two or three kids who grow up smart, happy and well-adjusted, and a good marriage/relationship. They are optimistic that with good will from bosses, colleagues and partners, and plenty of hard work, they’ll manage all these things. Surmising that friends and relatives they know somehow managed this juggling act, they assume they will too—without seeing, viewed from the outside, the sacrifices that were made or the choices that were constrained.

Choice is a central construct of both contemporary feminist discourse and of market imagery, and one of our goals in this book is to unpack its appeal and its disingenuousness. In her book on women who “opt out” of high powered careers, Pamela Stone considers the appeal of choice rhetoric and ways in which it mis-describes and obfuscates the constrained decision making these women were engaging in. Stone counterposes two women’s views about choices they made to stay home like this:

Melissa Wyatt, a thirty-four-year-old who had given up a full-time job as a fundraiser to work part-time as a school administrator before finally quitting, described her decision: “I think today it’s all about choices, and the choices we want to make. And I think that’s great. I think it just depends where you want to spend your time.” Olivia Pastore, forty-two, a lawyer whose career had taken her from full-time to part-time and ultimately home, had a different take: “I’ve had a lot of women say to me, ‘Boy, if I had the choice of, if I could balance, if I could work part-time, if I could, I would keep doing it.’ And there are some women who are going to stay home full-time no matter what, and that’s fine. But there are a number of women, I think, who are home because they’re caught between a rock and a hard place (Stone, 2007, 105).

Most women, Stone found, agreed with Melissa’s perception and thought their decisions about kids-or-career reflected a true choice—not a constrained choice made between a rock and a hard place. Stone herself sees “the assertion of choice” as “an explanation of last resort” made “in the face of inconsistencies or larger structural constraints” (Stone, 2007, 114). She writes that choice is

a kind of black box of tastes and preferences that are taken as self-evident despite the ‘I choose because I choose’ circularity of this line of thinking. Social scientists often invoke the image of the black box to describe influences that cannot be identified or disentangled; the black box is the mystified catch-all of explanations. Choice rhetoric served much the same function for [the women I interviewed], and often had the effect of obscuring or rendering invisible to them the constraints they faced and under which their decisions were actually carried out. Women are indeed bombarded with messages of choice, but seeing structure is difficult when ideas and practices around mothering as well as around professional work are taken so for granted... (Stone, 2007, 114).

But there were good reasons why so many women framed their decisions to quit their jobs and stay home to raise kids in terms of choice:

The rhetoric of choice, which is defined by its focus on self-expression and its construction of work and family as mutually exclusive and opposing options ... is how they constructed their accounts of leaving the workforce. Women embedded choice in the language of privilege, feminism, and personal agency, and internalized it as a

reflection of their own perfectionism. For high-achieving women, this was a powerful and attractive combination. It played to their drive for achievement and confirmed their exceptionality (Stone, 2007, 124-5).

Many of the high-achieving, well-educated women Stone studied remarked that they were lucky enough to have the choice to stay home, since their husbands made enough money to support their families without their having to work too. Furthermore, many of these women closely identified feminism with choice, articulating a view of feminism much more aligned with third wave or “choice” feminism than second wave feminism with its emphasis on economic equality. To them, especially to the women under forty, *feminism was about choices*...[one informant stated:] “I would characterize myself as a feminist. And I like the fact that women today have choices. And I think that’s so critical.” ... [another] responded to the argument that her decision to stay home might fuel a backlash against women’s entrance into the profession [of law by] invoking choice feminism with its strong individualistic undertone, and disavowed any adverse consequences that might be attached to her choice: “To me, feminism meant that women were entitled to their choices, and that this was a choice that was as legitimate as any other choice...” (Stone, 2007, 125-6).

Choice seems to encode personal agency and ownership for one’s decisions, but at the same time it led women to understand their situations and dilemmas, not as characteristic or shared, but as personal and idiosyncratic: “Rather than acknowledging the structural constraints facing them, women saw the decision to quit in idiosyncratic and individual terms, in effect blaming themselves (and their perfectionism) for being unable to get out of the box of the double bind, a box from which there was no easy exit” (Stone, 2007, 128). Bosses accepted this view of their decisions as well, taking a “make whatever choice you want to” approach. They saw such decisions “as reflecting choice and based on family considerations, [which] they accepted it at face value. Few bosses attempted to convince women to stay or offered them inducements to do so, acting as if there *was* a firewall between women’s work and family lives” (Stone, 2007, 129-30).

Stone dismisses the idea that women experience decisions to quit their careers and stay home to raise children as a moment of blinding insight that helped them understand their decision as unequivocally right:

Many people have the idea that women quit their jobs to stay home in a “last straw” moment like an epiphany. Consistent with the rhetoric of choice, split-second decision making conveys the impression that high-achieving women prefer domesticity to career and that this latent desire is just waiting to break through in a “Eureka!” moment of self-realization. In its emphasis on the short-term, this idea carries with it the implication that careers are ephemeral and disposable. So constructed, the decision appears easy, for it is posed as an unconflicted expression of women’s unfettered and true preferences for home and hearth over career. In fact, the process was rarely so simple, so neat, or so singularly motivated. Instead, for these purposeful and high-achieving women it was deliberate and thoughtful, long and protracted, complex, and, except for those women who had always intended to stay home, difficult and doubt-filled—evolutionary, not revolutionary. [In fact], women made many efforts to hang onto their careers and find a way to integrate them with motherhood. In addition, women expressed a moderate to high degree of ambivalence about the decision to quit their jobs, and for many the decision was drawn out and often agonizing (Stone, 2007, 122-3).

In summarizing her study of high achieving women who decided to stay home, Stone notes that many of them were dealing with constrained choices:

Turning to what can be thought of as “forced choice” reasons on the work front, which include the denial of requests to work part-time, lay-offs, or relocations (own or husbands’), fifteen women were affected. . . Typically, however, one forced choice family pull or workplace push was enough, in combination with the high demands of their and their husbands’ jobs, to tip the decision in favor of heading home. In all, thirty women, or just half of the sample, cited at least one forced choice consideration in their decision, another indication of the extent to which their decisions were constrained. Across all women, these forces were about equally balanced between those emanating from the family and those from the workplace, but all had in common that they were unpredictable and not within the women’s immediate control (Stone, 2007, 115).

Joan Williams also analyzes the constraints on women’s choices about work and family, attending to the structural, legal, and ideological constraints that compose the ideology of domesticity. Domesticity supports an employer’s entitlement to hire ideal workers, a man’s entitlement to be an ideal worker, and a woman’s obligation to have all the time and the love in the world to give to her children. Like Stone, Williams notes that women defend their decision to retreat from paid work as a “choice”—but they do so in an economy structured around ideal workers and marginalized caregivers. She writes that

“It just wasn’t working anymore” encodes a habitus structured by domesticity, with default modes that set up powerful force fields pulling women back toward traditional gender roles. Women’s sense of relief when they give up trying to perform as ideal workers reflects the fact that they no longer have to fight the stiff headwinds from domesticity: they can go with the flow of domesticity’s ideal worker/marginalized-caregiver patterning. The force field imagery also explains why battles women win over the politics of housework have to be refought over and over again: Without constant vigilance, people tend to get sucked back into the default mode (Williams, 2000b, 38).

The phrase “It just wasn’t working anymore” signals a woman’s decision that the best of course of action is to stay home and be a full-time mother, because the stress involved in trying to juggle child care arrangements, deadlines and other career pressures, and fighting with her husband over *his* work and lack of help at home has become too constant and intense (Williams, 2000b).<sup>2</sup> Indeed, calling such decisions “choices” is a little odd; they certainly are not choices in the same sense in which we might *choose* between a Mars bar and a Baby Ruth. Within this peculiar parlance of choice, Williams argues that “Domesticity’s organization of market and family work leave women with two choices: either they can be ideal workers (without the flow of family work and other privileges that male ideal workers enjoy). Or they can take dead-end mommy track jobs or ‘women’s work.’ Neither of these is equality; a system that only allows these two alternatives discriminates against women” (Williams, 2000b, 39).

Similarly, Ann Crittenden observes that many view childrearing as on a par with other “lifestyle” choices, rather than an activity that benefits all of society:

[On this view,] raising a child is just another lifestyle option, like choosing to run long distance or play serious tennis. The consequences of those decisions are private, of no concern to the rest of us. If the people who opt to nurture and educate the next generation are systematically handicapped in the labor market, if they find it hard to make a decent living or get ahead without neglecting their children, why should we care? It’s their choice. But if raising children well is

more important than running fast, and if female equality is important, the ‘its’ their choice’ argument is completely inadequate.

...[But just as mothering is not the moral equivalent of running marathons,] mothers' choices are not made in a vacuum. They are made in a world that women never made, according to rules they didn't write. To take one example, what many mothers in the United States want a good part time job, yet there is no rich and vibrant part-time labor market in the United States ... we have many more choices in breakfast cereals than we do in work arrangements.... To most women choice is all about bad options and difficult decisions: your child or your profession; taking on the domestic chores or marital strife; a good night's sleep or time with your child; food on the table or your baby's safety; your right arm or your left. No wonder many mothers talk about ‘surrendering’ to motherhood, as if it were a gigantic defeat that it is better to accept than to fight (Crittenden, 2001, 234, 235, 237).

Linda Hirshman adds her voice to the chorus of critiques of choice in a pointed attack on contemporary “choice feminism” for failing to give women any vantage point from which to criticize the lack of real choices available to them with regard to work and family issues: “liberal feminists abandoned the judgmental starting point of the movement in favor of offering women ‘choices.’ The choice talk spilled over from people trying to avoid saying ‘abortion,’ and it provided an irresistible solution to feminists trying to duck the mommy wars. A woman could work, stay home, have 10 children or one, marry or stay single. It all counted as ‘feminist’ as long as she *chose* it” (Hirshman, 2005, 5).

In sum, a number of recent analyses of the “opt out” phenomenon and women’s problems dealing to work-family conflicts focus on “choice,” noting that framing one’s decisions as a choice, leads to a personalized, privatized view of the matter, rather than one that puts issues related to work and family into a larger structural context. Women understand their problems as personal dilemmas rather than seeing them as foreordained by practices or policies that encourage women with childrearing responsibilities to quit--e.g., reluctance to allow workers to reduce their hours, limit their overtime, or work flexible hours, and tax laws that tax the “second” worker’s earnings at a higher marginal rate (McCaffery, 1997; Crittenden, 2001, 115-6).

This excursion into the problematic language of choice is warranted at the outset, because students so often fall back on the argument that “but she chose it” to explain and justify patterns of marginalization. When asked to consider whether it was unfair that Sue was paid less than Bob in the scenario set out earlier, students argue that Sue chose a mommy track, and knew or should have known what risk she was taking with respect to her career and overall earnings. They go further, venturing to argue that any woman would think the trade-off between hands-on childrearing and higher salaries was worth it. When pushed to think about the gender disparity—the fact that men are not forced to make the same “choices” and do not face the same issues regarding work-family conflicts, students don’t have adequate responses. They assume the gender disparity away by arguing that men too can decide to be primary parents who put their career aspirations second to their childrearing responsibilities, or they treat sex and gender differences as irreducible: being a woman comes with costs that being a man does not.

Bearing in mind that structural explanations are often discounted by those who understand decisions as chosen rather than constrained, the pervasive discourse of choice, this book examines two basic explanations for the gender gap. The first is rooted in work done by sociologists who study the structure of the workforce and the gendering of different occupations.

For instance, research demonstrates a strong tendency for women to work in jobs that are predominately female jobs and men to work in predominately male jobs, noting that about 75% of both men and women work in jobs that are male-dominated or female-dominated, respectively (see chart 4-2 from Lindgren et al., 2005 showing female-dominated jobs). Some sociologists of work have studied what workers and supervisors do to send the message that women should steer of male-dominated jobs or heavily masculinized workplaces, arguing that while many women initially take non-traditional jobs that pay better, they often find that they are subjected to sex-typing that makes them feel like they are unwelcome, not to mention the outright hostility expressed through sexual harassment and chilly workplace environments (Jacobs, 1989; Schultz, 1992; Cohen, 2004; England and Budig, 2002).

The second major explanation argues that the wage gap stems from a gendered division of labor in which women typically take a secondary earner, primary parenting role, and men a breadwinner, secondary parenting role. Some would reject this approach out of hand, arguing that many families adopt non-traditional divisions of labor, and noting that recent surveys by the National Study of the Changing Workforce (FWI, 2008) show that younger men are spending significantly more time taking care of their children than in the past. But despite the trend line pointing toward greater involvement in childrearing by fathers, I am inclined to treat such findings with skepticism. For one thing, even the recent NSCW survey shows that men still do only 31% of the household chores (up from 21% in 1992, to be sure), and men ages 29-42 (and even more so for older cohorts) are not as egalitarian in the amount of time they spend caring for children as are men under age 29. Furthermore, several studies have shown the durability of the gendered ecology of the family whereby men are primary earners and women don't work, take time off, or perform as secondary earners (generally in jobs that tolerate or permit part-time or flexible hours or interruptions) in order to take responsibility for childrearing and housework (Crittenden, 2001; Hochschild, 2001; Hochschild and Machung, 1997; Stone, 2007; Williams, 2000). And Williams thinks the gender earnings gap—in reality, the gap between mothers and others—is increasing, not decreasing:

Women who can perform as ideal workers are on their way to reaching equality with men: single women without children earn about 95% of men's wages. Most mothers do not. In deference to the norm of parental care, most mothers of childbearing age remain off the "fast track" and on the "mommy track," either at home or in jobs where they work only part-time or part year or do traditional "women's work."

Consequently, mothers as a group earn only 60% of the wages of fathers. In fact, while the wage gap between men and women has been *falling*, the "family gap" between mothers and others has been *rising*. In an economy where men's bodies and life patterns still define our work ideals, mothers remain marginalized as a group.... The economy of mothers and others stems from our practice of providing for children's care by marginalizing their caregivers. This practice is the central tenet of the gender system historians have called domesticity, which arose during the Industrial Revolution, circa 1780.... In the contemporary version, the typical father is still viewed as the breadwinner and earns 70% of the family income, while the typical mother does most of the child care and also engages in economically marginalized part-time, volunteer, or "women's work." (Williams, 2000a, 254-5)

In a nutshell, the second explanation for the gender gap presented here builds on the intuition that women earn less than men because mothers find themselves pulled between the

demands of their jobs or careers, and the demands of unpaid care work, especially childrearing. Many mothers seek out jobs that allow them flexibility in scheduling and that will not be punitive with respect to brief interruptions to recover from child birth, get to know a new born, stay home with sick children. Others simply interrupt their careers to take a year or two off when their children are young. Either strategy is costly with respect to their overall lifetime earnings. Thus Crittenden notes the results of a survey of women who graduated from the University of Michigan Law School in 1974:

During the first fifteen years after law school, these women spent an average of only 3.3 months out of the workplace, compared with virtually no time out for their male classmates. More than one-quarter of the women had worked part-time, for an average of 10.1 months over the fifteen years, compared with virtually no part-time work among the men. While working full-time, the women put in only 10 percent fewer hours than full-time men, again not a dramatic difference.

But the penalties for these slight distinctions between the men's and women's work patterns were strikingly harsh. Fifteen years after graduation, the women's average earnings were...almost 40 percent lower [than the men's] (Crittenden, 2001, 96).

Similarly, Crittenden cites a gap of 17% in earnings between female MBAs who had average gaps of 8.8 months out the job market, and comparable women who had never had a gap in their employment. She rejects the notion that mothers earn less than childless women because they are less productive, arguing that a more plausible explanation is work rules, practices and habits of mind that discriminate against people who cannot perform like "unencumbered" or ideal workers. Failure to consistently work overtime or to have as much "face time" as other employees seems to account for part of the difference in wages that she calls the "mommy tax" - and men who are primary caregivers also pay a "daddy tax" (Crittenden, 2001, 96, 98-99).

Far from being mutually exclusive, arguments about the gender ghettoization of the workforce and penalties exacted on primary parents for failing to be ideal workers overlap. Thus, women who are responsible for childrearing seek out workplaces that are used to dealing with female employees and interruptions for childbirth and childrearing, and the list resembles the "female dominated" workplaces discussed above: teaching; clerical work; retail; restaurant work; cleaning; childcare, nursing, and other caring professions. Such work does not usually pay as well as jobs that require "ideal workers" who can put in overtime hours, accept transfers, and work full-time, full year, and without interruption. Looking at the crossover between job ghettoization and mothering from explanations from another perspective, women who are would like to be "career primary" workers frequently encounter "maternal walls" that make it difficult for them to advance in their job or career tracks. For example, supervisors often assume that women with children at home do not have the time or willingness to put in hours and dedication to the job, and subtly pressure them to quit or direct them into less interesting, challenging and valued work. Women who ask for accommodations to their childrearing responsibilities—for example, shorter hours or a flexible schedule—often find that official family-friendly policies look better on paper than the accommodations their line supervisors are willing to grant. Even companies that are listed in *Working Mother* magazine as scoring high for family-friendliness are often unwilling to come through with actual accommodations for working mothers (Hochschild, 2001; Stone, 2007). For example, Stone notes that many high-achieving professional women realized in the course of requesting accommodations for their pregnancies and return to work post-partum that pregnancy was a hot-button issue: their bosses were likely to go ballistic over

this issue, and to treat them like they were always going to be sick or missing work. “These and similar experiences sent women the message that pregnancy was to be handled like a dirty little secret. Just as there were no role models, neither were women able to openly discuss their impending motherhood.... This sweeping of motherhood under the carpet contributed to women’s conflict and uncertainty about whether or not to continue with their careers, and was one of the reasons that they often waited until the last minute to decide what to do” (Stone, 2007, 118).

Here we treat these two explanations as intertwined but not synonymous: women are channeled into or find themselves attracted to female-dominated professions and job tracks for many reasons, some of which have to do with childrearing interruptions and responsibilities (and ditto for men, who are attracted and flourish in male-dominated jobs because they do not have the same childrearing and domestic responsibilities as their wives). But the reasons for gender job ghettoization include job descriptions and definitions, gendered expectations about job performance and professionalism, stereotypes of women as less dependable, dedicated workers, hostile workplace climates, and sexual harassment, all factors that go beyond maternal duties. We aim in this book to provide a collection of readings that make powerful arguments about the gender gap so that you can read a variety of interpretations and arguments, encountering intelligent, articulate positions written for a variety of audiences and drawing on varied academic disciplines and approaches. The readings are controversial and opinionated, and we hope our readers will have some productive arguments with them--and with one another--as you develop your *own* ideas and positions.

*The Law and Politics of the Gender Gap* is a collection of excerpts from books, legal decisions, and articles that are intended for undergraduate courses in American politics, women, politics and public policy, women and the law, introductory courses in women’s studies, or any class that explores issues related to gender discrimination and equality. We have tried to provide readings that will illuminate central issues and problems connected to gender socialization, women and work, workplace discrimination, shared parenting, family support policies, divorce settlements, the feminization of poverty, feminist theory and jurisprudence, and political activism and change. The chapters are organized around several broad themes, with chapter two presenting key interpretations of the gender gap written by sociologists of work (Jerry Jacobs, Budig and England, Jacobs and Gerson, Cohen, and Chang). After attending to the sociology of work perspective, which focuses more on the dynamics of how workers are hired into and treated in the workplace, we turn to the reasons for devaluing women’s work, especially their unpaid work in the home, in chapter three. Chapter four deals with the “opt out revolution” argument, from the point of view both of those who think women happily choose to opt out, and those who think “opting out” is a misnomer that obscures just how much supervisors and workplace arrangements are responsible for pushing women out of full time careers. Chapter five looks at several key court decisions that deal with discrimination against pregnant workers and mothers and fathers of young children, covering the key developments since the 1970s. Chapter six turns to the family side of work-family conflicts, focusing on issues that face women who divorce—especially with respect to estimating their contribution to the family unit, and figuring out fair property and income divisions post-divorce for wives who placed most of their effort into childrearing and home making and find themselves disadvantaged in the job market post-divorce. Chapter seven and eight turn to solutions to the gender gap, with seven dealing with personal, private-life solutions to the issues we’ve examined (e.g., marriage contracts spelling out shared responsibility for family care work, shared parenting arrangements, and personal

priorities with respect to work-and-family issues), and eight dealing with public policy or legal approaches to what needs to be done, and the political barriers to enacting significant policy changes in the United States. Chapter nine looks at an increasingly common approach to addressing work-family conflicts, though one that is only available to the relatively wealthy who have the means to hire maids, nannies and baby nurses, commonly hiring women from third world countries. Here we examine recent work on the globalization of care work focusing on the problems such women encounter as low-paid care workers with irregular immigration status.

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<sup>1</sup> Few believe that much of the wage gap can be explained by outright wage discrimination, that is, paying women less than men for doing the same job, which is illegal under the 1963 Equal Pay Act. This is even more true since the Lilly Ledbetter Act was signed into law in 2009, as that Act makes it easier for plaintiffs to bring lawsuits alleging wage discrimination under the EPA, since now each successive paycheck is taken to establish a new starting line for cause of action based on wrongful wage discrimination.

<sup>2</sup> Pamela Stone makes a similar argument in ch 3 of *Opting Out?*, where she analyzes husbands' unwillingness to step off their career tracks in order to allow their wives to continue on theirs, writing that "'It's your choice' was code for 'It's your problem'" (Stone, 2007, 78).

**For class discussion:**

Do you agree with Schultz's notion that work is constitutive of who we are in the world, pp. 2-3? Why or why not? Do you think the U.S. is unusual in the degree to which people tend to define their self-worth in terms of the work they do?

In your view, is the childrearing work deserving of public support? Is it any different than deciding to have a pet or be a marathon runner?

What if anything should be done to address "mommy gaps" like that between Bob and Sue, pp. 3-5?

How powerful are gendered expectations about domestic and paid work (e.g., the vacuum cleaner story, p. 5)?

How typical or resonant is the language of "choice" in explaining decisions about work and family, like Sue's decision to work part time and job-hop when her children were small? How are such choices constrained in our society? Pay attention to the larger structural context that shapes our choices.