



2008

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Recommended Citation

Cahn, Naomi and Carbone, June (2008) "Lifting the Floor: Sex, Class, and Education," *University of Baltimore Law Forum*: Vol. 39: No. 1, Article 7.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol39/iss1/7>

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ARTICLE

LIFTING THE FLOOR: SEX, CLASS, AND EDUCATION

By: Naomi Cahn and June Carbone*

Third-wave feminism emphasizes the possibilities that come with choice. Women can choose to be wives, mothers, employees, bosses, hobos, harlots, veiled Islamists, semi-observant Catholics, provocateurs of any stripe, in mix or match settings in which no role necessarily excludes any other, or permanently defines the women occupying it. As third-wave feminists celebrate the possibility of choice, however, it is critical to ground this option in the class perspective that is an integral part of the third-wave itself; otherwise, third-wave feminism risks diminishing the prospects for solidarity with a working class that might happily trade the illusion of choice for more rigidly defined structures that offer the prospect of greater support. Third-wave feminism recognizes the importance of “raising the floor,”¹ and this paper — from two second-wave feminists — helps in developing an agenda for achieving that goal.

Integrating a class analysis into feminism is not new, of course; many second-wave feminists, while concerned with male/female equality, also sought to ensure that feminism did not exclude poor and working-class women. Barbara Ehrenreich, for example, has written eloquently about “making ends meet.”² Theda Skocpol, Frances Fox Piven, and Gwendolyn Mink have called our attention to the impact of welfare on women.³

In this paper, we approach class issues through the lens of family law, examining how a state’s approach to issues of family leave and contraception affects class mobility. Indeed, the “culture wars,” as they play out in high profile Supreme Court decisions and legislative

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¹ JENNIFER BAUMGARDNER & AMY RICHARDS, *MANIFESTA: YOUNG WOMEN, FEMINISM, AND THE FUTURE* 82 (Farrar, Straus and Giroux 2000).

² BARBARA EHRENREICH, *NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA* 220-21 (Henry Holt and Co., LLC 2001).

³ GWENDOLYN MINK, *WELFARE’S ENDS* 8 (Cornell University Press 1998); FRANCES FOX PIVEN, *Welfare and Work, in WHOSE WELFARE?* 97 (Gwendolyn Mink ed., Cornell University Press 1999); THEDA SKOCPOL, *THE MISSING MIDDLE: WORKING FAMILIES AND THE FUTURE OF AMERICA SOCIAL POLICY* 13 (W.W. Norton & Co. 2000).

fight over abortion and same-sex marriage, are first and foremost about family values. Family values in the United States are not unitary; different families in different parts of the country are leading different lives. A new family culture has emerged among middle class men and women that is geared for the post-industrial economy. With fertility rates dropping and the average age of marriage moving into the late twenties, states deregulate sexuality, identify responsibility with financial independence, respect equality and autonomy, and safeguard access to contraception and abortion for teens and adults. Middle class men and women reap the benefits.

This new culture, in both its feminist and non-feminist iterations, fetishizes choice. It does so because it is grounded in a socialization that makes the exercise of autonomy — and the transfer of responsibility for investment in human capital from institutions to individuals — foundational to middle-class life. The centerpiece of the cultural reorganization is the emergence of the twenties as a period of exploration of jobs, career possibilities, relationships, and gender roles and attributes, with the deferral of irrevocable choices and permanent responsibilities until the far more mature — and financially independent — thirties.

With greater autonomy and fewer unacceptable pathways, however, comes less societal support for any course of action. Traditionalists, who bemoan loss of the insistence on societally approved pathways emphasizing abstinence, marriage, and the gender roles that made early marriage universal and enduring, have launched something of a counterattack. Rooted in more religious, rural and conservative communities, they play on feelings of moral crisis to promote a “values” agenda that celebrates chastity and pumps government money into marriage promotion programs. Largely invisible in the political reaction to their efforts, however, is the fact that their embrace of more traditional values — one more acceptable choice among many — in fact dramatically restricts the avenues open to the most disadvantaged Americans, and further blocks any hope of progress into the increasingly hard to attain status of middle-class life.

The critical moral issues that divide the two systems of family law — issues such as abstinence education, abortion, and gay relationships — center on control of sexuality, particularly female sexuality. If, as Professor Bridget Crawford notes, one of the challenges of third-wave feminism, is “to develop an account of the law’s ability to enhance

women's autonomy and well-being,"⁴ then the blue state model is radical because it allows women to control their own sexuality. On the other hand, the emphasis in third-wave feminism on autonomy and choice may obscure the restriction of choice for those without the means to secure autonomy. Indeed, the very acceptance of traditional values as within the ambit of permissible options may have muted political opposition to abstinence and marriage programs, obscuring their role in making contraception and abortion less available to poor women. The resulting increase in teen births and single mothers, all within the realm of permissible practices, then becomes identified only with conservative concerns. The role of moralistic restrictions and government budget cuts in engineering the increase in unplanned pregnancies disappears from view. Yet, genuine autonomy and choice for both men and women depend on the ability to secure educational opportunities and control fertility. Early births to impoverished women, who are disproportionately likely to be victims of sexual coercion and to lack support from family or mates, derail education, and lock single mothers into marginal positions unlikely to provide opportunities for the work-life balance available to more highly educated women.

After a brief exploration of these two models, this paper makes two critical points: (1) it correlates the different models to the varying approaches to parental leave laws; and (2) expands our discussion of women and care beyond the workplace and child care, exploring what contributes to women's ability to care for their children and others: education, an outcome that is associated with deferred childbearing and higher income in the newer family model. It is in looking at the impact of education that we can get at some of the variations within each model based on class and race. Our conversation about third-wave feminism must examine women's means of moving between classes and being able to provide better care to themselves and to others (whether it be children or parents or significant others). Moreover, educating women serves to challenge gendered stereotypes and is another means for putting pressure on others to help with the care-work.

I. DIFFERENT FAMILY MODELS

Third-wave feminism's most pressing challenge may be the effort to combine its celebration of "choice" — the ideal of elites — with renewed attention to economic inequality and the construction of class.

⁴ Bridget J. Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99, 168 (2007).

The first part of the challenge comes from the fact that an insistence on autonomy may reflect the needs of the new information economy as much as an authentic feminist perspective. The second is the risk that the new middle class model that makes women's greater autonomy realistic may simultaneously undermine the ability of working class women to realize the promises of middle class life. These contradictions may lay the groundwork for something that may ultimately define the third-wave, *viz.*, a renewed political and legal consciousness.

Underlying these contradictions is tension in the United States between the two different family systems that guide the transition from adolescence to adulthood. In the older, more traditional system, the entry into adulthood corresponded with the assumption of adult roles — marriage, childbearing, and employment. The new system, which we have termed “the new middle class morality,” identifies adulthood with financial independence and emotional maturity. This system corresponds to the needs of the information economy. Employment has become less secure. With greater turnover, employers invest less in training new workers. The new pathway to the middle class emphasizes adaptability; too early an assumption of permanent commitments may derail better opportunities later. The twenties have accordingly become a time of education, internships, skill acquisition, job transitions, and serial relationships.⁵ The results pay off handsomely for family formation in the thirties. Dual career families earn more and enjoy more of a cushion that allows them to weather financial adversity. Moreover, the new patterns produce more independent women, who can more successfully demand and find companionate mates.⁶ College educated women are the only group in society whose marriage rates have increased, and the marriages they enter are as stable as the unions of the mid-1960s, the period before no-fault divorce, the legalization of abortion, or widespread use of the pill.

A distinguishing feature of the new middle class model is delay in childbearing. The average age of first birth for the country as a whole has risen from 21.4 in 1970 to 25.2 in 2004, what Elizabeth Gregory terms “an enormous change.”⁷ For college-educated women, the average age of first birth is 30.1.⁸ Within such a model, “responsible”

⁵ See June Carbone, *Age Matters: Class, Family Formation, and Inequality*, 48 SANTA CLARA L. REV. 901, 954, 958 (2008).

⁶ ELIZABETH GREGORY, *READY: WHY WOMEN ARE EMBRACING THE NEW, LATER MOTHERHOOD* 8-9 (Basic Books 2007).

⁷ *Id.* at 2-3.

⁸ *Id.*

reproduction follows financial independence and emotional maturity. Contraception is accordingly an imperative, and abortion an important, if regrettable, backup.

The legal correlates of this model — greater access to contraception and abortion, equality and autonomy for women, tolerance for sexuality — have been most widely accepted in the wealthier areas of the country — urban areas, the Northeast and the West Coast, the upper mid-west. They are also deeply threatening to the more traditional and more religious areas of the country, identified with the core of Bush's support in the 2004 election. These "red states," or more accurately, the politically active Republicans who have pushed a "moral values" agenda, reject the new culture. They continue to emphasize religious teachings that celebrate the unity of sex, marriage, and reproduction. As a result of the emphasis on chastity and abstinence education for teenagers and the lesser availability of contraception and abortion, however, red states have higher teen pregnancy rates, more shotgun marriages, and lower average ages of marriage and first births. Not only are these, in turn, associated with lower income, but early marriage and shotgun weddings also correlate with higher divorce rates. Both divorce and the cognitive dissonance that comes from the lengthening period of time between the beginning of sexual activity and marriage in all states produces a sense of moral crisis that in turn fuels political support for abstinence education, marriage promotion, and further restrictions on access not only to abortion, but contraception. The result increases the likelihood of early pregnancy for the working class — teen birth rates increased in 2006 for the first time since 1991 — and makes support for the workforce participation of young mothers that much more critical.

The lack of agreement about acceptable paths to adulthood, and the diverging needs of the middle and working classes, complicate an effective political response. Welfare reform illustrates the tensions. The legislation and subsequent implementation efforts reflect an emphasis on marriage, associated with a more traditional and red state approach — but less than 1% of welfare leavers did so for marriage. A second aspect of welfare reform, however, reflects blue state values: there is a strong emphasis on work. Yet welfare reform does not provide the necessary support for either marriage or work. It lacks the necessary support for helping men find employment, and it does not provide adequate attention for either training women for better jobs nor for facilitating mothers' participation in a family unfriendly labor market.

II. THE IMPACT ON CARE

The need to balance work and family affects men and women regardless of class. Through the Federal Family and Medical Leave Act (“FMLA”), all workers who satisfy certain criteria, such as size of employer and length of time at employment, are guaranteed at least twelve weeks of unpaid family and medical leave.⁹ This section addresses patterns of the FMLA usage as well as the various ways in which states have supplemented the federal leave guarantees. As this discussion shows, not only are poor women less likely to have access to leave and related balancing benefits, but also, blue states are far more likely to have enacted legislation that protects the work family balance.

A. Class and Care:

The care picture is complicated by limits in FMLA coverage, the inability to take unpaid leave, and access to paid leave. First, almost 40% of employees are not at worksites subject to the FMLA,¹⁰ and because not all of those employees have satisfied the prerequisites, only 54% of the workforce is eligible to take FMLA leave.¹¹ Second, even among those workers who are covered, many (according to one study, more than three-quarters) cannot take the leave because they cannot afford to take unpaid leave.¹²

Third, although FMLA leave is unpaid, some employees do have access to paid leave. Approximately 40% of working parents earning less than 200% of the federal poverty level have no access to paid leave at all (no paid sick days, vacation, nor personal days).¹³ Among

⁹ An employee eligible for leave under the FMLA must be employed for at least “12 months by the employer with respect to whom leave is requested under section 2612 of this title; and for at least 1,250 hours of service with such employer during the previous 12-month period.” 29 U.S.C. § 2611(2) (2008). The FMLA only applies to employers who employ “50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year.” *Id.* at § 2611(4). Assuming an employee is eligible for leave under the FMLA and works for an employer covered by the FMLA, the employee shall be entitled to twelve weeks of unpaid leave. *Id.* at § 2612(a)-(c).

¹⁰ JODI GRANT, TAYLOR HATCHER & NIRALI PATEL, EXPECTING BETTER: A STATE BY STATE ANALYSIS OF PARENTAL LEAVE PROGRAMS 7 (2005) [hereinafter *Expecting Better*], available at <http://www.nationalpartnership.org/site/DocServer/ParentalLeaveReportMay05.pdf?docID=1052>.

¹¹ Family and Medical Leave Act Regulations: A Report on the Department of Labor’s Request for Information, 72 Fed. Reg. 35550, 35622 (June 28, 2007), available at <http://www.dol.gov/esa/whd/FMLA2007Report/2007FinalReport.pdf>.

¹² *Expecting Better*, *supra* note 10, at 7.

¹³ *Id.* at 8.

low wage workers, 76% do not have access to paid sick leave.¹⁴ Indeed, as a general matter, *low wage* workers are less likely than *higher-income* workers to be covered by family leave policies, to be eligible to take even unpaid family leave, or, much less, to receive paid family leave.¹⁵ They are also less likely to have access to flexible scheduling.¹⁶

While highly educated and higher income women are more likely to have access to paid leave than women with less education and lower incomes, still one-third of those highly educated and higher income women lack access to any form of paid maternity leave. In fact, 35% of highly educated women are forced to take unpaid maternity leave, compared to 47% of women who have less than a high school education who must take unpaid maternity leave.¹⁷ Women with a college degree were three times more likely to take paid leave following the birth of their first child (58.7%) than women with less than a high school education (17.8%); while 56.4% of women with less than a high school education took unpaid leave, only 38.6% of women with a college degree used unpaid leave.¹⁸ Moreover, women in blue states have better health care coverage. The five states with the lowest rate of uninsured women are all blue — Hawaii (11.2%), Minnesota (11.5%), Massachusetts (11.9%), Maine (12.1%), and Iowa (12.9%).¹⁹

B. Who Cares?

The work and family balance that makes it possible for women to remain in the workplace is more critical to the newer model — and to

¹⁴ *Id.* at 8.

¹⁵ “In March 2005, 54% of workers who made more than \$15 per hour had access to a short-term disability policy, while only 28% of workers earning less than \$15 per hour had access to a short-term disability policy. Similarly, 46% of workers who made over \$15 per hour had access to long-term disability leave, while only 16% of workers making less than \$15 per hour had access to long-term disability leave. There are similar disparities in access to paid sick leave and paid holidays. Eighty-eight percent of workers making more than \$15 per hour had access to paid holidays, and 75% of these workers had access to paid sick leave. Meanwhile, 68% of workers earning less than \$15 per hour had access to paid holidays, and only 47% had access to paid sick leave.” Ann O’Leary, *How Family Leave Law Left Out Low-Income Workers*, 28 BERKELEY J. EMP. & LAB. L. 1, 8 (2007) (internal citations omitted).

¹⁶ Joan C. Williams, *One Sick Child Away from Being Fired: When “Opting Out” is Not an Option* 8 (2006), http://www.uchastings.edu/site_files/WLL/onesickchild.pdf.

¹⁷ *Expecting Better*, *supra* note 10, at 7-8.

¹⁸ JULIA O. JOHNSON & BARBARA DOWNS, U.S. DEP’T OF COMMERCE, MATERNITY LEAVE AND EMPLOYMENT OF FIRST-TIME MOTHERS: 1961-2000, 11 tbl.7 (2005), *available at* <http://www.census.gov/prod/2005pubs/p70-103.pdf>.

¹⁹ KAISER FOUNDATION, MEDICAID’S ROLE IN FAMILY PLANNING 2 (2007), *available at* http://www.kff.org/womenshealth/upload/7064_03.pdf.

the autonomy of poorer women. Through a series of different laws — ranging from domestic violence protection in the workplace to paid leave — some states (typically, those that voted Democratic in the 2004 election and are viewed as “blue states”) are generally more hospitable to working women who have families. The National Partnership on Women and Families examined a series of different laws in developing a state by state scorecard of parental leave programs. Several states — California, Minnesota, and Washington (all blue) — have enacted paid family leave legislation, and a series of others — all blue — have considered it.²⁰ More generally, with respect to a series of parental leave, maternity benefits, and job protection for both state and private sector employees, the top states are: California, Hawaii, Oregon, Connecticut, New Jersey, Washington, Maine, Vermont, Minnesota, Rhode Island; the bottom states of the bottom nineteen, only three (Delaware, Maryland, and Pennsylvania) are blue.²¹ Those states that have most consistently embraced the new family model really do support care.

III. CLASS, EDUCATION, AND CARE

Given the class variations in access to needed care, how do we, in the words of *Manifesta*,²² move up the floor? It is important to recognize here that care consists not just of spending time with children; it also means how you care for children — are your children going to get a good education, experience abuse, live in stable housing, etc.

Education and teen birth matter when it comes to resources for caring for children even outside of the workplace. Not that poverty is necessarily bad for children — moms can be caring and poor. However, life is much harder. In the international development literature, it is well-known that every dollar spent on a woman’s education benefits her and her children, while every dollar spent on a man does not.²³

²⁰ See NAT’L P’SHIP FOR WOMEN AND CHILDREN, STATE FAMILY MEDICAL LEAVE LAWS (2006), <http://www.ncsl.org/programs/employ/fmlachart.htm>.

²¹ *Expecting Better*, *supra* note 10, at 5, 15-43, 48-49. The Report evaluated states based on a variety of programs, including family leave benefits, medical/maternity leave benefits, flexible sick days. *Id.* at 12-14.

²² BAUMGARDNER & RICHARDS, *supra* note 1.

²³ See Franz Brotzen, *Economist Backs Recommitment to World Development Goals*, RICE NEWS, Nov. 2, 2007, <http://www.media.rice.edu/media/NewsBot.asp?MODE=VIEW&ID=10207>; INT’L FUND FOR AGRIC. DEV., WOMEN available at http://www.ifad.org/pub/factsheet/women/women_e.pdf (“The imbalance between the essential roles of women and their limited opportunities is undermining efforts to reduce poverty.”); U.N. DEVELOPMENT PROGRAMME, TASK FORCE ON EDUC. AND GENDER EQUALITY, *Toward Universal Primary Educ.:*

Let's look at women's education and poverty and the class of their children. First, only 36% of women with less than a high school degree worked during their first pregnancies, while 83% of women with a college degree were in the workforce.²⁴ Second, education allows parents to provide more resources for children. While the resources available for the average child have decreased, they have increased dramatically for those who are living the life of the new middle class morality.²⁵ According to Princeton professor Sara McLanahan,

Children who were born to mothers from the most-advantaged backgrounds are making substantial gains in resources. Relative to their counterparts 40 years ago, their mothers are more mature and more likely to be working at well-paying jobs. These children were born into stable unions and are spending more time with their fathers. In contrast, children born to mothers from the most disadvantaged backgrounds are making smaller gains and, in some instances, even losing parental resources. Their mothers are working at low-paying jobs. Their parents' relationships are unstable, and for many, support from their biological fathers is minimal.²⁶

Women without a college degree are almost twice as likely to get divorced as women with a college degree.²⁷

In 2004, women with a college degree earned an average monthly income of \$2,851.00, while women with a high school education earned less than half — \$1,357.00. More highly educated women earned even more — \$4,837.00.²⁸ Men with comparable degrees of education exhibited the same pattern, although their earnings were higher. Access to college is an important commodity for middle class earning potential. Among mothers, the more highly educated women have higher labor force participation rates.²⁹ In 2004, the labor force

Investments, Incentives, and Institutions, at 5 (2005), available at <http://www.unmillenniumproject.org/documents/Education-part1.pdf>.

²⁴ JOHNSON & DOWNS, *supra* note 18, at 5 fig. 1.

²⁵ See June Carbone, *Is Fertility the Unspoken Issue in the Debate Between Liberal and Conservative Family Values?*, 32 LAW & SOC. INQUIRY 809, 822 (2007) (reviewing LINDA C. MCCLAIN, *THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY* (The Harvard President and Fellows 2006)).

²⁶ SARA McLANAHAN, *Diverging Destinies: How Children Are Faring Under the Second Demographic Transition* 41 DEMOGRAPHY 607, 608 (2004).

²⁷ See *id.* at 613 fig.4.

²⁸ U.S. CENSUS BUREAU, AVERAGE MONTHLY INCOME BY EDUCATION, SEX, AGE, AND RACE AND HISPANIC ORIGIN, 2004, SURVEY OF INCOME AND PROGRAM PARTICIPATION, tbl.2B (released January 29, 2008), <http://www.census.gov/population/www/socdemo/education/sipp2004w2.html>.

²⁹ HEATHER BOUSHEY, ARE WOMEN OPTING OUT? DEBUNKING THE MYTH, CENTRE FOR ECON. POLICY RESEARCH 10 (2005), available at http://www.cepr.net/documents/publications/opt_out_2005_11_2.pdf.

participation rate for mothers with less than a high school education was 28.8%; for women with graduate degrees, it was 77%. These differences held true even for mothers of children under the age of six; 18.2% of women with less than a high school education were in the labor force, compared to 73.2% of women with graduate degrees. Perhaps even more significantly, economist Heather Boushey found that the “child penalty,” the effect of having a child on labor force participation rates, is negligible for highly educated women, while it is considerable for women with less education. Employment rates for women with less education who had children at home were 21.7% less than for those women with the same education who did not have children at home, while for women with a graduate degree, the “penalty” rate was 1.3%.³⁰

So how do race and class play out? We hypothesize that blue laws reinforce the blue family lifestyle, and red laws reinforce the red family lifestyle; and that, at least in blue states, the blue lifestyle is associated with the middle class. This, in turn, is associated with education. According to Sara McLanahan, women with higher education levels have much higher incomes: in 2000, for example, their median family incomes were close to \$80,000 per year, while women with less education had median family incomes of about \$25,000 per year;³¹ and mothers with high levels of education are more than two times as likely to be employed as are mothers with low education (62% versus 30%). Women with low education levels were more than twice as likely to become single mothers than women with higher education; women with a four-year degree had a divorce rate of about 17% in 2000, while women without a four-year degree had a divorce rate almost double, at about 32%. Moreover, earlier childbearing is associated with less education. Almost 60% of teens with a school-age pregnancy drop out of high school, while only 25% of teens who do not have a child before they turn eighteen drop out of school.³² Only 2% of teen mothers will graduate from college, while four times that number of women who do not have children until twenty or twenty-one will graduate. Eighty-two percent of children whose parents do not have a high school diploma live in poverty. Seventy-five percent of unmarried teen mothers begin to receive welfare within five years of their first child. Children of teen mothers

³⁰ See *id.* at 11-12 tbls.5 & 6.

³¹ McLANAHAN, *supra* note 26, at 614.

³² THE NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY, WHY IT MATTERS: TEEN PREGNANCY AND EDUCATION, available at <http://www.thenationalcampaign.org/why-it-matters/pdf/education.pdf>.

do not perform as well in school as children of older mothers; for example, they are 50% more likely to repeat a grade. The daughters of teen mothers are three times more likely to become teenage mothers themselves as compared to daughters of mothers ages twenty and twenty-one.

The blue states are beginning to learn this lesson. The five states³³ with the lowest rates of teen births are all concentrated in the Northeast and all voted for Kerry: New Hampshire,³⁴ Vermont, Massachusetts, Connecticut, and Maine. In contrast, the five states with the highest teen birth rates are all red and are all in the South or the Southwest: Texas, New Mexico, Mississippi, Arizona, and Arkansas.³⁵ As the statistics on education and teen pregnancy show, teen pregnancy is associated with class and can provide a significant barrier to finishing high school and pursuing additional educational opportunities.³⁶ Contraception and abortion availability would help in providing teens with the choices they need.

There are, of course, complicating factors of wealth, religion, and ethnic diversity in reinforcing or undercutting family formation practices. Nonetheless, however, the fact of different cultural understandings in itself is a significant issue underlying family law decisions.

³³ To make the analysis more cogent, we focus on the highest and lowest five states in each category.

³⁴ New Hampshire, unlike the others, however, was so close that it could be more accurately described as “purple.” See The Washington Post, U.S. President — New Hampshire (2004), available at <http://www.washingtonpost.com/wpsrv/elections/2004/page/295035> (demonstrating the 2004 presidential election in New Hampshire was so close that it could more accurately be described as a “purple” state).

³⁵ CHILD TRENDS DATABANK, TEEN BIRTH RATES RANKED LOWEST TO HIGHEST (2003) http://www.childtrends.databank.org/pdf/13_PDF.pdf. In 1988, by contrast, the lowest teen birth rates would have in Minnesota, North Dakota, Massachusetts, Iowa, New Hampshire, and Vermont while the highest rates would have been in Mississippi, New Mexico, Arkansas, Texas, and Arizona. The relative changes involve a steady decline in teen birth rates in New England compared to stable rates in the upper Midwest. Abortion ratios, defined as the number of abortions for every 1000 births, complement the picture of regional variation. The states with the five highest ratios for teens are New Jersey, New York, Massachusetts, Connecticut, and Maryland, all blue states from the New England or mid-Atlantic regions. The states with the lowest teen abortion ratios are Kentucky, Louisiana, Arkansas, South Dakota, Oklahoma, and West Virginia. With the exception of South Dakota, they are all Southern or border states. See GUTTMACHER INSTIT., U.S. TEEN PREGNANCY STATISTICS, NATIONAL AND STATE TRENDS BY RACE AND ETHNICITY 11 (2006). If we were to measure abortion rates as opposed to ratios, New Jersey, New York, and Maryland would remain in the top five, but Massachusetts and Connecticut would be replaced by Nevada and California. *Id.* The lowest abortion rates would change more with the five lowest states: Utah, South Dakota, North Dakota, Kentucky, and West Virginia. Utah, North Dakota, and South Dakota also have relatively low teen pregnancy rates compared with Kentucky and West Virginia or the states with higher abortion ratios.

³⁶ McLANAHAN, *supra* note 26, at 614.

Turning to race, Black and Latino teens are still two to four times as likely as whites to become teen mothers.³⁷ Once they do, statistically speaking, women who became teen mothers are likely to stay out of the middle class.³⁸ The November 2007 Pew Study asked middle and lower-class blacks what they think about each other in terms of values, or, the “things that people view as important or their general way of thinking.”³⁹ By a two-to-one ratio, blacks said that the values of poor and middle class blacks have grown more dissimilar over the past decade; at the same time, most blacks say that the values of blacks and whites have grown more alike during this same time period. On a similar question, only about a quarter of all blacks (23%) said that middle class and poor blacks share “a lot” of values in common, while a plurality (42%) says they share some values in common; 22% say they share only a little in common and 9% say they share almost no values in common. Well-educated blacks are more likely than blacks with less education to say that a values gap within the black community has widened during the past decade. At the same time, however, it is blacks with lower incomes and less education who are most inclined to see few shared values between middle class and poor blacks — suggesting that the perception of differences over values and identity within the African American community is felt most strongly by those blacks at the lower end of the socio-economic spectrum.⁴⁰

III. THE FUTURE?

Lifting up the floor requires structural supports. So far, the attention in third-wave feminism has been on structural supports for equality and reproductive rights, but not on the more basic forms of structural support that enable women to hold jobs where equality matters and to exercise reproductive rights in a context where choice is meaningful. While many women will not choose the middle class model that we have articulated, and while the trend towards later childbearing is problematic in its acceptance of women living “ideal worker” lives, this choice should be available.

³⁷ B.E. HAMILTON, J.A. MARTIN & S.J. VENTURA, BIRTHS: PRELIMINARY DATA FOR 2006, 56 NAT'L VITAL STATISTICS REPORT 7, 9 tbl.3 (2007), available at http://www.cdc.gov/nchs/data/nvsr/nvsr56/nvsr56_07.pdf.

³⁸ CHILD TRENDS DATA BANK, TEEN BIRTHS 11 (2003), available at http://www.childtrendsdatabank.org/pdf/13_PDF.pdf.

³⁹ PEW RESEARCH CENTER, BLACKS SEE GROWING VALUE GAP BETWEEN POOR AND MIDDLE CLASS 3 (2007), available at <http://pewsocialtrends.org/assets/pdf/Race.pdf>.

⁴⁰ *Id.*

These more basic supports involve education and training, healthcare that includes, but is not centered on, reproductive health, and support for balance in the workplace. Part of the problem may be that, in their reliance on individual narratives, third-wave feminists may not have access to the narratives of women unable to adequately articulate their needs.⁴¹

Listening to individual narratives may make it more difficult to engage with the larger, systemic, and more fundamental group problems. Indeed, third-wave feminists offer their own challenges to the emphasis on individual narrative, and even on the terminology “third-wave” and its suggested differentiation from other forms of feminism. Some suggest that the term itself is no longer useful;⁴² others suggest that the debate is useful in attempting

to determine if there’s enough of a generational divide between older and younger feminists to warrant a whole new label. The question seems to be, have we moved far enough from the social issues that propelled the women’s movement in the 1960s and ‘70s to be able to suggest that there’s a new wave?⁴³

Such questions help third-wave feminism define itself and its goals.

Indeed, there are some self-identified third-wave feminist agendas that strive to make the goals of gender equality more concrete.⁴⁴ For example, in their thirteen-point *Manifesta*, Baumgardner and Richards include a comprehensive goal about women’s involvement in the armed forces, calling for women who wish to do so:

to participate in all reaches of the military, including combat, and to enjoy all the benefits (loans, health care, pensions) offered to its members for as long as we continue to have an active military. The largest expenditure of

⁴¹ See Crawford, *supra* note 4, at 166 (noting that “the only autobiographical account that will make it into a book of third-wave feminist writing is one told by the person with enough education, authority, and mental and cultural resources to write it.”).

⁴² E.g., Lisa Jervis, *The End of Feminism’s Third-wave*, MS. MAGAZINE, 2004, available at <http://www.ms magazine.com/winter2004/thirdwave.asp>.

⁴³ Alison Piepmeier, *Postfeminism vs. the Third-wave*, Mar. 17, 2006, <http://www.electronicbookreview.com/thread/writingpostfeminism/reconfiguredrip2>. Piepmeier is the author of *Catching a Wave: Reclaiming Feminism for the 21st Century* (Rory Dicker & Alison Piepmeier, eds., Northeastern University Press 2003).

⁴⁴ *Id.* (noting that third-wave feminism “grapples with women’s intersectional identities and demands an end to all the forms of oppression that keep women from achieving their full humanity.”). See also Deborah Siegel, *Women: What Next for the Sexual Revolution?*, THE GUARDIAN (United Kingdom), Aug. 16, 2007, at 16 (suggesting that the stripping pole is to third-wave feminism what bra-burning was to second-wave feminists, and that third-wave feminists are concerned with activism on a series of gender equality issues), available at <http://www.guardian.co.uk/world/2007/aug/31/gender.uk>.

our national budget goes toward maintaining this welfare system, and feminists have a duty to make sure women have access to very echelon.⁴⁵

Notwithstanding their approach to equity in the military, and their critique of it as a “welfare system,” there is no comparable goal with respect to other forms of public welfare. Indeed they make the following two somewhat more modest demands concerning health care:

3. To make explicit that the fight for reproductive rights must include birth control; the right for poor women and lesbians to have children . . . subsidized fertility treatments for all women who choose them; and freedom from sterilization abuse. Furthermore, to support the idea that sex can be — and usually is — for pleasure, not procreation . . .

8. To have equal access to health care, regardless of income, which includes coverage equivalent to men’s and keeping in mind that women use the system more often than men do because of our reproductive capacity.⁴⁶

While gender equity in health care and in the military are important signposts on the road to equality, these markers do not provide the basic structural supports that women need to achieve the potential that is so celebrated.

Instead, as we have argued elsewhere, women need to be trained and educated to assume their roles in the economic future. Our examination of how demographic differences correspond to differences in understandings about values (such as views on the regulation of sexuality or “family values”), and not just on hot button issues, such as same-sex marriage or parental notification of abortion, have resulted in our conclusion that the newer family culture is the system that is better geared for the post-industrial economy. The fundamentally religious and other “conservative” influences are distracting the country from developing a family law system that promotes economic growth and stronger families. In terms of macro and micro economic and social stability, the family culture (of both laws and life patterns) that is more typical in blue states provides a model for the future. Policies that promote early marriage and higher fertility produce less investment in each child, which in turn promotes a less skilled labor force, which in turn attracts a less skilled industry, which in turn keeps wage levels down and makes employers less likely to offer paid leave and other benefits.

The conservative take on this is to re-impose values that tie marriage and childbearing together, pushing a solution that depends on

⁴⁵ BAUMGARDNER & RICHARDS, *supra* note 1, at 280.

⁴⁶ *Id.* at 279-80.

low income women getting married.⁴⁷ David Blankenhorn flatly states, “there is something specifically about *marriage* that tends to boost earnings and reduce poverty.”⁴⁸ Federal marriage promotion efforts emphasize responsibility on the parts of both men and women, presuming that it is because both men and women are acting irresponsibly that the non-marital childbirth has increased so dramatically. If irresponsible sexual behavior is the problem, then enforcing marriage is the solution that not only privatizes dependence (solving welfare) but also benefits children. It is true that the overwhelming majority of public welfare recipients (69.6%) are single, while only 10.5% are married, and that approximately 90% of the recipients are female.⁴⁹ On the other hand, only 0.1% of welfare recipients stop receiving it because they married, while 20.9% leave because of employment.⁵⁰

While we support adult commitment, forcing people to marry is not the answer. Indeed, most people have a positive view of marriage, and want to be married.⁵¹ The state can help couples remain in marriage, albeit without coercion or forcing one fixed idea of marriage on all relationships — but that should not be the sole focus of changing patterns of dependency.⁵² The problems that cause most single welfare recipients to receive aid will not be solved through

⁴⁷ See KAY HYMOWITZ, MARRIAGE AND CASTE IN AMERICA: SEPARATE AND UNEQUAL FAMILIES IN A POST-MARITAL AGE 30 (Ivan R. Dee 2006), available at http://www.city-journal.org/html/16_1_marriage_gap.html.

⁴⁸ DAVID J. BLANKENHORN, THE FUTURE OF MARRIAGE 243 (2007). See also Amy Wax, *Engines of Inequality: Class, Race, and Family Structure*, 41 FAM. L.Q. 567 (2007) (providing an extremely thoughtful discussion of potential reasons for the disparity in marriage rates by class).

⁴⁹ ADMIN. FOR CHILDREN AND FAMILIES, *Temporary Assistance for Needy Families – Active Cases*, <http://www.acf.dhhs.gov/programs/ofa/character/FY2006/tab22.htm>, tbl.22 (last visited Aug. 29, 2008) (noting that from October 2005 until September 2006, 98,436 recipients of temporary assistance were male, while 897,876 were women).

⁵⁰ ADMIN. FOR CHILDREN AND FAMILIES, *Temporary Assistance for Needy Families – Closed Cases*, <http://www.acf.dhhs.gov/programs/ofa/character/FY2006/tab46.htm>, tbl.46 (last visited Aug. 29, 2008).

⁵¹ See Alison Stein Wellner, *The Marriage Habit: Baby Boomers May Have Believed in Free Love, But Now They’re Hooked on Matrimony*, AMERICAN DEMOGRAPHIC FORECAST, March 2002, available at http://acuriousmind.typepad.com/a_curious_mind/files/Forecast_BoomMarriage.pdf.

⁵² See generally, Theodora Ooms, *The Role of the Federal Government in Strengthening Marriage*, 9 VA. J. SOC. POL’Y & L. 163, 177-90 (2001) (suggesting five ways for the federal government to promote marriage without imposing it, including improved data collection on divorce, and removing the marriage penalty in the income tax code). See also Elizabeth Scott, *Marriage, Cohabitation, and the Collective Responsibility for Dependency*, 2004 U. CHI. LEGAL F. 225, 252-58 (arguing that marriage deserves “special” treatment, but that contracts within cohabitating relationships merit enforcement as well).

marriage.⁵³ Instead, education appears as a more feasible solution. Lack of education is highly correlated with welfare receipt: more than 95% of all welfare recipients have twelve years of education or less, compared to 50% of the general population. While education does not guarantee that an individual will not receive public aid, it becomes statistically less likely with each year of post-secondary education.⁵⁴

Consequently, a more comprehensive approach to the third-wave vision of moving up the floor suggests a series of different approaches that are designed to increase the economic independence of women and the financial resources available to children. Marriage is not, as the famous article goes, the panacea — but increasing education for women and resources for children together with facilitating the lives of parents who seek to be good parents and good workers are panaceas. So is allowing girls access to contraceptives, comprehensive sex education, and abortion.

First, the concept of choice, that is so important in third-wave feminism, must be reconstructed. Regardless of issues concerning choice and false consciousness,⁵⁵ one choice generally forecloses other future options. Thus, while the “choice” to become sexually active must be protected, of course, the choice of girls who become pregnant at sixteen may foreclose them from moving towards more autonomy because they are then statistically much less likely to have other choices concerning work and family.

While cultural norms are integral to structuring women’s choices, the law can support expanding those choices. Ultimately, policies must support practices that train for the autonomy that will allow women to decide for themselves when to have children and where to work.⁵⁶ This means: (1) cushioning the consequences of bad early decisions so they are not permanently derailing to women; (2) deterring early childbirth through comprehensive sex education (encouraging responsibility and autonomy); and (3) enforcing laws against domestic violence and coercive sex (more autonomy).

A second goal of third-wave feminism is gender equity. In addition to enacting the ERA and allowing equal access to the

⁵³ See generally, Vivian Hamilton, *Will Marriage Promotion Work?*, 11 J. GENDER, RACE & JUST. 1 (2007).

⁵⁴ ADMIN. FOR CHILDREN AND FAMILIES, *supra* note 49, at tbl.25.

⁵⁵ See Crawford, *supra* note 4, at 166; see also JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (Oxford Univ. Press 2000).

⁵⁶ One important question at the conference concerned which women’s lives should be reproduced. We are not advocating one lifestyle over another; what we are advocating is that women have the education and support to understand their choices.

military,⁵⁷ this involves: (1) conceptualizing mothers' role as combining workforce participation and parenthood by making the workplace more family friendly; (2) re-conceiving the safety net to provide the things low income jobs are unlikely to provide including health care, assistance with child care (probably through universal preschool), and real unemployment assistance in a world where jobs have become less permanent, and retraining may be critical; and (3) improving education, specifically for low income children.

Achieving this goal requires specific laws that, for example, mandate Medicaid funding for family planning (perhaps even a return to funding for abortion, if this becomes politically feasible). It means single parenthood with support — education, retraining, cycling in and out of the workforce. Ensuring that employment is feasible for single mothers involves the recognition that employers of poor women cannot realistically subsidize family leave or health benefits. Ann O'Leary suggests, for example, that Congress provide funding for family leave for newly employed welfare recipients.⁵⁸ Similar funding could also be extended to health benefits to ensure that former welfare recipients have adequate access without employers assuming the full responsibility. Even more radically, laws could detach medical care from employment.

In terms of family leave, as both second and third-wave feminists argue, there must be meaningful access for both men and women, which means requiring smaller workplaces to be covered and shortening the waiting period for employee eligibility — and ensuring that working class men buy into these roles. As third-wave feminism (and second-wave feminists as well) remind us, men's roles are critical to this enterprise, so this involves paying attention to the needs and futures of unemployed and working class men. Otherwise, not only will employers continue to hire men over women, but also women's domestic roles will not change. When an employer does invest in the individual, then the employer will also be more willing to provide additional benefits to get them to stay. Mandating parental leave makes individual jobs more expensive for employers, making them less likely to hire poorly educated or unskilled workers. For poor women, it is critical to prevent them either from being railroaded out of employment permanently by helping them acquire the education and skills necessary to move into jobs with more benefits.

⁵⁷ See BAUMGARDNER & RICHARDS, *supra* note 1.

⁵⁸ See O'Leary, *supra* note 15, at 60-61.

Ultimately, all women need training for the realization of their own autonomy and for gender equity. Enhancing women's workforce opportunities through better education will strengthen them economically as well as in their personal lives. The middle class already trains for autonomy by putting in place the necessary conditions for this status, including access to birth control, education, and delay in family formation. Middle class women who then have the capital to be worth more to employers can better negotiate employment situations that are family friendly enough to keep them in the workforce.

By contrast, poorer women are not trained for autonomy and do not experience it; they have less access to contraception, which produces unplanned pregnancies that derail education and the kind of workforce participation that builds skills that contribute to long term marketability. To change this cycle, there are a series of steps that enhance choice and result in gender equity: more contraception, more abortion, more support for single parents, and the creation of pathways that provide for workforce participation and education after the birth of the first child.