

# FEMINISM, CHILDREN AND THE FAMILY

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Feminism originated and has developed as a demand for equality between women and men. Admittedly, the feminist commitment to equality has followed a sinuous road, not least because a variety of obstacles to full equality has periodically led some feminists to emphasize the differences between women and men that appear to make equality on male terms an elusive goal.<sup>1</sup> But when all the caveats are filed, the claims to equality nonetheless remain paramount, notwithstanding significant and sometimes unarticulated differences among feminists over whether equality should mean equality of opportunity or equality of results.<sup>2</sup> Arguably, most women are today struggling not for the equality demanded by feminists but for equity and fairness in the distribution of burdens.<sup>3</sup> The rhetoric of equality therefore distorts the issues.

Feminists' stated and unstated commitments to equality cast a long shadow over the relations among feminism, children, and the family.<sup>4</sup> From the start, some feminists argued that the so-called patriarchal family was itself the primary source of women's oppression and the primary obstacle to their liberation.<sup>5</sup> And even those who do not judge the family so harshly nonetheless

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1. See generally CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982); Ellen DuBois, *Illusions Without Feminism*, *THE NATION*, Jan. 20, 1992, at 57-60 (review of ELIZABETH FOX-GENOVESE, *FEMINISM WITHOUT ILLUSIONS* (1991)) (both discussing differences between men and women and resulting inequalities).

2. The issue is illustrated by the question of whether women should fight for "maternity leave," implying equal opportunity for women to work, or for "parental leave," symbolizing an equal sharing of parental responsibility by fathers. See ELIZABETH FOX-GENOVESE, *FEMINISM WITHOUT ILLUSIONS* 56 (1991).

3. VIRGINIA SAPIRO, *WOMEN IN AMERICAN SOCIETY* 410 (1994). As one commentator has noted, women who do not seek a feminist version of substantive equality "would find it intrusive and counterproductive for government" and law to try to effect it. Cass R. Sunstein, *Feminism and Legal Theory*, 101 *HARV. L. REV.* 826, 836 (1988) (review of CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987)).

4. See, e.g., Joan C. Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 *N.Y.U. L. REV.* 1559 (1991) (discussing the working mother and abortion and arguing that "mothers who pursue their own self-interest are often condemned as selfish.") For a discussion of the impact of feminism on the family as a corporate unit rather than a collection of individuals, see Elizabeth Fox-Genovese, *The Legal Status of Families as Institutions*, 77 *CORNELL L. REV.* 992 (1992).

5. See, e.g., SIMONE DE BEAUVOIR, *THE SECOND SEX* 444 (Vintage Books 1989) (1952) (labeling marriage "obscene in principal"); KATE MILLETT, *SEXUAL POLITICS* 25-26 (1970) (arguing that patriarchy is a social constant, keeping women from political or social power).

tend to single out family responsibilities as a formidable obstacle to women's equality with men.<sup>6</sup> The proposed feminist solutions to this problem have gone in many directions, arguing for the transformation of male consciousness,<sup>7</sup> a new division of labor within the family (joint-parenting),<sup>8</sup> and a variety of state supports for working women or parents.<sup>9</sup> I hardly need to rehearse the objections to these and similar proposals for this audience. Suffice it to say that no equalization of men's and women's domestic responsibilities will be possible without considerable private and social cost. With this difficulty in mind, it seems useful to reconsider the problem itself.

In its initial stages, feminism primarily articulated a revolt by women against men. After all, men with their many freedoms and prerogatives made an easy target. More importantly, few women were prepared to admit openly that children constituted the real object of their attack or, to put it differently, the real constraint upon their equality with men.<sup>10</sup> And since I intend sharply to attack the feminist tendency to rebel against responsibility for children,<sup>11</sup> it is all the more important to understand that children do indeed account for a significant portion of women's inequality with men.<sup>12</sup> To be blunt, more often than not, children make and keep women poor, especially when the women have sole responsibility for them.<sup>13</sup> And since almost one-fourth of all

6. See BARBARA EHRENREICH, *THE HEARTS OF MEN: AMERICAN DREAMS AND THE FLIGHT FROM COMMITMENT* 100-02 (1983) (reviewing feminist arguments against housekeeping by married women).

7. See, e.g., FOX-GENOVESE, *supra* note 2, at 3-4; CASEY MILLER & KATE SWIFT, *WORDS AND WOMEN* ix-x (1977).

8. See, e.g., Virginia Held, *The Obligations of Mothers and Fathers*, in *MOTHERING: ESSAYS IN FEMINIST THEORY* 7 (Joyce Trebilcot ed., 1984) [hereinafter *MOTHERING*] ("we may have urgent reasons to turn the parenting done by fathers and mothers into entirely similar activities.").

9. See, e.g., EHRENREICH, *supra* note 6, at 177 (arguing that, for women to enter the workforce, they will need child care); Maria O. Hylton, "Parental" Leaves and Poor Women: *Paying the Price for Time Off*, 52 U. PITT. L. REV. 475, 518 (1991) (arguing that parental leave legislation as currently constituted is inadequate and actually burdens women).

10. See, e.g., BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 194-95 (20th anniversary ed. 1983) (1963) (explaining that the double duty of children and work does not adversely affect working mothers).

11. See, e.g., FOX-GENOVESE, *supra* note 2, at 82; Jeffner Allen, *Motherhood: The Annihilation of Women*, in *MOTHERING*, *supra* note 8, at 315, 316.

12. See LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 275-76 (1985) (demonstrating how divorced women with children experience significant economic loss); M. Rivka Polatnick, *Why Men Don't Rear Children: A Power Analysis*, in *MOTHERING*, *supra* note 8, at 21, 28-29, 33-34 (discussing the demands that children place on a mother's time).

13. SAPIRO, *supra* note 3, at 433; see also WEITZMAN, *supra* note 12, at xi-xii.

children live only with their mothers,<sup>14</sup> it should be clear that any complacent assumption that mothers should just assume time-honored domestic responsibilities and stay home with their kids fatuously misses the point. Any consideration of feminism's attitudes toward children and the family must, accordingly, take into account these social and economic realities.

In fairness, however, it is not clear that these are the realities that immediately concern the most visible feminists. These feminists represent the group of upscale—affluent, well-educated, and primarily white—women who have fixed their own ambitions upon careers comparable to those of the most successful men.<sup>15</sup> These are the women who have pioneered in turning women's work within the home into servants' work—women who expect others to do their cleaning, care for their kids, and take on all the other drudgery of keeping life going.<sup>16</sup> (Conservatives are entitled to laugh and recall the old saw that socialism is a system in which everyone has servants.) No doubt, these women's incomes benefit their families, but not by the full amount of the income, for a significant portion of that income supports their own clothing, manicures, meals out, and travel—all of the signs of prestige and freedom that women who spend most of their time with kids cannot justify and usually cannot afford.

Arguably, many elite career women could choose to stay home without significant cost to their families' well-being. Many other women cannot; with rare exceptions, single mothers must work or go on welfare; many poor married women must also work.<sup>17</sup> The problem of choice falls the hardest on working-class and lower-middle-class women who cannot earn enough to replace the quality of the care they give their children, but who know that if they do not work their children may lose the opportunity to attend college. Most women wrestle with difficult choices about how best to meet their family responsibilities.<sup>18</sup> Even if

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14. In 1990, about 73% of children in the United States lived with both parents, 21% lived with their mother only, and 3% lived with neither parent. SAPIRO, *supra* note 3, at 387. For a discussion of the difficulties of mothering and work, see MAXINE L. MARGOLIS, *MOTHERS AND SUCH: VIEWS OF AMERICAN WOMEN AND WHY THEY CHANGED* 46-47 (1984).

15. FOX-GENOVESE, *supra* note 2, at 28-29 (citing ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988)).

16. See FOX-GENOVESE, *supra* note 2, at 22 (arguing that feminism eases the passage of privileged middle-class women into the public sphere).

17. LAURA A. DAVIS, *A Feminist Justification for the Adoption of an Individual Filing System*, 62 CAL. L. REV. 197, 209 (1988); see also SAPIRO, *supra* note 3, at 388.

18. See WEITZMAN, *supra* note 12, at 319 (observing that the children of divorced working mothers rarely receive compensatory care from other family members).

many legitimately enjoy the opportunity to spend some time at work as well as at home, their work usually has more to do with necessity than with self-fulfillment.<sup>19</sup> Their problems should top the list of our agenda for social policy, if only because they reappear in sinister form in the statistics about teen crime, pregnancy, and suicide.<sup>20</sup>

Their problems are not those with which feminism has most directly concerned itself. Indeed, they are not those which feminists normally like to discuss at all. For buried in the private anguish of ordinary women who weigh hard choices, lies the notion that the leading feminist premises about what women should want may mask a more complex and dangerous reality. Feminism has, above all, been driven by the determination to free women from the constraints under which they suffer, notably their biology.<sup>21</sup> This determination surfaces in the defense of the right to abortion as a fundamental right. In *Planned Parenthood of Southeastern Pennsylvania v. Casey*,<sup>22</sup> the Supreme Court effectively confirmed the logic of the feminist position in this regard, arguing that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."<sup>23</sup> The Court thus assumed that women are, by choice or necessity, independent economic agents who must be able to provide for themselves. It further assumed what most people have always known, namely that in important respects, the interest of women as individuals and the interests of children are at odds.<sup>24</sup> To be a fully autonomous individual—a player—women must be free not to bear children.

Societies have always coerced or cajoled women into finding a compelling interest in the care of children, and most elite women throughout history have not performed the work of caring

19. SAPIRO, *supra* note 3, at 431, 435, 437.

20. See *id.* at 438; DONNA GAINES, *TEENAGE WASTELAND* 7 (1992) (discussing teen suicide); see generally ALEX KOTLOWITZ, *THERE ARE NO CHILDREN HERE* (1991) (tracing the lives of two children in a housing project over two years).

21. See, e.g., ALLEN, *supra* note 11, at 315 (calling for women to "evacuate" motherhood). For a discussion of the pernicious effect of "phallocentrism" in public institutions, see CHRISTINE A. LITTLETON, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279 (1987).

22. 112 S. Ct. 2791 (1992).

23. *Id.* at 2797.

24. See POLATNICK, *supra* note 12, at 35 (arguing that a mother's duty to subordinate her personal objectives to the needs of others is not a path to power and success).

for their own children.<sup>25</sup> This recognition does not negate the competing truth that women have generally had a deep personal interest in their children and a special sense of responsibility for them.<sup>26</sup> But, it should force us to acknowledge the complexity of the issue and to recognize the ways in which the failures of our social policies, beginning with no-fault divorce, have opened the door to feminist claims about women's primary need for independence and equality—their need not to be left at home with the kids.

Our most powerful rhetoric about the responsibilities and satisfactions of motherhood derives from a period in which men were normally held to the economic support of wives and children.<sup>27</sup> Those days are gone. Nor will newly draconian support policies for absent fathers bring them back. Feminists are uncomfortable with the claim that children do better with both fathers and mothers, even when they insist that fathers should share equally in the responsibilities of parenting.<sup>28</sup> We are not required to share these self-serving illusions. If we are to encourage mothers to put children first, we must encourage fathers and especially employers and public policies to do the same.

If feminism has not been friendly to children, most employers have not been either.<sup>29</sup> Pregnancies, breast feeding, chicken pox, recurring earaches, and even homework are antithetical to the norms of smoothly running organizations—and, in fairness, we should acknowledge that many firms cannot easily meet the attendant costs. Child-friendly solutions such as extended pregnancy leaves, job security for child-raising employees, and the rest can prove expensive, as can on-site daycare and job training for poor single mothers.

But, if we are serious about our commitment to children, we must find ways to solve these problems. The commitment to solutions does not oblige us to swallow reigning feminist and liberal-

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25. See ELIZABETH FOX-GENOVESE, *WITHIN THE PLANTATION HOUSEHOLD* 16-17, 98 (1988) (discussing elite ante-bellum women who did not care for their own children).

26. See SARA RUDDICK, *MATERNAL THINKING* 70 (1989) (discussing the preservative love of mother for child).

27. See MARGOLIS, *supra* note 14, at 33-39 (providing examples of 19th-century rhetoric concerning motherhood).

28. See Barbara D. Whitehead, *Dan Quayle Was Right; Harmful Effects of Divorce on Children*, *THE ATLANTIC*, Apr. 1993, at 47-48 (noting that any discussion of the superiority of two-parent families provokes angry protest).

29. See, e.g., Hylton, *supra* note 9 (arguing that unpaid leave is inadequate for the needs of families and that the costs are passed on to poor workers).

statist pieties and agree to an endless expansion of bureaucracy and state intervention. When feminism assumes that women must be liberated from their responsibilities to children in order to attain justice for themselves, it implicitly invites the conclusion that women who choose to have children may fairly be held responsible for them in the way that all individuals are held responsible for their "choices." Or, to put it differently, a mindless view of equality between women and men puts children at high risk. And if we uncritically accept the upscale, careerist feminist agenda, countless numbers of women will also suffer.

Our society has cut women loose from the secure pursuit of devotion to children.<sup>30</sup> The tension that always existed between the interests of women and the interests of children has erupted into a war in which women, to meet their purported responsibility to perform the moral work of society—the work for which the rest of us are unwilling to pay—are asked to sacrifice their own prospects not merely for glory and renown but for minimal security and equity.<sup>31</sup> We will not begin to define the appropriate relations among women, children, and family until we transcend both the feminist insistence upon equality and the conservative celebration of domesticity as usual. Only when we recognize that both an unattainable equality and a punitive inequality deepen the antagonism between the needs of women and children, will we begin to imagine a model of equity that may serve the needs of both.

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30. For a critique of this cutting loose, see F. Carolyn Graglia, *The Housewife as Pariah*, 18 HARV. J.L. & PUB. POL'Y 509 (1994).

31. See Fox-Genovese, *supra* note 4, at 995 (arguing that the family could be strengthened by denying parents the right to divorce, or at least the right to remarry and assume economic responsibility for another family, until their children are self-sufficient).