

BOOK REVIEW

In Pursuit of Equity: Women, Men, and the Quest for Economic Citizenship in 20th-Century America

CATHERINE L. FISK†

When my Princeton roommates and I graduated from college in 1983, two went to medical school, two to law school, two got Ph.D.s in science, one a graduate degree from Oxford, and three went into business—two in engineering, and one in health care administration. We were convinced that the great fights for gender equality had been won sometime around 1969 when women first enrolled at Princeton. We believed, as Alice Kessler-Harris put it in her prize-winning book, *In Pursuit of Equity: Women, Men and the Quest for Economic Citizenship in 20th-Century America*, that "the transformation merely had to play itself out, that women's [our] economic independence was assured, and that with it, the full range of economic citizenship would soon be available to both sexes."¹ (Or at least that is what I thought; we didn't discuss gender equity

† Professor of Law, University of Southern California Law School. I wrote this essay while I was a visiting professor at Duke University Law School, where Professors Doriane Lambelet Coleman and Laura Fitzgerald Cooper helped me think through these issues far more clearly than I ever could have on my own. Thanks to Susan Bisom-Rapp and Erwin Chemerinsky for commenting on drafts, and especially, to Dora Hernandez, without whose work caring for my own children I would never have written this essay (or anything else) at all.

1. ALICE KESSLER-HARRIS, *IN PURSUIT OF EQUITY: WOMEN, MEN, AND THE QUEST FOR ECONOMIC CITIZENSHIP IN 20TH-CENTURY AMERICA* 290 (2001). [hereinafter *IN PURSUIT OF EQUITY*].

much, perhaps because we did not see inequity in our future). Twenty years later, I am one of only two or three still working full-time. I am not the smartest of us, nor was I the most ambitious when we graduated. I doubt that I showed the most promise for intellectual or professional accomplishment. What happened?

What happened is that we got married and had children. And then, one by one, we began to commit more time as wives and moms and less as doctors, lawyers, engineers, or business people. Since our children are still young, it is too soon to know if, when, and on what terms those of us who left full-time paid work will resume it. So we do not know what adverse professional consequences will attend our choices. Contrary to what a statistician would predict, all ten of us are still married, and so we haven't faced the economic consequences of divorce. I respect the choices that my roommates have made, and I would not presume to say that they are unhappy or unfulfilled (though I do know many non-working moms who feel wistful about the intellectual stimulation and satisfaction of professional accomplishment that they left behind). And if you asked, I imagine all of them would say they made a good choice, the best choice, the only choice to benefit their families, even as they reduced their own income, professional prospects, status, or opportunities for intellectual fulfillment. The desirability, not merely the necessity, of that choice is reinforced in popular literature, even the feminist variety that questions the fairness of it. Still, I am troubled that so many have done what we have, and that everyone seems perfectly willing to characterize it as our "choice." How is it that gendered patterns of work and family have dominated our lives in a way that never occurred to us (or at least to me) twenty years ago? For all the accomplishments of the women's movement, when I look at the life patterns of my college roommates, I am stunned how much they look like our mothers' lives.

We might be atypical, but judging from the constant outpouring of popular books on the work-family conflict, I doubt it. To take one example, the best-selling *I Don't Know How She Does It: The Life of Kate Reddy, Working Mother*² (and hedge-fund manager, who adores her job and her

2. ALLISON PEARSON, *I DON'T KNOW HOW SHE DOES IT: THE LIFE OF KATE REDDY, WORKING MOTHER* (2002).

children, but can't manage the crazy hours and the juggling of business trips, school plays, and household emergencies, and eventually quits the job to save her family) obviously resonates with enough people to keep the book on the *New York Times* bestseller list for weeks in a row. Many upper-middle class mothers—working or not—can see themselves and their ambivalence about work and family hilariously portrayed (and skewered) in the book. Kate Reddy has become an icon (or a lightning rod) because of the anger, frustration, and anxiety about mothers working as hard as one has to work to succeed at a profession or in business.³ We are appalled that Kate Reddy seems so remote from her children, though we empathize with her when we see that she really adores them. We see from the beginning that her marriage cannot withstand the pressure of her job. Working moms find comfort in Pearson's portrayal of the "muffia," the bright, well-educated, Type-A women who quit their jobs and seem to have nothing to do but maneuver their own children into top schools so they can get top jobs that the daughters will then quit at age 30 to repeat the whole cycle. Yet, by the end most readers are probably rooting for Kate to quit her job to save her family and her marriage. So, the book suggests (which may account for some of the hostility to it), women have accomplished little more than pushing gender inequity out of elementary and secondary school and university, only to hit it like a glass brick wall as soon as we bring the baby home from the hospital.

Not everyone agrees with this grim assessment, of course. One reviewer of *I Don't Know How She Does It* asserted that sexism in the high levels of corporate, finance, and law firms simply does not exist.⁴ "Investment banks," she claims, "unlike publishing houses or universities," are "pretty damn meritocratic You may not approve of the merits selected for, but gender and race don't hinder those who have them."⁵ Thus, she claims, "women have broken through the glass ceiling."⁶ The truth, according to that reviewer, is that women can have it all, so long as they make a *lot* of money and know how to spend it to have

3. *Id.*

4. Ann Marlowe, *The all-too-female cluelessness of "I Don't Know How She Does It,"* (last visited Oct. 23, 2002) available at <http://www.salon.com/books/feature/2002/10/23/pearson>.

5. *Id.*

6. *Id.*

nannies and household staff raise their children and run their lives. (Though she concedes that a non-working spouse helps, too, noting that 30 percent of the Fortune Top 50 women have househusbands). "Kate Reddy's problems are all solvable by money, which is why they're not really very interesting," the reviewer claims, and thus the book's portrayal of the conflict between work and family is "dishonest[] about the real issues of work and family life."⁷ The reviewer, perhaps not unlike Kessler-Harris, believes that "financial success" (Kessler-Harris uses a more nuanced concept of "economic citizenship") "is the only way women will finally achieve not just legal equality with men but also power and respect."⁸

The conflict between work and family is not only one of the most intractable problems confronting feminists today, it is also one of the most emotional because so much is at stake. A crucial part of all this is the question why so many women today regard the gendered pattern of our lives as appropriate, fair, and biologically determined. I can accept it when a friend says that she, rather than her husband, quit to stay home with the kids because her husband has more earning power or because she did not really like her job and being with the kids seemed more fun. I dislike it when women say that they did so because women are better parents to infants and small children. And, I hate it when people suggest that working moms are worse parents than full-time moms. It transforms social inequality into biological necessity and moral imperative.

Yet women—the "muffia" who congregate outside my daughter's preschool every morning (or so I've been told; I'm never there because I am at work)—are often the most zealous advocates of the biological-moral imperative of domesticity. As Joan Williams observed, women have become invested in describing themselves and their families in gendered terms because what is at risk is their self-description as women enjoying free choice under a system of gender inequality.⁹ They insist on the superiority of full-time mothering because women who do it have so much economically, psychologically, and socially riding on it being

7. *Id.*

8. *Id.*

9. JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 192 (2000).

superior. It reminds me of the vociferous objections to the use of anesthesia during childbirth. Women who did not have epidurals are absolutely convinced epidurals are terrible. Most women I know who had an epidural think that anesthesia is fine, but that doing without is fine too. Why are the anti-anesthetists, like the muffia, so adamant that theirs is the only right way? Perhaps it is that doing without anesthesia during labor must be the *only* right choice because otherwise 8 or 12 or 24 hours of excruciating pain was unnecessary. (Of course, there is plenty of insistence on both sides, viz. the reviewer who insists that there is no glass ceiling in the elite business world and that all that is necessary is plenty of money).

The core dispute in all of this is, as Williams has asserted, the portrayal of work *versus* family as a "choice." If it is a "choice," the argument goes, then there is nothing unfair in the fact that so many women choose family at the expense of work. The plot resolution of *I Don't Know How She Does It* is controversial because everyone can see how constrained is Kate's "choice" (or non-choice) to quit her job to save her family. The anger about it protests that the choice is not so constrained. Williams' liberating insight is that constructing work-versus-family as a choice has been the principal problem.

Those seeking to turn down the heat and turn up the understanding of the origins and nature of the work-family "choice" will find comfort in Kessler-Harris's exhaustive treatment of the problem in historical context. The important, liberating, calming, and empowering insight of Alice Kessler-Harris' new book is that the irreconcilability of work and family, and the gender inequity that flows from that conflict are, in part, a product of twentieth-century social policy. The origins of Kate Reddy's (or my college roommates') choice between work and family lies in the deliberate and comprehensive construction of work and family policy in the U.S. that pits work and family in mortal combat. Kessler-Harris shows how recently and how deliberately society constructed the conflict between work and family. The pervasiveness of the conflict, the impossibility of reconciling the norm of ideal work in the professions and business with the norm of domesticity and proper child-rearing, are not natural; they were constructed by law and policy beginning in the mid-nineteenth century. Kessler-Harris's careful historical analysis also sheds light

on the question whether the critic of *I Don't Know How She Does It* is right about the way out. The secret to gender equality and to resolving the work-family conflict is not for women to earn more money. Rather, as Kessler-Harris demonstrates, it is to dismantle the elaborate legal and social policy network that defines citizenship and distributes wealth solely on the basis of paid labor, and that assumes children will be reared and supported by two-parent families in which one parent plus children are supported solely by a working parent.

In Pursuit of Equity offers incomparable perspective on the ways in which our choices have been shaped and deliberately constrained by the systematic isolation of caregiving from the public sphere. It explains why the conflict between work and family has proved so intractable and why our society remains ambivalent about working mothers. This book analyzes the highly gendered origins of the myriad laws and policies that encourage women to become economically dependent on husbands and to stay home with children, and the vast web of law that makes women's and children's economic and social welfare depend entirely on the husband-father's job. Gender, Kessler-Harris argues, in particular a notion of gender based exclusively on the white, middle class, "constitutes a central piece of the social imaginary around which social organization and ideas of fairness are constructed and on which social policies are built."¹⁰ Alice Kessler-Harris is one of the leading American historians of women and work—indeed, her 1982 book, *Out to Work: A History of Wage-Earning Women in the United States*, nearly pioneered the field.¹¹ *In Pursuit of Equity* won the Philip Taft Labor History Prize sponsored by Cornell University, and it well deserves it, for we cannot understand modern labor without seeing the origins and consequences of the work-family concept.

A gendered division of labor, as Kessler-Harris demonstrates in the six chapters of *In Pursuit of Equity*, is at the foundation of the American version of the welfare

10. IN PURSUIT OF EQUITY, *supra* note 1, at 5.

11. ALICE KESSLER-HARRIS, *OUT TO WORK: THE HISTORY OF WAGE-EARNING WOMEN IN THE UNITED STATES* (1982). Professor Kessler-Harris has written two other books on women and work. *See*: A WOMAN'S WAGE: HISTORICAL MEANINGS AND SOCIAL CONSEQUENCES (1990) and WOMEN HAVE ALWAYS WORKED: A HISTORICAL OVERVIEW (1981).

state. The social safety net, and the web of income and payroll taxes that finance it, draw lines based on "[t]he idea that some people (generally women) would get benefits by virtue of their family positions and others (mainly men) by virtue of their paid employment."¹² The cultural division of labor among the white middle class that assigned caregiving to women and paid work to men became the foundation on which the law and social policy of work, family, and welfare were built. In the first half of the twentieth century, "at a moment in time when the federal government assumed greater authority over the distribution of resources, gender constituted a crucial measure of fairness and served a powerful mediating role."¹³ Over the course of the twentieth century, activists and policy-makers struggled to define and redefine what legal rights and protections for women as workers and women as wives and mothers were desirable.

The book spans a wide range of laws and social policies from the 1920s through the early 1970s. The first chapter explores the race-, gender-, and class-based division of labor at the turn of the twentieth century and the rise of protective labor legislation for women built upon it. As Kessler-Harris notes, "[w]omen (six million of them) constituted nearly a quarter of the paid labor force in 1900," working in a variety of jobs and economic sectors.¹⁴ "Employers, like most white men and women, shared a sense of social order that accommodated job assignments by sex as they deferred to racial and ethnic hierarchy,"¹⁵ and the legislation that restricted women's hours and working conditions was designed and justified as "the major means of protecting the public interest in motherhood and family life."¹⁶ The law explicitly recognized that wage work for women was bad for children and families. Therefore, as the rest of the book demonstrates, we repeatedly resisted efforts to accommodate working mothers or to subsidize childcare. And without adequate childcare or societal consensus defining adequate work as being anything less

12. IN PURSUIT OF EQUITY, *supra* note 1, at 4.

13. *Id.* at 6.

14. *Id.* at 25.

15. *Id.*

16. *Id.* at 33.

than full time, wage work will in fact be bad for children and families.

Kessler-Harris weaves together evidence of company practice with evidence of debates about legislation regulating work demonstrating that companies and legislatures based law and policy, and a good deal of propaganda as well, on exhortations to women to work when the war effort or the economy needed them, but not otherwise. As she explains, during and after World War II, "[m]anpower experts called on married women to take jobs 'for the duration' and discouraged those with small children from entering the labor force; industrial relations experts successfully fostered continued sex segregation of jobs; human relations consultants advised women to retain their femininity and remember that their families came first."¹⁷ In the debates over the proposed Full Employment Act of 1945, which was supposed to guarantee job opportunities for "all Americans," Congress tried to decide who was entitled to a job. Were married women or mothers entitled, or were their housekeeping and family responsibilities too much? What if they did not have housekeeping responsibilities?

'Suppose she starts her housework at 6:30 in the morning and gets through it by 9 o'clock?' 'What if she had domestic servants who did her housekeeping? Would she then be entitled to a job?' Would the bill commit the government to providing a woman with funds to take care of her children 'so that she could have less full-time duties at her housekeeping?' There was even a sarcastic suggestion that the bill would require nurses for newborns so that new mothers could go right back to work.'¹⁸

Just as race and gender shaped assumptions that then shaped legislation, the placing of childcare and a right to a job beyond the pale of acceptable social policy shaped the expectations of generations of women.

The second chapter shows how expectations (and some deliberate social engineering) regarding gender roles shaped New Deal employment legislation. Kessler-Harris argues that gender legitimated new policies and identified appropriate beneficiaries for employment and welfare legislation at "three pivotal moments" in the shaping of the

17. *Id.* at 61.

18. *Id.* at 62.

New Deal: "the struggle over the thirty-hour workweek in the early 1930s, the debate over unemployment insurance and its inclusion in the 1935 Social Security Act, and the adoption of fair labor standards in 1938."¹⁹ The history of unemployment insurance and the Social Security Act is especially detailed and interesting, as Kessler-Harris explores the views of all the major participants in the debate. Organized labor's skepticism about government intervention in employment relationships and its "sense of manly freedom"²⁰ played well with maternalist women's groups' concerns, which largely centered on motherhood.²¹

Because the level of benefits received was expected to be potentially higher if fewer and more consistent workers drew on them, workers had every incentive to help their employers limit the pool of eligible workers. Industry and employed workers thus colluded in the belief that including casual laborers, inefficient workers, part-timers, and so on would incur additional expenses. That these workers were among the poorest and least secure members of the labor force could not have escaped notice. They were also disproportionately black, female, and married.²²

Thus, Kessler-Harris demonstrates, was born the notion that women who "choose" to leave the paid labor force because of the demands of marriage or childcare are not entitled to unemployment benefits. The effect of the legal category on social attitudes is illustrated by a 1950 *Reader's Digest* story reporting outrage at a court decision that allowed a female clerk-typist to "cheat" the system by getting unemployment benefits when she had quit because of her marriage.²³

Chapter Three studies the prevalence of gendered arguments in the shaping of the Social Security Act, which provides old-age pensions to those who worked in paid labor, and benefits to the surviving spouse and children of workers who die. Kessler-Harris excavates the notions of equity that justified a system that provided benefits to aged men without children, children without fathers, and young widows with children, but none to young widows without

19. *Id.* at 66.

20. *Id.* at 82.

21. *Id.* at 92.

22. *Id.* at 97-98.

23. *Id.* at 99.

children.²⁴ Why should the surviving widow receive less than the surviving worker would receive? Because she can "adjust herself to a lower budget on account of the fact that she is used to doing her own housework whereas the single man has to go out to a restaurant."²⁵ Kessler-Harris also demonstrates the racist and sexist assumptions that underlay the initial decision to exclude domestic and agricultural workers who were, of course, significantly black and/or female. As she explains, the social change associated with World War II and the Civil Rights movements redefined equity, and finally some domestic workers gained coverage in 1950 and others in 1954.²⁶

The fourth chapter examines gendered arguments about fairness in the tax system, illuminating the origins of the so-called marriage penalty, and other tax rules attempting to allocate the burden of taxation "fairly," i.e., in a way that treated families favorably. The debate, as Kessler-Harris shows, pitted a certain vision of the male-headed family against some women's groups who defended the wife's right to separate taxation.²⁷ An early proposal would have required married spouses to file a joint return; later, the U.S. Treasury Department advocated (and saw enacted) a provision allowing the spouses to split their combined income between them.²⁸

Embedded in the split-income provision was a vision of marriage in which two partners had unequal incomes, which they pooled. This was the group that stood to benefit from the new tax law. It was intended to provide no benefit to people who lived together without benefit of marriage,²⁹ and it assumed that only married couples pooled their income.

This, as Kessler-Harris shows, was a very concrete way for law to "endors[e] certain kinds of gender roles, influence[e] personal behavior, and encourag[e] particular forms of activity."³⁰

24. *Id.* at 135.

25. *Id.* at 137.

26. *Id.* at 155-56.

27. *Id.* at 195.

28. *Id.*

29. *Id.*

30. *Id.* at 196.

Chapter Five explores the evolving arguments about gender segregation at work, support for voluntary and mandatory maternity leaves, and paid maternity benefits during the post-World War II period. Married women in particular moved into the labor force in the postwar era; the proportion of single women workers remained stable but the proportion of married women doubled between 1940 and 1960 and tripled by 1970.³¹ Yet even unpaid maternity leave remained beyond the pale, despite considerable support from women in the federal Children's Bureau and Women's Bureau at the U.S. Department of Labor. Providing maternity leaves or pregnancy benefits "violated the notion that men could and should support their families without the help of wives."³² Thus, Kessler-Harris demonstrates, the problem was not merely that wage work was deemed unfeminine; it was that having not supporting your wife and family was deemed unmasculine. Prevailing norms of masculinity steered policy away from accommodating child bearing; the resulting blindness of labor policy to working mothers made it that much harder for men and women to renegotiate their own work and family roles.

This point is well illustrated in the chapter's recounting of the astonishingly sexist attitudes of the Eisenhower Administration's "Manpower Commission," which published six volumes on how to develop the American labor resources. The Commission largely ignored women, noting a survey showing that three-quarters of employed men and women believed that employers should discharge an efficient woman whose husband could support her in preference to an inefficient man with a family to support.³³ All that seems to have changed in the intervening half century is public attitudes toward an employer's obligation to accommodate inefficient working fathers. Perhaps today, the prevailing view would be that the employer should discharge an inefficient worker irrespective of his or her family situation. Since many women without adequate child care may be (or be perceived as being) less efficient than

31. *Id.* at 205.

32. *Id.* at 209. However, in 1950 Rhode Island broke ranks with the other states by including pregnancy under the state disability insurance program. *Id.*

33. *Id.* at 211.

men with stay-at-home wives, still the elite segments of the labor force will be *manpower*.

As the issue of racial equality gained salience among white policymakers, women advocated greater attention to gender equality as well. The chapter dwells at length on the President's Commission on the Status of Women in the Kennedy and Johnson Administrations, and the Equal Pay Act of 1963. The chapter also documents the differing opinions among women's rights activists on whether to push for the Equal Rights Amendment, inasmuch as, if adopted, it might have invalidated early twentieth-century protective labor legislation that had improved the lives and working conditions of some women workers. The exhaustive treatment of the Commission's debates reveals the prevalence of assumptions that American family life rested on enforcing—whether through protective labor legislation limiting women's hours or through defining sex discrimination in a way that endorsed different career paths for men and women—a gendered division of labor. The work-family conflict was an issue of women's work, not an issue of work generally.

The last chapter of the book examines the early history of the legislation that prohibits gender discrimination in employment. It tells the fascinating story of the inclusion of sex as a protected category in Title VII of the Civil Rights Act of 1964 and the early approach of the Equal Employment Opportunity Commission ("EEOC"), the Department of Labor, and the Civil Rights Division of the Department of Justice to enforce (or, more accurately, not enforce) the new prohibitions on sex discrimination.³⁴ As Kessler-Harris explains, the EEOC initially had no interest in combating sex discrimination, and simply refused to believe that occupational segregation by sex was either unfair or unlawful. Women's rights advocates persisted in arguing that gender discrimination was every bit as wrong as race discrimination, and continually equated race and sex as a way of galvanizing support for banning separate men's and women's help-wanted ads, rules limiting the job of flight attendant to women (or, later, unmarried young women weighing less than a certain amount) and other explicitly gender discriminatory practices. The early

34. *Id.* at 239-89.

hostility of the EEOC to gender equality is a story that is often forgotten and worth retelling.

The epilogue attempts to suggest the endurance of the notion that male-female biological differences lead inevitably to different family roles and thus, that there is nothing unfair—at least in the sense in which law ought to describe as unfair—about the social pattern that Kate Reddy and my college roommates represent. Kessler-Harris tells the story of her involvement as an expert witness in *EEOC v. Sears*, the important case that allowed Sears to defend itself against a charge of women's underrepresentation in highly-compensated commission sales jobs on the ground that women lacked interest in such positions, and preferred less pay in order to be placed in the supposedly more congenial working environment of non-commission sales positions.³⁵ The case divided women's historians with every bit of the rancor that divides the working and non-working moms at playgrounds and preschools.³⁶

The most exciting part of Kessler-Harris's book is its ambitious and successful effort to show "how tradition and culture, and especially the deeply intertwined ideological and practical relationships of race and gender, helped to shape conceptions of fairness that found their ways into twentieth-century law and social policy."³⁷ In other words, the incompatibility for (middle- and upper-class) women of a full work life with a full family life is the product of a deliberately formulated (if sometimes hotly contested) social policy that was enshrined in labor, social welfare, and tax laws over the course of several decades. At many points over the course of the twentieth century, legislators and policymakers chose to adopt what Williams has called a norm of domesticity for white women even as they adopted a norm of responsible wage-earning for men.³⁸ Legislation and policy that would have facilitated women's greater participation in paid labor—paid family leave, an expansive definition of sex discrimination that would encompass

35. *EEOC v. Sears, Roebuck & Co.*, 839 F.2d 302 (7th Cir. 1988).

36. See Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, 103 HARV. L. REV. 1749 (1990); Ruth Milkman, *Women's History and the Sears Case*, 12 FEMINIST STUD. 375 (1986).

37. IN PURSUIT OF EQUITY, *supra* note 1, at 10.

38. WILLIAMS, *supra* note 9, at 1.

failure to accommodate family responsibility,³⁹ and the like —was repeatedly proposed and rejected over the course of the twentieth century. At the same time, as Kessler-Harris shows, the norms of female domesticity and male responsible earning were never pushed for women and men of color. The breadth of the book, its thorough treatment of so many areas of law, convincingly demonstrates how encompassing the social policy regarding women's work was, and thus makes more convincing her claim that today's expectations of fairness in the distribution of work and family responsibility are reinforced by the wide range of social policies and laws that a person would encounter over the course of her working life.

Kessler-Harris makes two interrelated causal claims. The first is that notions of what is fair with regard to men, women, work, and family are the products of historical circumstance and social policy, and that these notions change. She does an excellent job excavating obscure legislative debates and policy proposals and her exegesis of these texts is thoughtful and persuasive. She amply succeeds in her effort to show how particular and sometimes contested notions of fairness for white and black women and their families were enshrined in a wide array of legislation. At many steps along the way, alternative visions of the family and of women's work were rejected in favor of one that prioritized full-time mothering for middle-class whites, while consigning working women (including, significantly, women of color) to full-time work and grossly inadequate economic support for child and family care. In the vast popular literature on the work-family conflict, and the endless discussions about the supposed benefits of non-working mothers, too little attention is paid to the very explicit class- and race-based privilege to quit one's job to stay home with the children.

39. See Catherine L. Fisk, Note, *Employer-Provided Child Care Under Title VII: Toward an Employer's Duty to Accommodate Child Care Responsibilities of Employees*, 2 BERK. WOMEN'S L.J. 89 (1986). In this note, I attempted to demonstrate that failure to accommodate child care responsibilities has a disparate impact on women, thus violating Title VII. The Note had about as much effect on law and policy as most law review notes: none, so far as I can tell. I was motivated to write it by repeated failures of Congress and state legislatures to enact a family leave statute. Those who thought the enactment of the Family and Medical Leave Act in 1992 would make the gender discrimination theory obsolete have been disappointed as well.

Kessler-Harris' second causal claim is very nuanced, and quite cautiously made. It is that laws and policies that shaped not only the options, but even the expectations and sense of fairness of the generations that came later. In other words, my generation of middle- and upper-class white women learned the norm of domesticity and learned to accept a gendered division of labor as fair in part *because* it is enshrined in so much law and policy. Kessler-Harris shows how deliberate choices made at so many steps along the way to provide no public subsidies for childcare and no obligations on employers to accommodate family have shaped our expectations of the ideal worker and the ideal mother such that they become mutually exclusive.

These twin causal claims about the interaction between culture and law in constructing the modern family and the gendered pattern of work and social welfare are as persuasively demonstrated as any such claims could be. And, the book acknowledges that many other factors contribute to gendered norms about work and family. As Kessler-Harris notes, the distinctive feature of the American welfare state—the allocation of the rights of economic citizenship on the basis of work rather than on the basis of residence or citizenship—is deeply gendered.⁴⁰ Yet, as Kessler-Harris observes from her extensive research on Scandinavia, gendered patterns of inequality in work and family are similar in Europe, even though Europe provides much greater support for working parents. Nevertheless, it is very illuminating for those mired in the tremendous difficulty of enacting even the most modest of economic supports for working parents—such as California's new paid family leave law⁴¹—to remember that there is nearly a century of government encouragement of full-time mothering for white women and that changing such an encompassing social and legal structure is a slow process.

Of course, there is more to the causes of contemporary gender inequity. One aspect that bears further study in future work is the social construction of masculinity and femininity that leaves women but not men the option of leaving an unsatisfying job or a disappointing career path to raise their children. My college roommates have the

40. IN PURSUIT OF EQUITY, *supra* note 1, at 4.

41. Cal. Unemp. Ins. Code § 3300 (2003) (effective Jan. 1, 2004).

luxury because of their class and gender to choose the rewards of family when the frustrations of work seem unappealing. Their husbands do not, or at least they risk a major blow to their self-respect and their status as serious people. Even if women's choice is so highly constrained as to be hardly a choice, it is more of a choice than their husbands have. In other words, women are regarded as fully contributing members of society solely (or largely) by virtue of their status as parents; men, with some exceptions, are not. Kessler-Harris alludes to this in her description of race- and class-based notions of masculinity as breadwinner and family head. Perhaps the reason my college roommates and I thought so little about gender inequity is that we thought all we had to worry about was reconciling femininity with being at Princeton or becoming doctors, and that seemed really easy. I probably should have spent more time talking with my male classmates about how they thought they could reconcile masculinity with being full-time (or at least really available) parents, even at the expense of professional success.

In addition to thick description and provocative explanatory claims, Kessler-Harris makes an interesting normative claim regarding what desirable social policy should be with respect to gender equity. The concept that Kessler-Harris uses to define what genuine gender equity would look like is not, as the critic of *I Don't Know How She Does It*, says, lots of money, but rather "economic citizenship." Economic citizenship is:

the achievement of an independent and relatively autonomous status that marks self-respect and provides access to the full play of power and influence that defines participation in a democratic society. The concept of economic citizenship demarcates women's efforts to participate in public life and to achieve respect as women (sometimes as mothers and family members) from the efforts of men and women to occupy equitable relationships to corporate and government services.⁴²

My college roommates may not have sacrificed careers they loved for the sake of their families, but they did sacrifice full economic citizenship. The costs of the sacrifice perhaps will not be apparent to them so long as they remain married to successful high-earning husbands.

42. IN PURSUIT OF EQUITY, *supra* note 1, at 12.

The fascinating question is whether full economic citizenship for women is possible in American capitalism as we know it today. Although Kessler-Harris asserts that economic citizenship is a core concept in her book, I feel it remains a bit too abstract in a book that is otherwise not abstract at all. To be fair, a work of history need not (and probably, for the sake of intellectual credibility, ought not) be terribly detailed in its imagination of an alternative world if the past were different. Generally, we consign that job to science fiction. The great contribution of the book is to show how American economic citizenship was deliberately constructed over the course of the twentieth century to exclude women on the assumption that all women would marry and have children and thus not need to work outside the home, even as many women—especially women of color, working class women, and women who chose not to marry men—did not fit that pattern. A challenge for future scholarship is to probe the concept of economic citizenship and to figure out how much it matters to whom and why, and to imagine a regime of law and policy for work and family that recognizes the benefits of economic citizenship without distributing them so explicitly on the basis of gender, race and class.

