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CORPORATE SOCIAL RESPONSIBILITY FOR WORK/FAMILY BALANCE

MARLEEN A. O'CONNOR[†]

INTRODUCTION

In this Article, I use the lens of gender to examine the American system of corporate governance. My goal is to promote the discussion of how the processes of globalization influence the struggles of working families in the United States.¹ I am interested in establishing issues pertaining to the work of “social reproduction”—that is, “caring for children”²—both as relevant to

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¹ This Article builds on and expands upon much of my previous work, notably one particular article published last year. See Marleen O'Connor-Felman, *American Corporate Governance and Children: Investing in Our Future Human Capital During Turbulent Times*, 77 S. CAL. L. REV. 1255 (2004). While many of the arguments and assertions are different, the foundations and backgrounds are quite similar, and accordingly, this Article takes and uses several points I have addressed previously.

Many scholars focus on how social policy in the United States needs to change to take into account the needs of working families in the United States. See generally ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* (2001) (evaluating the economic opportunity cost of motherhood); *id.* at 90 (discussing how parents in the United States are at a disadvantage compared to parents in other advanced economies, particularly France); NANCY FOLBRE, *THE INVISIBLE HEART: ECONOMICS AND FAMILY VALUES* (2001) (looking at the economic role of the family); MONA HARRINGTON, *CARE AND EQUALITY: INVENTING A NEW FAMILY POLITICS* 48–51 (1999) (promoting better childcare); THEDA SKOCPOL, *THE MISSING MIDDLE: WORKING FAMILIES AND THE FUTURE OF AMERICAN SOCIAL POLICY* (2000) (discussing how politicians target the rich and poor and calling for broad-based social change to help working middle-class families); JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (2000) (discussing the need for gender equality at home and at work); Symposium, *Gender, Work & Family Project Inaugural Feminist Legal Theory Lecture*, 8 AM. U. J. GENDER SOC. POL'Y & L. 1 (2000) (discussing the need for gender equality at home and at work); Symposium, *The Structures of Care Work*, 76 CHI.-KENT L. REV. 1389 (2001) (arguing for better support and greater equality for caretakers).

² Linda C. McClain, *Care as a Public Value: Linking Responsibility, Resources,*

the agenda for corporate social responsibility as well as pertinent to the topic of sustainable economic development. To do this, I consider how the United States is simultaneously undergoing both an economic transformation and a social revolution that destabilize family relationships. Advanced economies are shifting from the industrial era to information economies based on new technologies and production techniques of flexible production. Thus, an ever-increasing proportion of jobs are organized around knowledge rather than physical skill.³ In the past, American corporations sought to avoid unionization by providing job security for workers under a system known as "welfare capitalism."⁴ Over the last three decades, corporations have sought to promote more flexible labor markets by restructuring the social contract with their workers.⁵ Under this new employment relationship, employees work longer hours and encounter more intensified workplace demands, less job security, and stagnating wages.⁶ In addition, this new labor market requires workers to upgrade their human capital in order to change jobs and careers.

In times of economic transition, three institutions have traditionally aided workers in making adjustments to new labor market conditions: the state, unions, and the family.⁷ These so-called "shock absorbers" serve to buffer the individual from economic turmoil.⁸ Unfortunately, the processes of globalization

and Republicanism, 76 CHI.-KENT L. REV. 1673, 1674 (2001).

³ See PETER CAPPELLI ET AL., *CHANGE AT WORK* 4-6 (1997); MARTIN CARNOY, *SUSTAINING THE NEW ECONOMY: WORK, FAMILY, AND COMMUNITY IN THE INFORMATION AGE* 3 (2000).

⁴ See SANFORD M. JACOBY, *MODERN MANORS: WELFARE CAPITALISM SINCE THE NEW DEAL* 25 (1997).

⁵ See e.g., EILEEN APPELBAUM & ROSEMARY BATT, *THE NEW AMERICAN WORKPLACE: TRANSFORMING WORK SYSTEMS IN THE UNITED STATES* 21-22 (1994); CAPPELLI, *supra* note 3, at 6-8; PAUL OSTERMAN, *SECURING PROSPERITY: THE AMERICAN LABOR MARKET: HOW IT HAS CHANGED AND WHAT TO DO ABOUT IT* 90-91 (1999); PAUL OSTERMAN ET AL., *WORKING IN AMERICA: A BLUEPRINT FOR THE NEW LABOR MARKET* 35-44 (2001); Katherine V.W. Stone, *The New Psychological Contract: Implications of the Changing Workplace for Labor and Employment Law*, 48 UCLA L. REV. 519, 554-55 (2001).

⁶ See CAPPELLI, *supra* note 3, at 4; CARNOY, *supra* note 3, at 11.

⁷ See CARNOY, *supra* note 3, at 4-7.

⁸ See Chris Benner, *Shock Absorbers in the Flexible Economy: Dealing with the Rise of Contingent Employment in Silicon Valley* (May 1996) (unpublished manuscript, on file with author) (using the term "shock absorbers" to refer to unions, community organizations, and social policies that help workers adapt to new economies).

have diminished the effectiveness of each of these support systems.⁹ First, the nation-state's ability to regulate is severely hampered in the global economy because corporations engage in regulatory arbitrage in a world without boundaries.¹⁰ Second, union membership has declined to less than ten percent of the workforce because unions cannot prevent capital flight to countries with cheaper labor.¹¹

This leaves the family as the institution in the best position to maintain social cohesion by cushioning economic blows of downsizing and enabling workers to live with insecurity. In the past, the nuclear family served as the basis for production and reproduction that supported the industrial economy.¹² Specifically, corporations paid men family wages in the public realm while women supported production through full-time mothering and homemaking in the private domain.¹³ Thus, caring work performed by families is crucial to developing the skills and knowledge necessary for the next generation to function in the new economy. Yet the new employment contract impedes family life because more stressful jobs and longer working hours mean that parents have less time for their children.

Occurring simultaneously with the economic revolution, the women's movement has spurred a social revolution that also impairs the ability of families to raise children.¹⁴ In one lifetime, women's roles have changed more than they had in all of history. Specifically, over the last thirty years, women have rejected their traditional role in providing domestic services and have entered the labor force.¹⁵ Although this shift in the gender composition of

⁹ See WILLIAM GREIDER, *ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM* 18 (1997) (examining how globalization has influenced the state); Charles B. Craver, *The American Worker: Junior Partner in Success and Senior Partner in Failure*, U.S.F. L. REV. 587, 590 (2003) (mentioning the effect of globalization on unions); *infra* notes 15–18 and accompanying text (referencing the effects of globalization on families).

¹⁰ See GREIDER, *supra* note 9, at 17 (“[T]he essence of what is forming now is an economic system of interdependence designed to ignore the prerogatives of nations . . .”).

¹¹ See, e.g., Craver, *supra* note 9, at 590.

¹² See CARNOY, *supra* note 3, at 111–12.

¹³ *Id.*

¹⁴ See CARNOY, *supra* note 3, at 96–100 (describing the movement of women into the workplace, “especially in labor markets marked by greater flexibility”).

¹⁵ See *id.*

the labor force evolved independently of globalization, these two phenomena intersect and interact.¹⁶ The fact that the new employment relationship strains families at the same time that women have entered the workforce accelerates and magnifies the forces reshaping the family in three ways. First, certain trends, such as breakdown of family and community bonds, exacerbate the damaging effects of new labor conditions. Second, under norms of "intensive mothering,"¹⁷ the private sphere requires an increase in caring work at home just when women have assumed a "second shift" by entering the public domain.¹⁸ Third, many women work not only to enhance their identity but also to hold their family earnings constant by bringing in a second income and providing a hedge against the risks of divorce. In these ways, the concurrent economic and social transformations combine to diminish the ability of families to perform the caring work necessary for the well-being of children that is crucial for sustainable economic development.

This Article analyzes the dynamic between these economic and social revolutions to present a conceptual framework for recognizing the family as a corporate stakeholder. Part I provides background by defining basic terms such as "gender," "family," and "care." This Part also examines the recent changes in work and family life and how they impact women and men differently. Part II explains the idea that the "caring" work that families perform needs to be recognized as an important value in our corporate culture because families provide a significant subsidy to the economy by producing both human and social capital. Part III examines the current work/family programs that corporations have implemented and why workers take advantage of such policies. This Part then discusses the topic of work/family balance within the broader discussion of the convergence of corporate governance systems. This Article ends by providing an outline of the goals that corporations should seek to attain in order to support working families.

¹⁶ See, e.g., ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* 104-05 (Mark Ritter trans., 2d ed. 1992) (1986).

¹⁷ See SHARON HAYS, *THE CULTURAL CONTRADICTIONS OF MOTHERHOOD* 97-130 (1996).

¹⁸ See ARLIE HOCHSCHILD WITH ANNE MACHUNG, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME* 4 (1989) (referring to the job that working parents do at home before and after work as the "second shift").

I. AN OVERVIEW OF THE ECONOMIC AND SOCIAL REVOLUTIONS

A. *Definitions of Basic Terms Used in a Feminist Analysis of Corporate Governance*

1. "Gender" Analysis: Men Have Gender Too

At the outset, I will define what I mean by the terms "gender," "family," and "care." There are many possible interpretations of what these terms encompass; the following are my own views based upon years of personal experience, reflection, and reading of the scholarly literature.

Feminist jurisprudence and corporate governance scholarship are two bodies of study that, at first glance, seem separate and contradictory. As a feminist and an academic corporate governance scholar, I am undertaking the task of blending these two fields to break the silence of women's voices in conversations about establishing business norms in the new economic order. I believe that a gender analysis of corporate governance will be useful in raising unique questions and methods to evaluate issues pertaining to how working families operate in the global economy. In addition, I believe that combining these fields is necessary because feminists, labor scholars, and corporate governance experts have not traditionally concerned themselves with how capitalist systems influence work/family issues.

In making my argument to recognize the family as a corporate stakeholder, I rely on gender scholarship that focuses on issues pertaining to how the lives of women are influenced to a great extent by their role as mothers. Because corporations "set the terms within which family life is lived," corporate America greatly affects the eighty percent of women who become mothers.¹⁹ Although gender scholars have examined the topic of work/family in the past, these discussions were often stalled by debates over whether and how women are different from men. In order to avoid this obstacle, many recent explorations focus on

¹⁹ Joan C. Williams, *The Family-Hostile Corporation*, 70 GEO. WASH. L. REV. 921 (2002) (discussing the role of the corporation in terms of work-family life). The literature on children's human capital development is well respected by leading economists and thus can help to persuade business leaders that investing in parenting through work-family policies is important.

how changes in the workplace cause hardships for workers—both women and men—in performing their roles as parents.²⁰

Overall, women must sacrifice far more than men in order to succeed in the workplace. Today, society dictates two contradictory ways for women to behave which lead to the so-called “mommy wars.” On the one hand, women are told to surrender their free time to succeed as ideal workers in the new economy. At the same time, however, women are told that mothers should “have all the time in the world to give” to their children under the recent norms of “intensive mothering.”²¹ This cultural script does not make sense and leaves women feeling like failures at work and at home.

As far as men's gender roles, a new field of studies called “masculinities” focuses on how gender constrains men in their roles as breadwinners in the new economy and as fathers in changing patterns of family life.²² In my mind, this field is extremely important because a one-sided view of how gender affects women restrains the use of gender as an analytical tool in four ways. First, opening up the discussion to include how gender roles hurt men may make gender perspectives more appealing to a wider audience. Second, this focus is crucial for social change to occur because it emphasizes the important role that men need to play as fathers in the care work involved in families.²³ Third, this literature discusses how men tend to over-

²⁰ Joan Williams, *From Difference to Dominance to Domesticity: Care as Work, Gender as Tradition*, 76 CHI.-KENT L. REV. 1441, 1443 (2001) (describing how the workplace threatens to “swallow home life”).

²¹ *Id.* at 1449, 1478 (citation omitted).

²² See, e.g., MICHAEL KIMMEL, *MANHOOD IN AMERICA: A CULTURAL HISTORY* (1996); Michael Selmi, *Family Leave and the Gender Wage Gap*, 78 N.C. L. REV. 707 (2000).

²³ Several political movements, such as the “Promise Keepers” and “The Million Man March,” send a similar message. See R.W. Apple, Jr., *The March on Washington: News Analysis; Ardor and Ambiguity*, N.Y. TIMES, Oct. 17, 1995, at A1 (noting the Million Man March’s “repeated appeals for the regeneration of the black family and the need for strong African-American male role models”); Promise Keepers, *Seven Promises*, <http://www.promisekeepers.org/faqscore24> (last visited Oct. 23, 2005) (“A Promise Keeper is committed to building strong marriages and families . . .”). The view I advocate differs, however, in that I do not support the traditional, patriarchal family to the exclusion of other types of families. I agree with much of what Linda McClain advocates—particularly in viewing these movements as promising signs for promoting the father's role in the family which, in turn, will allow women the freedom necessary to pursue roles in the public sphere, if they wish to do so. More importantly, however, supporting the father's role in the family will benefit children, which is my prime concern in this Article.

identify with work, which leaves men feeling alienated and causes women to bear the greater burden of caring for families. Finally, this analysis is crucial because it highlights that men suffer even more than women in the wage market when men perform caring work in the family.²⁴ For these reasons, a focus on the ways in which gender affects men is necessary to achieve the goal of greater gender equity at home and at work.

We need to alleviate the burden that women have in performing a disproportionate amount of caring work but also recognize that we cannot achieve this goal without encouraging men to seek fulfillment that comes from caretaking work on the home front. In other words, we should seek to promote an equitable world in which both men and women have real choices in deciding whether and how much to rely upon the workplace and the home as sites for the pursuit of self-actualization. In this way, we can begin to write a new gender script for both men and women that allows us to perform the work/family roles required under the new socio-economic stage.

2. "Family" and "Care"

I define the term "family" broadly; I reject the conservative view of the family because this approach ignores that traditional family relationships are harmed when unfettered markets create insecurity and disrupt lives. Specifically, conservatives rely on the traditional family to produce citizens and employees but do not consider how stagnating wages and job loss impede family life. The definition of the family that I use attempts to respect the new types of families that have arisen—those beyond the traditional, nuclear, heterosexual family. Rather than focusing on form, I believe that it is more useful to examine the roles that the diverse types of families fulfill and how corporations can support them in performing those functions.²⁵

Second, I also use an expansive definition of "care" in discussing work/family issues. I use the term "care" to encompass not only raising children but also caring for elderly, ill, or otherwise dependent family members.²⁶ I use this

²⁴ See WILLIAMS, *supra* note 1, at 71–72 (explaining that in today's world, full-time work precludes normal family life).

²⁵ See McClain, *supra* note 2, at 1710.

²⁶ See Martha M. Ertman, *Changing the Meaning of Motherhood*, 76 CHI.-KENT L. REV. 1733, 1733–34 (2001) (stating that care is important in fostering human and

definition of care for two reasons. First, I am sympathetic to arguments that family-friendly policies operate to the detriment of childless workers. Second, I believe such caring work is valuable because it is what makes us human; we need more time in this hectic world to focus on such issues. At the same time, however, I want to emphasize that caring for children deserves special emphasis for two reasons. First, this type of caring work consumes more of one's lifecycle with the most intensive years occurring while many workers are within the "brass ring" of career advancement. Second, caring for children is crucial for sustaining the economy in the future.

B. The New Social Contract for Workers and the New Deal at Home

The workplace and family are in flux. On the one hand, the economic revolution has produced a tremendous amount of social upheaval. At the same time, the social revolution that swept women into the workforce has also brought unforeseen consequences at home. This Part examines the changes at home and at work and how these forces magnify and intensify one another.

1. Change at Work: Ideal Worker Norms

In this section, I examine the extensive work done by labor historians to evaluate the continuing evolution of work/family arrangements. In moving from an agricultural to an industrial society, work became more closely connected with employment and wages. Under the old system of welfare capitalism, corporations paid men family wages in the public sphere. Family wages were sufficient for a man to support a family without the necessity of his wife working.

Thus, at the turn of the twentieth century, only twenty percent of women were in the workforce.²⁷ Women supported the industrial economy by providing domestic services in the private sphere. These domestic services included women's traditional roles in promoting human values of family and community.

social capital).

²⁷ LYNN A. KAROLY & CONSTANTIJN W.A. PANIS, RAND CORP., THE 21ST CENTURY AT WORK: FORCES SHAPING THE FUTURE WORKFORCE AND WORKPLACE IN THE UNITED STATES 11 (2004), available at http://www.rand.org/pubs/monographs/2004/RAND_MG164.pdf.

Under this gender-based separation of productive and reproductive work, the institution of the family was crucial to the economy because it allowed employers to count on men to work where and when they were needed while counting on women to raise the next generation of the work force. In this way, the traditional family was one of the foundations for the remarkable economic expansion during the industrial revolution.

Under welfare capitalism, paternalistic corporations provided security for workers.²⁸ This was a movement that viewed the business corporation, rather than the government or unions, as the source of security and stability for workers. Although welfare capitalism could be found elsewhere in the industrialized world, it was more pronounced in the United States because it complimented the structure of large firms, small unions, and limited government. Sanford Jacoby writes how the firms pursuing this strategy were, in effect, “modern manors” because corporations built internal labor markets designed to reduce exit options for workers by wedding them to the firm economically.²⁹ Employers used this strategy to gain stability in a dependable labor force. Firms also saw it as an efficient method for training.

In many firms, internalized labor markets that once protected jobs from outside market pressures are shifting to practices that place a much higher degree of risk onto workers.³⁰ Many firms are reshaping their corporate cultures to promote the notion of “employability security.”³¹ Under this employment compact, workers assume greater responsibility for their own skill development, and employers provide opportunities to accumulate human capital. The purpose of employability security is to ensure that workers have the skills and reputation they need to find new jobs when their employers no longer need them. A recent study, however, shows that most employers do not tend to provide these portable, general-purpose skills.³²

²⁸ See JACOBY, *supra* note 4, at 3–4.

²⁹ See *id.* at 5–6.

³⁰ See CHRIS BENNER, BOB BROWNSTEIN & AMY B. DEAN, WALKING THE LIFELONG TIGHTROPE: NEGOTIATING WORK IN THE NEW ECONOMY 11–12 (1999), available at http://www.wpusa.org/publications/complete/wpusa_tightrope.pdf.

³¹ See Rosabeth Moss Kanter, *Nice Work If You Can Get It: The Software Industry as a Model for Tomorrow's Jobs*, AM. PROSPECT, Fall 1995, at 52, 52–53, available at <http://www.prospect.org/print/V6/23/kanter-r.html>.

³² See BRIAN HACKETT, THE CONFERENCE BD., THE VALUE OF TRAINING IN THE

The new workplace norms increase the hours of paid work, the required mobility of workers, and the degree of responsibility that workers bear. The new employment contract has resulted in falling wages, rising inequality, and reduced job security. In considering the social aspects, we see that the new employment contract intensifies pressures that employees face in balancing work/family issues in five ways. First, working standards are no longer set by norms for an accepted length of workday. Rather, today many corporations have a 24/7 workplace culture. Many larger companies want more time on demand from their workforce and favor those employees who are regularly willing to sacrifice other activities. The new workplace hoards the time of the individual, with the most vigorous pressures and promotion stages occurring during childbearing years. One of the major assumptions underlying the new ideal worker model is that workers do not have responsibility for obligations other than work. The result is that Americans work more hours than employees in other advanced industrialized nations and are provided much less in terms of government support for families.³³

Second, stagnating wages have had a negative effect on the family; the gender transformation in the workplace occurred for reasons beyond the women's movement. Beginning in the 1980s, as job tenure and real wages fell for men, wives and mothers took jobs to keep family income constant.³⁴ Thus, changes in the workplace led many women to enter the workforce for financial reasons—not to gain a workplace identity. Third, the constant threat of layoffs pressures people to live up to an ideal of total commitment to the workplace, which necessarily relegates family life to a much lower priority. Fourth, corporations operate so leanly and change so rapidly that many workers suffer from burn out. The recent concept of "multi-tasking" highlights how we strive to accomplish more work in a twenty-four-hour day. Finally, new technology means that the lines between work and home life blur because now people can work around the clock away from the office. This new technology has the positive effect of allowing parents more opportunities to blend work with

ERA OF INTELLECTUAL CAPITAL: A RESEARCH REPORT 6 (1997).

³³ See Jane Waldfogel, *International Policies Toward Parental Leave and Child Care*, FUTURE CHILDREN, Spring/Summer 2001, at 99–100.

³⁴ See ELLEN GALINSKY, ASK THE CHILDREN: WHAT AMERICA'S CHILDREN REALLY THINK ABOUT WORKING PARENTS 12 (1999).

raising children. On the other hand, this technology complicates the human relationship with time because it erodes the notion that certain things are best done at certain times. These changes in norms about when and where it is appropriate to work add to the pervasive feeling of overload experienced by today's working families.

2. Change at Home: Working Mothers, Single-Parent Families, and Divorce

Just when a strong family was needed most during the difficult transition period toward the information age, much has changed in the last thirty years when we look at attitudes toward elemental issues relating to the traditional family such as marriage, divorce, and child-rearing. The numbers tell a dramatic story. For example, in 1950, approximately one in three women participated in the labor force; in the 1990s nearly three in five were in the workforce.³⁵ New mothers return to work more quickly than in the past. In 1998, fifty-nine percent of mothers with children under one were working, up from thirty-one percent in 1976.³⁶ Dual-career families with small children now compose a majority of the families in the United States.³⁷

Divorce rates began to increase as women's economic independence allowed them to leave unsatisfactory marriages. By the 1980s, half of all American marriages could be expected to end in divorce, and the ratio of divorced to married people had increased fourfold in just thirty years.³⁸ As a result, divorce has lost much of its social stigma. In turn, as divorce rates increased, women began to seek employment in order to protect themselves economically if their marriages failed. Divorce hurts children both economically and developmentally.³⁹ Today, twenty-four percent of all households are single, with the vast majority

³⁵ See CORNELL EMPLOYMENT & FAMILY CAREERS INST., FACTS ABOUT THE DEMOGRAPHICS OF WORKING FAMILIES (1999), available at <http://www.blcc.cornell.edu/archives/factsht/fsfeb99.pdf>.

³⁶ Tamar Lewin, *Now a Majority: Families with 2 Parents Who Work*, N.Y. TIMES, Oct. 24, 2000, at A20.

³⁷ *Id.*

³⁸ DAPHNE SPAIN & SUZANNE M. BIANCHI, BALANCING ACT: MOTHERHOOD, MARRIAGE, AND EMPLOYMENT AMONG AMERICAN WOMEN 29 (1996).

³⁹ JUDITH S. WALLERSTEIN, JULIA M. LEWIS & SANDRA BLAKESLEE, THE UNEXPECTED LEGACY OF DIVORCE: THE 25 YEAR LANDMARK STUDY 6 (2000).

headed by women.⁴⁰ The rise in single-parent households has increased both as a result of divorce and out-of-wedlock births.⁴¹ These single-parent families are one of the reasons for the increase in child poverty in the United States—which is the highest of any advanced country.⁴²

3. The Time Bind

Due to these changes in workplace norms and family structure, American society is in the midst of tremendous upheaval. Many changes in the family are influenced by the ways in which we organize time. Specifically, the gendered distribution of time spent in paid work in the market and the unpaid work in the home is undergoing its most significant transformation since the industrial revolution. Time has taken on greater importance as we struggle to make every minute count. Indeed, the disappearance of time has become commonplace, a cliché of our era. This phenomenon is termed “The Time Bind” by Arlie Hochschild, who reports that the Time Bind mainly flows from both the longer hours Americans work and women’s entry into the workplace.⁴³

The Time Bind negatively impacts families’ abilities to perform caring work. Indeed, ninety percent of parents say that this time scarcity is the worst thing in their lives.⁴⁴ I believe that this Time Bind should be the core focus of a gender analysis of capitalism. This gender analysis of the Time Bind criticizes the way in which corporations are seeking to mold corporate cultures so that employees are pushed to arrange family life around work. As a result, Arlie Hochschild points out that people like work and that it is tempting to relocate emotionally to work.⁴⁵

⁴⁰ Lewin, *supra* note 36, at A20.

⁴¹ See Terry Arendell, *Conceiving and Investigating Motherhood: The Decade’s Scholarship*, 62 J. MARRIAGE & FAM. 1192, 1194 (2000) (“Intensive mothering ideology both assumes and reinforces the traditional gender-based division of labor.”).

⁴² See Daniel T. Lichter, *Poverty and Inequality Among Children*, 23 ANN. REV. SOCIOLOGY 121, 126, 129 (1997).

⁴³ See generally ARLIE RUSSELL HOCHSCHILD, *THE TIME BIND: WHEN WORK BECOMES HOME AND HOME BECOMES WORK* (1997) (providing a detailed case study of the implementation of and reaction to company policies designed to facilitate balancing family and work).

⁴⁴ See SYLVIA ANN HEWLETT & CORNEL WEST, *THE WAR AGAINST PARENTS: WHAT WE CAN DO FOR AMERICA’S BELEAGUERED MOMS AND DADS* 232 (1998).

⁴⁵ See HOCHSCHILD, *supra* note 43, at 44–45.

Engineers of corporate cultures have feminized the workplace so that people internalize speedup to think it is their work ethic. Indeed, work is an ideal addiction. Arlie Hochschild asserts that employees work harder and longer at their jobs in order to get away from pressures in other parts of their lives.⁴⁶ Hochschild explains: "In this new model of family and work life, a tired parent flees a world of unresolved quarrels and unwashed laundry for the reliable orderliness, harmony, and managed cheer of work."⁴⁷ In this way, capitalism controls the amount of time we have to care for families and how we receive work/family balance.

C. How Women and Men Experience the Time Bind Differently

We have seen how the economic and social revolutions interact to produce changes that have had a negative impact on family life. Such forces shape the age of marriage, the quality of marriage, divorce, the number of children born to a marriage, and the timing of those children. With this background, we can explore how women and men experience the dilemmas caused by the change at work and the change at home differently. This distinction stems from the underlying belief that prevails in our culture—that the optimal arrangement for society is for women to stay home and raise children and for men to go to work to support the family. Thus, cultural pressures to maintain the breadwinner/primary-caregiver roles exert much force despite the competing ideology of gender equality.

1. Women: The Super Woman Myth

In looking at how mothers experience the Time Bind, four factors are relevant. First, mothers earn less money than other workers, even after considering the fact that mothers work fewer hours.⁴⁸ Second, employed wives have more work, less leisure, and more stress than their husbands. Although men have increased their share of housework, women still perform two-thirds of this labor. Under this "second shift,"⁴⁹ women put in an extra month of work a year when hours of wage and care work

⁴⁶ See *id.*

⁴⁷ *Id.* at 44.

⁴⁸ See CRITTENDEN, *supra* note 1, at 93–95.

⁴⁹ See *supra* note 18 and accompanying text.

are combined.⁵⁰ Studies of household labor indicate that "women continue to feel responsible for family members' well-being and are more likely than are men to adjust their work and home schedules to accommodate others."⁵¹ Joan Williams states that, with respect to childcare, "[w]omen know that if *they* do not sacrifice *no one* will, whereas men assume that if *they* do not, *women* will."⁵²

Third, inequalities in the workplace reflect and reinforce inequalities in the home. The patterns are self-perpetuating: if a wife has lower earning potential than her husband, it is economically rational to give priority to the husband's career and assign the mother a greater share of family responsibilities. According to Joan Williams, however, it is not appropriate to say that women *choose* to be caregivers rather than participate more in market labor.⁵³ Williams asserts that in a society whose model of the ideal workers presupposes a worker with no child care responsibilities, women do not have a real choice.⁵⁴

Finally, women face greater pressure in their roles as mothers under recent norms of "intensive mothering."⁵⁵ Raising a child for the new economy requires much more of parents than in the past. The ideology of intensive mothering is reflected in recent parenting norms relating to an increase in extracurricular activities for children. Women are pressured to measure their worth by how well they enact this selfless mother role in chauffeuring children from music lessons to soccer practice to Boy Scouts.⁵⁶

⁵⁰ HOCHSCHILD WITH MACHUNG, *supra* note 18, at 3; see RHONA MAHONY, KIDDING OURSELVES: BREADWINNING, BABIES, AND BARGAINING POWER 1 (1995) (providing an example of "the second shift").

⁵¹ Scott Coltrane, *Research on Household Labor: Modeling and Measuring the Social Embeddedness of Routine Family Work*, 62 J. MARRIAGE & FAM. 1208, 1212 (2000).

⁵² Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 831 (1989).

⁵³ *See id.*

⁵⁴ *See id.* at 831-32.

⁵⁵ *See supra* note 17 and accompanying text.

⁵⁶ New norms of intensive mothering reinforce this traditional gender-based division of labor. Thus, modernized childhood means an expansion of maternal labor. *See, e.g.,* Teresa Arendell, *Hegemonic Motherhood: Deviancy Discourses and Employed Mothers' Accounts of Out-of-School Time Issues 2-4* (Ctr. for Working Families, Univ. of Cal., Berkeley, Working Paper No. 9, 1999) ("Intensive mothering ideology both assumes and reinforces the traditional gender-based division of labor."), available at http://www.bc.edu/bc_org/avp/wfnetwork/berkeley/papers/9.pdf; Arendell, *supra* note 41, at 1193-94 (introducing a discussion of modern motherhood

The combination of intensive mothering norms and ideal worker norms place impossible pressures on working mothers. The result is that many working mothers feel that they are doing an inadequate job both as mothers and as workers. Women are left to juggle maternal and market labor in ways that perpetuate these problems rather than address them. Women are caught within societal demands that are more contradictory, self-refuting, and impossible to fulfill.

2. Men: No More Organization Man

In the past, men also faced a different life at work and at home. In 1956, William Whyte wrote about the suburban junior executives in *The Organization Man* at a time when men arrived home by 5:30 p.m. for ballgames and family barbecues as regular events.⁵⁷ The civilized pace enjoyed by William Whyte's organization man is clearly a thing of the past. Today, masculine dignity is linked with success at work, but many men want to be more involved at home. Men are praised for short-term family commitments, yet it is much harder for them to take advantage of family policies on a long-term basis.⁵⁸ In addition, the gender wage gap makes it impractical.⁵⁹

For men, family life has also changed.⁶⁰ Men are becoming more involved fathers and are doing somewhat more of the housework. In the past, women were housewives who provided havens for their husbands from the heartless, outside world. Today, many men no longer come home to a peaceful environment in which a housekeeper wife has taken care of domestic matters. Aside from workplace pressures, men continue to conform to traditional gender roles to obtain the

and modernized childhood as part of broader economic trends).

⁵⁷ See generally WILLIAM H. WHYTE, JR., *THE ORGANIZATION MAN* (1956) (describing the Organization Men as the "ones of our middle class who have left home, spiritually as well as physically, to take the vows of organization life," and "who are the mind and soul of our great self-perpetuating institutions").

⁵⁸ See Selmi, *supra* note 22, at 758–59 (discussing possible workplace repercussions for fathers taking parental leave).

⁵⁹ See Jane Waldfogel, *Understanding the "Family Gap" in Pay for Women with Children*, 12 J. ECON. PERSP. 137, 147–49 (1998) (explaining results from a study showing that "[h]aving children had positive or no effects [on wages] for men, but very strongly [sic] negative effects for women, and these effects increased from 1980 to 1991").

⁶⁰ See David J. Eggebeen & Chris Knoester, *Does Fatherhood Matter for Men?*, 63 J. MARRIAGE & FAM. 381, 381 (2001).

benefits of being male. Although men are contributing more to home life, studies confirm that mothers generally still do more of the menial housework. Being a mother's helper holds fewer drawbacks and offers enough rewards to make it the more attractive option.⁶¹

Continuing gender pressure on men is a crucial factor for the "stalled revolution" in work and family life. As a result of the change at work and at home, families are now sites of conflict over gender roles and time. Thus, the new workplace norms intensify marital stress because oftentimes the only way to mitigate the Time Bind is for one parent to *sacrifice*—usually the mother. Now that I have defined some basic terms and reviewed how the economic and feminist revolutions interact to impair family life, I will explain why I believe we need to recognize the family as a corporate stakeholder.

II. USING THE VOICE OF THE MORAL MOTHER TO RECTIFY THE CARE CRISIS

A. *Childcare as a Public Good*

To recognize the family as a corporate stakeholder, we must take an important first step to reject the idea that individuals bear the sole responsibility for resolving all the varied harsh issues involved in balancing work/family demands.⁶² A prevalent view is that if men want their wives to work, it is not the company's responsibility to accommodate dual careers. In rejecting this approach, gender scholars urge more explicit attention to supporting the "work" that families perform in fostering children's developments and capacities to enter the new economy, as well as their "capacities for self-government."⁶³

⁶¹ Ulrich Beck states:

The *liberation* of women from housework and marital support is to be forced by the regression of men into this 'modern feudal existence' which is exactly what women reject for themselves. Historically, that is like an attempt to make the nobility the serfs of the peasants. But men are no more willing than women to follow the call 'back to the kitchen!'"

BECK, *supra* note 16, at 109.

⁶² See Martha Albertson Fineman, *Contract and Care*, 76 CHI.-KENT L. REV. 1403, 1405–06 (2001) (arguing that the public should do more to contribute to the private cost of childrearing).

⁶³ McClain, *supra* note 2, at 1677. We need to recognize a "vital role for families and other institutions of civil society in the formative project of shaping children into

Gender scholars maintain that the traditional view of the family as a private institution is no longer tenable given the changes that have taken place in the workplace and in the family. Instead, gender scholars promote the notion of “care as a public value”⁶⁴ by looking to the theme in public discourse that the most important job anyone has in society is that of being a parent. In addition, these scholars write that the caring “work” within families is a “public” good that is necessary for “social reproduction” because it fosters human and social capital.⁶⁵ Using this line of reasoning, Martha Fineman advocates the view that society should respect and support caregivers because they provide a subsidy to society.⁶⁶

Although the caring work of the family is crucial for the sustainability of the economy, many factors converge to make it harder for the family to perform this role of social reproduction. Many working parents must rely on childcare purchased in the open marketplace. Various studies, however, show that childcare facilities are not always able to provide a high quality of care because childcare workers receive low wages and have a high rate of turnover.⁶⁷ This is the so-called “care crisis” that imposes substantial costs upon children, parents, employers, and society as a whole.⁶⁸ The lack of adequate childcare costs corporations \$3 billion a year in absenteeism, turnover, and lost productivity.⁶⁹ More importantly, however, children suffer under the current system in terms of achieving cognitive and social

future adult members of society.” *Id.* at 1684. In John Rawls’ account, “[t]he family[s] . . . main role[] is to be the basis of the orderly production and reproduction of society and its culture from one generation to the next. . . . Thus, reproductive labor is socially necessary labor.” John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765, 788 (1997).

⁶⁴ McClain, *supra* note 2, at 1677. Martha Albertson Fineman uses the term “caretaker” to refer to both men and women performing this role. See Fineman, *supra* note 62, at 1406 (arguing that caretaking is essential to “[e]very society and every institution in society”).

⁶⁵ See McClain, *supra* note 2, at 1677; see also Rawls, *supra* note 63, at 788.

⁶⁶ See Fineman, *supra* note 62, at 1406 (arguing that society should view children as a public good because children represent the nation’s cultural and economic future).

⁶⁷ See SUZANNE W. HELBURN & BARBARA R. BERGMANN, AMERICA’S CHILD CARE PROBLEM: THE WAY OUT 29–30 (2002).

⁶⁸ See *id.*; see also The Annie E. Casey Foundation, 1998 KIDS COUNT Online: Making Quality Child Care a Reality for America’s Low-Income Working Families (1998), <http://www.aecf.org/kidscount/kc1998/overview.htm> (espousing the need for quality childcare, especially for lower-income families).

⁶⁹ THE ANNIE E. CASEY FOUND., KIDS COUNT DATA BOOK 10 (1998).

skills. In addition, studies show that low-income families are particularly hurt by low-quality childcare.⁷⁰

The "care crisis" is related to the nation's declining social capital. Several writers, including Francis Fukuyama, Robert Putman, and Richard Sennett, write about how economies depend on "social capital" to survive, but that the social capital in the United States is declining. This term "social capital" is defined as the informal values or norms shared among members of a group that permit cooperation among them. In turn, social capital creates economic value because it promotes norms such as honesty, reciprocity, keeping of commitments, hard work, and loyalty.⁷¹

Francis Fukuyama states that the new economy has led to a decline in social capital. Specifically, beginning in the 1960s, three indicators of societal well-being began to indicate a decline in social capital: increase in crime, increase in family breakdown, and lack of trust.⁷² In discussing the factors leading to the decline of social capital, Fukuyama, Putman, and Sennett each mention that women once had a long tradition of volunteer work in the form of many important neighborhood and community-preserving services. These authors surmise that the dramatic movement of married women out of the home and into the paid labor force from the 1960s on has led to a decline in women's investment in social capital.

Scholars commenting on social capital state that this decline is also reflected in people's changing attitudes as to their obligations to their communities. In his book *Bowling Alone*, Putnam writes that available evidence in advanced societies points to a dramatic decline in membership in voluntary

⁷⁰ *Id.*

⁷¹ Max Weber found these Puritan values to be critical to the development of Western capitalism. See MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* 51-56 (Talcott Parsons trans., Unwin Paperbacks 1987) (1930) ("Honesty is useful, because it assures credit; so are punctuality, industry, frugality, and that is the reason they are virtues.").

⁷² By social capital, I refer to the informal values or norms shared among members of a society that permit cooperation. Fukuyama notes that the concurrent economic and social revolutions have led to the decline in social capital. Specifically, since the 1960s, crime has increased, family breakdowns have increased, and levels of trust have decreased—three indicators of a decline in social capital since that time. See FRANCIS FUKUYAMA, *THE GREAT DISRUPTION: HUMAN NATURE AND THE RECONSTITUTION OF SOCIAL ORDER* 27, 31-34, 36-38, 47-50 (1999) (explaining these three factors in detail).

associations as a result of individualistic values, time constraints, and dual-job families.⁷³ This lack of community has serious consequences. Richard Sennett writes that community is hard to come by in our transient and work-harried culture.⁷⁴ Sennett looks at the way in which the high rates of divorce and downsizing result in a lack of long-term relationships for many people. He notes that "[t]he short time frame of modern institutions limits the ripening of informal trust" because "social bonds take time to develop."⁷⁵ As such, people lack life-long witnesses to their lives which increases stress and leads to a decline in basic moral values.

In discussing how to rebuild social capital, Francis Fukuyama writes that both women in the workforce and divorce are permanent aspects of the new order.⁷⁶ The next section explores how gender scholars use the moral authority of

⁷³ Robert Putnam writes that available evidence in the United States points to a dramatic decline in membership in voluntary associations as a result of individualistic values, time constraints, and dual-job families. See ROBERT D. PUTMAN, *BOWLING ALONE; THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 194 (2000). He notes that women once had a long tradition of volunteer work in the form of many important neighborhood and community-preserving services. *Id.* Putnam maintains that the movement of married women out of the home and into the paid labor force has led to a decline in women's investment in social capital. *Id.* at 194-96. It is important to note, however, that he finds that women's entry into the workforce plays a modest role in decreasing amounts of civic participation. Indeed, traditional notions of community in America have long depended on women having the free time to build informal networks; now that fewer women have free time, our communities are less cohesive. *Id.* at 194.

⁷⁴ The decrease in social capital in the United States leaves many people without community support. See RICHARD SENNETT, *THE CORROSION OF CHARACTER: THE PERSONAL CONSEQUENCES OF WORK IN THE NEW CAPITALISM* 23-24 (1998) (asserting that work has an impact on moral character and that flexible labor markets destroy character and community). Sennett looks at how the high rates of divorce and corporate downsizing result in a lack of long-term relationships for many people. See *id.* at 22-27 Corporate scholars recognize the importance of social capital in evaluating the role of trust in business.

⁷⁵ *Id.* at 24.

⁷⁶ See FUKUYAMA, *supra* note 72, at 41, 94-95, 105-111; ANTHONY GIDDENS, *THE THIRD WAY: THE RENEWAL OF SOCIAL DEMOCRACY* 91 (1998) ("We should be clear first of all how implausible the idea of returning to the traditional family is."); ARLENE SKOLNICK, *EMBATTLED PARADISE: THE AMERICAN FAMILY IN AN AGE OF UNCERTAINTY* 5, 9-10 (1991) (explaining that in any period of social transformation, people look at the recent past with nostalgia and they seek to retain old forms before developing new ones); Stephanie Coontz, *Nostalgia as Ideology*, 13 AM. PROSPECT, Apr. 8, 2002, at 26, 26-27, available at <http://www.prospect.org/print-friendly/print/V13/7/coontz-s.html> (explaining that marriage is no longer the main source of stability in family life).

motherhood to push for accommodations to support working families.

B. The Political Voice of Moral Mothers

In making a call to recognize the family as a corporate stakeholder, I follow the path of other scholars by speaking as a mother and using the institution of motherhood as a basis to argue for social change. Historically and globally, mothers have had a long tradition of using their moral authority as mothers to transform society. A recent example of this political activism can be seen in the "Million Mom March" where mothers demonstrated on Capitol Hill to persuade Congress to enact gun safety laws to prevent children from accidentally hurting themselves and others.⁷⁷

In the United States, the moral authority of mothers was first recognized at the beginning of the industrial revolution with the strict separation of breadwinner/caregiver roles.⁷⁸ Society dealt with the shock of the new capitalist system by seeking to preserve moral virtues by associating them with women.⁷⁹ During this time, the so-called "cult of domesticity" arose which viewed women's care work as spiritual.⁸⁰ Specifically, norms emerged that expected men to exude the capitalist spirit by being selfish, but this individualism was to be cushioned by women's selflessness in creating a haven from the cruel world. Thus, women became "Moral Mothers" as their work took on new ideological significance. Mothers used this moral authority to criticize aspects of the emerging "dog-eat-dog" capitalist system. In politics, the moral mother became the "social housekeeper" and pushed for reforms to bolster the welfare state. Recently, feminist scholars writing about work and family issues have

⁷⁷ Someday, I hope to see a "Million Mom March" for work-family benefits. For more information on a mothers' organization for gun control safety, see the Million Mom March website, <http://www.millionmommarch.com> (last visited Oct. 23, 2005). I took my daughter Sarah, then five years old, to march on Capitol Hill for this event.

⁷⁸ See generally SARA RUDDICK, *MATERNAL THINKING: TOWARD A POLITICS OF PEACE* (1989) (analyzing how characteristics of mothering should be used to influence social policy); THEDA SKOCPOL, *PROTECTING SOLDIERS AND MOTHERS: THE POLITICAL ORIGINS OF SOCIAL POLICY IN THE UNITED STATES* (1992) (describing the history of women that shaped maternalistic social policies in the early twentieth century).

⁷⁹ See WILLIAMS, *supra* note 1, at 180–81.

⁸⁰ See *id.* at 195.

stated that we need to reemphasize the Moral Mother's role to humanize the new economic order.

Although using the authority of the "Moral Mother" has much to offer in arguing for recognition of the family as a corporate stakeholder, there are two negative aspects that must be considered. First, the prevailing ideology still continues to view housework as women's "expression of affection."⁸¹ This spiritualization of housework serves to hide the economic dimension of caring work. Specifically, many aspects of providing a home life for the family is anything but spiritual; this view ignores the hard labor involved in the daily grind of dirty laundry, meal preparation, housecleaning, and shopping.

Second, the notion of the Moral Mother builds upon this topic of the differences between women and men and is attributed to the so-called "voice," a theory that women have a different voice—a moral authority not possessed by men. This theory was developed by Carol Gilligan in her book *In a Different Voice*.⁸² This work had a defining role in influencing feminist theory because it suggested that prevailing models of moral development left out women's distinct patterns of moral reasoning. Gilligan found that women place a primary emphasis on care, connection, and taking responsibility for the needs of others.⁸³ Men, on the other hand, emphasize individual values such as rights.⁸⁴ Using this line of research, relational feminists argue that the law reflects male values. By bringing women's values and experiences to the law, relational feminists argue for the creation of a legal system that supports the values of connection, responsibility, care, and affirmative governmental obligation.⁸⁵

Critics of the relational feminist position, such as Catharine MacKinnon, suggest that only when men take their feet "off [women's] necks . . . will [we] hear in what tongue women speak."⁸⁶ Obviously, using the authority of the "Moral Mother"

⁸¹ Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 NW. U. L. REV. 1, 4 (1996).

⁸² CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

⁸³ See *id.* at 7, 17.

⁸⁴ See *id.* at 16.

⁸⁵ See *id.* at 173–74.

⁸⁶ CATHARINE A. MACKINNON, *Difference and Dominance: On Sex Discrimination*, in *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 32, 45

may reinforce traditional gender roles that harm women. Recognizing this danger, Carol Gilligan stated that we need to avoid associating women with care in a manner where "care" is not a virtue but a "gender-specific harm."⁸⁷ I agree with MacKinnon's point, but at the same time, we need to recognize that eighty percent of women are mothers and that mothers are profoundly influenced by the practice of mothering. For these reasons, I prefer Sara Ruddick's position that characterizes care not as the essence of women but as a practice in which many women engage that forms particular habits of mind and orientations toward others through the activities of nurturance and concern for others.⁸⁸ Thus, I do not view women as being naturally selfless, but I do think that the act of mothering helps one gain a more caring perspective. I believe it is possible to use the voice of motherhood to overcome its negative potential to argue for legal change in a manner that will support families at the same time it rectifies gender inequity in the workplace and at home.

III. ESTABLISHING THE FAMILY AS A CORPORATE STAKEHOLDER

A. *Evaluating Work/Family Programs*

This Part seeks to appraise how corporate cultures perpetuate gender norms in the workplace and society. A review of the literature on work/family policies offered by corporations reveals that it is difficult for company officials to recognize that employees' family lives should be legitimate business concerns.⁸⁹ Such assumptions persist because most executives are men with stay-at-home wives.⁹⁰ In addition, many executives attained their position by sacrificing participation in family life. For this reason, many executives are not sympathetic to workers'

(1987).

⁸⁷ GILLIGAN, *supra* note 82, at 17.

⁸⁸ See RUDDICK, *supra* note 78, at 17-23.

⁸⁹ LOTTE BAILYN, *BREAKING THE MOLD: WOMEN, MEN, AND TIME IN THE NEW CORPORATE WORLD* 26-27, 40-41 (1993) ("One part of the problem is that organizations assume that their employees are workers only; work must come first, and all organizational demands must be met.").

⁹⁰ "A survey of chief financial officers in American corporations found that 80 percent were men with stay-at-home wives. Another survey of managerial employees revealed that 64 percent of the male executives with children under age thirteen had nonworking spouses." CRITTENDEN, *supra* note 1, at 17-18.

requests for more flexible work schedules. Perhaps they will appreciate issues about work/family balance when their daughters or daughter-in-laws have children.

Some companies are beginning to recognize that although they are successful in recruiting women, work/family programs are necessary to reduce high turnover for women and allow women to advance to more senior positions. At this time, however, only two percent of employers have the most progressive type of work/family policies according to the Work and Family Institute.⁹¹ Under these policies, family issues are integrated into the corporate culture, and there is a true commitment to change. For example, the SAS Institute has a mandatory work week of thirty-five hours.⁹²

More progressive work/family policies are needed, but the solution will not be easy. In order to galvanize broad-based political pressure to push for recognition of the family as a corporate stakeholder, it is necessary to articulate a collective purpose that would account for a more strategic view of work/family issues. I undertake to present this broader perspective by linking discussions of the struggles of working families in the United States to the topic of convergence of corporate governance systems.

B. Convergence and the Employees' Role in Corporate Governance

A gender analysis of corporate governance is useful to examine the topic of the convergence of corporate governance systems because it seeks to analyze how globalization affects people's lives at work and at home. Under the topic of convergence, corporate governance scholars direct attention to how countries around the world are changing their systems of corporate governance to promote shareholder value. Recent debate among prominent American scholars addresses whether this convergence will take place, but much less time is spent examining whether this is a good thing for the societies involved. When the merits of the American system of corporate governance are discussed, it is assumed by most prominent corporate governance scholars that the American system of promoting

⁹¹ See O'Connor-Felman, *supra* note 1, at 1321 (2004).

⁹² See Leslie Kaufman, *Some Companies Derail the 'Burnout' Track*, N.Y. TIMES, May 4, 1999, at A1.

shareholder value is socially optimal. For example, Henry Hansmann and Reinier Kraakman state that shareholder value maximization "serve[s] the interests of society as a whole, . . . that is, the pursuit of aggregate social welfare."⁹³ The authors do not offer any further explanation. I think we need to examine these notions in more detail. Although the American system may be optimal for shareholders, workers have quite a different view.

A broader view that looks at the role of the corporation in society is important because issues about shareholder value and flexible labor markets affect the basic foundations of how societies are organized—the family and the community. The focus of our public discourse on global competition has been on how American companies are competing with Japan, Germany, and other foreign companies. This focus allows us to ignore how American companies compete with the families of workers for time and commitment. Arlie Hochschild states, "[We] point to global competition as the major business story of the age [C]orporate America's fiercest struggle has been with its local rival—the family."⁹⁴

The relationships between work time and family life in Germany and Japan are different than the American arrangements. U.S. social legislation supporting the family lags behind other advanced countries. The United States is unique in having increased the average number of hours worked. In Europe and Japan, work systems are more secure with higher

⁹³ Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 441 (2001). The authors state:

The point is simply that now, as a consequence of both logic and experience, there is convergence on a consensus that the best means to this end (that is, the pursuit of aggregate social welfare) is to make corporate managers strongly accountable to shareholder interests and, at least in direct terms, only to those interests.

Id. They also assert that a cross-country study "lends credence to the view that adherence to the standard [shareholder value] model promotes better economic outcomes." *Id.* at 450. For criticism of this view of the shareholder value model, see HEWLETT & WEST, *supra* note 44, at 32 ("Many conservatives refuse to recognize the ways in which market values destroy family values."). Mark Roe also takes quite a different view. In discussing how social democracies impede public firms, he states, "Life may well be better for more people, but the internal structure of public firms must necessarily be weaker for shareholders." Mark J. Roe, *Political Preconditions To Separating Ownership from Corporate Control*, 53 STAN. L. REV. 539, 543 (2000).

⁹⁴ HOCHSCHILD, *supra* note 43, at 203–04.

pay, thus providing for a more comfortable family life.⁹⁵ For these reasons, Martin Carnoy writes that European and Japanese workers resist American-style corporate governance because the flexible labor markets that result lead to an increase in working hours, less job security, and more strain on family life.⁹⁶ Carnoy states:

Americans cannot understand why the French, Italians, and Germans, facing high unemployment rates, do not deregulate their economies to look like that of the United States, with its massive job creation but stagnant wages and increasing work hours. In turn, Europeans, despite unemployment and other problems, cannot understand how Americans can tolerate such high rates of child poverty and the stresses of constant work⁹⁷

Carnoy emphasizes that the American system that promotes shareholder value through changing the terms of the employment contract may not be sustainable in the future because it tends to deplete human and social capital.⁹⁸ Carnoy argues that because flexible labor markets strain family life and impair human capital development, corporate governance structures that have inflexible labor markets may be better posited to be sustainable in the future. The United States has more children living in poverty than any other advanced industrial nation.⁹⁹ As a result, Carnoy speculates that we may see even greater inequality in future generations because the new economy demands higher skills even for low-level jobs.¹⁰⁰

The theory of “care as a public value” offers corporate governance scholars a new way to think about corporate social responsibility to promote the well-being of children and the equality of women. Specifically, corporations need to focus on work/family issues and how inadequate childcare arrangements impede work and family life. Recognizing the family as a corporate stakeholder may accomplish a broader goal—that is, infusing the corporate culture and society with more “care” overall. Deborah Stone explains that we learn to care in families. In calling for a “care movement,” Stone states: “Care, the noun,

⁹⁵ See CARNOY, *supra* note 3, at 141–42.

⁹⁶ See *id.* at 144.

⁹⁷ *Id.* at 11.

⁹⁸ See *id.* at 190.

⁹⁹ O'Connor-Felman, *supra* note 1, at 1306.

¹⁰⁰ CARNOY, *supra* note 3, at 131–32.

requires families and workers who care, the verb. Caring, the activity, breeds caring, the attitude, and caring, the attitude, seeds caring, the politics."¹⁰¹

I raise questions about work/family balance to open up the dialogue about convergence. We need to move beyond stock prices to examine the political and social issues involved in assessing which corporate governance system is socially optimal. The next section discusses how recognition of the family as a corporate stakeholder would require firms to redesign workplace cultures to accommodate the change at home and the change at work.

C. Redesigning the Corporate Culture: A Comparative View

In this section, I summarize the goals the new workplace structure would need to attain in order to support working families as corporate stakeholders. Lucie White explains these goals by raising this question: "How could public policy encourage and enable parents of both genders, at all income levels to play a major role in caring for their own children, without reinforcing either the gendered distribution of care work or the marginalization of caretakers from waged work and public life?"¹⁰²

To reconstruct corporate cultures to accommodate family life, two areas need to change. First, corporate norms involving long work hours need to change. Lotte Bailyn, a leading human resources expert, writes that long hours and face time do not lead to higher productivity. In many workplaces, long hours are the sign of a star performer, yet this face time may not indicate the quality of the work performed.¹⁰³ Indeed, Bailyn discusses experiments demonstrating that people complete the same jobs in varying amounts of time depending on the time they are given to finish. Thus, Bailyn argues that we need to view long hours as a sign of inefficiency rather than of commitment and motivation.¹⁰⁴ In addition, Williams emphasizes that changing

¹⁰¹ Deborah Stone, *Why We Need a Care Movement*, NATION, Mar. 13, 2000, at 13, 15.

¹⁰² Lucie White, *Quality Child Care for Low-Income Families: Despair, Impasse, Improvisation*, in *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* 116, 138 (Joel F. Handler & Lucie White eds., 1999).

¹⁰³ See BAILYN, *supra* note 89, at 77-78.

¹⁰⁴ See *id.* at 77.

these norms is critical to promoting gender equity.¹⁰⁵ Second, employers need to pay benefits according to hours worked because some corporations introduce flex-time and part-time work not to accommodate workers but as a means to cut costs.¹⁰⁶

In redesigning corporate cultures to achieve these goals, this Article adopts Susan Sturm's approach to eradicating gender discrimination which emphasizes that organizations have eliminated most of the blatant types of discrimination, but that subtle forms are still prevalent.¹⁰⁷ To prevent this more subtle form of discrimination, she argues that "command-and-control" legislation will not work because each organization develops its own norms.¹⁰⁸ Rather, she suggests using outside intermediaries to investigate the workplace culture, such as Catalyst, the Family and Work Institute, and The Center for the Study of Gender in Organization. These intermediaries have the expertise to question employees to find out about these workplace norms and to suggest changes aimed at eliminating these subtle discriminatory forces.¹⁰⁹ Once changes are put in place, middle managers should be given certain goals to ensure that the policies are implemented. Through objective performance measures, data tracking, and feedback, these outside intermediaries can change underlying corporate norms that impede the success of work-family policies.¹¹⁰

¹⁰⁵ See Williams, *supra* note 19, at 929–30.

¹⁰⁶ See Jerry A. Jacobs & Kathleen Gerson, *Toward a Family-Friendly, Gender-Equitable Work Week*, 1 U. PA. J. LAB. & EMP. L. 457, 461 (1998).

¹⁰⁷ See Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458, 468–74 (2001). This subtle type of discrimination usually stems from norms that appear gender-neutral on their face but unintentionally hurt women. In one example, an organization concerned about high turnover of women and difficulty in recruiting women found that some of the problems arose because the corporate culture had a norm of allowing people to call meetings on an informal basis at any time. See *id.* at 469–70. This norm operated to the detriment of women, but men also found the norm disruptive. Identifying this issue and changing the norm benefited all employees in the organization and thus improved organizational effectiveness. See *id.* at 469–72. Thus, in evaluating these norms, scholars note that many organizational practices create barriers to women's advancement because these norms have been created by and for men and are based on male experience. It is important to state at the outset that, as the previous example demonstrates, such norms do not mean that men are at fault or that men necessarily benefit from them.

¹⁰⁸ See *id.* at 475.

¹⁰⁹ See *id.* at 524.

¹¹⁰ For a system of measuring the success of part-time programs, see generally Joan Williams & Cynthia Thomas Calvert, *Balanced Hours: Effective Part-Time*

CONCLUSION

In examining the difficulties faced by child-rearing families in the United States, the concurrent economic revolution and social transformations both matter. This new environment leaves little time to invest in children and raises questions of how well today's children will be prepared to cope with tomorrow's flexible work environment. If we want flexible labor markets to be sustainable in the future, we need to consider future generations of human capital as well as the lives of current employees. Much turns on reshaping the corporate culture to accommodate the change at home and the change at work. In order to recognize the family as a corporate stakeholder, we need an alliance between gender scholars, labor activists, child advocates, and progressive corporate scholars. It is my hope that this Article will encourage other scholars in many fields to reconceptualize the corporation's role in society to recognize the family as a corporate stakeholder.