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FEMINISM AND THE STATE

Deborah L. Rhode*

Despite the obvious centrality of the state in structuring gender relationships, theorizing about the state does not occupy a central role in feminist jurisprudence. Most political treatments of the state have had little to say about gender, just as most feminist theory about gender has been uninterested in conceptual approaches to the state. As Catherine MacKinnon has observed, “[f]eminism has no theory of the state.”¹ Nor do feminists agree about whether that constitutes a problem. For some theorists, abstractions like the state are “too unitary and too unspecific to be of much use in addressing the . . . diverse and specific . . . sites that must be of most pressing concern to feminists.”² By contrast, other feminists emphasize the centrality of government structures in women’s lives and the need for theoretically richer accounts of that role in mediating gender relations.³

This debate is part of a broader dispute among contemporary social critics about the role of theory. Informed by postmodern work in various disciplines, many feminists challenge the usefulness of overarching theoretical frameworks in illuminating social experience. In place of “grand theory” built on abstract concepts like “the state,” these feminists call for more contextual analysis.⁴ Their objective is not to abandon all theoretical critique, but rather to situate analysis of specific governmental interventions against the background of particular social circumstances and gender relationships.⁵

This Essay suggests the need for such a contextual framework in contemporary feminist jurisprudence on the state. Part I offers a brief overview of the primary feminist approaches to government power: feminist critiques of class exploitation in the capitalist state, male

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¹ CATHERINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 157 (1989).

² Judith Allen, *Does Feminism Need a Theory of ‘The State’?*, in *PLAYING THE STATE* 21, 22 (Sophie Watson ed., 1990).

³ See, e.g., Wendy Brown, *Finding the Man in the State*, 18 *FEMINIST STUD.* 7, 7 (1992); Sue Ellen M. Charlton, Jana Everett & Kathleen Staudt, *Women, the State, and Development*, in *WOMEN, THE STATE, AND DEVELOPMENT* 1, 15 (Sue Ellen M. Charlton, Jana Everett & Kathleen Staudt eds., 1989).

⁴ See, e.g., Nancy Fraser & Linda J. Nicholson, *Social Criticism Without Philosophy: An Encounter Between Feminism and Postmodernism*, in *FEMINISM/POSTMODERNISM* 19, 35 (Linda J. Nicholson ed., 1990); Robin West, *Feminism, Critical Social Theory and Law*, 1989 U. CHI. LEGAL F. 59, 96–97.

⁵ See Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 884 (1990); Margaret J. Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1707 (1990).

dominance in the patriarchal state, and structural inequalities in the liberal state. The limitations revealed in these frameworks point to the need for less categorical critique and more situated analysis.

Part II attempts a response to this need by exploring potential governmental initiatives to transform this country's gender relations. At issue is what feminists want from the state and what stands in the way of achieving it. These are not small questions, and the enterprise here is less to suggest definitive answers than to offer a beginning agenda for debate. To make significant progress at the level of political practice, we need greater clarity at the level of social theory.

For that enterprise, some threshold definitional points are in order. Most feminist work refers to "the state" without defining it and uses the term synonymously with central government. However, some theorists view the state more broadly, as all of the "administrative, legal, bureaucratic, and coercive systems" that structure social relations.⁶ From this perspective, the state is not a unified entity, but a convergence of institutions that "have their own histories, contradictions, relations and connections, internally and externally."⁷ This more inclusive definition is appropriate here, since the point of feminist analysis is to understand the full range of governmental structures that maintain and transform gender hierarchies.

Defining feminism is considerably more problematic. While this analysis cannot fully explore that issue, it seems appropriate at least to identify the premises underlying this Essay. Although feminists differ strongly on many dimensions, they generally share certain basic commitments. At the substantive level, feminism presupposes a commitment to equality between the sexes. At the methodological level, it implies a commitment to gender as a focus of analysis and to approaches that reflect women's perspectives and concerns. Yet these commitments also reveal a central paradox. Feminism's authority rests on its claims to speak from women's experience. That very experience, however, demands attention to the diversity in women's circumstances. There is no "generic woman";⁸ gender is always mediated by other forces that structure identity, such as race, ethnicity, class, and sexual orientation. Recognition of this diversity complicates the search for theoretical coherence and political cohesion.

Yet if this paradox cannot be escaped, at least it can be reformulated. The factors that divide women also can be a basis for

⁶ Theda Skocpol, *Bringing the State Back In: Strategies of Analysis in Current Research*, in *BRINGING THE STATE BACK IN* 3, 7 (Peter B. Evans, Dietrich Reuschmeyer & Theda Skocpol eds., 1985); see also Brown, *supra* note 3, at 12 (describing the state as "an incoherent, multifaceted ensemble of power relations").

⁷ Sophie Watson, *The State of Play: An Introduction*, in *PLAYING THE STATE*, *supra* note 2, at 3, 7.

⁸ ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN* 187 (1988).

enriching analysis and building coalitions. If feminism is to make good on its commitment to speak for all women, its concerns must extend beyond the specific sex-based injustices that gave it birth. Any ethical and political framework adequate to challenge gender inequality must similarly challenge the other structures of subordination with which gender intersects. Such a framework, informed by various postmodern, pragmatic, and critical race perspectives, rests not on some single standpoint *of* woman, but on affinities and alliances *among* women.

I. FEMINIST CRITIQUES

A. *The Capitalist State*

Most theorizing about the state among contemporary feminists emerged from Marxist and socialist traditions. In these traditions, the state mediates between capitalism's dual needs for market production and labor force reproduction. State policies toward the family reinforce women's unpaid work in the home and their subordinate status in the world outside it.⁹ Government support for traditional gender roles perpetuates class oppression by enabling employers to pay less than the full cost of maintaining a labor force and by relegating women to a reserve army of provisional workers.¹⁰ Under some frameworks, capitalism is not wholly responsible for male-dominance but affects the forms it takes.¹¹

For most feminists, however, class-centered frameworks appear inadequate to account for persistent gender hierarchies and the state's role in perpetuating them. Women's social position is not determined by their relationship to the means of production; it is also shaped by their connection to men (as fathers or husbands), and by other factors such as race and ethnicity. Gender subordination is not limited to capitalist societies, and the consequences of that subordination cut across economic classes. Materialist frameworks cannot explain either the "endless variety" or the "monotonous similarity" in women's experience.¹² Nor does recent history provide assurance that women's interests and values are well served by socialist revolution. In Heidi

⁹ See Varda Burstyn, *Masculine Dominance and the State*, in *THE SOCIALIST REGISTER* 1983, at 45, 62–64 (Ralph Miliband & John Saville eds., 1983); Birte Siim, *Towards a Feminist Rethinking of the Welfare State*, in *THE POLITICAL INTERESTS OF GENDER* 160, 180 (Kathleen B. Jones & Anna G. Jónasdóttir eds., 1988).

¹⁰ See JENNIFER DALE & PEGGY FOSTER, *FEMINISTS AND STATE WELFARE* 117–18 (1986).

¹¹ See, e.g., Zillah R. Eisenstein, *Some Notes on the Relations of Capitalist Patriarchy*, in *CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM* 41, 42–43 (Zillah R. Eisenstein ed., 1979).

¹² Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex*, in *TOWARD AN ANTHROPOLOGY OF WOMEN* 157, 160 (Rayna R. Reiter ed., 1975).

Hartmann's phrase, the traditional relationship between Marxism and feminism is like the bond between husband and wife under early English common law: "marxism and feminism are one, and that one is marxism."¹³

Yet despite their limitations, class-centered critiques highlight a core insight that informs other feminist work on the state. As the discussion in Part II reflects, the policy initiatives necessary to secure equality for all women will require a substantial redistribution of private wealth and a substantial expansion of the public sector. Many feminists, while agnostic about the collective ownership issues that have preoccupied socialist theorists, share with these critics a commitment to a more egalitarian distributive structure and a greater sense of collective responsibility.¹⁴

B. The Patriarchal State

In many left feminist accounts, the state is a patriarchal institution in the sense that it reflects and institutionalizes male dominance. Men control positions of official power and men's interests determine how that power is exercised. According to Catharine MacKinnon, the state's invocation of neutrality and objectivity ensures that, "[t]hose who have freedoms like equality, liberty, privacy and speech socially keep them legally, free of governmental intrusion."¹⁵ In this view, "the state protects male power [by] appearing to prohibit its excesses when necessary to its normalization."¹⁶ So, for example, to the extent that abortion functions "to facilitate male sexual access to women, access to abortion will be controlled by 'a man or The Man.'"¹⁷

Other theorists similarly present women as a class and elaborate the ways in which even state policies ostensibly designed to assist women have institutionalized their subordination.¹⁸ So, for example, welfare programs stigmatize female recipients without providing the support that would enable them to alter their disadvantaged status.¹⁹ In patriarchal accounts, the choice for many women is between de-

¹³ Heidi Hartmann, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union*, in *WOMEN AND REVOLUTION* 1, 2 (Lydia Sargent ed., 1981).

¹⁴ See, e.g., Lynn S. Chancer, *The Socialist Future of Radical Feminism*, in *SOCIALISM: CRISIS AND RENEWAL* 170, 176 (Chronis Polychroniou ed., 1993).

¹⁵ MACKINNON, *supra* note 1, at 163.

¹⁶ *Id.* at 167.

¹⁷ *Id.* at 168 (quoting Johnnie Tillmon, *Welfare Is a Women's Issue*, *LIBERATION NEWS SERVICE* (No. 415), Feb. 26, 1972, reprinted in *AMERICA'S WORKING WOMEN* 355, 356 (Rosalyn Baxandale, Linda Gordon & Susan Reverby eds., 1976)).

¹⁸ See, e.g., MICHÈLE BARRETT, *WOMEN'S OPPRESSION TODAY* 228-39 (1980); Mary McIntosh, *The State and the Oppression of Women*, in *FEMINISM AND MATERIALISM* 254, 255 (Annette Kuhn & AnnMarie Wolpe eds., 1978).

¹⁹ See NANCY FRASER, *UNRULY PRACTICES: POWER, DISCOURSE, AND GENDER IN CONTEMPORARY SOCIAL THEORY* 147, 151-53 (1989); *infra* pp. 1201-02.

pendence on an intrusive and insensitive bureaucracy, or dependence on a controlling or abusive man.²⁰ Either situation involves sleeping with the enemy. As Virginia Woolf noted, these public and private spheres of subordination are similarly structured and “inseparably connected; . . . the tyrannies and servilities of the one are the tyrannies and servilities of the other.”²¹

This account is also problematic on many levels. To treat women as a class obscures other characteristics, such as race and economic status, that can be equally powerful in ordering social relations. Women are not “uniformly oppressed.”²² Nor are they exclusively victims. Patriarchy cannot account adequately for the mutual dependencies and complex power dynamics that characterize male-female relations.

Neither can the state be understood solely as an instrument of men's interests. As a threshold matter, what constitutes those interests is not self-evident, as MacKinnon's own illustrations suggest. If, for example, policies liberalizing abortion serve male objectives by enhancing access to female sexuality, policies curtailing abortion presumably also serve male objectives by reducing female autonomy.²³ In effect, patriarchal frameworks verge on tautology. Almost any gender-related policy can be seen as either directly serving men's immediate interests, or as compromising short-term concerns in the service of broader, long-term goals, such as “normalizing” the system and stabilizing power relations. A framework that can characterize all state interventions as directly or indirectly patriarchal offers little practical guidance in challenging the conditions it condemns. And if women are not a homogenous group with unitary concerns, surely the same is true of men.

Moreover, if the state is best understood as a network of institutions with complex, sometimes competing agendas, then the patriarchal model of single-minded instrumentalism seems highly implausible. It is difficult to dismiss all the anti-discrimination initiatives of the last quarter century as purely counter-revolutionary strategies. And it is precisely these initiatives, with their appeal to “male” norms of “objectivity and the impersonality of procedure, that [have created]

²⁰ See Brown, *supra* note 3, at 11; Sharon Presley & Lynn Kinsky, *Government Is Women's Enemy*, in FREEDOM, FEMINISM, AND THE STATE 77, 77–78 (Wendy McElroy, The Independent Inst. eds., 2d ed. 1991).

²¹ VIRGINIA WOOLF, *THREE GUINEAS* 142 (1938).

²² BARBARA EHRENREICH & DEIRDRE ENGLISH, *COMPLAINTS AND DISORDERS: THE SEXUAL POLITICS OF SICKNESS* 11 (1973); see also Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990) (discussing diversity in women's experience across race and class).

²³ See Rosalind Petchesky, *Abortion as “Violence Against Women”: A Feminist Critique*, 17 RADICAL AM. 64, 64 (1984); *supra* p. 1184.

leverage for the representation of women's interests."²⁴ Cross-cultural research also suggests that the status of women is positively correlated with a strong state, which is scarcely the relationship that patriarchal frameworks imply.²⁵ While the "tyrannies" of public and private dependence are plainly related, many feminists challenge the claim that they are the same. As Carole Pateman notes, women do not "live with the state and are better able to make collective struggle against institutions than individuals."²⁶

To advance that struggle, feminists need more concrete and contextual accounts of state institutions than patriarchal frameworks have supplied. Lumping together police, welfare workers, and Pentagon officials as agents of a unitary patriarchal structure does more to obscure than to advance analysis. What seems necessary is a contextual approach that can account for greater complexities in women's relationships with governing institutions. Yet despite their limitations, patriarchal theories underscore an insight that generally informs feminist theorizing. As Part II reflects, governmental institutions are implicated in the most fundamental structures of sex-based inequality and in the strategies necessary to address it.

C. The Liberal State

The dominant influence in contemporary American theorizing about the state is liberalism. It is also the most elusive, because neither liberals nor their feminist critics offer wholly consistent descriptions of liberalism's defining characteristics. For present purposes, however, it is unnecessary to canvas the full definitional debate. What bears emphasis here are more general concerns about women's relation to the state under most contemporary liberal theory and political structures.

Although they differ strongly on other matters, modern liberal theorists generally share certain assumptions about the basic responsibility of the state: it must treat each citizen with equal concern and respect, and secure individuals' freedom to pursue their own objectives to an extent consistent with similar freedom for others. To this end, governmental institutions must protect fundamental rights that are essential to ordered liberty and must ensure minimum conditions for individuals to exercise such rights.²⁷ Central among these entitlements is a zone for autonomous private choice, free from public intervention.

²⁴ SUZANNE FRANZWAY, DIANNE COURT & R.W. CONNELL, *STAKING A CLAIM: FEMINISM, BUREAUCRACY AND THE STATE* 30 (1989).

²⁵ See *id.* at 23.

²⁶ Carole Pateman, *The Patriarchal Welfare State*, in *DEMOCRACY AND THE WELFARE STATE* 231, 256 (Amy Gutmann ed., 1988).

²⁷ See, for example, JOHN RAWLS, *A THEORY OF JUSTICE* 60-65 (1971) and sources discussed in Deborah L. Rhode, *Feminist Critical Theories*, 42 *STAN. L. REV.* 617, 627-28 (1990).

Liberal frameworks vary concerning the scope of that zone and the state interventions that are justifiable to protect it. However, most modern theorists agree on one limiting principle: governmental institutions must remain neutral toward individuals' competing visions of the good life.²⁸

On this account, the state can be — and increasingly has been — mobilized to prohibit sex-based discrimination. If equality in formal rights has not generated equality in social experience, the problem, under traditional liberal frameworks, lies less with the state than with women. They have not made the same “private” choices concerning “public” life as men. Nor have women engaged in the collective political struggles that would alter the unequal consequences of their individual choices.²⁹

For feminists, this liberal understanding of the state has been inadequate at the levels of both theory and practice. As Part II reflects, liberal institutions have not in fact delivered on their commitment to ensure equal concern and respect for women. Neither have leading liberal theorists sufficiently attended to the causes of that failure or to strategies for addressing it.

One of liberalism's most conspicuous inadequacies is its reliance on public/private distinctions, and its refusal to make gender inequality in presumptively “personal” spheres a central political issue. Feminists have criticized the public/private boundary on both descriptive and prescriptive grounds. The dichotomy of “separate spheres” always has been illusory. The state determines what counts as private and what forms of intimacy are entitled to public recognition. Policies governing tax, welfare, childcare, family, and workplace issues heavily influence personal relationships. Public opportunities shape private choices just as private burdens constrain public participation. Women's unequal responsibilities in the home limit options in the world outside it. Reduced earning capacity in the market also correlates with reduced power and increased obligations in the family.³⁰

Conventional public/private distinctions present normative difficulties as well. Contrary to liberal assumptions, the state's refusal to intervene in private matters does not necessarily expand individual autonomy; it often simply substitutes private for public power. The failure to provide adequate remedies for domestic violence or nonpay-

²⁸ See, e.g., BRUCE ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* 10–12 (1980); Ronald Dworkin, *Liberalism, in PUBLIC AND PRIVATE MORALITY* 113, 127 (Stuart Hampshire ed., 1978). But see Robin West, *Liberalism Rediscovered: A Pragmatic Definition of the Liberal Vision*, 46 U. PITT. L. REV. 673, 673–74 (1985) (arguing that neutrality toward conceptions of the good life is generally, but need not be, a characteristic of liberal theory).

²⁹ See JOHN H. ELY, *DEMOCRACY AND DISTRUST* 166–70 (1980).

³⁰ See Janice M. Steil & Beth A. Turetsky, *Marital Influence Levels and Symptomatology Among Wives*, in *SPOUSE, PARENT, WORKER* 74, 74–75 (Faye J. Crosby ed., 1987).

ment of child support enlarges the liberties of men at the expense of women. Given the persistence of sex-based disparities in social, economic, and political power discussed in Part II, laissez-faire policies are not sex neutral. Nor are the results of such policies a purely "private" concern; they materially affect the quality of community life.

Although this critique has been of central importance for feminist theory and practice, it raises more questions than it resolves. Having deconstructed the public/private boundary on a theoretical level, the women's movement has been busy reconstructing it around particular issues. On questions such as reproductive rights, feminists seek both to enlist and to circumscribe state action; they resist restrictions on access to abortion, while demanding subsidies for birth control services.³¹

These tensions within the women's movement are, of course, by no means unique. For any subordinate group, the state is a primary source of both repression and assistance in the struggle for equality. These constituencies cannot be "for" or "against" state involvement in any categorical sense. The questions are always what forms of involvement, to what ends, and who makes these decisions. From some feminist perspectives, liberalism has failed to respond adequately to those questions because of deeper difficulties. In part, the problem stems from undue faith in formal rights. The priority granted to individual entitlements undermines the public's sense of collective responsibility.

This critique has attracted its own share of criticism from within as well as from outside the feminist community. As many left feminists, including critical race theorists, have noted, rights-based claims have played a crucial role in advancing group as well as individual interests.³² Such claims can express desires not only for autonomy, but also for participation in the struggles that shape women's collective existence. The priority that state institutions place on rights is not in itself problematic. The central difficulty is the limited scope and inadequate enforcement of currently recognized entitlements. Since rights-oriented campaigns can advance as well as restrict political struggle, evaluation of their strategic value demands historically-situated contextual analysis.

A final line of feminist critique challenges liberalism's deference to individual preferences and its insistence that the state remain neutral

³¹ See DEBORAH L. RHODE, *JUSTICE AND GENDER* 210-19 (1989); Laurie Nsiah-Jefferson, *Reproductive Laws, Women of Color, and Low-Income Women*, in *REPRODUCTIVE LAWS FOR THE 1990S*, at 23, 25 (Sherrill Cohen & Nadine Taub eds., 1989); *infra* pp. 1203-05.

³² See, e.g., Elizabeth Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589, 604-10 (1986); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401, 404-05 (1987).

between such preferences and between competing visions of the good life. Liberal frameworks frequently take women's objectives as given and assume that women can enlist the state on their behalf through group leverage in democratic processes.³³ Yet to an important extent, women's preferences are socially constructed and constrained. The state does not simply respond to expressed desires; it plays an active role in legitimating, suppressing, or redirecting them. Attempts to challenge inequality through conventional democratic measures fall short when subordinate groups adapt or accommodate their preferences to the unequal opportunities available.³⁴ As Kathy Ferguson puts it, liberalism "proceeds as if women were already free . . . when the entire force of the feminist critique is to show precisely the opposite. Part of the perniciousness of femininity in our society is that it produces people who claim to choose what they are supposed to want."³⁵ Contrary to conventional wisdom, most victims of discrimination do not identify themselves as such. Individuals generally want to believe in a "just world"; they prefer to avoid the hostility, as well as the diminished sense of efficacy and self-esteem, that acknowledging one's victimization typically entails.³⁶

Moreover, the mobilization of women presents particular obstacles. Unlike "discrete and insular" minorities, women constitute a geographically diffuse, racially diverse, and socioeconomically heterogeneous group.³⁷ Most of its members live on terms of intimacy with the dominant class and do not identify strongly with women's issues. The lack of group identification along gender lines raises problems not only for liberals, but also for their feminist critics. Who can claim to represent the interests of women when women themselves disagree about what those interests are, when their perceptions may be constrained by systemic inequalities, and when their concerns vary substantially across race, ethnicity, class, sexual orientation, and so forth?

Yet the absence of any undistorted perspective from which to identify women's "true" consciousness or "authentic" interests need not disable feminist critiques. Under a contextual approach, feminism need not judge the content of choices; rather it can evaluate constraints

³³ See, e.g., ELY, *supra* note 29, at 166–99.

³⁴ See JON ELSTER, *SOUR GRAPES: STUDIES IN THE SUBVERSION OF RATIONALITY* 109–10 (1983); Anna G. Jónasdóttir, *On the Concept of Interest, Women's Interests, and the Limitations of Interest Theory*, in *THE POLITICAL INTERESTS OF GENDER*, *supra* note 9, at 33, 36–54; Cass R. Sunstein, *Legal Interference with Private Preferences*, 53 U. CHI. L. REV. 1129, 1146 (1986).

³⁵ KATHY E. FERGUSON, *THE FEMINIST CASE AGAINST BUREAUCRACY* 177 (1984).

³⁶ See KRISTIN BUMILLER, *THE CIVIL RIGHTS SOCIETY* 27–29, 52–53 (1988); FAYE J. CROSBY, *RELATIVE DEPRIVATION AND WORKING WOMEN* 163–64 (1982); MELVIN J. LERNER, *THE BELIEF IN A JUST WORLD* at vii–viii (1980); Deborah L. Rhode, *The No-Problem Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1775 (1991).

³⁷ See Bruce A. Ackerman, *Beyond Carolene Products*, 98 HARV. L. REV. 713, 722–31 (1985).

on choice in a given set of circumstances. All preferences are culturally constituted at least in part, but some are freer than others. Feminism can offer criteria by which to determine individuals' capacity to exercise choice and to develop their human potential. For example, what is the range of experience that informs women's preferences and their ability to imagine alternatives? Do women have sufficient resources to express their aspirations? To what extent do women participate in defining the conditions that structure choice?

Of course, neither all women nor all feminists will answer these questions in the same way. But this kind of contextual inquiry provides a more useful groundwork for mobilizing the state than either liberalism's conventional deference to existing preferences, or some feminists' categorical critiques. As Part II suggests, a commitment to reducing current gender-related inequalities and constraints on choice would establish a substantial beginning agenda for government responses.

The ultimate adequacy of that agenda is more problematic, and some feminists reject any approach that fails to challenge liberalism's commitment to state neutrality. In their view, a government that purports to adopt a neutral stance is in fact affirming a substantive vision that privileges individual autonomy over other values. This priority seems to many feminists an impoverished substitute for a more affirmative, nurturing vision. From their vantage, the goal is not simply equal rights and equal access to existing institutions, but also the transformation of those institutions to reflect women's relational, caretaking values.³⁸

Yet to argue for a substantive vision based on women's "different voice" presents risks of oversimplifying and overclaiming. As an empirical matter, it is by no means clear how different that voice is. Psychological research generally finds few attributes that vary consistently along gender lines.³⁹ Even for these attributes, gender typically accounts for only a small part of the variance.⁴⁰ Most studies of moral values or altruistic behavior do not disclose significant sex-based distinctions.⁴¹ And, as Part II suggests, the differences in men's and women's political behavior are less striking than the similarities. A

³⁸ See, e.g., CAROL GILLIGAN, IN A DIFFERENT VOICE 173-74 (1982); Carrie Menkel-Meadow, *Portia in a Different Voice*, 1 BERKELEY WOMEN'S L.J. 39 *passim* (1985).

³⁹ See Kay Deaux & Brenda Major, *A Social Psychological Model of Gender*, in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE 89, 93-99 (Deborah L. Rhode ed., 1990); Janet S. Hyde, *Meta-Analysis and the Psychology of Gender Differences*, 16 SIGNS 55, 64-68 (1990).

⁴⁰ See Linda D. Molm & Mark Hedley, *Gender, Power, and Social Exchange*, in GENDER, INTERACTION, AND INEQUALITY 1, 16 (Cecilia L. Ridgeway ed., 1992).

⁴¹ See, e.g., CYNTHIA F. EPSTEIN, DECEPTIVE DISTINCTIONS: SEX, GENDER, AND THE SOCIAL ORDER 76-98 (1988); CAROL TAVRIS, THE MISMEASURE OF WOMAN 63-66 (1992); Catherine G. Greeno & Eleanor E. MacCoby, *How Different Is the "Different Voice"?*, 11 SIGNS 310, 312-16 (1986).

convincing alternative vision requires grounding in feminist commitments, not feminine stereotypes.

Nor are concepts like care sufficient to express such commitments or to establish an alternative framework for the state. To determine how broadly caretaking obligations extend, and what governmental intervention they justify, additional principles remain necessary.⁴² In most comprehensive feminist work on justice, concepts of equality and autonomy play no less prominent a role than in conventional liberal theory.⁴³ And in some egalitarian strains of contemporary liberalism, values of empathy and care assume central importance.⁴⁴ The major challenge for both feminist and liberal theories lies in institutionalizing those normative commitments.

Whatever its other limitations, the feminist critique of liberalism can help meet that challenge. As the following discussion makes clear, women's practical needs are linked to the theoretical gaps identified above. Significant progress on both levels requires a reformulation of the public/private boundary, a commitment to substantive rather than formal equality, and an acceptance of societal responsibility to expand, not simply to accommodate, individual choices.

II. FEMINIST AGENDAS

At the most basic level, contemporary feminists generally agree about the minimum conditions necessary to secure women's equal status, welfare, and capacity for self-realization. As even the briefest overview makes clear, we remain a considerable distance from securing those conditions, and the state could do considerably more to bring us closer. Summarizing an agenda for this forum is not, however, without difficulties. A threshold problem is the level of generality at which to describe unmet needs and plausible responses. Risks run in opposite directions. Any brief policy overview risks appearing too concrete or not concrete enough. Feminist agendas that paint in broad strokes may fail to inform actual choices or to acknowledge the diversity in women's interests. What Mies van deRohe observed about architecture is no less true of law; God lies in the details. Yet a brief essay in the *Harvard Law Review* is not the occasion for working through the complexities of state initiatives.

A second difficulty involves disputes within the feminist community over particular governmental policies. Controversies include es-

⁴² See JOAN C. TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* 157-80 (1993); Mary J. Larrabee, *Introduction to AN ETHIC OF CARE: FEMINIST AND INTERDISCIPLINARY PERSPECTIVES* 3, 16 (Mary J. Larrabee ed., 1993).

⁴³ See, e.g., Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279, 1282-84 (1987); Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J.L. & FEMINISM 7, 7 (1989).

⁴⁴ See, e.g., SUSAN M. OKIN, *JUSTICE, GENDER, AND THE FAMILY* 21-23 (1989).

tablishing priorities among competing values; resolving conflicts between material interests and symbolic concerns; and making tradeoffs between short-term gains and long-term objectives.⁴⁵ Important though these debates are for feminist theory, they should not displace efforts to find common ground in feminist political struggle. Many of feminists' sharpest disagreements arise, at least in part, from the state's failure to implement policies on which feminists are largely agreed. The stakes in the pornography controversy would be less acute in a society with more effective policies regarding sexual violence. Surrogacy would be less problematic in a nation that did not privilege biological parenthood over other family forms, that did not tolerate high levels of reproductive hazards, and that did not have large numbers of economically vulnerable women. The point of the following agenda is not to imply that feminists are united on all issues of state policy, but rather to identify areas on which substantial consensus seems possible.

A final difficulty in constructing this agenda involves the degree of pragmatism that should inform feminist strategies. Domestic policy-making has grown increasingly conscious of fiscal constraints and of forces beyond the control of national or local governments. At a time of increasing skepticism about the state's capacity to solve social problems, a call for massive state initiatives could seem at best naive, and at worst irrelevant. Moreover, given the gender biases that have characterized prior government policies, the barriers to realizing an adequate feminist agenda should not be understated. Yet to allow what now appears politically palatable to establish that agenda is to doom it from the outset. Partial strategies reinforce public disillusionment with government and undermine feminist mobilizing efforts. Often what is politically viable ignores the needs of those most in need, especially low-income and minority women, who lack leverage in political processes.

The following overview responds to these concerns by surveying what feminists generally identify as pressing problems and plausible government responses. The proposed initiatives are representative, by no means exhaustive, and most are not especially novel. Nor are they all uniquely feminist; some have been longstanding staples of liberal platforms. What distinguishes much of the feminist agenda is its scale — its call for vastly expanded state enforcement structures and social services, as well as the redistribution of power and resources

⁴⁵ Examples include the conflict between values of equality and free expression in pornography regulation, the conflict between long-term symbolic values and tangible short-term costs of gender neutrality in custody disputes and parental leave, and the tradeoff between repressing and commodifying sex in surrogacy and prostitution. Radin discusses many of these situations as double binds. See Radin, *supra* note 5, at 1699–1701; Margaret J. Radin, *Market Inalienability*, 100 HARV. L. REV. 1849, 1915–36 (1987).

that this expansion entails. Such initiatives are pragmatic in the sense that they presuppose no fundamental transformation of state structure. But they are also visionary in the sense that their realization would require a major redirection of public values and priorities.

A. *Physical Security*

For centuries, political theorists have viewed physical security as citizens' most basic demand from the state. Yet virtually never, except in feminist work over the last several decades, has that demand been seen as encompassing women's protection from sexual violence.⁴⁶ Nor has recent attention to the issue prompted anything close to adequate governmental intervention. Recent surveys estimate that as many as four million women are victims of domestic violence each year and that three quarters of all women will suffer some violent incident in their lifetime.⁴⁷ Brutality by a spouse or a partner is the greatest cause of injury to women, and cuts across lines of race, ethnicity, class, and sexual orientation.⁴⁸

Despite some recent improvements, government responses exemplify in practice precisely the inadequacies that feminists have indicted in liberal theory. Domestic violence policy respects "private" liberty for men at the expense of comparable liberty for women, fixes responsibility at the individual rather than societal level, and substitutes formal for substantive protections. Among many police officers, prosecutors, and judges, assumptions persist that family violence is a "family matter" and that women are responsible for their own victimization by provoking, tolerating, or declining to prosecute abuse.⁴⁹ As one judge summarized prevailing sentiments: "Why don't they just get up and leave?"⁵⁰

Why women should be the ones to leave, where they can go, and how they will support themselves and their children are questions frequently overlooked. The answers available in most jurisdictions

⁴⁶ See Jane Cohen, *Private Violence and Public Obligation: The Fulcrum of Reason*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE* (Martha Fineman ed., forthcoming 1994).

⁴⁷ See STAFF OF SENATE COMM. ON THE JUDICIARY, 102D CONG., 2D SESS., *VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA* 3 (Comm. Print 1992).

⁴⁸ See Barbara Hart, *Lesbian Battering: An Examination*, in *NAMING THE VIOLENCE* 173, 173-74 (Kerry Lobel ed., 1986); Antonio C. Novello, *A Medical Response to Domestic Violence*, 267 JAMA 3132, 3132 (1992) (noting that battering is the leading cause of injury to women ages 15-44).

⁴⁹ See GENDER BIAS STUDY COMM., SUPREME JUDICIAL COURT OF MASS., *REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT* 745 (1990); Naomi R. Cahn & Lisa G. Lerman, *Prosecuting Woman Abuse*, in *WOMAN BATTERING* 95, 95-96 (Michael Steinman ed., 1991); Joan Zorza, *The Criminal Law of Misdemeanor Domestic Violence: 1970-1990*, 83 J. CRIM. L. & CRIMINOLOGY 46, 47-52 (1992).

⁵⁰ *Report of the New York Task Force on Women and the Courts*, 15 FORDHAM URB. L.J. 11, 32 (1987).

evidence rhetorical and not substantive commitments to women's security. Half of all interspousal homicides and many of the most serious injuries occur after the abused party "just gets up and leaves."⁵¹ Individuals at risk of violence are entitled to protective orders, but these mandates are routinely violated and violations are rarely prosecuted; in some jurisdictions, such orders are not even available for same-sex partners.⁵² Only a small minority of domestic abuse cases result in significant sanctions. Most are dropped, relegated to misdemeanor status, or diverted to counseling and mediation programs that often trivialize the offense.⁵³ Existing social services come nowhere close to meeting battered women's needs for housing, child care, vocational aid, and related support services.⁵⁴ These inadequacies are especially acute for women of color.⁵⁵

Government responses to rape reflect similar inadequacies. Recent estimates suggest that approximately forty to forty-five percent of women will experience a violent sexual assault outside of marriage, and that fourteen percent will be raped by their spouses.⁵⁶ The vast majority of these offenses remain unpunished. Rape is the most under-reported felony and the likelihood of a formal complaint resulting in conviction is between two and five percent.⁵⁷

Much of the problem lies in the general patterns noted above: the state's unwillingness to intervene in "private" relationships and the tendency to hold individual victims responsible for their own victimization. Many states do not criminalize rape in marriage unless the parties have separated.⁵⁸ Sexual assaults involving acquaintances rarely result in significant penalties, and the likelihood of conviction is even lower if the complainant is a woman of color.⁵⁹ In the small

⁵¹ See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 64-65 (1991).

⁵² See Peter Finn, *Civil Protection Orders: A Flawed Opportunity for Intervention*, in WOMAN BATTERING, *supra* note 49, at 155, 157; Ruthann Robson, *Lavender Bruises: Intra-Lesbian Violence, Law, and Lesbian Theory*, 20 GOLDEN GATE U. L. REV. 567, 576-81 (1990).

⁵³ For critiques of penalty structures, see sources cited in *Developments in the Law — Legal Responses to Domestic Violence*, 106 HARV. L. REV. 1498, 1525-26 (1993).

⁵⁴ See *id.* at 1506-09; RHODE, *supra* note 31, at 242-44.

⁵⁵ See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245-50, 1262-65 (1991); Deanna Jang, *Triple Jeopardy: The Plight of Battered Immigrant and Refugee Women*, 19 IMMIGR. NEWSL. 6 (1990).

⁵⁶ For statistics on rape generally, see sources cited in MARY P. KOSS & MARY R. HARVEY, *THE RAPE VICTIM* 25, 263 (2d ed. 1991). For statistics on marital rape, see DIANA E.H. RUSSELL, *RAPE IN MARRIAGE*, 110-16 (1982).

⁵⁷ See RHODE, *supra* note 31, at 246.

⁵⁸ See RUSSELL, *supra* note 56, at 110-16; Robin West, *Equality Theory, Marital Rape, and the Promise of the Fourteenth Amendment*, 42 FLA. L. REV. 45, 47 n.9 (1990).

⁵⁹ For barriers to sanctioning acquaintance rape generally, see SUSAN ESTRICH, *REAL RAPE* 11-12 (1987). For the special problems in cases involving women of color, see Crenshaw, cited above in note 55, at 1266-75.

percentage of all rape cases that do reach court, it is often the victim rather than her assailant who is on trial, which further discourages rape reports.⁶⁰ Although a tiny minority of sexual assaults (particularly "stranger rapes" of white complainants by non-white defendants) do result in highly punitive sanctions, the typical penalty is relatively lenient. In the federal system, the base level sentence is only six years, which is significantly lower than the penalties for robbery and certain minor drug offenses.⁶¹

Although many forces affecting the prevalence of sexual violence are beyond direct government control, that fact by no means justifies the state's current abdication of responsibility. Critical needs include increased funding for rape crisis and battered women's services, expanded educational programs for law enforcement personnel, judges, and the general public, closer monitoring of police and prosecutorial practices, stiffer sanctions and closer supervision of offenders, and more effective prevention and treatment initiatives. Such strategies need to be seen as part of a broader agenda. Cross-cultural comparisons suggest that sexual assault rates are lower in societies in which women have gained greater authority and respect.⁶² As the subsequent discussion suggests, the state has multiple opportunities to address the devaluation of women and the eroticization of violence that contribute to sexual assault.

B. Equal Employment and Education Opportunities

Despite three decades of equal opportunity legislation, women's experience in employment and education remains far from equal. The paid labor force is gender-segregated and gender-stratified, with women of color at the bottom of the occupational hierarchy. "Glass ceilings" have been documented in virtually every business and professional sector.⁶³ Full-time female employees earn about seventy cents for every dollar earned by men, and women disproportionately lack access to full-time work.⁶⁴ An African-American female college graduate has an average salary no greater than a white male high school dropout.⁶⁵ An estimated four-fifths of women will experience sexual

⁶⁰ See GARY LAFREE, *RAPE AND CRIMINAL JUSTICE* 200-20 (1989).

⁶¹ See SENATE COMM. ON THE JUDICIARY, *REPORT ON THE VIOLENCE AGAINST WOMEN ACT OF 1991*, S. Doc. No. 197, 102d Cong., 1st Sess. 54 (1991).

⁶² See Peggy R. Sanday, *Rape and the Silencing of the Feminine*, in *RAPE* 84, 85 (Sylvana Tomaselli & Roy Porter eds., 1986).

⁶³ See, e.g., U.S. DEP'T OF LABOR, *A REPORT ON THE GLASS CEILING INITIATIVE* 4-5 (1991).

⁶⁴ See Joan E. Rigdon, *Three Decades After the Equal Pay Act, Women's Wages Remain Far From Parity*, *WALL ST. J.*, June 9, 1993, at B1.

⁶⁵ See WAC STATS: *THE FACTS ABOUT WOMEN* 59 (Women's Action Coalition 1993); sources cited in Rhode, *supra* note 36, at 1733 & n.4.

harassment at some point in their working lives, and existing complaint structures address only a tiny fraction of abusive conduct.⁶⁶

Sex-based inequalities reflect a complex set of factors, but many stem from two general patterns noted earlier: the state's reliance on formal rather than substantive conceptions of equal opportunity, and the assignment of individual rather than societal responsibility for addressing systemic problems. Current anti-discrimination mandates miss all but the most egregious forms of discrimination. Recent research indicates that objective factors such as education, experience, and hours worked cannot account for more than half of current sex-based disparities.⁶⁷ Reducing these disparities will require state initiatives more responsive to the varied patterns of harassment and discrimination that women commonly report but rarely litigate.⁶⁸ Such initiatives should include increased support for affirmative action, vocational training, informal complaint mechanisms, gender-bias education, and government enforcement actions.

Not only should the state more actively promote gender equality in male-dominated occupations, but it should also address the devaluation of traditionally female occupations. Historical and clinical research make clear that work performed by women is undervalued *because* it is performed by women.⁶⁹ Careful implementation of job evaluation strategies can help remedy racial and gender biases in compensation structures without triggering the major inflation, inefficiencies, and unemployment that critics have predicted.⁷⁰ The state can do more to develop such evaluation systems and related pay equity initiatives in the public sector, while also encouraging their adoption in the private sector. Because women are represented disproportionately in low-wage and part-time work, they would also benefit from strategies targeted to that sector, such as increases in the minimum

⁶⁶ See Louise Fitzgerald & Alayne J. Ormerod, *Breaking Silence: The Sexual Harassment of Women in Academia and the Workplace*, in *PSYCHOLOGY OF WOMEN* 553, 559 (Florence L. Denmark & Michele A. Paludi eds., 1993); Jill Smolowe, *Anita Hill's Legacy*, *TIME*, Oct. 19, 1992, at 56.

⁶⁷ See, e.g., HENRY J. AARON & CAMERAN M. LOUGY, *THE COMPARABLE WORTH CONTROVERSY* 12-13 (1986); Heidi I. Hartmann, Patricia A. Roos & Donald J. Treiman, *An Agenda for Basic Research on Comparable Worth*, in *COMPARABLE WORTH: NEW DIRECTIONS FOR RESEARCH* 3, 5 (Heidi I. Hartmann ed., 1985).

⁶⁸ See BUMILLER, *supra* note 36, at 26-30; CROSBY, *supra* note 36, at 3-5; Richard E. Miller & Austin Sarat, *Grievances, Claims and Disputes: Assessing the Adversary Culture*; 15 *L. & SOC'Y REV.* 525, 539-41, 544-46 (1981).

⁶⁹ See Brenda Major, *Gender Differences in Comparisons and Entitlement: Implications for Comparable Worth*, 45 *J. SOC. ISSUES* 99, 102-06 (1989); Michele A. Wittig & Rosemary H. Lowe, *Comparable Worth Theory and Policy*, 45 *J. SOC. ISSUES* 1, 7 (1989).

⁷⁰ See SARA M. EVANS & BARBARA J. NELSON, *WAGE JUSTICE* 53-54, 67-68 (1989); Judy Fudge & Patricia McDermott, *Pay Equity in a Declining Economy: The Challenge Ahead*, in *JUST WAGES: A FEMINIST ASSESSMENT OF PAY EQUITY* 281, 281-88 (Judy Fudge & Patricia McDermott eds., 1991).

wage, pro rata extension of benefits, and broader unemployment insurance coverage.⁷¹

The state also needs to assume greater responsibility for helping individuals to accommodate work and family responsibilities. The vast majority of women employees are in workplaces designed by and for men. Only a small minority have opportunities for flexible schedules, adequate part-time policies, paid family leaves, or employer-assisted child care.⁷² Recent government initiatives have provided least for those who need help most. The largest federal subsidies for childcare take the form of limited tax credits, which primarily benefit middle- and upper-class families.⁷³ Options for the working poor are grossly inadequate in quality as well as quantity, and depressed wages for childcare providers compound these inadequacies.⁷⁴ So too, the 1993 passage of the Federal Family and Medical Leave Act⁷⁵ addresses only a small part of current needs. Exemptions from coverage leave most American workers unprotected, and the Act's guarantee of twelve weeks unpaid leave falls short of what almost all child development experts consider adequate.⁷⁶ Unsubsidized leave benefits only those who can afford to take it, and domestic partners are excluded altogether. Although the Act is gender neutral in form, it is not designed to work out that way in fact. Without the inducement of paid caretaking leave, few men are likely to withstand the combined economic and peer pressure against significant workplace absences.⁷⁷

Because women continue to assume a disproportionate share of family obligations, they pay a disproportionate price for these public policy limitations. Significant progress toward equal employment opportunity in fact as well as form will require far greater government support, such as expanded subsidies, tax incentives, and minimum

⁷¹ See Roberta Spalter-Roth, *Feminist Economic Agendas and the Clinton Plan*, Discussion Paper Presented at the Annual Meeting of the Eastern Sociological Society 8-9 (Mar. 26, 1993) (on file with the Harvard Law School Library).

⁷² See Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1238-39 (1989); Nancy E. Dowd, *Work and Family: Restructuring the Workplace*, 32 ARIZ. L. REV. 431, 446-50 (1990).

⁷³ See Peter Pitegoff, *Child Care Enterprise, Community Development and Work*, 81 GEO. L.J. 1897, 1905, 1908 (1993).

⁷⁴ See *id.* at 1906.

⁷⁵ See Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 2 U.S.C. §§ 60m-60n; 3 U.S.C. §§ 2601, 2631, 2651 (1993)).

⁷⁶ See Nancy E. Dowd, *Family Values and Valuing Family: A Blueprint for Family Leave*, 30 HARV. J. ON LEGIS. 335, 352 (1993). For developmental experts' views, see *Recommendations of the Yale-Bush Center, Advisory Committee on Infants*, in THE PARENTAL LEAVE CRISIS 343, 343-45 (Edward F. Zigler & Meryl Frank eds., 1988).

⁷⁷ A 1990 survey found that 31% of the nation's largest companies offered some form of paternity leave but that only about 1% of eligible employees took advantage of it. See Shari Rudavsky, *New Fathers Reluctant to Take Time Out*, WASH. POST, July 7, 1992, at A3.

requirements concerning childcare, workplace schedules, and family leave policies.

Broader educational initiatives are equally critical. Gender inequality in the schools is a major, frequently unacknowledged contributor to gender inequality in the workplace. All too often, women's presence is taken as evidence that all "women's problems" have been solved. Yet recent surveys document pervasive biases in classroom interaction, instructional materials, vocational preparation, and classroom hiring and promotion.⁷⁸ Female students are less likely to receive recognition and support than their male classmates; vocational, math, science, and technical programs discourage female participation; and curricular and institutional policies do not adequately address multicultural issues or gender-related concerns such as sexual violence, harassment, birth control, and family roles.⁷⁹ Women, particularly women of color, are still grossly underrepresented in upper-level educational policy and faculty positions.⁸⁰ If we truly aspire to equal educational opportunity, we need to confront all these issues and translate our rhetorical commitments into resource priorities.

C. Family Structures and Welfare Policy

Gender inequalities in the family both reflect and reinforce gender inequalities in the world outside it. To address these inequalities, the state needs to redirect its family as well as its employment and educational policies. In essence, government must ensure equal recognition of diverse family forms and encourage gender equality within those diverse relationships. That will, in turn, require a reconceived boundary between public and private responsibilities, and a substantive as well as rhetorical commitment to gender equality.

Despite growing variation in family structures, public policy has not caught up. Discrimination against gays and lesbians is pervasive and, in most forms, still legal. A majority of states criminalizes sodomy, and only one extends to same-sex couples the wide array of benefits accompanying marital status, such as tax, inheritance, insurance, welfare, pension, spousal support, custodial, and adoption

⁷⁸ See AMERICAN ASSOC. OF UNIV. WOMEN, *HOW SCHOOLS SHORTCHANGE GIRLS* *passim* (1992); MYRA SADKER & DAVID SADKER, *FAILING AT FAIRNESS: HOW AMERICA'S SCHOOLS CHEAT GIRLS* 105-31, 140-67, 170-76 (1994); DAVID TYACK & ELIZABETH HANSOT, *LEARNING TOGETHER* 243-78 (1990).

⁷⁹ See AMERICAN ASSOC. OF UNIV. WOMEN, *supra* note 78, *passim*; SADKER & SADKER, *supra* note 78, at 105-09, 122-23, 170-76; Deborah L. Rhode, *Adolescent Pregnancy and Public Policy*, in *THE POLITICS OF PREGNANCY* 301, 321-24 (Annette Lawson & Deborah L. Rhode eds., 1993).

⁸⁰ See sources cited in *Profession Update*, ISSUES Q. (National Council for Res. on Women, New York, N.Y.), Spring 1994, at 14; *supra* note 78.

rights.⁸¹ Such discrimination undercuts feminist commitments on multiple levels. Punitive policies toward sexual orientation violate fundamental principles of equal recognition and personal autonomy, penalize egalitarian caretaking relationships, and reinforce the same gender stereotypes against “effeminate” men and “unfeminine” women that have limited opportunities for all individuals, regardless of sexual orientation. Moreover, feminists who organize against sex-based inequality have often been labeled as lesbians. The homophobic use of such labels has long served to discredit or discourage activism on women’s issues.⁸² Only by recognizing the linkages between all forms of gender-based subordination — on the basis of sexual orientation as well as sex — can women effectively contest its consequences. Altering such subordination will require expanded concepts of enforceable rights and societal wrongs. At a minimum, any feminist agenda for the state must include banning all discrimination on the basis of sexual orientation, recognizing rights to same-sex marriage, and developing domestic partner registration systems that authorize benefits for non-marital committed relationships.

A second set of strategies should provide greater support for single-parent families, which now account for a quarter of all households with children under eighteen. Women head about ninety percent of these families, and a third of them are poor.⁸³ In part, this feminization of poverty reflects the unequal distribution of family responsibilities in the “private” sphere and the absence of divorce and child-support policies responsive to that inequality in the “public” sphere. Women continue to perform about seventy percent of the domestic work in the average marriage and to make corresponding sacrifices in their wage-earning capacity.⁸⁴ These sacrifices assume added significance when couples separate. Almost half of all marriages result in divorce, and though formal legal mandates promise equal or equitable treatment between the spouses, in practice women receive neither. After divorce, their incomes substantially fall while their former husbands’ substantially rise.⁸⁵

Such inequalities reflect multiple causes. Many states restrict the scope of the property subject to division, and judges resist providing

⁸¹ For a catalogue, see William B. Rubenstein, *Introduction to LESBIANS, GAY MEN, AND THE LAW* at xvi (William B. Rubenstein ed., 1993); and *Developments in the Law — Sexual Orientation and the Law*, 102 HARV. L. REV. 1508, 1519 (1989).

⁸² See CHARLOTTE BUNCH, *PASSIONATE POLITICS* 174–81 (1987); PAULA KAMEN, *FEMINIST FATALE* 23, 48 (1991).

⁸³ See U.S. BUREAU OF THE CENSUS, *CURRENT POPULATION REPORTS, SERIES P60-185, POVERTY IN THE UNITED STATES: 1992*, at xviii (1993).

⁸⁴ See sources cited in ARLIE HOCHSCHILD, *THE SECOND SHIFT* 21, 271–73 (1990); Rhode, *supra* note 36, at 1772.

⁸⁵ For studies of the disparate impact of divorce on women and men’s income, see sources cited in KATHARINE T. BARTLETT, *GENDER AND LAW* 348–49 (1993).

substantial spousal maintenance, even for women with compelling needs.⁸⁶ Inadequate child-support standards and enforcement structures also result in large financial gaps between custodial and non-custodial households.⁸⁷ For low-income women, chronic shortages in divorce-related legal services compound the problem.⁸⁸ Similar difficulties plague child support collection from never-married fathers. Of all noncustodial fathers, less than half provide any child support and, of those under court order, only half pay the full award.⁸⁹ Although some of these men are themselves impoverished, the majority are in a position to contribute to their children's welfare.⁹⁰

To address these problems, the state should institutionalize substantive rather than formal commitments to gender equality and expand its enforcement responsibilities. Spouses who have sacrificed wage-earning opportunities should receive a share of past and future family resources commensurate with their contributions and their needs. Such distributional principles need to be reflected in specific guidelines for the allocation of marital property and spousal support.⁹¹ Adequate child support should be guaranteed through child assurance systems comparable to those in Scandinavian countries. Under such systems, the state establishes minimum support levels for each child, collects payments, and makes up any shortfall, which also absolves custodial parents from enforcement expenses, irregularities, and acrimony.⁹² Finally, although the state has limited abilities to affect the unequal distribution of family responsibilities in ongoing relationships, it is not without influence. Strategies for reducing or reallocating "private" burdens include greater public support for family education,

⁸⁶ See MARTHA A. FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* 40–52 (1991); Deborah L. Rhode & Martha Minow, *Reforming the Questions, Questioning the Reforms: Feminist Perspectives on Divorce Law*, in *DIVORCE REFORM AT THE CROSSROADS* 191, 200–04 (Stephen D. Sugarman & Herma H. Kay eds., 1990) [hereinafter *DIVORCE REFORM*]; sources cited *infra* notes 87–91.

⁸⁷ See PAT WONG, *CHILD SUPPORT AND WELFARE REFORM* 12–13 (1993); Rhode & Minow, *supra* note 86, at 204–08.

⁸⁸ Cf. GENDER BIAS STUDY COMM., *SUPREME JUDICIAL COURT OF MASS., REPORT OF THE GENDER BIAS STUDY OF THE SUPREME JUDICIAL COURT* 21 (1989) (noting that quick, inexpensive legal assistance is rarely available in family law cases); NATIONAL CTR. ON WOMEN AND FAMILY LAW, *CHALLENGES FACING LEGAL SERVICES IN THE 1990S*, at 4 n.6 (1988) (noting that, during the 1980s, "38 of 61 sample LSC programs eliminated representation in divorce and custody issues").

⁸⁹ See WONG, *supra* note 87, at 4, 13.

⁹⁰ See Robert I. Lerman, *Child Support Policies*, in *WELFARE POLICIES FOR THE 1990S*, at 219, 224 (Phoebe H. Cottingham & David T. Ellwood eds., 1989).

⁹¹ See Herma H. Kay, *Beyond No-Fault: New Directions in Divorce Reform*, in *DIVORCE REFORM*, *supra* note 86, at 6, 11–18.

⁹² See WONG, *supra* note 87, at 93–120; Thomas Corbett, *The Wisconsin Child Support Assurance System: From Plausible Proposals to Improbable Prospects*, in *CHILD SUPPORT ASSURANCE* 27, 27–49 (Irwin Garfinkel, Sara S. McLanahan & Philip K. Robins eds., 1992).

child and elder care, paid paternity as well as maternity leaves, cooperative housing, and integrated urban planning that is sensitive to caretaking needs.⁹³

A final set of initiatives must focus on health and welfare programs. Fifteen percent of the American population lives in poverty, and women, particularly women of color, are grossly over-represented in low-income groups.⁹⁴ Two-thirds of indigent adults and a disproportionate number of elderly poor are female.⁹⁵ Women are also less likely to receive needed medical care, and their health problems are less likely to attract government research funds.⁹⁶ Government responses to poverty always have been inadequate, but they also reflect pervasive gender biases. The problem is not, as popular opinion generally assumes, women who are "pathologically independent with respect to men and pathologically dependent with respect to government."⁹⁷ It is, rather, a society that privatizes and devalues child-rearing, assigns women a grossly disproportionate share of its burdens, and fails to adapt workplace structures and social services to meet family needs. Distinctions between the "deserving" and "undeserving" poor have underpinned a dual welfare structure that differentiates in form between social insurance and public assistance, and in fact between male and female recipients. Individuals with a continuous history of full-time paid labor (primarily men) have obtained comparatively generous benefits with comparatively little stigma, through social security, unemployment insurance, and workers compensation programs. By contrast, the public assistance available primarily for low-income women, particularly women of color, has offered far fewer benefits with far more demeaning and intrusive conditions.⁹⁸

These longstanding biases have informed contemporary welfare reform initiatives. After recent reductions in benefits, the median grant of Aid to Families with Dependent Children, coupled with food stamps, places recipients at three-quarters of the poverty level.⁹⁹ No

⁹³ See DOLORES HAYDEN, *REDESIGNING THE AMERICAN DREAM* 173–224 (1984); Nancy E. Dowd, *Envisioning Work and Family: A Critical Perspective on International Models*, 26 HARV. J. ON LEGIS. 311, 318–21 & n.21, 337–38 (1989).

⁹⁴ See Peter B. Edelman, *Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L.J. 1697, 1698 (1993).

⁹⁵ See *id.*; Laura L. Carstensen & Monisha Pasupathi, *Women of a Certain Age*, in AMERICAN WOMEN IN THE NINETIES 66, 72–74 (Sherri Matteo ed., 1993).

⁹⁶ See BARTLETT, *supra* note 85, at 734; Hilary Stout, *Many Women Aren't Getting Preventive Care*, WALL ST. J., July 15, 1993, at B1.

⁹⁷ Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309, 327 (1994).

⁹⁸ For discussion of this dual structure, see Sylvia A. Law, *Women, Work, Welfare and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1252–61 (1983); and Bettylou Valentine, *Women on Welfare: Public and Institutional Racism*, in CLASS, RACE, AND SEX: DYNAMICS OF CONTROL 276, 279 (Amy Swerdlow & Hanna Lessinger eds., 1983).

⁹⁹ See WONG, *supra* note 87, at 16.

state provides sufficient support to lift a family out of poverty.¹⁰⁰ Many jurisdictions also impose restrictions on eligibility that are irrational as well as punitive. For example, some states deny assistance to any child conceived after a mother begins receiving welfare; the assumption is that public subsidies encourage high fertility and illegitimacy.¹⁰¹ Yet a decade of research has found no link between welfare benefits and childbirth decisions, and the average size of an AFDC family is two children, only slightly above the national norm.¹⁰² Similar biases and irrationalities underpin recent federal proposals that would limit welfare eligibility to two years and would force recipients who do not obtain sufficient paid employment during that period to work in community service programs.¹⁰³ Such proposals build on popular misperceptions that government assistance breeds dependence and that work requirements are an effective strategy for promoting self-sufficiency. In fact, most AFDC recipients receive benefits for less than a year, and most are unable to work; sixty-five percent are children and others are incapacitated.¹⁰⁴ Historically, work requirements have not proved cost-effective in reducing welfare dependency.¹⁰⁵ Not only has the government declined to appropriate sufficient funds for job training and childcare, but it has also failed to address the broader structural forces that make decently paying work unavailable. Nothing in recent welfare reform proposals suggests that they will prove exceptions.¹⁰⁶

A feminist agenda for the state would begin from different premises. Rather than stigmatizing dependent individuals, the government would address the causes of their dependency. To that end, more job-creation initiatives should target low-income women, more support services should be available to the impoverished elderly, and much higher priority should attach to the educational, employment, and

¹⁰⁰ See Mimi Abramovitz & Frances F. Piven, *Scapegoating Women on Welfare*, N.Y. TIMES, Sept. 2, 1993, at A23.

¹⁰¹ See Martha Minow, *The Welfare of Single Mothers and Their Children*, 26 CONN. L. REV. (forthcoming 1994); Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719, 719-20, 736-41 (1992).

¹⁰² See Lucie E. White, *No Exit: Rethinking "Welfare Dependency" from a Different Ground*, 81 GEO. L.J. 1961, 1971-90 (1993); Mimi Abramovitz, *Spreading the Word About Low-Income Women's Activism: Challenging the Myths of Welfare Reform 1-4* (1992) (unpublished manuscript, on file with the Harvard Law School Library).

¹⁰³ See Jason DeParle, *Clinton Welfare Planners Outline Big Goals Financed by Big Saving*, N.Y. TIMES, Dec. 3, 1993, at A1, A26.

¹⁰⁴ See STEPHANIE COONTZ, *THE WAY WE NEVER WERE* 83 (1992); RHODE, *supra* note 31, at 129-30.

¹⁰⁵ See David T. Ellwood, *Conclusion to WELFARE POLICIES FOR THE 1990s*, *supra* note 90, at 269, 272; Richard Cloward & Frances F. Piven, *The Fraud of Workfare: Punishing the Poor, Again*, THE NATION, May 24, 1993, at 693.

¹⁰⁶ See Minow, *supra* note 101; Jason DeParle, *Change in Welfare Is Likely to Need Big Jobs Program*, N.Y. TIMES, Jan. 30, 1994, § 1, at 1.

family strategies noted earlier. National health care coverage, as well as gender equity in health research and delivery services, are equally critical. For mothers who cannot find adequate work and child care, the national government should guarantee a decent standard of living, indexed for inflation and adjusted for local costs of living.

This redirection of public policies will require an analogous reorientation of public attitudes. Why should so much social stigma and so little social support attach to mothers who are raising children in impoverished circumstances, while other forms of dependence are readily tolerated? The average middle-class family receives more governmental assistance in the form of direct outlays and tax relief than the average poor family.¹⁰⁷

We can afford a more equitable system. The wealthiest one percent of this society has a greater net worth than the entire bottom ninety percent, and an after-tax income equal to the combined income of the poorest forty percent.¹⁰⁸ Despite the nation's affluence, welfare receives only one percent of the federal budget.¹⁰⁹ AFDC programs lift less than five percent of indigent families out of poverty compared to over seventy-five percent in some European countries.¹¹⁰ We have accomplished little with our antipoverty initiatives over the last two decades because we have demanded little. Yet abandoning so many women and children to impoverished conditions compromises our humanity in this generation and our productivity in the next.

E. Reproductive Freedom

Despite a century of struggle and some major achievements, women have yet to secure one of their most fundamental needs: the capacity to control their reproductive lives. What feminists seek from the state is its guarantee of the basic conditions necessary for reproductive autonomy. What that requires is a renegotiated boundary between public and private, and a reduced distance between formal rights and social realities. In essence, the government must assume greater responsibility for removing barriers to choice and expanding the range of choices available.

Abortion has been central to reproductive freedom campaigns, and its current status points up the gap between legal entitlements and daily experience. Although women have formal rights to terminate a pregnancy free from "undue burdens" by the state,¹¹¹ the definition of

¹⁰⁷ See COONTZ, *supra* note 104, at 272-85.

¹⁰⁸ See *id.* at 272; Sylvia Nasar, *Fed Gives New Evidence of 80's Gains by Richest*, N.Y. TIMES, Apr. 21, 1992, at A1.

¹⁰⁹ See Abramovitz, *supra* note 102, at 3.

¹¹⁰ See *id.* at 2.

¹¹¹ See *Planned Parenthood v. Casey*, 112 S. Ct. 2791, 2820-21 (1992).

these "burdens" has been skewed by race, class, and ethnicity. Legislators have enacted and the courts have upheld a range of funding and service restrictions that disproportionately burden access to abortion by poor and minority women.¹¹² Such restrictions target women who are least able to protect their interests through political channels and least able to bear the costs of an unwanted child. The result is that only "women with privileges get rights."¹¹³

Government restrictions, together with inadequate responses to "pro-life" terrorism, also have curtailed the number of abortion providers and have increased the risks and trauma associated with the procedure. By the early 1990s, more than four-fifths of all United States counties had no facility offering abortions.¹¹⁴ Clinics providing the service are experiencing several thousand incidents of violent intimidation annually, including bombings, arson, kidnapping, and murder, and state responses to such terrorism have been demonstrably ineffective.¹¹⁵

One other group that has been particularly disadvantaged by reproductive policies is female adolescents. America has the highest teenage pregnancy rate in the developed world, and early parenthood is associated with increased risks of poverty as well as health and child development difficulties.¹¹⁶ Yet government policy makers have misdescribed the problem and misdirected their responses. The difficulty is less adolescents who want "too much too soon" in sexual relationships than a society that offers too little too late: too little birth control assistance, too little reason to stay in school, and too little opportunity for health services, child support, vocational training, or decently paying jobs.¹¹⁷ Parental consent requirements for adolescent contraception and abortion impose further obstacles without significantly improving family communication.¹¹⁸ Those most adversely

¹¹² See *id.* at 2821-33; *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 511, 520 (1989); *Harris v. McRae*, 448 U.S. 297, 326 (1980); *Maher v. Roe*, 432 U.S. 464, 477 (1977).

¹¹³ Catharine A. MacKinnon, *Roe v. Wade: A Study in Male Ideology*, in *ABORTION: MORAL AND LEGAL PERSPECTIVES* 45, 52 (Jay L. Garfield & Patricia Hennessey eds., 1984).

¹¹⁴ See Stanley K. Henshaw & Jennifer VanVort, *Abortion Services in the United States, 1987 and 1988*, 22 *FAM. PLAN. PERSP.* 102, 106 (1990).

¹¹⁵ See Tamar Lewin, *Hurdles Increase for Many Women Seeking Abortions*, *N.Y. TIMES*, Mar. 15, 1992, at A1, A18; Judith Warner, *The Assassination of Dr. Gunn: Scare Tactics Turn Deadly*, *Ms.*, May-June 1993, at 86, 87.

¹¹⁶ See Elise F. Jones, Jacqueline D. Forrest, Noreen Goldman, Stanley K. Henshaw, Richard Lincoln, Jeannie I. Rosoff, Charles F. Westoff & Deirdre Wulf, *Teenage Pregnancy in Developed Countries: Determinants and Policy Implications*, 17 *FAM. PLAN. PERSP.* 53, 56-57 (1985) [hereinafter *Teenage Pregnancy*].

¹¹⁷ See Rhode, *supra* note 79, at 301-02. Only a small minority of schools provides birth control assistance, and over half of sexually active teens lack reproductive health services. See sources cited in *id.* at 317-18 & n.45.

¹¹⁸ See *Hodgson v. Minnesota*, 497 U.S. 417, 470 (1990) (Marshall, J., concurring in part, concurring in the judgment in part, and dissenting in part); Melody G. Embree & Tracy A.

affected are poor, minority, and young teenagers, who also face the greatest difficulty coping with unwanted childbirth.¹¹⁹ More coherent policies for adolescent pregnancy require more realistic adult attitudes and more accessible birth control services. If we want teenagers to make responsible reproductive choices, we must lower the barriers to doing so.

Similar points apply to other governmental practices affecting procreative freedom. Punitive policies toward pregnant substance abusers are an obvious example. Although low-income women of color are not disproportionately likely to be substance abusers, they are disproportionately likely to face criminal and civil sanctions because they are more dependent on state assistance and more vulnerable to state intervention.¹²⁰ Yet punishing addicts does little to discourage addiction; rather, it discourages prenatal care.¹²¹ A serious commitment to fetal health requires not sporadic and selective prosecutions but significant increases in prevention and treatment programs.¹²² It is neither just nor effective to condemn addicted mothers without addressing the circumstances that lead to their addictions.

Finally, the state must assume a more affirmative role in establishing the social as well as the legal conditions for reproductive autonomy. Just as some women are unable to choose abortion, others are unable to choose childbirth. The state must invest more heavily in family- and health-related programs, including those aimed at the reduction of reproductive hazards and sexually transmitted diseases. Greater government efforts also need to focus on men. That women have assumed so much of the responsibility and risk of birth control is a function not only of biology, but also of ideology; gender biases have skewed contraceptive research, education, and assistance. Promoting greater reproductive responsibility in men is crucial to ensuring equality for women.

F. Political Representation

Equal participation in government was the organizing principle of the American women's movement. Some 150 years later, that objec-

Dobson, *Parental Involvement in Adolescent Abortion Decisions: A Legal and Psychological Critique*, 10 LAW & INEQ. J. 53, 58 (1991); sources cited in Rhode, *supra* note 79, at 318-19.

¹¹⁹ See Embree & Dobson, *supra* note 118, at 58.

¹²⁰ In one representative survey, black women were ten times more likely than white women to be reported to public health authorities for substance abuse during pregnancy, despite similar rates of abuse. See Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right of Privacy*, 104 HARV. L. REV. 1419, 1433-34 (1991).

¹²¹ See *id.* at 1449; Dawn Johnsen, *Shared Interests: Promoting Healthy Births Without Sacrificing Women's Liberty*, 43 HASTINGS L.J. 569, 603 (1992).

¹²² Treatment programs routinely turn away pregnant addicts, in part because of liability concerns. See Rorie Sherman, *Split Rulings for Fetal Abuse Cases*, NAT'L L.J., Feb. 24, 1992, at 3, 10.

tive has not been realized. Despite record gains in the 1992 electoral campaigns, women still hold only about eleven percent of Congressional seats, twenty-two percent of state elective offices, and six percent of state governorships.¹²³ Women of color occupy two percent of federal legislative positions and are similarly underrepresented at state and local levels.¹²⁴ Obstacles to political leadership include not only the gender biases and work/family conflicts noted earlier, but also some distinctive problems of networking and fundraising that penalize outsiders.

These gender-related barriers deny women opportunities for political power, social status, and economic reward. Such obstacles also deny the public a range of backgrounds, perspectives, and values that should be represented in political office. Moreover, underrepresentation of women makes it more difficult for women's issues to become social priorities because male legislators have been less likely than their female colleagues to work on such issues.¹²⁵

A state committed to substantive rather than formal equality for women has a variety of ways to promote that objective in political institutions. Additional campaign funds could be made available to women, and proportional representation could be mandated for certain appointive offices.¹²⁶ More elections could be held using multi-member districts, in which women do comparatively better.¹²⁷

Yet although gender parity in political representation is valuable in its own right, its achievement would by no means guarantee the broader agenda outlined above. Securing women's equal opportunity within established institutions will not necessarily transform those institutions to accommodate values traditionally associated with women. In politics as in other contexts, claims about women's "different voice" build on exaggerated and essentialist assumptions about women's nature. While some gender variations in voting and legislative behavior have become increasingly noticeable, over time the similarities have been far stronger than the differences.¹²⁸ Although women voters have exhibited somewhat greater support than men for

¹²³ See MARY BECKER, CYNTHIA G. BOWMAN & MORRISON TORREY, *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE* 893 (1993).

¹²⁴ See *id.*; *Few Women Found in Top Public Jobs*, N.Y. TIMES, Jan. 3, 1992, at A12. For a discussion of the barriers to women of color, see LINDA WITT, KAREN M. PAGET & GLENNA MATTHEWS, *RUNNING AS A WOMAN: GENDER AND POWER IN AMERICAN POLITICS* 118-19 (1994).

¹²⁵ See SUSAN J. CARROL, DEBRA L. DODSON & RUTH B. HANDEL, *THE IMPACT OF WOMEN IN PUBLIC OFFICE* 5-13, 16-17 (1980).

¹²⁶ See BECKER, BOWMAN & TORREY, *supra* note 123, at 911.

¹²⁷ See ANN PHILLIPS, *ENGENDERING DEMOCRACY* 80 (1991).

¹²⁸ See ROBERT S. ERICKSON, NORMAN K. LUTTBURG & KENT L. TEDIN, *AMERICAN POLITICAL OPINION* 186-87 (2d ed. 1980); KEITH T. POOLE & L. HARMON ZIEGLER, *WOMEN, PUBLIC OPINION, AND POLITICS* 4-7, 68-69 (1985).

environmental and welfare measures, as well as greater opposition to the use of military force, women have also been more conservative on some feminist issues, such as gay/lesbian rights and sex education.¹²⁹ Moreover, gender is not nearly as important in predicting attitudes on these issues as other factors such as education, race, and employment status.¹³⁰ Nor has the gender gap in electoral behavior been significant on questions most directly related to gender, such as the Equal Rights Amendment or abortion restrictions.¹³¹

So too, despite female politicians' somewhat greater support for women's issues, less than half of surveyed female legislators consider themselves feminists and only ten percent have given top priority to women's rights issues.¹³² Party affiliation has been more critical than gender in determining votes on social service expenditures, even on matters such as childcare.¹³³ Although it is often assumed that female politicians need to reach higher positions or a greater critical mass before broader changes are possible, the evidence to date casts doubt on this assumption. For example, some state legislatures that have the highest percentages of women provide the least support for family services.¹³⁴ Among world leaders, none of the women who have been in a position to develop more caring substantive agendas or egalitarian participatory styles have actually done so. Putting women in power is not the same as empowering women.

The problem is not simply that women's political performance falls short of feminists' idealized conception of womanhood. Gaps between aspiration and outcome are endemic to social theory and political struggle. The difficulty lies deeper. We cannot expect that women who internalize the norms necessary for political success and who gain a vested interest in current structures will promote a transformative vision.¹³⁵ An obvious truth, but one often overlooked during the "Year of the Woman" in politics, is that to institutionalize a feminist agenda we need to elect feminists, not simply females. And we need to create a political base that will make feminist initiatives possible.

There are no shortcuts and no lack of obstacles to realizing that objective. Less than ten percent of surveyed women identify other

¹²⁹ See SANDRA BAXTER & MARJORIE LANSING, *WOMEN AND POLITICS* 57 (1980); ERICKSON, LUTTBURG & TEDIN, *supra* note 128, at 186-87; NANCY WOLOCH, *WOMEN AND THE AMERICAN EXPERIENCE* 534 (1984).

¹³⁰ See JANET S. CHAFETZ, *GENDER EQUITY* 170-71 (1990).

¹³¹ See *id.* at 170; POOLE & ZIEGLER, *supra* note 128, at 4-7.

¹³² See POOLE & ZIEGLER, *supra* note 128, at 8, 16-17.

¹³³ See Susan Gluck Mezey, *Increasing the Number of Women in Office: Does It Matter, in THE YEAR OF THE WOMAN: MYTHS AND REALITIES* 255, 262 (Elizabeth A. Cook, Sue Thomas & Clyde Wilcox eds., 1994).

¹³⁴ See Cathy Young, *The Sexist Subtext of the Year of the Woman*, *TALLAHASSEE DEMOCRAT*, Oct. 18, 1992, at 1B, 4B.

¹³⁵ See FERGUSON, *supra* note 35, at 192.

women as the group to which they feel closest, and still smaller numbers belong to any feminist organization.¹³⁶ This lack of cohesion, coupled with the adverse stereotypes and social penalties associated with feminism, has proven a major obstacle to mobilizing women on women's issues. Most female voters, even those who support the basic objectives of the organized feminist movement, have been unwilling to press them publicly, give them priority politically, or underwrite them financially.

Yet despite these difficulties, the women's rights movement has made extraordinary progress over an astoundingly short period. Indeed, the very publication of this article is some testament to the distance we have traveled. Until relatively recently, women seldom had opportunities to write in leading law reviews, much less about women's issues. On a national level, increasing numbers of women are now concerned about state initiatives and are positioned to influence them; a growing percentage perceive gender discrimination as a problem; and a vast majority support efforts to improve women's status.¹³⁷

The challenge is to build on these perceptions and to forge the political coalitions that further progress requires. A half century ago, William Allen White counseled American women to "raise more hell and fewer dahlias."¹³⁸ It remains good advice.

¹³⁶ See CHAFETZ, *supra* note 130, at 169-70 (noting that the number of women who identified most closely with women as a group was under 10%); Arthur H. Miller, Anne Hildreth & Grace L. Simmons, *The Mobilization of Gender Group Consciousness*, in *THE POLITICAL INTERESTS OF GENDER*, *supra* note 9, at 106, 109-115.

¹³⁷ See ROPER ORG., *THE 1990 VIRGINIA SLIMS OPINION POLL 21* (1990); Claudia Wallis, *Onward, Women!*, *TIME*, Dec. 4, 1989, at 80, 81.

¹³⁸ ANNA QUINDLEN, *THINKING OUT LOUD*, *frontpiece* (1993) (quoting William A. White).