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The Four-Day Work Week: But What About Ms. Coke, Ms. Upton, and Ms. Blankenship?

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The work/family conflicts of poor and low-income women remain invisible in mainstream discussions about reform of working hours. “Family-friendly” reforms such as compressed work weeks, part-time jobs, reduced hours, and other alternative work schedules largely address the interests of professional women who are in a position to trade income for time. This Article suggests ways of expanding work/family discussions to address the needs of poor and low-income women who are immigrants, single parents, and involuntary part-time workers who labor in low-wage industries such as home care, clerical services, and office cleaning. The Article begins by examining gaps in the current discourse that reinforce racial and class hierarchies among women and families. It then explores the role of race, class, and citizenship in rethinking how to broaden the work/family discourse through a consideration of three cases brought by women to challenge the length or conditions of their working hours. This Article argues that to ensure that work/family policies benefit poor and low-income women, it is necessary to understand how social welfare policies, the structure of low-wage work, and immigration policies intersect to deprive low-income women of the right to make meaningful choices about paid work, unpaid work, and caregiving. The last section of the Article emphasizes the need for the work/family discourse to focus on a right of control of time as a means of challenging the unilateral control of working hours that our legal regime vests in employers. In particular, worker control of time provides a unifying framework for the common struggles that all women face as economic providers and caregivers.

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I. INTRODUCTION

It is no small irony that it has taken an economic recession to place the issue of four-day work weeks and reduced hours into public discourse. Many of the alternative work schedule measures adopted by municipalities, states, and other employers in response to the recent recession are lauded as family-friendly and feminist.¹ Proverbial wisdom asserts that compressed work weeks, shortened hours, and part-time jobs enhance all-around flexibility. Employers enjoy greater flexibility to restructure the workforce while women enjoy greater flexibility to juggle the demands of paid work and their caregiving responsibilities.² Against the backdrop of millions of workers losing jobs, these measures also garner support as the altruistic efforts of employers and workers to stave off layoffs in a recession.³ Thus, the recent adoption of compressed work schedules and

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¹ See ELLEN GALINSKY & JAMES T. BOND, THE IMPACT OF THE RECESSION ON EMPLOYERS, FAMILIES AND WORK INSTITUTE 7 (2009), available at <http://familiesandwork.org/site/research/reports/Recession2009.pdf> (discussing increased workplace flexibility in the recession); Randy Cordova, *Economy Spurs Workers To Sacrifice Like Never Before*, PITTSBURGH TRIB. REV., Sept. 13, 2009 (“Although working more hours, many employees at least are experiencing more flexibility on the job, with options such as telecommuting, staggered hours and four-day weeks.”); Sylvia Ann Hewlett, *Making Flex Time a Win-Win*, N.Y. TIMES, Dec. 13, 2009, at BU13 (noting that as employers encourage restructured work weeks for both male and female employees during a recession, flextime is becoming degendered and thus legitimized); David Silverberg, *Four-Day Work Week Catching on Across U.S.*, DIGITAL J., Aug. 9, 2009, <http://www.digitaljournal.com/article/277125> (noting that compressed four-day work weeks allow parents to spend more time with their children).

² See Cordova, *supra* note 1; Hewlett, *supra* note 1; Silverberg, *supra* note 1.

³ See Cordova, *supra* note 1 (quoting a staffing company that calls the current environment, which requires workers to work more, “a tool to help the cream rise to the top”); Steven Greenhouse, *Out of Work, Part Time*, N.Y. TIMES, June 16, 2009, at B1 (providing feedback from employers and employees who are satisfied with reduced work hours and partial unemployment benefits as an alternative to layoffs); Jay Reeves & Christopher Leonard, *Great Recession Transforms Workplace, Work Force*, ASSOCIATED PRESS FIN. WIRE, Sept. 24, 2009 (noting employer and employee preference for reduced hours rather than layoffs).

reduced hours by some employers are touted as a “win-win” for employers, workers, women, and families alike.

Historically, feminists and labor unions have advocated strongly for reforming work hours to accommodate women’s unpaid family caretaking responsibilities in the home.⁴ The basis for such reform is the work/family conflict and “time crunch” that has accompanied the rise of dual income middle- and upper-class families.⁵ The call for reduced hours, compressed work weeks, and other alternative work schedules is an important strand of the discourse on reform of working hours. Undoubtedly, these measures will provide relief to some workers and their families.

Yet, as feminists and feminists of color, we must ask which workers are the most likely beneficiaries of reduced or compressed work weeks? Which workers are the least likely beneficiaries? A growing feminist legal scholarship critiques the mainstream work/family discourse for focusing on the work/family conflicts of professional women to the exclusion of poor and low-income women.⁶ The policy reforms spawned by the work/family discourse—reduced hours, increased part-time jobs, compressed work weeks—reflect the interests of professional women who are in a position to trade income for time, and thus, to spend less time at paid work.⁷ The time crunch faced by poor and working class women necessitates a far broader discussion. The work/family conflicts of poor and low-income women are

⁴ See Vicki Schultz & Allison Hoffman, *The Need for a Reduced Workweek in the United States*, in PRECARIOUS WORK, WOMEN, AND THE NEW ECONOMY: THE CHALLENGE TO LEGAL NORMS 131, 133–34 (Judy Fudge & Rosemary Owens eds., 2006) (noting that proposed reforms include reduced hours or caps on long hours, and alternative work schedules that rearrange the work day or work week, such as flexible hours for when the work day starts or ends, compressed four-day work weeks, and part-time options); AFL-CIO, Family-Friendly Work Schedules, <http://www.aflcio.org/issues/workfamily/workschedules.cfm> (last visited Apr. 11, 2010) (discussing the importance of choice and noting that there is no one-size-fits-all solution).

⁵ See Lucy Williams, *Poor Women’s Work Experiences*, in LABOUR LAW, WORK, AND FAMILY 195, 198 (Joanne Conaghan & Kerry Rittich eds., 2005) (noting that the current discourse on work/family conflict assumes a feminization of labor that rests on the entry of middle- and upper-class women into the labor force); Michael Selmi & Naomi Cahn, *Women in the Workplace: Which Women, Which Agenda?*, 13 DUKE J. GENDER L. & POL’Y 7, 24 (2006) (noting that a series of reforms to restructure the workplace would benefit lower-income women).

⁶ See Williams, *Poor Women’s Work Experiences*, *supra* note 5, at 195, 198; Nancy E. Dowd, *Bringing the Margin to the Center: Comprehensive Strategies for Work/Family Policies*, 73 U. CIN. L. REV. 433, 434 (2004) (arguing that more attention needs to be paid to class inequalities as well as gender inequalities); Laura T. Kessler, *Getting Class*, 56 BUFF. L. REV. 915, 915 (2008) (noting that legal feminist literature remains uninterested in class); Ann O’Leary, *How Family Leave Laws Left Out Low-Income Workers*, 28 BERKELEY J. EMP. & LAB. L. 1, 4 (2007) (noting that “low-wage working women are much less likely to have access to maternity leave or family leave” than more highly-paid women); Dorothy E. Roberts, *Welfare Reform and Economic Freedom: Low-Income Mothers’ Decisions About Work at Home and in the Market*, 44 SANTA CLARA L. REV. 1029, 1030 (2004) (noting that the work/family conflict is experienced by mothers of all socio-economic levels); Selmi & Cahn, *supra* note 5, at 7 (“[M]uch of the literature has focused on a small segment of women typically professional women, lawyers, professors or corporate executives.”). For a discussion of low-income rural women, see generally Lisa R. Pruitt, *Gender, Geography & Rural Justice*, 23 BERKELEY J. GENDER, L. & JUST. 338 (2008).

⁷ Selmi & Cahn, *supra* note 5, at 8.

framed by social welfare policies, a low-wage labor market, and immigration policies that deny low-income women the right to make meaningful choices about paid work, unpaid work, and caregiving.⁸ These issues have not figured into work/family discussions.

This Article explores the role of race, class, and citizenship in rethinking how to broaden the work/family discourse. Part II discusses the gaps in current work/family discussions that reinforce racial and class hierarchies among women and families. Part III examines the limits of reduced hours and the four-day work week as demonstrated in three cases brought by women who challenged the length or conditions of their working hours. Part IV considers the possibilities for reframing a work/family discourse that unifies women and families across race, class, and citizenship. This Article concludes that a demand for the right of control over time may provide a unifying framework for the common struggles that a diversity of women and men face as caregivers and economic providers.⁹

II. RACE, CLASS, AND CITIZENSHIP IN WORK/FAMILY DISCOURSE

It should be no surprise if current work/family discussions promote measures that run counter to the needs of poor and low-income women and their families. After all, salaried professional workers have been the focus of work/family research.¹⁰ The particular tensions that professionals and their families faced as middle- and upper-class women entered the workforce gave rise to the field of work/family research.¹¹ In contrast, the struggles of poor and low-income women are mainly invisible in work/family policy debates.¹²

There is little comparable study of the implications of alternative work schedules and possible trade-offs for workers in low-wage jobs such as restaurant, factory, domestic service, home care, retail, and janitorial

⁸ See Lucy A. Williams, *Property, Wealth and Inequality Through the Lens of Globalization: Lessons from the United States and Mexico*, 34 IND. L. REV. 1243, 1243 (2001). Professor Williams has brought attention to the need to contest narrow definitions of worker identity that exclude the roles of poor women as caregivers, as workers in the waged formal sector, and as workers in the unwaged and informal sector. Williams, *Poor Women's Work Experiences*, *supra* note 5, at 195–99, 212–14. For a discussion of how welfare reform has forced poor women to choose low-wage jobs over staying at home to care for their children, see Judith E. Koons, *Motherhood, Marriage, and Morality: The Pro-Marriage Moral Discourse of American Welfare Policy*, 19 WIS. WOMEN'S L.J. 1, 4 (2004), and Roberts, *supra* note 6, at 1030–31.

⁹ See Williams, *Poor Women's Work Experiences*, *supra* note 5, at 199 (observing that understanding the experiences of poor women provides an important lens for observing “the multiple problems with which *all* women struggle in their effort to fulfill their caregiving responsibilities while providing for their families' subsistence”).

¹⁰ Brenda A. Lautsch & Maureen A. Scully, *Restructuring Time: Implications of Work-Hours Reductions for the Working Class*, 60 HUM. REL. 719, 719 (2007).

¹¹ *Id.* at 721.

¹² Williams, *Poor Women's Work Experiences*, *supra* note 5, at 198.

work.¹³ In fact, these are industries in which large numbers of employers seldom offer alternative work schedules because increased productivity may be “efficiently” achieved through squeezing more work from workers for less pay. Work/family research also fails to document the specific work/family tensions produced by poverty or a precarious financial existence, or the preferences for work hours among low-income workers.¹⁴

Women and men of color, and immigrants—including undocumented immigrants—predominate in low-wage work.¹⁵ Yet the impact of race and immigration status in creating inequities that exacerbate work/family conflicts is absent from the mainstream work/family discourse. ClassCrit scholar Laura Kessler observes that feminists, too, are guilty of ignoring “the unique ways in which class, race, and other aspects of identity combine to produce fundamentally different family structures and caregiving practices among a substantial portion of the population.”¹⁶ Work/family policy proposals, though often praised as “feminist,” remain uninformed by the lives of poor and low-income women of color.

Bringing class, race, and citizenship to the center of the work/family discourse requires a wide lens and recognition of contradictions.¹⁷ Policy proposals—such as reduced hours, compressed work weeks, and other alternative work schedules—aim to offer middle-class and professional women greater flexibility to choose caregiving at home over waged work outside the home.¹⁸ Poor and low-income women, however, are penalized for making the same choice.¹⁹ The structure of low-wage industries and labor markets, immigration policies, and social welfare benefits intersect to

¹³ See Lautsch & Scully, *supra* note 10, at 719–20 (arguing that work/family research has failed to fully study the “implications of reduced hours and the potential trade-offs . . . for the working class”); Selmi & Cahn, *supra* note 5, at 7 (noting that work/family literature concentrates on professional women—lawyers, professors, and corporate executives).

¹⁴ See, e.g., Lautsch & Scully, *supra* note 10, at 739–40 (arguing that the dominant view in work/family literature—that a reduction of hours eases work/family tensions—does not apply to working-class employees, whereas a reduction of hours leads to lost overtime and strains on family finances).

¹⁵ See Joel F. Handler, *Low-Wage Work “As We Know It”: What’s Wrong/What Can Be Done*, in *HARD LABOR* 3, 3–7 (Joel F. Handler & Lucie White eds., 1999) (discussing the composition of the low-wage labor force); Williams, *Poor Women’s Work Experiences*, *supra* note 5, at 202 (discussing the predominance of women in various low-wage industries).

¹⁶ Kessler, *supra* note 6, at 926; accord Dowd, *supra* note 6, at 434.

¹⁷ I borrow Professor Dowd’s concept of the need to “bring the margin to the center” of work/family policy. Dowd, *supra* note 6, at 442.

¹⁸ See Kessler, *supra* note 6, at 917 (discussing how part-time and flexible work schedules, which emphasize less work, are realistic options for women who have sufficient income or who have a “second breadwinner”); O’Leary, *supra* note 6, at 8–10 (suggesting that work/family proposals enabling women to spend less time in the workplace are of utility primarily to professional and high-income women and families).

¹⁹ See Koons, *supra* note 8, at 20–21 (noting that welfare reform creates a contradiction for poor women: “children should be cared for in their homes, but poor women must leave their homes and enter the low-wage labor market”); Roberts, *supra* note 6, at 1030–31 (arguing that welfare reform has negatively impacted low-income women’s ability to make decisions about caregiving).

deny poor and low-income women the same right to choose between paid work, unpaid work, and caregiving.

To ensure that work/family policies benefit poor and low-income women, the discourse should be broadened to strive for an understanding of: (1) how the nature of low-wage jobs with poor working conditions, often under autocratic rule, creates inflexible workplaces and powerlessness to make choices about time; (2) how the structure of low-wage work concurrently produces patterns of mandatory long hours, involuntary part-time jobs, and unemployment among women; (3) how immigration status complicates work/family conflicts by intensifying job exploitation; and (4) how shifting family structures beyond the two-parent nuclear family accentuates the need for greater support of childcare and other kinds of caregiving for *all* families.

The goal of greater inclusiveness in the work/family discourse is not to formulate policies for the “neediest” or “worst-off.” Failure to broaden the discourse is bound to yield policy reform of work hours that reinforce racial and class divisions among women and families. Most important, we lose opportunities to imagine ways to forge a more potent framework that can mobilize women across race, class, and citizenship.²⁰

III. WHAT ABOUT MS. COKE, MS. UPTON, AND MS. BLANKENSHIP?

The limits of reduced hours and compressed four-day work weeks as policy prescriptions reveal hierarchies along lines of class, race, and citizenship. These reforms, at best, may appear irrelevant to the lives of most poor and low-income women, and at worst, may undercut their interests. This Article uses the examples of three women who brought lawsuits to challenge the length or conditions of their working hours to examine how work/family discussions should be broadened.

A. *Ms. Evelyn Coke: What About the Paid Laborer Who Takes Care of Others?*

Ms. Evelyn Coke, likely the best-known of the three women, was a home healthcare worker who cared for the elderly and whose case was heard by the U.S. Supreme Court just three years ago.²¹ Ms. Coke worked sixty to seventy hours per week, earned below the federal minimum wage, and never received overtime pay.²² The Supreme Court upheld regulations

²⁰ See Dowd, *supra* note 6, at 439–42 (discussing questions of cross-class solidarity or intra-class interest in the context of work/family policy).

²¹ Long Island Care at Home, Ltd. v. Coke, 127 S. Ct. 2339, 2345 (2007).

²² See Ruthann Robson, *A Servant of One's Own: The Continuing Class Struggle in Feminist Legal Theories and Practices*, 23 BERKELEY J. GENDER, L. & JUST. 392, 409–10 (2008) (reviewing ALISON LIGHT, *MRS. WOOLF AND THE SERVANTS: AN INTIMATE HISTORY OF DOMESTIC LIFE IN BLOOMSBURY* (2008), and providing an excellent discussion of the case based on class and gender from

that home healthcare workers hired by a third-party agency to provide companionship services to the elderly or disabled are entitled to neither the federal minimum wage nor overtime pay. Ms. Coke is a Jamaican immigrant who worked for twenty years caring for the elderly or disabled.²³ By the time the Supreme Court heard her case, Ms. Coke was seventy-three years old and herself disabled.²⁴ Her employer did not provide health insurance.²⁵

Perhaps Ms. Coke “chose” to work substantial overtime hours because she was not even earning \$5.15 per hour—the federal minimum wage at the time of her lawsuit—and she could therefore ill afford not to work overtime in order to support her family. In her case, as an immigrant, Ms. Coke’s family might have also included extended family members living with her or abroad.

Perhaps Ms. Coke unwillingly worked the substantial overtime hours. If she refused overtime, her employer could have legally fired her and replaced her with someone who was unemployed or working part-time and who would have welcomed the long hours.

Perhaps Ms. Coke’s immigration status made her particularly vulnerable to her employer’s demands. Or, if she was a documented immigrant, perhaps she felt she had to “keep up” with undocumented immigrant co-workers who were pressured by her employer to work long hours; complaining about long hours, when others worked long hours, would make her “lazy” and expendable. One might also ask who cleaned Ms. Coke’s home and took care of her family while she was working sixty to seventy hours per week taking care of others.

The work/family literature as well as feminists ignore the long hours of workers who, like Ms. Coke, alleviate the time crunch of women who are more economically privileged. The myth is that long work hours are the province of professional women and men exempted from the overtime pay requirements of the Fair Labor Standards Act of 1938 (“FLSA”).²⁶ Yet, low-wage workers in the garment, restaurant, domestic, home care, janitorial, and other low-wage industries are routinely subjected to mandatory or forced overtime, including uncompensated overtime.²⁷ Under the current employment regime, workers have virtually no legal recourse to challenge terminations or retaliations for refusing employer

a feminist legal perspective). Professor Robson persuasively documents the invisibility of Ms. Coke and other modern-day “domestic servants” in mainstream feminist legal work.

²³ *Id.* at 409.

²⁴ *Id.*

²⁵ *Id.* at 409–10.

²⁶ 29 U.S.C. §§ 201–219 (2006). The work/family literature, as well as critiques of the work/family literature, focus on the excessive work hours of professionals and managers. *See, e.g.*, Kessler, *supra* note 6, at 930; Selmi & Cahn, *supra* note 5, at 11.

²⁷ *See* Shirley Lung, *Overwork and Overtime*, 39 IND. L. REV. 51, 66–67 & nn.109–25 (2005).

demands to work overtime.²⁸ The power to control decisions about overtime and working hours, even to a small degree, lies outside the hands of most workers.²⁹ In most low-wage jobs, employer autocracy, rather than flexibility, is the norm. For employees working upwards of ten to twelve hours per day, six days per week, the day is too short for additional hours to be compressed into it.

In addition to involuntary long hours, the poverty of paid caregivers must be brought to the center of work/family policies.³⁰ The profile of a home care worker in the United States is that she is likely to be unmarried or a single parent of children under the age of eighteen, thus lacking the income associated with a household containing a second breadwinner. She is likely African American or Latina. There is a twenty-three percent likelihood that she is an immigrant. The median hourly wage for home care workers is less than nine dollars; annual wages for full-time work are likely to total less than \$17,000. Part-time home care workers receive less than \$13,000 per year. Consequently, many home care workers receive food stamps.³¹

Women who are struggling to survive economically are hardly likely to view compressed work weeks, flexible hours, or alternative work schedules as a priority. Further, shortened work hours, if accompanied by income reduction, would hurt poor and low-income women who are not in a position to forego earning income in exchange for time at home.³² Many low-wage workers view overtime or long hours as a critical means of providing for their families and as an opportunity for climbing out of poverty, even though this entails sacrificing time at home.³³

Some feminists rightly note the intersections of race and class that account for the exclusion of low-income women, such as Ms. Coke, from work/family discussions.³⁴ Yet, immigration status is another dimension of intersectionality that shapes women's lives in the low-wage labor market.³⁵ Worsening job conditions in the low-wage sector are directly related to the use of immigration status by employers to effectuate a race to the bottom

²⁸ See *id.* at 58–59.

²⁹ This is the default baseline for workers who are non-unionized. Union contracts may contain provisions governing overtime, breaks, and other conditions relating to working hours.

³⁰ See Dowd, *supra* note 6, at 442.

³¹ Peggie R. Smith, *Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century*, 92 IOWA L. REV. 1835, 1848–49 (2007).

³² Lautsch & Scully, *supra* note 10, at 722–23, 727; Selmi & Cahn, *supra* note 5, at 12–13.

³³ See Lautsch & Scully, *supra* note 10, at 728–31, 735–36.

³⁴ See *supra* notes 5–6 and accompanying text.

³⁵ See Fran Ansley, *What's the Globe Got To Do with It?*, in *HARD LABOR*, *supra* note 15, at 207, 210–13 (analyzing the need to address poverty and low-wage labor through the lens of global economic restructuring and immigration); Williams, *Property, Wealth and Inequality*, *supra* note 8, at 1250–53 (discussing the shift in social welfare policy in the United States with regard to low-wage earners and immigrants).

by workers.³⁶ Employers often utilize the status vulnerability of their undocumented employees to pit working class workers against one another.³⁷ Citizen workers find it harder to protest long hours or other poor working conditions if their employer has the power to place them in competition with undocumented workers.³⁸ Thus, the interplay between immigration laws and the low-wage labor market is crucial to understanding the conditions of poor and low-income women, as well as the interconnections between women's lives.³⁹

The interconnections between women are evident when we consider that Ms. Coke's exclusion from the minimum wage and overtime pay provisions of the FLSA is laced with historical continuities. First, the law, legal institutions, and judges are prone to marginalizing the work of poor women inside the home and outside in the marketplace.⁴⁰ Domestic service workers were wholly excluded from the FLSA and the Social Security Act at their enactments,⁴¹ and they continue to be excluded from the National Labor Relations Act.⁴² Women in domestic service were historically excluded from state laws that limited the working hours of other female employees.⁴³

Second, the historical continuities include stratifications defined by race and migration. During the Great Migration between 1900 and 1930, African American women migrated to the North in search of better jobs as factory workers, clerks, and salespersons.⁴⁴ They were excluded from these jobs and remained segregated in domestic service as they had been in the South.⁴⁵ Nearly eighty years later, Latina and Caribbean women, displaced from their home countries by global economic restructuring, now migrate north to the United States to become segregated in, among other

³⁶ See Ansley, *supra* note 35, at 212–13 (describing the use of immigration status to degrade working conditions); Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails*, 2007 U. CHI. LEGAL F. 193, 213–14 (explaining that employer sanctions for the hiring of undocumented workers disadvantage law-abiding employers and encourage the hiring and exploitation of undocumented workers, thereby undermining workplace rights); National Mobilization Against Sweatshops, Break the Chains!, <http://www.nmass.org/nmass/breakthechains/breakthechains.html> (last visited Apr. 11, 2010) (arguing that employers' exploitation of the criminalization of undocumented workers has expanded the underground economy and worsened workplace conditions for all workers).

³⁷ See National Mobilization Against Sweatshops, *supra* note 36 (discussing the effect that the Immigration Reform and Control Act of 1986 had on employers' abilities to exploit workers through employer sanctions).

³⁸ See *id.*

³⁹ See Williams, *Property, Wealth and Inequality*, *supra* note 8, at 1243, 1258–60.

⁴⁰ Williams, *Poor Women's Work Experiences*, *supra* note 5, at 206; Robson, *supra* note 22, at 408–10.

⁴¹ See Smith, *supra* note 31, at 1853.

⁴² 29 U.S.C. § 152(3) (2006).

⁴³ Smith, *supra* note 31, at 1852.

⁴⁴ Judith Olans Brown et al., *The Mythogenesis of Gender: Judicial Images of Women in Paid and Unpaid Labor*, 6 UCLA WOMEN'S L.J. 457, 481–82 n.108 (1996).

⁴⁵ *Id.*

kinds of low-wage work, domestic service, and home care.⁴⁶ They care for other families while struggling to provide for their own families.⁴⁷

B. Ms. Joanna Upton: What About Single-Parent Families?

Ms. Joanna Upton was a single mother with a young son; she was fired because she could no longer work the escalating number of overtime hours that her employer demanded.⁴⁸ At first, she acceded to her employer's demands for overtime, but then the demands became unreasonable.⁴⁹ Her boss told her that she would have to work until nine or ten o'clock every night and every Saturday for at least several months.⁵⁰ The Massachusetts Supreme Judicial Court held that Ms. Upton had no cause of action against her boss for wrongful discharge in violation of public policy.⁵¹ The court reasoned there was "no clearly established public policy which requires employers to refrain from demanding that their adult employees work long hours. Nor is any public policy directly served by an employee's refusal to work long hours."⁵²

For Ms. Joanna Upton, like Ms. Coke, the law placed the decision about working hours, when and how many, in the exclusive control of her employer.⁵³ The FLSA does not protect workers who refuse overtime even when employers make unreasonable or excessive demands that jeopardize the welfare of workers' children or other family members.⁵⁴ In addition, the FLSA contains neither limitations on the amount of overtime that an employer may require nor mandates for sick leave and vacation time. Wrongful discharge claims, too, do not recognize a right to refuse overtime.⁵⁵ In Ms. Upton's case, it did not matter that she had complied

⁴⁶ See NIGEL HARRIS, *THE NEW UNTOUCHABLES: IMMIGRATION AND THE NEW WORLD WORKER* 36 (1995) (examining the concentration of migrant women in domestic service work on an international scale); SASKIA SASSEN, *GLOBALIZATION AND ITS DISCONTENTS* 114, 114–16 (1998) (discussing the role of third-world women as domestic workers in the global migration of labor to major international cities).

⁴⁷ See Schultz & Hoffman, *supra* note 4, at 134–35.

⁴⁸ Upton v. JWP Businessland, 682 N.E.2d 1357, 1358 (Mass. 1997).

⁴⁹ See *id.*

⁵⁰ *Id.*

⁵¹ *Id.* at 1357, 1360.

⁵² *Id.* at 1359.

⁵³ The FLSA establishes the forty-hour work week as the norm and mandates time-and-a-half pay for every hour worked in excess of forty hours. It contains no other affirmative protections for workers with respect to overtime hours. 29 U.S.C. § 207(a)(1) (2006).

⁵⁴ See MARC LINDER, *THE AUTOCRATICALLY FLEXIBLE WORKPLACE: A HISTORY OF OVERTIME REGULATION IN THE UNITED STATES* 5 (2002) (noting that laws regulating overtime simply require premium pay for overtime work); TODD D. RAKOFF, *A TIME FOR EVERY PURPOSE: LAW AND THE BALANCE OF LIFE* 130 (2002) (noting that in at-will employment, employers control workers' time); Lung, *supra* note 27, at 58–59 ("Workers have no recourse under the FLSA if they are fired, demoted, reassigned, or otherwise punished for declining overtime.").

⁵⁵ *E.g.*, Upton, 682 N.E.2d at 1360. Wrongful discharge claims also do not cover the termination of an employee because childcare needs require the employee to miss a day of work. See, e.g., Rivera v. Cherry Hill Convalescent Ctr., Inc., No. 04-2449, 2006 WL 1373175, at *8 (D.N.J. May 17, 2006)

with the demands of her employer until they escalated to the point that she had to choose her son over her job.

Just as the U.S. Supreme Court failed to acknowledge the realities of Ms. Coke in providing caregiving in the marketplace,⁵⁶ the Massachusetts high court failed to acknowledge the realities of Ms. Upton in providing caregiving at home as a single parent. With respect to control of employees' time, the law favors employers as "masters" and "patriarchs."

While the work/family discourse promotes domesticity for professional women,⁵⁷ at-will employees in low-wage jobs usually do not have the choice to spend more time with their children. Low-wage jobs typically offer inflexibility and insecurity.⁵⁸ They provide women with little time off for caregiving, and they offer few or no benefits such as sick days, vacation time, and health care.⁵⁹ Consequently, women in these jobs are forced to cobble together childcare by enlisting the help of older children, neighbors, or extended family members.⁶⁰ If they are unable to do so, they must either leave their children unattended or risk being fired for taking time to attend to their caregiving responsibilities.⁶¹

Work/family conflicts for single parents who move back and forth between low-wage jobs and welfare programs are especially pronounced.⁶² Mandatory work requirements and lifetime limits on welfare benefits established by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA")⁶³ have the effect of pushing recipients into jobs that pay too little to support a family.⁶⁴ Poor women

(holding that no wrongful discharge occurred where an employee missed work because she had to care for her children during a statewide emergency in which schools were closed); *Lloyd v. AMF Bowling Ctrs., Inc.*, 985 P.2d 629, 632 (Ariz. Ct. App. 1999) (holding that there was no wrongful discharge where an employee was required to cover for other employees, but could not do so on one occasion because he had to care for his child).

⁵⁶ Robson, *supra* note 22, at 409–10.

⁵⁷ See Roberts, *supra* note 6, at 1029 (referring to the "opt-out revolution" among professional women); Selmi & Cahn, *supra* note 5, at 8 (explaining that the focus of work/family proposals for professional women is to enable them to spend less time at paid work); see also Brown et al., *supra* note 44, at 484–85 (discussing the historical model of domesticity for prosperous and middle-class white women that encouraged them to remain at home and led to the enactment of laws to protect them if they had to enter paid labor).

⁵⁸ See Williams, *Poor Women's Work Experiences*, *supra* note 5, at 212; O'Leary, *supra* note 6, at 57; Roberts, *supra* note 6, at 1045–46.

⁵⁹ See Williams, *Poor Women's Work Experiences*, *supra* note 5, at 212; O'Leary, *supra* note 6, at 57; Roberts, *supra* note 6, at 1045–46.

⁶⁰ Angela Hooton, *From Welfare Recipient to Childcare Worker: Balancing Work and Family Under TANF*, 12 TEX. J. WOMEN & L. 121, 135–36 (2002); see also Selmi & Cahn, *supra* note 5, at 16–17 (noting that higher-income women are more likely to have access to organized childcare while lower-income women are more likely to use social networks for childcare).

⁶¹ See Williams, *Poor Women's Work Experiences*, *supra* note 5, at 212; Roberts, *supra* note 6, at 1048–49.

⁶² See Hooton, *supra* note 60, at 133–38; Roberts, *supra* note 6, at 1044–45.

⁶³ 42 U.S.C. §§ 601, 602(a)(1)(A)(ii), 608(a)(7)(A) (2006).

⁶⁴ Williams, *Property, Wealth and Inequality*, *supra* note 8, at 1250–51; see also Handler, *supra* note 15, at 8–12 (analyzing the struggles of working poor mothers, including women who receive

are forced by welfare reform to choose low-wage work over caregiving at home, and in this way, welfare reform “devalue[s] and penalize[s] poor mothers’ care.”⁶⁵ At the same time, lack of access to affordable childcare undermines the ability of poor mothers to remain regularly employed.⁶⁶

Single-parent families such as Ms. Upton’s are on the rise.⁶⁷ This reality belies the presumption in the work/family literature that two-parent, heterosexual nuclear families are the norm.⁶⁸ Mainstream notions of family must give way to an appreciation of the specific work/family conflicts of single-parent families, many of which are single-parent families of color.⁶⁹ In addition, the intersection of poverty, race, culture, and migration produces different family structures or networks that, too, warrant attention in work/family policies.⁷⁰ As one scholar notes, “the family life of poor people challenges assumptions because, in order to survive, the family network must share the costs of providing for children.”⁷¹ Thus, grandmothers in the African American and immigrant communities regularly step in as caregivers or as breadwinners.⁷² Also, the role of extended family in some cultures means that responsibilities for economic support and caregiving reach beyond one’s nuclear family.⁷³ These diverse family structures and networks highlight the need for work/family policies that support *all* families.

C. Ms. Blankenship: What About Involuntary Part-Time Workers?

Ms. Linda Blankenship worked as a per diem substitute cleaner for a school district.⁷⁴ She was initially hired to cover for a full-time employee

welfare benefits); Hooton, *supra* note 60, at 123–24, 126–28 (explaining the impact of PRWORA and the Temporary Aid to Needy Families program in requiring poor mothers who receive welfare to work and the obstacles to employment posed by lack of access to childcare); Roberts, *supra* note 6, at 1044–46 (discussing the connections between low-wage work and welfare).

⁶⁵ Roberts, *supra* note 6, at 1031, 1055–57.

⁶⁶ Hooton, *supra* note 60, at 128.

⁶⁷ Handler, *supra* note 15, at 8.

⁶⁸ See Dowd, *supra* note 6, at 447 (noting the rise of single-parent families, and arguing that “[p]olicy that is inadequate for two-parent families is catastrophic for single-parent families”); Kessler, *supra* note 6, at 916, 924–25 (critiquing the emphasis of feminist theories and strategies that focus on white, heterosexual women to the exclusion of fluid family structures and networks); Lautsch & Scully, *supra* note 10, at 738 (“[T]he very notion of ‘family,’ at the heart of work/family research, needs to be reconsidered and broadened.”); see also Stephen R. Marks, *Understanding Diversity of Families in the 21st Century and Its Impact on the Work-Family Area of Study*, in THE WORK AND FAMILY HANDBOOK 41, 43–49 (Marcie Pitt-Catsouphes et al. eds., 2006) (discussing the transformation of the “normal” American household to include more single-parent families as well as different sexualities and racial compositions).

⁶⁹ Dowd, *supra* note 6, at 447.

⁷⁰ See Kessler, *supra* note 16, at 926; Lautsch & Scully, *supra* note 10, at 738.

⁷¹ Lautsch & Scully, *supra* note 10, at 738 (internal quotation omitted).

⁷² Hooton, *supra* note 60, at 136; Kessler, *supra* note 6, at 924–25; Lautsch & Scully, *supra* note 10, at 730–31.

⁷³ Lautsch & Scully, *supra* note 10, at 729, 738.

⁷⁴ *In re Blankenship*, 722 N.Y.S.2d 622, 622 (N.Y. App. Div. 2001).

who was on disability leave.⁷⁵ When the employee returned from disability leave, Ms. Blankenship's hours fluctuated based on the vacations and absences of permanent employees.⁷⁶ While she was able to work full-time during the summer months because of the vacation schedules of other employees, the school district reduced her hours by half—from eight to four hours per day—when the school year resumed.⁷⁷ As a result, Ms. Blankenship quit her job.⁷⁸ A New York appellate court upheld a denial of unemployment insurance to Ms. Blankenship, stating that her dissatisfaction with her reduced hours did not give her good cause to leave her employment.⁷⁹

Just as Ms. Upton has no legal right to shorter hours, Ms. Blankenship has no legal right to longer hours. Work hours, whether too many or too few, are the prerogative of employers. The FLSA does not guarantee workers a minimum number of work hours or stable and regular work hours. In addition, Ms. Blankenship's disqualification from unemployment benefits, because she was deemed to have "voluntarily" quit her job "without good cause," suggests value-laden judgments that workers who have a "good work ethic" should endure less than satisfactory working conditions.⁸⁰ Accordingly, the insufficiency, irregularity, and instability of Ms. Blankenship's work hours should not have detracted from her work effort.

Yet Ms. Blankenship's problem is not one of work ethic, but rather a condition of the structure of low-wage labor. Although the work/family literature advocates for increased part-time jobs and reduced hours as family-friendly reforms,⁸¹ large numbers of women work part-time involuntarily and need more hours of work.⁸² The low-wage labor market is marked by a vast dispersion in hours, with women who are

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See Lucy A. Williams, *Unemployment Insurance and Low-Wage Work*, in *HARD LABOR*, *supra* note 15, at 158, 158–59, 167–68. In many jurisdictions, unemployment insurance claims are denied where employees resign or are terminated because of dissatisfaction with working conditions. See, e.g., *Wheeler v. Bd. of Review, Dep't of Labor*, No. 129,906, 2008 WL 2229257, at *1–2 (N.J. Super. Ct. App. Div. June 2, 2008) (holding that while "appellant's childcare situation was compelling, it was personal, and thus did not constitute good cause attributable to the work," where a receptionist was discharged after leaving work early to care for her children); *In re Valentin*, 721 N.Y.S.2d 162, 162–63 (N.Y. App. Div. 2001) (holding that "a claimant's dissatisfaction with a position's hours or wages does not constitute good cause for resigning," where a per diem food service employee resigned after her employer reduced her hours); *In re Eck*, 717 N.Y.S.2d 789, 789 (N.Y. App. Div. 2001) (holding that "[d]issatisfaction with one's work schedule or responsibilities has been held not to constitute good cause for leaving employment," where a part-time employee who worked extra hours to cover for other employees resigned after her employer refused to allow her to return to her previous hours).

⁸¹ Selmi & Cahn, *supra* note 5, at 18–19.

⁸² *Id.* at 19.

overemployed (i.e., working excessively long hours) as well as underemployed (i.e., working fewer hours than they would like).⁸³ By some estimates, seventy-five percent of part-time workers want full-time work.⁸⁴

The shift from full-time work to contingent employment such as part-time, temporary, and contract work has had deleterious consequences for low-income women and their families.⁸⁵ Part-time jobs tend to be dead-end, lower paying, and without benefits;⁸⁶ they tend to be filled by women, especially women of color.⁸⁷ Families headed by part-time workers are four times as likely to fall below the poverty line, with single-parent families being in an even worse position.⁸⁸ The irregularity and unpredictability of work hours also makes it vastly difficult for women to manage their childcare needs.

Unemployment among poor and low-wage families further complicates the interplay between overemployment and underemployment. Employers enjoy greater power to squeeze more out of workers for less if they can pit unemployed workers against other workers.⁸⁹ While the current recession has given rise to record-level unemployment rates, unemployment is a permanent feature of the economy, not an anomaly.⁹⁰ Further, the structure of labor markets is such that unemployment of African Americans and Latinos far surpass that of white workers; also, low-wage workers, and low-wage mothers in particular, experience periods of unemployment on a more frequent and cyclical basis than other workers.⁹¹ For these reasons, the structural relationships between unemployment, underemployment, and overemployment creates fluid boundaries between workers.

Employers resort to layoffs and the use of part-time work and other forms of contingent labor under the banner of flexibility, efficiency, and lean production.⁹² The assumption that “employer flexibility” is synonymous with worker flexibility or worker control is fraught with

⁸³ Jon C. Messenger, *Towards Decent Working Time*, in *DECENT WORKING TIME* 419, 419 (Jean-Yves Boulin et al. eds., 2006); Kessler, *supra* note 6, at 930; Selmi & Cahn, *supra* note 5, at 12.

⁸⁴ Selmi & Cahn, *supra* note 5, at 19.

⁸⁵ Handler, *supra* note 15, at 5.

⁸⁶ *Id.*; Selmi & Cahn, *supra* note 5, at 19.

⁸⁷ Handler, *supra* note 15, at 5; Selmi & Cahn, *supra* note 5, at 20; Williams, *Unemployment Insurance*, *supra* note 80, at 160.

⁸⁸ Handler, *supra* note 15, at 5.

⁸⁹ See Lung, *supra* note 27, at 63 & n.85 (noting that worker insecurity and fear in labor markets with many unemployed and underemployed can effectively result in workers performing for less).

⁹⁰ *Id.* at 62–63 & n.79. Estimates in the 1990s indicated “six times more people looking for jobs than there were vacancies.” Handler, *supra* note 15, at 5.

⁹¹ See LAWRENCE MISHEL, ECON. POLICY INST., POLICY MEMORANDUM #144, THE JOB ISN'T DONE: MORE JOBS AND FAMILY SUPPORTS NEEDED 2 (2009), available at <http://www.epi.org/page/-/pdf/mishelpolicymemo.pdf>; Williams, *Unemployment Insurance*, *supra* note 80, at 158.

⁹² Lung, *supra* note 27, at 62–63 & nn.79–80.

danger. The pressure to accept as a truism that “what’s good for business is good for workers” is especially seductive during economic recessions. But historical trends demonstrate that employers are engaged in a continual process of reshaping their demand for labor to reduce costs and to divide workers against one another. Thus, we must critically examine whether proposed reforms for working hours actually result in greater control for workers.

IV. COMMON GROUND AND THE RIGHT OF CONTROL OVER TIME

The potential for work/family policies to reinforce intra-class self-interest and inter-class conflict,⁹³ as well as hierarchies along race and citizenship, are almost limitless. White workers can be pitted against workers of color; salaried professionals against low-wage workers; full-timers against part-timers; immigrants against citizens; the unemployed against the overemployed; welfare recipients against workers; and single mothers against married mothers. But conflicts about working hours are more often the products of social construction than lived reality.

An inclusive work/family discourse should aspire to show the interconnections between women. It is not enough to generate reforms that help women who would be labeled as the “neediest,” “most vulnerable,” or “worst-off.” Such an approach fails to challenge us to unpack divisions along lines of race, class, and citizenship. The struggles of Ms. Evelyn Coke, Ms. Joanna Upton, and Ms. Linda Blankenship are potent if we utilize them as a “critical lens through which to understand the multiple problems with which *all* women struggle in their effort to fulfill their caregiving responsibilities while providing for their families’ subsistence.”⁹⁴

A deeper investigation into the attitudes of different classes of workers toward work hours reveals more common ground than we might initially imagine.⁹⁵ For instance, some salaried professional workers may be just as unlikely as low-income workers to support measures such as reduced hours, part-time jobs, or compressed work weeks. Professionals have strong incentives to maintain long work hours because they provide an important source of pride and professional identity.⁹⁶ In addition, professionals may worry that availing themselves of reduced hours or alternative schedules will marginalize them as “less dedicated” and place

⁹³ See Dowd, *supra* note 6, at 441.

⁹⁴ Williams, *Poor Women’s Work Experiences*, *supra* note 5, at 199.

⁹⁵ See Dowd, *supra* note 6, at 440–41, 447; Lautsch & Scully, *supra* note 10, at 736.

⁹⁶ Lung, *supra* note 27, at 74. Class-based tensions around overtime and long hours can be deconstructed so that workers can be unified toward a common agenda. *Id.*

them on second-tier career tracks with fewer opportunities for advancement.⁹⁷

These incentives are not so different from the ones that motivate low-wage workers to put in large amounts of overtime. The long hours of low-wage workers are not only a necessity for economic survival, but also a source of economic mobility and advancement.⁹⁸ Low-wage workers also derive pride and identity from the long hours that enable them to provide for their families.⁹⁹ Moreover, refusing long hours may jeopardize their employment.¹⁰⁰ These attitudes that cut across class help us to deconstruct supposed divisions toward forming alliances across boundaries.

The narratives of Ms. Coke, Ms. Upton, and Ms. Blankenship suggest possibilities for reinventing a work/family discourse that unifies different groups of workers, women, and families based on the radical notion that workers should have the right to control their time.¹⁰¹

Work is legal, political, and cultural. Our current legal, political, and cultural norms invest employers with the unfettered right to unilaterally control decisions about paid-work time that impinge on workers' time outside of paid work. The notion of the right of workers to control time fueled a radical shorter-hours movement in the late nineteenth and early twentieth centuries.¹⁰² That struggle for worker control was exemplified by the rallying slogan, "eight hours labor, eight hours rest, and *eight hours for what we will*."¹⁰³ We should revive a call for worker control over time to forge a common agenda on the issues of working hours and work/family balance.

As employers restructure workplaces based on models of lean production and global competitiveness, the working conditions of professional workers and low-wage service and factory workers will increasingly converge.¹⁰⁴ Job insecurity and instability are contributing to the creation of autocratic workplaces for large sectors of the U.S. workforce, including corporate managers and professionals.¹⁰⁵ White-collar workers such as doctors and lawyers are not immune from the loss of autonomy and control over work hours and pace of work due to cost-

⁹⁷ *Id.* at 69 n.141.

⁹⁸ See *supra* note 33 and accompanying text.

⁹⁹ See Lautsch & Scully, *supra* note 10, at 720, 727–28.

¹⁰⁰ See STEVEN GREENHOUSE, *THE BIG SQUEEZE: TOUGH TIMES FOR THE AMERICAN WORKER* 186 (2008).

¹⁰¹ See Kathi Weeks, "Hours for What We Will": *Work, Family, and the Movement for Shorter Hours*, 35 *FEMINIST STUD.* 101, 102 (2009) (addressing the need to "reconsider and reinvent feminist perspectives on work" and reforms for shorter hours).

¹⁰² See *id.* at 103–04.

¹⁰³ *Id.* at 112 (emphasis added).

¹⁰⁴ See GREENHOUSE, *supra* note 100, at xii, 103–07, 201–04 (examining the deleterious impact of economic restructuring on a wide swath of the U.S. workforce).

¹⁰⁵ See *id.* at 92–97, 184–87, 199–207.

cutting management techniques.¹⁰⁶ The withdrawal of the social contract between corporations and workers, the rolling back of safety nets for workers, and de-unionization are trends that buttress the power of employers to unilaterally control working hours, and thus to control time outside of paid-work as well.¹⁰⁷

The common ground between workers up and down the occupational ladder is the inability to control time.¹⁰⁸ Specific demands for shorter hours or longer hours may splinter workers. Demands for income supports and a higher minimum wage may fail to appeal to the interests of higher-income workers. Alternative schedules may address the needs of only some workers. Because these demands may be viewed as particularistic,¹⁰⁹ their efficacy in helping us to reconstruct our relations to one another as workers is limited. In this way, “worker control of time” has the potential to provide a unifying framework for the common struggles that we face as caregivers and economic providers, and as human beings.¹¹⁰

V. CONCLUSION

Ms. Evelyn Coke, Ms. Joanna Upton, and Ms. Linda Blankenship collectively wrestled with time in its various permutations. The law favored their employers as “masters” and “patriarchs” such that none of these women had much freedom of choice over her work hours. Yet the vocabulary of “freedom of choice” and “flexibility” of work hours offers a framework of individual autonomy that, ultimately, is still constricting.¹¹¹ The forces that determine or impinge on our ability to make meaningful choices about paid work, unpaid work, and caregiving, mainly rest outside of our control—the terms of the choices are often imposed. Thus, we can realize only limited gains based on a right to choose.

But the concept of worker control of time is inherently radical and provocative.¹¹² It represents a collectivist perspective about reclaiming

¹⁰⁶ See Lung, *supra* note 27, at 68–70.

¹⁰⁷ See GREENHOUSE, *supra* note 100, at 184–87.

¹⁰⁸ See Weeks, *supra* note 101, at 112 (analyzing the “Post-Work Manifesto” in proposing a “post-work political agenda” that is motivated “by a vision of ‘shorter working hours, higher wages, and best of all, our ability to control much more of our time’”).

¹⁰⁹ See Michael Selmi & Molly S. McUsic, *Difference and Solidarity: Unions in a Postmodern Age*, in LABOUR LAW IN AN ERA OF GLOBALIZATION: TRANSFORMATIVE PRACTICES AND POSSIBILITIES 429, 437 (Joanne Conaghan et al. eds., 2002) (explaining the fragmentation and loss of power for workers that result from “particularistic notions of identity”).

¹¹⁰ See Weeks, *supra* note 101, at 118–20 (explaining the meaning of the slogan “eight hours for what we will” as possibly suggesting more time for discovering new possibilities for fulfillment).

¹¹¹ See *id.* at 105, 118 (arguing the need for a new vocabulary and conceptual framework for thinking about time, and discussing the limits of notions of individual autonomy for demanding shorter hours).

¹¹² Kathi Weeks emphasizes the need for a discursive agenda on shorter working hours that offers a “persuasive demand” and a “provocative perspective.” *Id.* at 105.

power to affect the terms by which we live.¹¹³ It suggests the upset of cultural, legal, and political norms that invest so much power in employers. It also suggests the ability to assert control over our lives, even to “reinvent our lives”¹¹⁴ at work, at home, and in our communities. Because these suggestions are potent for us all, working toward a right of control of time provides a basis for building radical alliances.

¹¹³ See *id.* at 118–19 (making a similar argument for reinventing a radical modern-day, shorter hours movement).

¹¹⁴ *Id.* at 119.