

CHAPTER 18

Discrimination against Caregivers? Gendered Family Responsibilities, Employer Practices, and Work Rewards

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ABSTRACT

This chapter discusses economic inequalities between caregivers and other workers, the mechanisms that produce them, and the possibility of using anti-discrimination law to challenge them. I first examine the consequences of gendered family responsibilities, specifically motherhood, for occupational status and wages. Then I present common explanations for the economic consequences of caregiving, contrasting human capital theory with a structural perspective that investigates the organizational mechanisms—the concrete policies and practices and the unquestioned assumptions in workplaces—that help create these inequalities. I review the legal strategies proposed by feminist legal scholars and then draw on empirical studies of changes in organizational policies and practices in the wake of anti-discrimination law to discuss the likely effects of those strategies. I suggest that defining the economic marginalization of caregivers as discrimination would provide a new language and legitimacy for workers faced with work-family conflicts but the resulting organizational changes would not fully erase the inequalities documented here.

INTRODUCTION

There have been significant improvements in the economic status of employed women in the U.S. over the past 30 years. Women's employment has increased dramatically during this period, particularly among White women and mothers (Cohen and Bianchi, 1999) and the pay gap has narrowed such that women employed full-time, year-round earn 77.5% of what comparable men earn (Leonhardt, 2003; Blau and Kahn, 2000). But stubborn inequalities remain. I contend that we must examine and interrogate the experiences of caregivers, i.e. workers with extensive family responsibilities, in the workplace in order to understand gender inequality in the United States today.

This chapter discusses the extent of these inequalities between caregivers and other workers, the mechanisms that produce them, and the possibility of using anti-discrimination law to challenge them. I first examine the social science evidence on the consequences of gendered family responsibilities, specifically motherhood,

for occupational status and wages. Unfortunately, there has been much less research on the effects of fatherhood or elder care responsibilities. Then, I present common explanations for the economic consequences of caregiving, contrasting human capital theory with a structural perspective that investigates the organizational mechanisms—the concrete policies and practices and the unquestioned assumptions in workplaces—that help create these inequalities. I examine the legal strategies proposed by feminist legal scholars and then discuss the likely effects of those strategies. I suggest that defining the economic marginalization of caregivers as discrimination would provide new cultural resources for workers faced with work–family conflicts, including a new language and sense of legitimacy, but the resulting organizational changes would not fully erase the inequalities documented here.

Caregivers may, of course, be male as well as female and some may ask what gender has to do with caregiving. I argue that the treatment of caregivers within organizations is directly related to gender inequality because family responsibilities are “gendered” in our culture. This means both that there are differences in the family responsibilities of women and men, on average, and that there are different cultural scripts and expectations for mothers and fathers.

Numerous studies show that women still spend significantly more time on housework and childcare than men do, and that this basic gender difference holds for couples at various stages of life and with various employment situations (e.g., Bianchi, Milkie, Sayer, and Robinson, 2000; Brines, 1994; Hochschild, 1989; South and Spitze, 1994). The gender differences in time spent on housework and childcare are less dramatic than in the past but, as of 1995, women still spent 1.8 hours for each hour of housework done by men and 1.8 hours for each hour of primary childcare performed by men (Bianchi et al., 2000, p. 208). If a workplace is hostile to workers with significant caregiving responsibilities, women are more likely to be affected than men.

In addition to these gender gaps in the time spent on housework and childcare, family responsibilities are gendered in the sense that acting in the expected ways reinforces individuals’ gender identities while acting in non-normative ways requires women and men to account for their deviance (Berk, 1985; West and Zimmerman, 1987; cf. Acker, 1990). Although expectations for women’s and men’s behavior are less rigid and more varied than in the past, there are still cultural prescriptions for family roles that differ by gender. In American culture, mothers are expected have unlimited time, energy, and emotional capacity for caring for family members and coordinating family life (Hays, 1992; Williams, 2000). Some mothers also work for pay and they are known as “working mothers.” In this phrase, the employment status of women modifies their core identity as mothers (Garey, 1999; Chamallas, 1986). The cultural expectations regarding fatherhood are less clear (Gerson, 1993; Coltrane, 1996; Townsend, 2002; Waller, 2002). Fathers are increasingly expected to care for family members by performing day-to-day chores and tending to the emotional lives of family members, but these tasks are often understood to be secondary to fathers’ core task of providing income. The phrase “working fathers” is not used in everyday conversation because work is not a modifier for fathers; it is the core responsibility of all adult men, including fathers. Instead, we talk about “involved fathers” when

we want to specify those men who prioritize family caregiving as much as or more than paid work. These men may be praised by some, but they may also face questions about their commitment to work, their ambition, and their gender identity as “normal men” (Cooper, 2000; Gerson, 1993; Pleck, 1993; West and Zimmerman, 1987).

1. THE ECONOMIC CONSEQUENCES OF CAREGIVING

Employees are generally expected to work full-time, full-year, and over-time as needed over many years if they want to do well and move ahead in their careers. But many caregivers—particularly mothers—do not meet these expectations of long hours and continuous employment. Despite the fact that many more mothers of young children are employed than in the past, *most* mothers of young children are not working in the full-time and over-time jobs that produce high incomes and good opportunities for advancement. Cohen and Bianchi (1999) remind us that 71% of married mothers with children under six were employed at some point in 1997 but only 35% of these mothers (and 38% of single mothers with young children) worked full-time, year-round. Furthermore, only 7% of mothers with children under 18 years of age work 49 hours a week or more (Williams, 2000, p. 2). In contrast, 96% of fathers with children under six were employed in 1997 and the vast majority of those men worked full-time, year-round (U.S. Department of Labor, 1999).

These work patterns mean that the common economic indicators of gender equity, including the sex gap in wages, do not reflect the reality of most women’s experiences. Reports that women earn 75–78% of what men earn, compare the wages of women working full-time, year-round to men working full-time, year-round. Approximately two-thirds of mothers of young children are excluded from this comparison; including the hourly wages of part-time or part-year workers would increase the reported sex gap significantly.

1.1. Glass Ceilings and Mommy Stations

The mismatch between organizational expectations and mothers’ work patterns helps explain women’s (particularly mothers’) underrepresentation in the upper echelons of management and high-status professions. Women continue to be underrepresented in top management positions. In 2000, 12.5% of the corporate officers in Fortune 500 companies were women and only 7% of line officers were women (Catalyst, 2000a). Another study found that, “among those who have risen to within three levels of the CEO position, fewer than half (49%) of the women have children, compared with 84% of the men” (Crittendon, 2001, p. 35; Catalyst, 2000b). In public sector management, the patterns are similar. As of the early 1990s, women held only 10% of the top positions in the federal government and mothers fared worse than women without children and worse than men, even when their level of experience and education was similar (Crittendon, 2001, p. 41; U.S. Merit Systems Protection Board, 1992).

Women are also less likely to achieve top positions within the high-status professions. Only 13% of the partners at the 1,160 largest law firms were women as of 1995 and only 7% of the equity partners (who share in the firm's profits) were women (Crittendon, 2001, p. 37). Small firms are not much better for women's achievement of partner status; only 13% of partners at all firms with two or more attorneys were female as of 1995 (Williams, 2000, p. 67). Women make up close to half the population of medical students and about a quarter of the doctors, but they are underrepresented in the prestigious positions in academic medicine. Only 10% of full professors in medical schools were women as of 1994 (Crittendon, 2001, p. 43; Conley, 1998). The studies of attorneys and doctors do not reveal what percentage of the high-status women are mothers (much less how other caregiving roles affect occupational position), but research on other professions, particularly college and university faculty, suggests that high-status women are often not mothers.

Using data that follows new Ph.D.s through the first 14 years of their careers, Mason and Goulden (2002) examine the family decisions and achievement of tenure among this cohort of faculty. In 1999, 29% of tenured professors in American colleges and universities were women, up from 18% in 1971 (National Science Foundation WebCASPAR, 2003). But Mason and Goulden (2002) show that a disproportionate number of tenured women faculty are not mothers. Among the cohort they study, 62% of tenured women in the humanities and social sciences and 50% of tenured women in the sciences do *not* have children in their household. The comparable figures for tenured men are 39% and 30%, respectively. They also find that mothers of "early babies," i.e. babies born within 5 years of the Ph.D., are less likely—about 20% less likely—than fathers of "early babies" to receive tenure.¹

In the academic world, it is difficult to find a "mommy track" if this term is understood as a slower movement up the career system that is dominant in the field. Instead, there is a fairly unforgiving career track and what I call a "mommy station," where caregivers—as well as people who are less lucky, productive, or connected than others—are literally stuck in adjunct and lecturer positions with low wages, low status, no job security, and often no possibility for advancement. Because women are more likely to choose or end up in these part-time positions, "the segmentation of academic life into an over-worked core and a marginalized periphery tends to perpetuate gender inequality" (Jacobs, 2004).

Professionals and managers in other industries may be able to negotiate part-time work but they, too, often give up high-status assignments, important fringe benefits, and job security by becoming contractors rather than employees (Kalleberg et al., 1997). In short, professionals and managers across a variety of industries face the choice of very long hours—which conflict with ingrained and gendered expectations

¹ If a woman finished a B.A. at the age of 22, went straight to graduate school and moved fairly quickly graduate school, the 5 years after the Ph.D. would likely be ages 28–33. Women faculty with "early babies" are on the verge of being labeled "older mothers" by the rest of society and the medical profession, unless they had their children during or before graduate school.

of appropriate caregiving—or marginalization and economic insecurity as a part-timer (Williams, 2000).

1.2. The Motherhood Penalty in Wages

Mothers tend to earn less than men and less than women who do not have children. As noted above, mothers tend to work fewer hours and so we would expect and accept a difference in the annual earnings of mothers and other workers. But there is also a difference in the hourly wages of mothers as compared to women without children and to men. In 1991, young mothers' hourly wages were 81% of other young women's wages and 73% of young men's hourly wages (Waldfogel, 1998a; Table 5). This "family gap" has grown in recent years even as the sex gap in wages has fallen. As Waldfogel (1998a, p. 148) notes, "by 1991, the pay gap between mothers and non-mothers had become larger than the gap between women and men."

Mothers' lower wages reflect mothers' lower levels of experience on the job, which result from mothers' higher odds of exiting the labor force when they have young children and working fewer hours when employed. But mothers' lower wages cannot be entirely explained by these differences in experience; the residual wage gap raises the question of wage discrimination against mothers.

1.2.1. The Wage Consequences of Breaks and Part-time Work

Women who leave the labor force to care for children or other relatives obviously forego wages while out of the labor force, but they also earn less once they return to paid work. The wage penalties associated with a break in employment continue for many years, creating significant cumulative consequences for lifetime earnings. For example, Noonan (2002) estimates that a woman who was out of the labor force for one year would make 32% less in the first year after she returned to work than a comparable woman who was continuously employed. Furthermore, this woman would still be making 24% less than a comparable woman in the 10th year after her break (Noonan, 2002; calculated from Table 2). The wage penalties seem to continue beyond that time frame as well. Jacobsen and Levin (1995) report that, even 20 years after a return to paid work, women with interrupted work histories earn 5–7% less than women with continuous labor force attachment.

Because women who stay in the labor force when they have young children may avoid the wage penalties associated with breaks in employment, access to maternity leave is economically important to women. Longitudinal studies show that women who take only short breaks after a birth and then return to the same employer earn more than other mothers (Waldfogel, 1998b).² Additionally, access to decent maternity leave is associated with continuous labor force attachment (Estes and Glass, 1996; Liebowitz

² Some of the differences in the wage rates between leave-taking mothers and other mothers reflect selection bias, since more privileged women have access to family leaves in the first place (England, 1997). This was certainly true before the passage of the Family and Medical Leave Act of 1993 but the

and Klerman, 1995), a higher likelihood of keeping the same job (Glass and Riley, 1998), and quicker returns to full-time work (Hofferth, 1996).

However, taking maternity or family leave may have its own consequences. One study of managers and professionals who worked full-time and continuously from 1990 to 1995 in a large, multinational financial services organization found that taking a leave was associated with lower performance evaluations, lower odds of promotion, and slightly smaller salary increases (Judiesch and Lyness, 1999). This study did not identify any gender differences in the consequences of leave (perhaps because only two men in this sample of about 12,000 managers had taken a family leave!) but a Swedish study found that a one *year* leave cost male managers 5.2% of their expected earnings growth over 5 years and cost female managers only 1.7% of their expected earnings growth (Stafford and Sundstrom, 1996).³ The authors note that men's use of family leave may be interpreted by managers and co-workers as a sign of relatively low commitment to work, even in a country where paternity leave is much more common than in the U.S. In contrast, women's use of family leave may have smaller consequences because it is expected and accepted as appropriate.

Shifting to part-time work allows caregivers to maintain employment while caring for family members. What are the consequences of this strategy? Part-time workers are paid less, per hour, than full-time workers; part-time workers are less likely to receive employee benefits; and part-time experience is rewarded lesser than full-time experience (Ferber and Waldfogel, 1998; Budig and England, 2001; Glass, 2004). However, part-time experience does improve women's wages, suggesting that part-time work yields better wages for women, in the long run, than time out of the labor force. Returns to part-time work are approximately half the size of returns to full-time work for women (Ferber and Waldfogel, 1998), although one study finds that part-time workers do better if they change employers (Glass, 2004). Glass (2004) hypothesizes that part-time workers find it hard to get a raise, perhaps because employers feel they are already doing a favor for these employees by allowing them to work part-time, and so part-timers must move to a new job to improve their wages.

Although most studies of the consequences of part-time work in the U.S. have examined women's wages, there is some evidence that part-time work has more dramatic consequences for men's wages. The differences between full-time workers' and part-time workers' hourly wages are greater for men than for women (Ferber and Waldfogel, 1998). Also, whereas part-time experience gets half the rewards of full-time experience among women, men's wages did not improve at all with part-time experience (Ferber and Waldfogel, 1998; Table 6). Employers apparently discount men's part-time work so thoroughly that they might as well be out of the labor force. These wage

passage of the federal law did not erase the disparities in women's access to leave because more privileged women are more likely to work for covered employers (Gerstel and McGonagle, 1999).

³ These 1-year leaves had much smaller wage consequences for parents in Sweden than a 1-year break in employment does in the U.S. National policies that establish family leave, as well as other state supports for families, clearly affect the economic consequences of caregiving (Gornick and Meyers, 2003; Stier, Lewis-Epstein, and Brain, 2001; Stryker, Eliason, and Tranby, 2004).

penalties probably discourage some fathers and men with elder care responsibilities from seeking part-time work when they would like to do so.

1.2.2. Unexplained Wage Penalties for Mothers and Pay Gaps

Caregiving reduces the wages and occupational status of mothers through reduced experience, penalties for breaks in employment, penalties for taking leaves, and smaller returns for part-time experience, but there is also a wage penalty for motherhood even when one controls for these effects and for a variety of individual and job-level traits (Anderson et al., 2003; Avellar and Smock, 2003; Budig and England, 2001; Waldfogel, 1997). Budig and England (2001; Table 3) find that there is a penalty of 5% for having one child, 11% for having two children, and 15% for having three or more children. These penalties are net and fixed effects, which control for unobserved individual traits, marital status, and a host of human capital variables such as education, current enrollment in school, work experience, seniority, current hours, and previous breaks in employment. Waldfogel (1997) finds quite similar penalties, of 4% for one child and 12% for two or more children, while Anderson et al. (2003) find smaller penalties of 3% for one child and 5% for two or more children. These studies demonstrate that mothers' reduced experience and increased propensity to breaks in employment cannot fully explain the gap between mothers' wages and the wages of other women.

1.3. What are the Consequences of Caregiving for Men?

Compared to the literature on motherhood, there is much less evidence about the economic consequences of fatherhood. Several studies have found that fathers receive wage premiums of approximately the same size as mothers' wage penalties (e.g., Hersch and Stratton, 2000; Lundberg and Rose, 2000; Noonan, 2001). In addition, researchers consistently find that married men earn more—between 10% and 30% more—than unmarried men with similar educational levels, experience, and occupational location (Hersch and Stratton, 2000; Waldfogel, 1998a). We know that there is wide variation in the caregiving performed by fathers—with some devoting as much time to child care as mothers and some devoting very little time—but research has not yet identified the effects of fathers caregiving separately from the effects of fatherhood as a status.

The research that comes close to disentangling the effects of men's care work from the effects of family status examines how time spent on housework affects men's earnings. Hersch and Stratton (2000) found that men's housework time reduced their wages, although the size of this effect was small. Noonan (2001) examined the effects of "female-typed tasks"—like cooking, cleaning up dishes, laundry—that must be done on workdays or at unpredictable times and that may consequently tire out an employee more than tasks—like yard work or paying bills—that can be done at any time. Time spent on these time-sensitive tasks reduces time spent at work and also reduces men's and women's earnings (Noonan, 2001). However, these effects are found *in addition to* a wage penalty for mothers and a wage premium for fathers so differences

in the type of housework performed by men and women cannot fully account for the wage gap between mothers and fathers. Neither of these studies was able to investigate the consequences of time spent in child-care activities specifically.

2. EXPLAINING THE ECONOMIC CONSEQUENCES OF CAREGIVING

The studies reviewed above demonstrate that caregivers (or at least mothers, who have received more attention from scholars) face real economic penalties. Is this a problem for our society? If so, what should be done about it? The answers to these questions depend on how one explains the existence of these penalties.

2.1. Human Capital Theory and Caregivers' Careers

Human capital theorists assert that differences in wages and occupational attainment reflect differences in "human capital" and productivity that arise because many women specialize in family work rather than market work (Becker, 1991). Human capital theory claims that, because of their family responsibilities and anticipated family responsibilities, women are more likely to leave the workforce at some point, work fewer hours when employed, invest less in education and training, expend less effort when working, and choose occupations or jobs that have lower penalties for intermittent work histories, greater possibilities for part-time work, smaller returns for training, and fewer demands or stressors on the job (Becker, 1991). The gender gap in experience and effort is believed to explain the gender gap between men's and women's wages. In turn, women's lower wages reinforce the rationality of women concentrating on family responsibilities rather than market work (Becker, 1991, pp. 38–39, 42). Human capital theory emphasizes individual, and couple, decisions about allocating time and effort. From this perspective, the economic penalties associated with caregiving are the expected consequences of specialization. These penalties are assumed to be offset, at the couple level, by the higher wages of the partner who specializes in market work.⁴

Although experience, education, and other "human capital" variables are important for understanding wage attainment and related topics, sociologists have challenged various parts of this theory. First, scholars have asked whether women today anticipate specializing in family work or whether women's orientations towards market work and family work are variable and responsive to their opportunities. Research suggests that many—perhaps most—young women do not have stable expectations about their adult lives (Gerson, 1985; Hakim, 2002). Rather than socialization or stable preferences, it is the economic opportunities available to young women in the workplace that lead some women towards market work, some towards family work, and others towards combining the two sets of responsibilities simultaneously (Gerson,

⁴ The specialization strategy obviously works only for married couples and this model assumes that most individuals expect to get and stay married.

1985; see also Kanter, 1977; Schultz, 1990). Second, researchers have attempted to gauge whether women, particularly wives and mothers, put in less effort (per hour) in their market work. Bielby and Bielby (1988) find evidence that, instead, women report working harder than men in comparable work and family statuses. Mothers of young children do report expending less effort at work than other women, but their effort falls only to the level of men—not below it (Bielby and Bielby, 1988, p. 1048). Third, because sex segregation is a powerful force in the maintenance of gender inequalities at work, sociologists have tried to ascertain whether this segregation arises because mothers seek out less demanding, female-dominated jobs in order to conserve energy for family work, as human capital theory implies. In contrast to the predictions of human capital theory, women without children are just as likely as mothers to work in female-dominated occupations (Tomaskovic-Devey, 1993; Budig and England, 2001; cf. Okamoto and England, 1999). Scholars have also asked whether female-dominated jobs are less demanding and more accommodating of family responsibilities. Glass and Camarigg (1992) report that flexible schedules and the ease of doing the job are the characteristics most closely related to low levels of work–family conflict among parents. But they find that female-dominated jobs are no more likely to have flexible schedules or reported ease. Also, mothers are no more likely than women without children to be in jobs with these traits. These findings suggest that sex segregation is a separate, parallel process that works simultaneously but largely independently of the marginalization of caregivers.

2.2. A Structural Perspective: Gendered Organizations Theory

In contrast to the human capital model, which claims that gender differences in specialization create the sex gap in wages, a structural model argues that organizational practices and processes are at least partially responsible for the inequalities between women and men and between caregivers and unencumbered workers. This argument begins by claiming that organizations operate with old-fashioned, gendered policies, practices, and expectations and that these organizational structures encourage the economic marginalization of caregivers (e.g., Acker, 1990; Williams, 2000; Moen and Roehling, 2005). For example, Acker (1990) provocatively argues that the very category of a “job” reflects and perpetuates gendered divisions between employment and reproductive labor. The concept of jobs and hierarchies of jobs form the basis of organizational theorizing inside and outside of firms, and these theories implicitly assume an abstract worker who fills an abstract job and exists only to fill the job:

The closest the disembodied worker doing the abstract job comes to a real worker is the male worker whose life centers on his full-time, life-long job, while his wife or another woman takes care of his personal needs and his children . . . The woman worker, assumed to have legitimate obligations other than those required by the job, did not fit with the abstract job . . . The concept ‘a job’ is thus implicitly a gendered concept, even though organizational logic presents it as gender neutral. ‘A job’ already contains the gender-based division of labor and the separation between the public and private sphere. (Acker, 1990, p. 149)

Organizations depend on and exploit the reproductive labor done by (female) caregivers while also excluding or marginalizing employees who do significant amounts of that work. Similarly, Williams (2000, p. 5) reviews employers' expectations that "serious" and "committed" and "promising" employees be willing to work long hours, with no breaks in employment or limits on working time, and travel or relocate as requested, and concludes that this "way of defining the ideal worker is not ungendered. It links the ability to be an ideal worker with the flow of family work and other privileges typically available only to men (see also Moen and Roehling, 2005)."

Scholars working with a structural perspective acknowledge that, faced with organizational policies, practices, and assumptions that are based on (privileged White) men's traditional life experiences, some caregivers "choose" to leave the labor force, shift to less rewarding part-time work, and limit their commitment to the organization. But this perspective views these decisions as strategic responses to organizational inflexibility, not unconstrained individual choices.

The structural perspective also suggests that wages and other work rewards do not simply reflect the even-handed assessment of a worker's performance and productivity. Performance and productivity emerge from an organizational context rather than simply reflecting the human capital investments and other traits of an individual worker (Kanter, 1977). An individual's performance or productivity depends on access to training and to good assignments that will allow the employee to develop and show off his or her skills. The implication is that caregivers will be more likely to perform at a high level in workplaces that recognize their skills and do not limit training opportunities and good work assignments to unencumbered, "ideal" workers.

2.3. Employers' Practices

What are the specific policies, practices, and assumptions that penalize caregivers and thereby "gender" organizations in pernicious ways? Many organizations expect employees to work long hours and to follow rigid career tracks. When caregivers do not meet the expectations of the organization, their wages, chances for promotion, and job security may suffer. These expectations obviously vary by occupation as well as by organization, but they affect a wide variety of workers in both low-status and high-status jobs.

Long hours are expected for managerial and professional positions in most organizations, but long hours and unpredictable hours are also part and parcel of many jobs that do not have an obvious "career track." Mandatory overtime increased for many hourly workers in the 1990s (Williams, 2000, p. 8). In some para-professional settings and service sector organizations, workers are expected to be available to clients, patients, or customers at any time—even if they are only employed part-time. For example, in retail organizations that are attractive because they are thought to offer "flexible hours," employees found that they were often pressured to "be available" for any shift that opened up. Workers who tried to maintain some control over their hours and weekly routine were not seen as "team players" and managers regularly penalized

these workers by cutting their shifts and therefore their wages (Waxman and Lambert, 2002). Faced with pressures to work long or unpredictable hours, caregivers may withdraw from the labor force (Stone and Lovejoy, 2004), look for another employer, or limit their work hours and accept marginalization as a reasonable “trade-off”.

Caregivers may also be disadvantaged by rigid career tracks of various types. The up-or-out tenure systems found in colleges and universities and the up-or-out partnership tracks in law firms, accounting firms, and management consulting firms are obvious examples of rigid career tracks. These high-stakes systems require intense investment in work during the early years of one’s career. Because these years are also the normative time for childbearing and raising young children, parents—particularly mothers—often find it difficult to establish their careers in these professions (Hochschild, 1975; Jacobs, 2004). Rigid career tracks may also require relocation in order to get on a career track (as with faculty jobs and medical residencies) or to move along a career track (as with many management positions, including store and restaurant managers in the service sector). If organizations provide very limited family leaves to employees, they are also conveying the message that staying on the career track—and often continuation of employment—requires absolutely no deviation from the pattern of continuous, full-time employment. Leaves may be inadequate if they are very short, if they do not allow a phased return to full-time hours, or if they do not allow paid leave time to be used to care for family members.

Rigid career tracks may exclude caregivers from the beginning by discouraging caregivers from seeking these positions or they may push caregivers off track later, perhaps when a family member becomes seriously ill or when family responsibilities change. The consequences of leaving the career track are often marginalization in a part-time, no-advancement position within the organization or a break in employment, which has the long-term wage consequences reviewed above.

2.4. Changing Policies and Practices

Although scholars of gender and organizations continue to see policies, practices, and assumptions that limit caregivers’ opportunities, many organizations have added “family-friendly” policies to address at least some of these problems. Recent surveys of medium and large organizations find that almost all of these employers now offer a variety of family leaves of various sorts and that a significant minority provide basic childcare benefits and allow flextime hours (Kelly, 2000; Galinsky and Bond, 1998). But do these family policies result in fewer or smaller penalties for caregivers?

The empirical evidence based on U.S. samples is still scant, but there are some hints that changing employers’ policies and practices can improve caregivers’ careers. At the individual level, we know that maternity leaves improve mothers’ wages and occupational status by helping mothers remain in the labor force (Estes and Glass, 1996; Klerman and Liebowitz, 1995; Glass and Riley, 1998; Waldfogel, 1998b). At the organizational level, a recent study found smaller gaps between the wages of mothers and other women among employees of organizations described as “family-friendly”

than among employees of less supportive organizations (Friedman and Greenhaus, 2000, p. 111).⁵ Also, a case study of one large medical organization found no evidence that shifting to part-time work had negative effects on primary care physicians' careers (Briscoe, 2003). Perhaps this organization has avoided penalizing part-time work because (1) the actual work performed is the same for part-time and full-time employees, (2) there are multiple paths to advancement depending on specialty and interest in administration, and (3) highly regarded physicians have always cut back on their clinic hours in order to pursue research or teaching, so there is not a tight conceptual link between working part-time and gendered caregiving responsibilities (Briscoe, 2003).

But "family-friendly" policies may create their own problems. Workers in many organizations perceive that there will be negative career consequences if they use the officially available policies (Blair-Loy and Wharton, 2002; Fried, 1998; Hochschild, 1997). These fears (and the roadblocks created by managers in some organizations (Albiston, this volume)) help explain the relatively low utilization rates in many organizations. Recent studies confirm that these fears are well-founded, at least in some organizations. Glass (2004) followed a cohort of new mothers for several years and found that mothers who used the "family-friendly" arrangements had a slower rate of wage growth than mothers who did not (see also Judiesch and Lyness, 1999; Stafford and Sundstrom, 1996). These findings reveal an economic penalty for taking advantage of family policies and suggest that adding these policies may be only a first step in improving caregivers' careers.

2.5. Beyond Family-Friendly Policies

I argue that caregivers will benefit from family policies most if and when organizations integrate those policies with existing human resources practices, specifically their supervision of the work process and their performance evaluation systems. Yet my interviews in 41 organizations and others' research on the implementation of family policies suggests that most organizations have added family policies without re-examining the way work is done or the way workers are evaluated (Kelly and Kalev, 2003; Fried, 1998; Hochschild, 1997; Rudd, 2001).

Flextime, telecommuting, reduced-hours schedules, and decent family leaves are attractive because they allow workers to work in "non-standard" ways while continuing their employment. However, in many organizations these new options are understood as deviations from the standard system and as "accommodations" available to a favored few (Lee, MacDermid, and Buck, 2000; Kelly and Kalev, 2003). One human resources manager I interviewed worked 85% time, but felt it was important to seem available at any time and eager for any task; for her this meant hiding her part-time status from some colleagues. In response to my question "What about someone who's worked a

⁵ These data are cross-sectional and have fairly crude measures, but this is among the best information we have for comparing the wage gap *across organizations* so far.

reduced schedule for a good long time? Do you think that has long-term penalties?" she replied: "Well, I must think about that because I don't personally advertise the fact that I work part-time." She went on to describe how she avoids the subject with co-workers, even when they are scheduling meetings:

... even if somebody would say, "Well, is that OK with you? I know you work part-time," I will react against that and I'll say "I'm available whenever the team [wants to meet]. I have a flexible schedule and I'm here to work on this project." I don't want them first of all to know [that I work part-time]. If they do know, I don't want them to use that as some kind of reasoning that maybe their schedules need to be adjusted because [someone] works part time, or "Do you even care about this project? You just work part-time. Does it really impact you?" or whatever.

This manager has worked part-time for 15 years and yet she understands her schedule as a deviation from the legitimate expectation that all employees will be available at any time and that their non-work schedules will not influence the team's work process in any way. She believes that other employees will equate her part-time schedule with a lack of interest or investment in projects and, earlier in the interview, she explicitly said she hid her part-time status in order to have a better chance of moving "up the ladder" or getting "more challenge in the assignments." This organization is known nationally for its family-friendly initiatives, but this manager's experiences suggest that the expectation that all employees are full-time, on-site workers is still influential within the organization.

What organizational changes would transform caregivers and other workers on non-standard schedules from deviant employees to normal workers? Re-examining and reforming performance evaluation systems might be a crucial step. Even when organizations have identical family policies, they may differ in how they fit these employees into the existing systems for measuring work performance, assigning work, and distributing rewards such as raises, promotions, and training opportunities. In many organizations, there is no formal guidance on how to incorporate "non-standard" workers into the "normal" system and so there may be extensive variation between supervisors in how they assess the contribution of employees who took a leave, worked part-time, or worked from home. How should the contributions of employees who work part-time be evaluated, in relation to the contributions of those working full-time and over-time? When there are concrete measures of productivity, such as sales or client contact hours, it seems logical to have a pro-rated target for part-time employees, but we do not know whether this measurement strategy is a common practice. When it is more difficult to measure productivity or performance directly, it will be more difficult to weigh the relative contributions of part-time workers or telecommuters who put in less "face time."

Revising performance evaluation systems is especially important now because performance evaluations increasingly determine pay and job security as well as advancement opportunities. Many organizations have moved to "merit pay" and "pay for performance" systems in the last 20 years, and perhaps a third of American organizations

have done away with across-the-board or seniority-based pay increases altogether (Cappelli, 1999, p. 150). Performance evaluations increasingly affect job security too, because more companies are instituting forced ranking, where all employees in a group or team are numerically ordered from “best to worst” and the employees near the bottom of the list are “counseled out” or marked as targets of any future downsizing (*Time*, 2001; Gladwell, 2002). Forced rank systems (nicknamed “rank and yank” systems) are likely to be as susceptible to bias as other performance evaluation practices, particularly if the measures of productivity or performance are vague or subjective. It is easy to imagine that those who limit their travel, refuse to work much overtime, or shift to part-time schedules or telecommuting arrangements will not do well in these tough performance evaluation systems, particularly because few organizations explicitly tell supervising managers how to count the contributions of those who take advantage of these new work arrangements.

In addition to marginalizing those who use family policies or work part-time, performance evaluation systems often fail to question what counts as work in the first place and ignore important skills and behaviors traditionally associated with women. Although organizations increasingly emphasize teamwork and empowering workers, the actual work of keeping a team functioning is generally seen as “extra” work if, indeed, it is recognized as work at all. This work includes the emotional labor of reassuring peers and supervisors that they are doing well, encouraging discouraged team members, and winning cooperation from reluctant superiors, co-workers, or subordinates as well as the training, mentoring, and coordination work needed to empower other workers (Fletcher, 1999). This “relational practice” (to use Fletcher’s term) or “capacity-building work” (in my terminology) is ignored and devalued partly because of its association with femininity. Instead, “individual” achievements carry the most weight in assessments of employees’ performance and productivity even if those achievements require collaboration, support, and guidance from others whose contributions are soon forgotten or hidden (Ely and Meyerson, 2000; Fletcher, 1999; Rappoport et al., 2001). The devaluation of capacity-building work may affect women disproportionately, if they are more likely to devote time and energy to this work (Fletcher, 1999). The discounting of this work could conceivably affect caregivers disproportionately as well; these employees may have highly developed skills in negotiating, coordinating, and mentoring that are not recognized as valuable within the organization.

3. DISCRIMINATION AGAINST CAREGIVERS? POSSIBLE LEGAL CLAIMS

If we believe that the economic marginalization of caregivers is largely, or even partially, caused by organizational practices, policies, and assumptions and that many of these practices, policies, and assumptions are no longer rational responses to business

needs (if, indeed, they ever were), then we should encourage organizations to change these practices, policies, and assumptions. Anti-discrimination law is one possible tool—although not the only tool (Gornick and Meyers, 2003; Rapoport et al., 2001) or necessarily a manageable tool (Edelman, this volume)—for inducing organizational change. Indeed, in response to the marginalization of caregivers, legal scholars in the U.S. have proposed either using existing sex discrimination law or creating new laws that require reasonable accommodation of caregivers in order to prompt organizational changes.⁶

3.1. Sex Discrimination Law and Caregivers

To make sex discrimination claims about practices that marginalize caregivers, advocates emphasize the disproportionate representation of women in the group of caregivers and/or argue that the marginalization of caregivers is gender discrimination even when it affects men because male caregivers are punished for enacting a traditionally feminine role (Williams, 2000; Williams and Segal, 2003). Claims of disparate treatment based on “sex-plus” family status have some potential for challenging the marginalization of caregivers. The famous *Phillips v. Martin-Marietta* case, in which the Supreme Court recognized the sex-plus disparate treatment theory of sex discrimination, involved an employer who refused to hire mothers (but not other women or fathers) for certain jobs because of worries about their child care arrangements. Disparate treatment cases require evidence of discriminatory intent, such as “smoking gun” comments by decision-makers. Because norms of polite conversation and perhaps the forms of discrimination have changed in recent decades, it is now rare to have this kind of evidence (Krieger, this volume). However, some decision-makers still make surprisingly blunt comments about working mothers (Williams and Segal, 2003; cf. Chamallas, 1999). For example, in *Santiago-Ramos v. Centennial P.R. Wireless Corp* (217 F.3d 46 (1st Cir. 2000)), a high-level, female manager was asked to comment on a company hiring profile that excluded mothers from certain positions. A vice-president in the organization told her the “profile was ‘nothing against you,’ but that he preferred unmarried, childless women because they would give 150% to the job” (217 F.3d 46 [1st Cir. 2000], p. 51; cited in Williams and Segal, 2003). Also, in *Moore vs. Alabama State University*, (980 F. Supp. 426; Williams and Segal, 2003), an admissions officer applied for but was not chosen for the vacant position of Admissions Director. When she was visibly pregnant, a university officer who played a central part in the hiring decision told her, “I was going to put you in charge of the office, but look at you now” (980 F. Supp. 426, p. 431; also cited in Williams and Segal, 2003).

⁶ Advocates for caregivers in other nations are less likely to turn to anti-discrimination law as a vehicle for changing the workplace because they have much more extensive public policies and benefits for parents and other caregivers with which to work (see Gornick and Meyers (2003) for a thorough review of family policies in other industrialized nations).

An April 2004 decision by the Second U.S. Circuit Court of Appeals illustrates the potential of disparate treatment claims under the Equal Protection Clause of the 14th Amendment, in addition to claims made under Title VII of the Civil Rights Act of 1964. In *Elana Back v. Hastings-on-Hudson Union Free School District* (365 F.3d 107), the appellate court allowed a school psychologist who was denied tenure to proceed with her case against her former principal and the school district's former personnel director. Back alleged that, after she returned from maternity leave, her supervisors began to question her devotion to the job and her willingness to put in the long hours that they believed the position required. The supervisors allegedly suggested that she wait a few years to have another child, stated that her job was not appropriate for a mother because of its long hours, and questioned her devotion to the job over the long run because of her family commitments. The Appeals Court found that this case:

asks whether stereotyping about the qualities of mothers is a form of gender discrimination, and whether this can be determined in the absence of evidence about how the employer in question treated fathers. We answer both questions in the affirmative.

Although the district court eventually ruled against Back, the Second Circuit Court's recognition of discriminatory stereotyping of mothers received significant attention in the press and among human resources managers (Crary, 2004; Kleinman, 2004; Vuocolo; 2004), as I discuss below.

Disparate treatment theory is limited, though, because successful plaintiffs are usually mothers who were willing, able, and eager to meet the job requirements—including working long hours, traveling, etc.—rather than caregivers who argued that expectations of long, unpredictable hours were unnecessary in the first place and discriminatory as well. Sex-plus disparate treatment cases may help female caregivers who actually function as “ideal workers”—like Elana Back who reportedly put in the expected hours and received excellent performance evaluations—but this theory has been less successful in making jobs more amenable to caregiving (Kessler, 2001) or improving the work conditions and rewards in part-time jobs (Chamallas, 1986).

Title VII's disparate impact theory, which holds employers accountable for facially neutral practices that disproportionately disadvantage workers in protected categories, may also be useful for (female) caregivers making discrimination claims. As Travis (2003, p. 341) notes:

This model focuses on inequitable results, and does not require discriminatory intent. Accordingly, this model appears well-suited to address aspects of women's inequality that stem from basic, structural aspects of the workplace that help to create, retrench, or magnify women's work/family conflicts.

Disparate impact theory explicitly invites the examination and interrogation of employers' existing policies and practices and thereby creates the possibility for changing those policies and practices in ways that may benefit women and/or caregivers.

Disparate impact claims have had some success challenging restrictive leave policies that disproportionately affect women because they are more likely to need time

off due to childbirth (e.g., *Abraham v. Graphic Arts International* [660 F.2d 811 [D.D.C. 1981]], *EEOC v. Warshawsky & Co.* [768 F. Supp. 647 [N.D. Ill. 1991]]). Disparate impact discrimination claims—or more accurately, the possibility of them and public claims that inadequate maternity leaves are discriminatory—prompted many employers to adopt new leave policies in the 1970s and early 1980s, even though the courts were divided in their acceptance of these arguments (Kelly and Dobbin, 1999). Similar arguments might be used to challenge restrictions on part-time work, working from home, or working rigid hours. There are active cases challenging the limited promotion opportunities for part-time workers and those using flexible work arrangements (Williams and Segal, 2003), but the potential of disparate impact theory for caregivers is not yet clear.

Applying disparate impact theory to caregivers may be challenging because many courts have a narrow conception of what constitutes “a particular employment practice” (Travis, 2003). Employers’ institutionalized and entrenched practices do not feel like chosen “practices” but like “the way things are done.” In other words, they are taken-for-granted and assumed to be rational and efficient responses to real demands on the organization. The rigid career track is one such institutionalized system that affects caregivers, who are disproportionately women. Organizations assume that workers who do not work full-time (and overtime), year-round, with no breaks in employment are legitimately excluded from certain jobs and from moving to higher positions within the organization. Employers and, often, the courts see this as “the way things are done” and not as optional ways of organizing work and work rewards (cf. Nelson and Bridges, 1999). While these institutionalized practices do not necessarily reflect conscious decisions by organizational actors, they are nonetheless actions that can be made conscious when employees or peer organizations present alternative possibilities. For example, requiring all incumbents of a certain job to work at least 40 hours per week is an action on the employer’s part. It may not be a conscious action until and unless an employee requests a part-time schedule, but it is still an employment practice. After the employee makes a request or after the employer learns that peer organizations are allowing part-time schedules in comparable positions, the choice to continue that exclusionary practice is more obviously a choice and therefore it is more obvious that courts could scrutinize that practice using disparate impact theory.

An additional difficulty with disparate impact cases brought by marginalized caregivers is the need to establish that women, or mothers, are *disproportionately* disadvantaged by a given employment practice if there are no men, or women without children, who are similarly situated (Travis, 2003, pp. 345–349). The preponderance of sex-segregated jobs can make it difficult to find men in similar situations. Courts may ask: Are the employees who work a reduced-hours schedule or who work from home treated differently than full-time, on-site workers *doing the same job*? Plaintiffs may not be able to meet this requirement for showing disparate impact because the marginalization of non-standard workers occurs *through* the assignment of tasks and the definition of jobs (Williams, 2000). Many part-time workers are given slightly

different work to do—often more routine and sometimes less challenging work. Yet, it is precisely the practice of assigning part-time employees, who are more likely to be women, different work and refusing to promote part-time employees that might be challenged using disparate impact arguments.

3.2. Reasonable Accommodation of Caregiving

Enacting a new anti-discrimination statute requiring reasonable accommodation of caregiving could also challenge the work practices that marginalize caregivers. This statute could be modeled on anti-discrimination laws that target people with disabilities or on the religious accommodation provisions in Title VII (Kessler, 2001; Travis, 2003). Employers would be required to “accommodate” caregivers’ needs through flexible work arrangements or other revisions of current work practices unless those changes are shown to be unreasonable. As Travis (2003, p. 324) notes: “The accommodation concept is appealing because it explicitly recognizes that the workplace is mutable.” Furthermore, this approach is gender neutral and so it is more easily applied to men, as well as to workers of either sex who are caring for seriously ill or disabled relatives, elderly parents, or other loved ones outside a narrowly defined family.

Australia now has legislation along these lines.⁷ Both federal sex discrimination law and statutes in most Australian states prohibit discrimination on the basis of employees’ family responsibilities or “carers’ responsibilities” (Bourke, 2004). The New South Wales legislation, modeled on disability statutes, requires employers to make “reasonable accommodation” unless the caregiving employee is “unable to carry out the inherent (or essential) requirements of the job” or unless such changes would constitute “unjustifiable hardship” for the employer (Bourke, 2004, pp. 33–35). The law includes direct and indirect discrimination, which parallel the American concepts of disparate treatment and disparate impact discrimination. Recent Australian case law reveals “a general willingness to interpret carers’ responsibilities legislation broadly and beneficially” (Bourke, 2004, p. 38). It has been surprisingly difficult for employers to defend themselves with claims that standard work practices are essential job requirements or business necessities. Tribunals and courts have required employers to allow part-time work and job-sharing in professional and management positions, to set up telecommuting arrangements, to reinstate an employee who was terminated after she refused to work overtime on short notice, and to experiment with flexible schedules when it was not clear whether or not a new schedule would be feasible in a given job (Bourke, 2004, pp. 39–58). In short, the presumption has been that new work arrangements should be allowed except in unusual situations.

⁷ Australia, the country that has arguably gone the farthest in incorporating caregivers into anti-discrimination law, ranks with the U.S. as the only developed countries that do not provide paid leave to new parents. This suggests that advocates may focus on anti-discrimination law in the absence of more direct means of meeting caregivers’ needs.

4. CONCLUSION: WOULD IT WORK?

Would these legal developments inspire organizations to change their policies, practices, and expectations? And would those organizational changes reduce or eliminate the economic marginalization of employed caregivers? My own assessment, based on studies of organizational responses to other anti-discrimination laws and current thinking about the impact of employers' anti-discrimination programs on employees' careers, is that legal changes would provide a new framework for understanding the experiences of caregivers, alter the negotiations between employees and employers, and prompt many organizations to add or elaborate their "family-friendly" policies. However, those policies, on their own, would not erase the economic and occupational penalties that caregivers face.

Legal claims that existing organizational practices, policies, and assumptions can constitute discriminate against caregivers would transform current understandings of caregivers' place in the workplace. My interviews and analyses of the popular and business press reveal that employers, commentators, and probably most employees conceptualize "work-family conflicts" as individual problems rather than a broader social and organizational problem (Kelly, 1999; Moen, 2003; Williams, 2000). The solutions offered include teaching employees to better "juggle" their work and family roles or providing minimal "accommodations" if and when these adjustments are convenient and attractive to managers. "Discrimination talk" can be a powerful tool for challenging these privatized understandings of the problem (Williams, 2000; Williams and Segal, 2003), even if relatively few cases are successful in the courts (Stryker, 1994; McCann, 1994). The cultural power of law is that it can de-legitimize previously unquestioned actions and assumptions and suggest new actions and identities (see Albiston, this volume). A working mother who feels scattered, stressed, and guilty about asking her employer to let her change her hours or work from home can be transformed (in theory, at least) into a caregiver who views her own situation as part of larger social changes in family life and the economy, expects reasonable accommodations at work, and labels her employer's intransigence as discrimination.

Recent history suggests that legal recognition of discrimination against caregivers would lead many organizations to add or improve their "family-friendly" policies, such as family leaves and flexible work arrangements. Previous expansions of anti-discrimination law prompted the widespread adoption of many common policies and practices, including formal job descriptions, formal performance evaluations, job ladders, equal opportunity statements, grievance procedures, diversity policies, sexual harassment training, as well as new staff positions (Dobbin, et al., 1993; Dobbin and Kelly, 2005; Dobbin and Sutton, 1998; Edelman, 1990; Edelman, 1992; Edelman et al., 1999). Because the Civil Rights Act of 1964 and other anti-discrimination statutes are quite ambiguous (Edelman, 1992), there is a collective, iterative process in which employers and their agents propose certain responses to the new (or newly reinterpreted) law and then courts and regulatory agencies comment on these practices and policies.

Those practices and policies that judges and regulators accept as signals of compliance diffuse widely, although managers often downplay their efficacy as legal signals and present these actions as rational responses to economic conditions.

These studies lead me to expect that new understandings of sex discrimination law or the passage of a law requiring reasonable accommodations for caregivers would spur the diffusion of new “family-friendly” policies and perhaps the elaboration of existing policies because employers would want to signal their attention to and compliance with the new legal environment with some organizational change. In fact, this process occurred in the 1970s when maternity leave was popularized after women’s movement advocates, the Equal Employment Opportunity Commission, and some lower courts claimed that a failure to provide maternity leave constituted sex discrimination (Kelly and Dobbin, 1999). The Supreme Court did not accept this argument in the 1976 *General Electric v. Gilbert* case, but employers had already responded to the lower court decisions and to the media’s framing of maternity leave as an equal opportunity issue (Kelly and Dobbin, 1999).

The early press coverage of *Back v. Hastings-on-Hudson Union Free School District* suggests that employers might make changes in organizational policies and practices in response to claims about discrimination against caregivers. Even though the Second Circuit Court of Appeals simply returned the case to the district court, the case has got attention in many newspapers (e.g., Crary, 2004; Kleiman, 2004; Vuocolo, 2004) and it may help employees and employers reframe “work-life issues” as a legal matter. The Associated Press story about the Back case introduces scholar Joan Williams’ concept of “the maternal wall,” as a parallel to the glass ceiling, and quotes Williams as saying that “discrimination against parents and other caregivers” is “a new battleground” (Crary, 2004). It is not clear what lessons human resources managers will see in this case, but previous studies suggest that the lessons applied by managers may not mirror the actual risk of liability or the meaningful changes in the legal doctrine (Edelman et al., 1993; Edelman et al., 1999). For example, none of the articles that I have located note that the Second Circuit Court agreed with the district court that the school district and school superintendent are not responsible for the alleged discrimination in this case although other school officials may be. Instead, the articles emphasize what organizations should do to avoid similar claims. The Associated Press article identifies five different responses that employers might take, including offering flexible work arrangements to more employees, expanding existing EEO policies to cover caregivers, and training supervisors that bias against caregivers is unacceptable (Crary, 2004). One human resources manager shared with me that she will now incorporate the facts of the Back case in her “coaching sessions” about how supervisors can avoid “inappropriate conversations around marital status, religion, and age.”

Yet there are several reasons to believe that the organizational changes prompted by changes in discrimination law would not erase the inequalities between caregivers and other workers. First, when organizations respond to anti-discrimination law, they do not simply follow the instructions laid out in the law. Instead, they help construct the meaning of the law by developing policies and programs that they then present as

signals of compliance. In this process, managers (or their attorneys and consultants) try to maintain managerial discretion as much as possible and thereby create non-threatening, if not quite empty, gestures of compliance (Edelman, 1992; Edelman, this volume; Edelman et al., 1993; Edelman et al., 1999; Kelly, 2003). Second, employers often do not have strong incentives to create meaningful changes. Research has not yet shown whether these policies are empty gestures or not, but courts often give employers the benefit of the doubt if they have the expected policies in place. Scholars find it difficult to study the effects of organizational policies on protected categories of workers (cf. Reskin and McBrier, 2000; Kalev et al., 2004) and employers either do not pursue these questions or do not share the results. Legal scholars suggest that employers avoid evaluating the effectiveness of their anti-discrimination policies because they fear such information could be used against them in court (Bisom-Rapp, 1999; Sturm, 2001, p. 461). Ironically, courts often accept employers' claims of compliance without significant analyses of actual data (Nelson and Bridges, 1999; Sturm, 2001). Third, there may be concerted resistance to the kinds of changes that would help caregivers. Previous changes related to anti-discrimination law have focused on the margins of organizational life—policies and procedures for hiring, firing, and the handling of disputes—rather than the work process itself or the system of allocating rewards. It seems likely that there would be greater resistance to changes in these domains of work. Indeed, researchers find significant resistance to changing the way work is done, as required by the Americans with Disabilities Act (Harlan and Robert, 1998; Travis, 2003), and to granting workers time off, as required by the Family and Medical Leave Act (Albiston, this volume).

Still, some scholars find hope in recent legal developments and in the changes occurring in some progressive organizations.⁸ For example, Sturm (2001) argues that the old-fashioned, rule-based, court-centered regulatory system is not a good match for the “second generation discrimination” that arises from cognitive bias, institutionalized structures of decision-making, and unquestioned patterns of interaction rather than deliberate racism or sexism. But she sees a new system of enforcement emerging, which emphasizes “problem-solving” over “gestures of compliance” and attempts to help employers manage a complex workforce in addition to avoiding bias. In this system, compliance is understood as the “capacity to identify, prevent, and redress exclusion, bias, and abuse” (p. 463).

In this new system, each organization would develop or customize its policies and practices but the reforms would have several traits in common. According to Sturm (2001, p. 519), organizations' equal opportunity and diversity initiatives should be (1) problem-oriented (i.e., created to respond to an organizationally defined problem as well as to broad anti-discrimination concerns), (2) functionally integrated with

⁸ Some organizational scholars are hopeful about “dual agenda” interventions that attempt to reduce gender inequalities while promoting organizational efficiency and effectiveness (Rappoport et al., 2001; Perlow, 1997; Ely and Meyerson, 2000). These studies make it clear, though, that such changes in organizational life require enormous investments of time and energy and change if often short-lived.

other systems in the organization, (3) data driven with many opportunities for the organization to evaluate its own progress towards its goals, and (4) accountable to external actors, such as the courts, as well as to internal constituencies affected by the practices. Managerial discretion would be maintained, in some form, but it would be limited by concrete procedures and by the possibility of being held accountable for inequitable outcomes as well as discriminatory motives (see also Reskin, 2003).

If anti-discrimination enforcement moved in these directions and if anti-discrimination law was expanded to include caregivers as a protected category of workers, we could very well see organizations that (1) recognize the marginalization of caregivers as an inefficient use of human resources as well as a potential source of legal liability, (2) seriously re-evaluate the way work is done and the way workers are evaluated in light of the needs and experiences of caregivers, (3) periodically evaluate the place of caregivers within the organization to be sure workers are not penalized for taking advantage of leaves, telecommuting, reduced hours schedules, and other new arrangements, and (4) know they must attend to all these tasks or face criticism and sanctions from their workers, the public, and the courts. If anti-discrimination law worked like that, we could very well see significant improvements in caregivers' careers. We are not there yet.

SECTION V

Social Psychology of Bias