

1-1-1996

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Recommended Citation

Twila L. Perry, Symposium, *Family Values, Race, Feminism and Public Policy*, 36 SANTA CLARA L. REV. 345 (1996).
Available at: <http://digitalcommons.law.scu.edu/lawreview/vol36/iss2/5>

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FAMILY VALUES, RACE, FEMINISM AND PUBLIC POLICY

Twila L. Perry*

I. INTRODUCTION

In recent years, the term "family values" has become a rallying cry against the increase in nontraditional families in this country. Much of the recent public discourse about women who bear children outside of marriage seems to reflect an underlying assumption that appropriate values are something these women simply do not have. An alleged decline in values, often represented in the media by families headed by single mothers, and especially black single mothers, has been blamed for a myriad of social problems, including unemployment, poor health, school drop-out rates and an increase in juvenile crime.¹ Since the blame for these problems has been placed on "the breakdown of the traditional family," it is not surprising that many people have concluded that the logical solution to the problem is the reunification of the traditional family structure.² It is assumed that this will return the country to an earlier era, the "good old days," in which values

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1. See, e.g., Joan Beck, *Nation Must Stem the Tide of Births Out of Wedlock*, TIMES PICAYUNE, Mar. 6, 1993, at B7 (blaming childbearing by unmarried women for crime, poor health and poor educational achievement among children); Andrew Rosenthal, *After the Riots, Quayle Says Riots Sprang from a Lack of Family Values*, N.Y. TIMES, May 20, 1992, at A1; Charles Murray, *No Point Fiddling with Welfare at the Margin*, SUNDAY TIMES (London), July 11, 1993, § 1, at 13 (citing an argument that blames births to single mothers for a rise in crime and unemployment, and a decline in the "overall civility of social interaction").

2. See, e.g., Martha L. Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 289-93 (1991) [hereinafter *Images of Mothers*] (discussing poverty discourses as centering around the image of the missing male).

were presumably different and better. Consistent with such thinking, recent years have seen an increase in governmental programs and policy proposals at both the local and national levels aimed at bolstering the traditional family structure, or otherwise encouraging what are presumed to be "family values."³

As part of this symposium on "Ethics, Public Policy and the Future of the Family," this article will explore the role of race in the current family values rhetoric. The premise of this article is that attitudes toward the structure, value and function of families do not exist in a vacuum but are a reflection of context, perspective, and power. Race plays a role in each of these factors. Because the role of black mothers is central to any discussion of public policy and the black family, this article also analyzes the intersection of racism and sexism in the current rhetoric.

This article begins with an exploration of the way in which values about family as well as the value of families themselves have often, in this country, been affected by the factor of race.⁴ Then, the discussion goes behind the rhetoric of "family values" to expose some of the specific ways in which this discourse is influenced by both racism and sexism.⁵ The next part of this article, comprised of three sections, provides a specific critique of the family values rhetoric. The first section explores some of the problems with focusing on private family values as a solution to public problems.⁶ The second

3. See, e.g., H.R. 4605, 103d Cong., 2d Sess. § 104 (1994) (amending Title IV-A of the Social Security Act, the Work Responsibility Act would place a 24 month limit on AFDC benefits to some households). The New Jersey legislature recently eliminated the increase in AFDC benefits as a result of the birth of additional children. N.J. STAT. ANN. § 44:10-3.5 (West 1994). In addition to this kind of family cap provision, a number of states have proposed or enacted "bridefare" provisions, and/or incentives for women on welfare to use Norplant. See generally Lucy Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719 (1992) (discussing learnfare, bridefare and family cap provisions). Under the Federal Personal Responsibility Act, states would be forbidden by the federal government from providing welfare payments to any child born to an unmarried woman under 18-years-old. The preamble to the Act states that the purpose of the Act is to "restore the American family, reduce illegitimacy, control welfare spending and reduce welfare dependence." Personal Responsibility Act, H.R. 4, 104th Cong., 1st Sess. § 105 (1994).

4. See *infra* part II.

5. See *infra* part III.

6. See *infra* part IV.A.

section illustrates the subjective nature of the values touted in the family values rhetoric by showing how one of the prime issues in that rhetoric — the value of work — is constructed in accordance with racial and gender hierarchies.⁷ The last section of this part discusses the way in which blacks as a subordinate group must often use independent judgment about majoritarian values, and create and pass on to their children values that are alternatives to, or even in opposition to, those of the larger society.⁸

In building on the themes of family, race, gender and values, the final part of this article discusses some of the challenges for feminists who seek a larger role for women in shaping public policy towards the family.⁹ These challenges include clarifying the relationship between family and patriarchy, deciding what values about family structure they wish to pass on to the next generation, and thinking more about the intersection of patriarchy, class and race.

The discussion in this article offers neither a specific theory nor a blueprint for a solution to the challenges of public policy this country must confront as the demographics of family life undergo rapid change. The goal is a more limited one — to expose some of the hypocrisy behind the current family values rhetoric and to stimulate thinking about ways to reconstruct our attitude toward family structure.

II. PUBLIC POLICY, BLACK FAMILIES AND FAMILY STRUCTURES

Although traditional formal marriage and the ideal of the nuclear family is promoted in the rhetoric of family values, historically, the extent to which this society has valued formal marriage has not been governed by some consistent standard that has equally supported the nuclear family structure throughout society. In the history of this country, formal public policies and institutionalized racism have acted in tandem to force many black families to develop alternatives to the traditional nuclear family structure.

During slavery, the government condoned and/or promoted a system in which marriage and family among slaves

7. See *infra* part IV.B.

8. See *infra* part IV.C.

9. See *infra* part V.

had no legal status.¹⁰ Slave parents had no recognized authority over the children to whom they gave birth; slave children were subject to sale by their owners.¹¹ Indeed, as Professor Orlando Patterson has noted, all slavery involves what he calls "natal alienation," the deprivation of rights or claims of birth, of claims on or obligations to parents, and of connection to living blood relations, ancestors or descendants.¹²

As one judge in North Carolina in 1853 described the legal status of marriage between slaves:

[O]ur law requires no solemnity or form in regard to the marriage of slaves, and whether they "take up" with each other by express permission of their owners, or from a mere impulse of nature, in obedience to the command "multiply and replenish the earth" cannot, in the contemplation of the law, make any sort of difference. . . .¹³

During slavery, the idea of what constitutes a family was manipulated through race to serve the slavemasters' economic interests. Thus, the legal principle was developed that the status of a slave child followed that of the mother. By such a rule, slaveowners owned as slaves their own children whom they had conceived through black slavewomen.¹⁴

The choice of whether to accord any respect to a slave marriage was a matter of individual discretion for the slaveowner. Ironically, some slaveowners did encourage marriage among their slaves and chose to respect the integrity of those marriages. However, when this was done it was often not a question of morality, but one of practicality. Respecting the marriages of slaves by not separating husbands from wives or parents from children often functioned effectively as a method of social control. The threat of sale of a spouse or children could be used to discourage a slave from running away or engaging in other rebellious behavior.¹⁵

10. ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH 189-90* (1982); Anita Allen, *Surrogacy, Slavery and the Ownership of Life*, 13 HARV. J.L. & PUB. POL'Y 139, 140-44 (1990).

11. Allen, *supra* note 10, at 5.

12. *Id.*

13. HERBERT G. GUTMAN, *THE BLACK FAMILY IN SLAVERY AND FREEDOM* 52 (1976).

14. See A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 GEO. L.J. 1967, 1971 (1989).

15. See, e.g., JOHN BLASSINGAME, *THE SLAVE COMMUNITY 170-77* (1979); Barra Omolade, *The Unbroken Circle: A Historical and Contemporary Study of*

The institution of slavery had a profound effect on the structure of black families. One consequence was the development of the single mother family.¹⁶ The origin of such families was in white male sexual exploitation of female slaves, and the breakup of slave families by the sale of the husband and father.¹⁷ During the decades after slavery, single mother families continued to be formed as a result of a variety of factors, including hard economic times, husbands who died or were killed, and men and women moving from place to place in search of work.¹⁸ Between 1880 and 1915, between twenty-five and thirty percent of urban black families were headed by females.¹⁹

Specific government policies during different periods encouraged the breakup of black families. For example, until the late 1960's, "man-in-the-house" welfare rules denied aid to a mother who was associating with a man, especially if the man lived in her home.²⁰ Although today black families have the same formal status under the law as other families, the persistence of racism often leaves black families subject to many of the same pressures they were forced to cope with in slavery. Race-based economic injustice, as well as changes in the marketplace and technological developments, have had a widespread effect on employment opportunities and a disproportionate effect on black men,²¹ preventing many of them from being able to earn a living sufficient to support a family.²² Sociological research has demonstrated the relation-

Black Single Mothers and Their Families, 3 WISC. WOMEN'S L.J. 239, 247 (1987).

16. See generally ANDREW BILLINGSLEY, CLIMBING JACOB'S LADDER: THE ENDURING LEGACY OF AFRICAN AMERICAN FAMILIES 101-11 (1992) (discussing the interaction of slavery and African tradition in the development of the role of the mother in black families); Omolade, *supra* note 15.

17. See generally Omolade, *supra* note 15, at 247, 250.

18. *Id.* at 250-54.

19. JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK AND THE FAMILY FROM SLAVERY TO THE PRESENT 113 (1985).

20. FRANCES F. PIVEN & RICHARD A. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE 127 (1971).

21. WILLIAM J. WILSON, THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY (1987); James H. Johnson & Melvin L. Oliver, *Economic Restructuring and Black Male Joblessness in U.S. Metropolitan Areas*, 12 URB. GEOGRAPHY 542, 542, 559 (1991) (discussing impact of the restructuring of the U.S. economy on black male unemployment).

22. Rates of black male unemployment consistently exceed those of white males. When black men are employed they earn much less money than white men. For example, in 1990 the median income for white men was \$21,170 per

ship between male employment and family formation.²³ The bleak employment situation of black males has been compounded by a higher number of women than men in every age group over fifteen, and the fact that the number of black men that would have otherwise been available for marriage has been decimated by drugs, violent crime, and incarceration.²⁴ The result has been a decline in the rate of marriage between black men and women.

Thus, black families are continuing to adapt through the structure of female-headed families.²⁵ Through the years, in the eyes of the larger society, this adaptation has often been construed as a failure of values and morality. Thus, the black family has been described as a "tangle of pathology"²⁶ and black women have been described as matriarchs,²⁷ a term

year, while for black men it was only \$12,868. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, CURRENT POPULATION REP., THE BLACK POPULATION OF THE UNITED STATES 453 (1992). See generally YOUNG, BLACK AND MALE IN AMERICA: AN ENDANGERED SPECIES (Jewelle Taylor Gibbs ed., 1988) (examining the social, historical and economic conditions that contribute to the employment, education, health status, and involvement with the criminal justice system of young black males); Dionne J. Jones & George Harrison, *Fast Facts: Comparative Views of African-American Status and Progress*, in THE NATIONAL URBAN LEAGUE: THE STATE OF BLACK AMERICA 213 (1994) (comparing white and black males with respect to levels of education, participation in the labor force, income, poverty and rates of death).

23. See, e.g., Mark Testa & Marilyn Krogh, *The Effect of Employment on Marriage Among Black Males in Inner City Chicago*, in THE DECLINE IN MARRIAGE AMONG AFRICAN-AMERICANS: CAUSES, CONSEQUENCES AND POLICY IMPLICATIONS 59 (M. Belinda Tucker & Claudia Mitchel-Kernan eds., 1995) (demonstrating that black male employment is positively related to marriage rates and black males with stable employment are twice as likely to marry as black men who are not in school, in the military, or otherwise employed.) William Julius Wilson has observed that "[p]erhaps the most important factor in the rise of black female headed families [is] the extraordinary rise in black male joblessness. . . . [B]lack women nationally, especially young black women, are facing a shrinking pool of 'marriageable' (i.e. employed) black men." WILSON, *supra* note 21, at 104-05.

24. William A. Darity, Jr. & Samuel L. Myers, Jr., *Family Structure and the Marginalization of Black Men: Policy Implications*, in THE DECLINE IN MARRIAGE AMONG AFRICAN-AMERICANS: CAUSES, CONSEQUENCES AND POLICY IMPLICATIONS 263, 263, 265 (M. Belinda Tucker & Claudia Mitchel-Kernan eds., 1995).

25. See, e.g., Omolade, *supra* note 15, at 239 (tracing the history of black woman-headed families from slavery through the present); see also BILLINGSLEY, *supra* note 16.

26. DANIEL P. MOYNIHAN, OFFICE OF POL'Y PLANNING & RESEARCH, U.S. DEP'T OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION 29 (1965).

27. *Id.* at 29-31.

generally not used to describe white single mothers or white wives who earn more than their husbands.

Rather than the country considering it an ethical and moral imperative to develop public policies to address the systemic societal conditions responsible for the circumstances of black families, black families have been blamed for their own condition and have been made the scapegoat for problems plaguing the black community. Indeed, programs which have the potential to increase black economic empowerment, such as affirmative action, and programs providing educational opportunity or job training are being slashed rather than enhanced. In light of current economic and political realities, the possibility that the black family will return in large numbers to the traditional structure seems increasingly remote.

III. RACISM AND SEXISM IN THE FAMILY VALUES CONTROVERSY

One of the main reasons for the current attack on single mother families is the belief that these families are responsible for dramatic increases in the costs of welfare, and in particular, the costs of the AFDC Program.²⁸ There also seems to be a growing belief that when people resort to AFDC it is not a temporary status, but instead leads to generations of welfare dependency, crime, and low academic achievement.²⁹ In other words, there is a view currently in vogue that families on AFDC, by their very structure, are a drain on society and are incapable of passing on good family values.

Some of these perceptions can be addressed briefly because they are based on clear factual misconceptions. Contrary to a common perception, the AFDC program represents

28. For statistics detailing the costs of AFDC between 1970 and 1990, see STAFF OF HOUSE COMMITTEE ON WAYS AND MEANS, 103D CONG., 2D SESS., OVERVIEW OF ENTITLEMENT PROGRAMS 325 (Comm. Print 1994).

29. Statistics have shown that after the time of first enrollment, 30% of the individuals on AFDC are on it for less than three years, and 20% are on it for three to four years. See David E. Rosenbaum, *Welfare: Who Gets It? How Much Does It Cost?*, N.Y. TIMES, Mar. 23, 1995, at A23. Some conservatives have begun to argue that there is a genetic component to the likelihood of certain people becoming welfare recipients. See RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN FAMILY LIFE* (1994) (arguing that higher fertility rates of groups with lower average intelligence helps to perpetuate welfare dependency).

only a tiny percentage of the federal budget.³⁰ Similarly, the link of AFDC to nonmarital mothers is overstated. Divorced mothers constitute nearly half of those on welfare.³¹ Most mothers receiving welfare are not teenagers, and the average family on welfare has two children or fewer.³² Also ignored in the attack on mothers on welfare are the extensive governmental subsidies given to middle-class families such as tax benefits, mortgage interest deductions, and educational loan assistance programs.³³

The alleged loss of family values, of which the single mother family has become a symbol, is posed as an issue of ethics and to some extent, economics. However, it is clear that the current rhetoric also has strong roots in two major structures of subordination in this society — racism and sexism.

Racism is implicated in a number of ways in the family values debate. Although the phrase "family values" is often used to decry an alleged loss of values in society generally, the phrase also has a lurking racial subtext. The term "family values," linked as it often is with welfare and single motherhood, easily becomes a code word for race just as "welfare dependency," "inner city," and "the urban underclass," have.³⁴ There is an implication that black families, especially those headed by single mothers, do not share the values of the rest of society and do not pass on to their children the kinds of values that most Americans believe are important.

30. The federal share of the costs of the AFDC program is only about 1% of the federal budget. STAFF OF HOUSE COMMITTEE ON WAYS AND MEANS, 103D CONG., 1ST SESS., OVERVIEW OF ENTITLEMENT PROGRAMS 679, 1749 (Comm. Print 1993).

31. STAFF OF HOUSE COMMITTEE ON WAYS AND MEANS, 103D CONGRESS, 1ST SESS., OVERVIEW OF ENTITLEMENT PROGRAMS 725 (Comm. Print 1993).

32. Joel Handler, *Two Years and You're Out*, 26 CONN. L. REV. 857, 861 (1994).

33. See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 191 (1995) [hereinafter *THE NEUTERED MOTHER*]. See generally ROBERT E. GOODIN & JULIA LE GRAND, *NOT ONLY THE POOR: THE MIDDLE CLASSES AND THE WELFARE STATE* (1987) (describing the ways in which the middle class has benefitted from the welfare state).

34. See generally Wahneema Lubiano, *Black Ladies, Welfare Queens and State Minstrels: Ideological War by Narrative Means*, in *RACE-ING JUSTICE, ENGENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY* 330, 332 (Toni Morrison ed., 1992) (arguing that references to women on welfare imply a whole range of words and concepts that imply racial degeneracy).

Racism is implicated in the family values rhetoric in other ways. One frequent phenomenon in American society is that a situation is often redefined as a problem or given more attention as a problem when it affects white people. This has been true in areas ranging from drug abuse to the problems faced by working mothers. One of the reasons for the recent intense focus on black people on welfare is that it is becoming clear that many of the consequences of poverty often associated with single mother families can no longer be internalized within the black community.

Although welfare is clearly a necessity for some people in order to ensure their very survival, it is clearly a system upon which most people, including those who are on it, would prefer not to be dependent. Welfare provides subsistence, but it does not empower people to maximize and be rewarded for their potential. When fewer persons were on welfare, there was little concern in the larger society that these clearly disempowered individuals were not fulfilling their potential, and were not participating in many of the opportunities and benefits society has to offer.

But the issue of welfare has now taken center stage. Although there has been long-standing resentment against black women dependent upon public assistance,³⁵ the hostility has clearly reached a new level. Many in society now fear for their pocketbooks, not in the usual sense of fear that they may be snatched in the street, but in the sense of fear that their hard-earned tax dollars will be snatched by the government in order to support welfare recipients.³⁶ The factor of race adds another dimension and intensity to this perception. There is concern about an increasing birth rate among blacks, with children being born who are not likely to become well-educated members of society. Some proponents of family values rhetoric may see the potential for a situation they would deem entirely unacceptable: working every day, at jobs that are increasingly stressful and insecure, to support a black "underclass" of able-bodied people who do not work.

35. See generally RICKIE SOLINGER, *WAKE UP LITTLE SUSIE* 187-204 (1992) (discussing taxpayer resentment toward welfare mothers since the post-war years and the restrictive, punitive programs that resulted).

36. See Lee Anne Fennell, *Interdependence and Choice in Distributive Justice: The Welfare Conundrum*, 1994 WIS. L. REV. 235, 295 (discussing public perceptions of unfairness in confiscating money earned through work for the purpose of providing support to able-bodied individuals who do not work).

This is a very bizarre and ironic twist in a nation with a history of black slavery.³⁷

There is also increased concern about welfare and single mothers because the phenomenon of single motherhood has spread beyond the black community. More and more white women are now engaging in a behavior that this society typically associates with black women. The well-known conservative Charles Murray is explicit about the concern that so many white women are now having children outside of marriage. He said, "[T]he brutal truth is that American society as a whole could survive when illegitimacy became epidemic within a comparatively small ethnic minority. It cannot survive the same epidemic among whites."³⁸

There are other aspects of the "family values" rhetoric that implicate both gender and race. The formation of single mother families challenges the notion of the centrality of men to the family. The male has historically been considered the head of the family, a status which was, until recently, affirmed in the law through a whole host of legal rules.³⁹ Moreover, the idea of the male as the head of the family is not simply a function of the law — it is also deeply ingrained in our culture. It is a part of the pervasive nature of patriarchy that both men and women have been socialized to think of men as indispensable to the definition of family.

In challenging the centrality of men to the family, single motherhood challenges a fundamental and long-standing social pattern: the control of men over women. This challenge is presented across the class spectrum. A single mother on welfare may not have a great deal of power over her life, but in a sense she has more power than a woman who has no access to any money other than through a husband. Thus, one consequence of the availability of public assistance is that

37. Contrary to what may be a common perception, the majority of recipients of AFDC are not black. According to 1994 statistics, 38.9% of recipients were white and 37.2% were black. It is true that recipients of AFDC are disproportionately black. Rosenbaum, *supra* note 29, at A23.

38. Charles Murray, *The Coming White Underclass*, WALL ST. J., Oct. 29, 1993, at A14. See also Daniel P. Moynihan, *Defining Deviancy Down*, 62 AM. SCHOLAR 17 (1993) (expressing the concern that the birth patterns of white Americans are starting to approximate those of black families thirty years ago).

39. See, e.g., *Kirschberg v. Feenstra*, 450 U.S. 455 (1981) (striking down as violative of equal protection the right of husbands to control and manage community property); *Warren v. State*, 336 S.E.2d 221 (Ga. 1985) (abolishing the marital rape exemption).

poor women can obtain at least a small measure of economic independence from men. This can enable them to decide to have children without husbands or to leave husbands who are physically or emotionally abusive.

The *Murphy Brown* controversy provides an illustration of the issues of centrality and control at the middle and upper-middle class level.⁴⁰ Murphy, a fictional television sitcom character who was obviously well-educated, professional and economically self-sufficient, decided to bear a child outside of marriage. Obviously, she was unlikely to become an AFDC recipient. Why did her decision become the subject of national attention and the focus of remarks by the Vice President of the United States?

The answer seems clear. Murphy Brown's decision to have a child outside of marriage represented a threat to remove middle-class men from centrality and control in the family. Murphy Brown was essentially saying, "I can support a child financially, and I can nurture a child without dependence on a man." She became a dangerous symbol because she posed the possibility that an attractive, affluent woman could choose to reject a powerful societal norm, decide to have a child without a man, and suffer no apparent adverse consequences.

The specific concern about the displacement of men from the center of the family implicit in the family values cry has implications for all men, but also has a specific racial dimension. The black single mother family has a long history in this country.⁴¹ While out-of-wedlock births have been traditionally associated with blacks, the fact today is that the fastest growing group of single mothers is among white women.⁴² As a result, a different group of men is now being affected by the growth in the number of single mothers. While black female-headed families have long been condemned as matriarchies, little was done to address the structures that prevented black men from playing the traditional role of breadwinner. The possible psychological impact on black men of the inability to play the traditional role was obviously not considered a

40. See, e.g., John E. Yang & Ann Devroy, *Quayle: 'Hollywood Doesn't Get It,' Administration Struggles to Explain Attack on TV's Murphy Brown*, WASH. POST, May 21, 1992, at A1.

41. See generally Omolade, *supra* note 15.

42. See, e.g., Murray, *supra* note 38, at A14.

problem. However, now that it is white men who are threatened with displacement from their expected roles in the family, there is a different level of concern. This is another illustration of the way in which the family values rhetoric is both racist and hypocritical. It also illustrates once again the way in which issues are redefined or given a different priority when they are no longer limited to the black community.

IV. THE FALLACIES IN FAMILY VALUES

A. *Problems with the Focus on Private Values*

In part, the family values rhetoric represents feelings of frustration about the many problems that exist in this society. It reflects a conclusion that these problems can only be solved through acts of individual will: if you change the way people think, you will change the way they act, and thereby change society. But focusing on private values as a solution to public concerns is extremely problematic.

The family values rallying cry rests on a number of assumptions about the idea of values. First, there is an assumption that there is some consensus as to what the family values are that are deemed to be threatened. The reality is that we live in an era of change and controversy with respect to many kinds of values, including values about family life. Many people, for example, would probably agree that the values of honesty, hard work and respect for others are desirable, but there would likely be strong disagreement about issues such as the appropriate role of religion in childrearing, or the effectiveness or morality of corporal punishment of children. The very assumption that marriage is a prerequisite to bearing children has been challenged. Adoption, surrogate motherhood and the increase in stepfamilies have challenged assumptions about biology and the nuclear family. Moreover, there is no obvious consensus in this country as to whether the proper role of the state is to maintain norms that are commonly shared or whether it is to protect the right of individuals to choose their own values about family.⁴³

Clearly the Dan Quayle-Murphy Brown flap suggests that at least for some people, the term "family values" is a

43. Peggy Cooper Davis, *Contested Images of Family Values: The Role of the State*, 107 HARV. L. REV. 1348 (1994).

euphemism for the two-parent family.⁴⁴ This view may be combined with a belief that children are more likely to learn certain values such as honesty and good citizenship in that context. The notion that the two-parent family is a prerequisite to passing on good values, as well as the assumption that there is a consensus with respect to which values are important, was a central focus in the 1992 Republican Party platform. Recent research, however, casts doubt on whether most Americans agree with this formulation. In a recent survey, only two percent of the women and one percent of the men questioned defined family values as being about the traditional nuclear family. Five percent of the women and one percent of the men defined family values as being connected to religion or the Bible. Nine out of ten women defined family values as loving, taking care of and supporting each other, knowing right from wrong and having good values, and nine out of ten said that society should value all kinds of families.⁴⁵

Even assuming that there are some values that most people in the society agree are desirable, there is no clear evidence that these values cannot be effectively transmitted in a family that is headed by a woman. Although research purports to show that it is children raised without fathers who are disproportionately represented in statistics concerning failure in school, involvement with the criminal justice system and other problems,⁴⁶ there has been no proof that it is the presence of fathers that makes the difference between a child's success or failure. A distinction must be drawn between a correlation and causation. Critical variables such as the impact of poverty and family disruption (where that is a factor) have not been fully accounted for in empirical studies. Finally, there is a growing body of research that challenges

44. Barbara Dafoe Whitehead, *Dan Quayle Was Right*, ATLANTIC MONTHLY, Apr., 1993, at 47 ("The social arrangement that has proven most successful in ensuring the physical survival and promoting the social development of the child is the family unit of the biological mother and father.").

45. Tamar Lewin, *Women Are Becoming Equal Providers*, N.Y. TIMES, May 11, 1995, at A27.

46. See Nancy E. Dowd, *Stigmatizing Single Parents*, 18 HARV. WOMEN'S L.J. 19, 35-42 (1995) (discussing and critiquing research purporting to demonstrate that children inevitably suffer in one-parent families).

the assumption that children in one-parent households inevitably suffer.⁴⁷

Also often overlooked in the family values rhetoric is the obvious fact that the traditional family can also be a site in which negative values can be transmitted. In the current rush to enshrine the nuclear family, it can be forgotten that traditional nuclear families have also been the place where children have seen, learned about, and been the victims of behavior such as domestic violence, sexual abuse and incest. One would think from the focus in the rhetoric and the media on crack addicted single mothers that alcoholism and drug abuse simply do not occur in traditional families.

Finally, and perhaps most importantly, the assumption that the solution to the problems confronting society today are to be found in the private rather than the public realm is not only unrealistic, it is dangerous. It is an approach to societal problems that lets the government off of the hook, permitting it to escape responsibility for developing policies to protect and improve the lives of its most vulnerable citizens. An approach that focuses on the family rather than society as the source of responsibility to address social issues can also have the effect of sanctioning or even promoting racism by encouraging people to feel little compassion or commitment toward those who can be easily regarded as "the other." As Stephanie Coontz has noted:

The language of private relationships and family values . . . leads not only to a contraction but also to a deformation of the public realm. Where family relations become "our only model for defining what emotionally real relationships are like," we can empathize and interact only with the people whom we can imagine as potential lovers or family members. The choice becomes either a personal relationship or none, a familial intimacy or complete alienation. . . . Using family as a model for public life pro-

47. See, e.g., RONALD ANGEL & JACQUELINE ANGEL, *PAINFUL INHERITANCE: HEALTH AND THE NEW GENERATION OF FATHERLESS FAMILIES* (1993) (stating that studies of children of divorce do not tell much about the consequences for children who never had a father in the home). See also, Barbara Bilge & Gladis Kaufman, *Children of Divorce and One Parent Families: Cross Cultural Perspectives*, 32 FAM. REL. 59, 68-69 (1983) (stating that "no single family form produces an optimal environment for a growing child").

duces an unrealistic, even destructive definition of community.⁴⁸

B. *Family Values and the Value of Work*

It would appear, at least from the recent obsession with forcing welfare mothers to work, that one value assumed to be passed on to children in the traditional family but not in a single mother family is the work ethic.⁴⁹

However, the family values rhetoric on the issue of work is flawed in many ways. First of all, that rhetoric assumes that those who do not have jobs are unemployed because they simply lack the desire to work. The reality is that there are simply not enough jobs for all of the people who want to work. This of course is not accidental — many scholars have noted that the stability of our capitalist society requires the existence of a certain amount of unemployment.⁵⁰ Because of racism, the pool of the unemployed remains disproportionately black.

Many marginalized people in this society work at the only kinds of jobs that are available to them: jobs that are temporary, low-paying, off-the-books or illegal. Regina Austin has described the strength and persistence of the work ethic among some of the most dispossessed members of the society:

Consider the youngsters employed in the urban crack trade. They are hardly shiftless and lazy leisure seekers. Many of them are as much Ronald Reagan's children, as much "yuppies," as the young urban professionals with whom the term is usually associated. Their commitment

48. STEPHANIE COONTZ, *THE WAY WE NEVER WERE: AMERICAN FAMILIES AND THE NOSTALGIA TRAP* 113, 115 (1992).

49. See Mickey Kaus, *The Work Ethic State: The Only Way to Break the Culture of Poverty*, *NEW REPUBLIC*, July 7, 1986, at 26. "If we could rely on volunteers to end the culture of poverty by working themselves out of it, we probably wouldn't have a culture of poverty in the first place. The point is to enforce the work ethic." *Id.* at 33. Another writer put it differently, stating that [t]he link between female headship and welfare dependency in the urban underclass is also well established, leading to legitimate concerns about the intergenerational transfer of poverty. At the root of this concern is the paucity of employment among welfare mothers and how this affects attitudes of their children toward work.

John D. Kasarda, *Urban Industrial Transition and the Underclass*, 501 *ANNALS* 26, 44 (1989).

50. CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY AND THE UNDERCLASS* 128 (1992).

to the work ethic is incredible; they endure miserable working conditions, including long hours, exposure to the elements, beatings and shootings, mandatory abstinence from drugs and low pay relative to their superiors. . . . "They spurn the injunctions of parents, police, teachers and other authorities, but they embrace the entrepreneurial and consumption cultures of mainstream America."⁵¹

Because of child care responsibilities, many single mothers on AFDC do not work. However, many do, earning unreported income in a variety of marginal jobs, often in the underground economy. They and their children survive by their ability to find ways to supplement the minimal money they receive from welfare.⁵² However, the society sees these women not as plucky, resourceful survivors of adversity, but rather as welfare cheats.

It must not be forgotten that the value we attribute to work is not, in any sense, an absolute. It is, instead, like the question of what constitutes a family, a value that is contingent upon perspective or standpoint. Work is valued in accordance with who does it and who it is done for. In a patriarchal system, the value of work is construed in accordance with what is valued under patriarchy. Thus, we have the obvious fact that in this society, market work is valued more highly than domestic labor in the home; a fact that becomes very clear when married couples divorce and women who have played the traditional role of homemaker often find themselves newly impoverished.⁵³

The question of hierarchies with respect to the value of work is more complex than a mere comparison between market and domestic labor. Attitudes toward what domestic women do in their homes are also profoundly affected by both sexism and racism. Let us take the example of two women,

51. Regina Austin, *"The Black Community," Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769, 1786 (1992) (footnotes omitted) (quoting Jefferson Morley, *Contradictions of Cocaine Capitalism*, NATION, Oct. 2, 1989, at 341, 344).

52. See JENCKS, *supra* note 50, at 204-21.

53. See generally Twila L. Perry, *No-Fault Divorce and Liability Without Fault*, 52 OHIO ST. L.J. 55 (1991); Joan Williams, *Is Coverture Dead? Beyond a New Theory of Alimony*, 82 GEO. L.J. 2227 (1994).

neither of whom has held a job in her adult life.⁵⁴ The first woman was married right out of college to a young man with a promising career. The other woman never married but ended up having three children and being on public assistance. Both women have been out of the workforce caring for their children for the past several years. In one case, the husband has now decided to leave the marriage. In the other case, the government has decided to take severe measures against women on public assistance to force them into workfare programs.⁵⁵

It is likely that people would be sympathetic to the privileged woman. They would see it as a noble thing for an educated middle-class woman to forego career opportunities in order to stay home and care for her children. They would be concerned about the likely precipitous decline in her economic circumstances, about her loss of status, and about possible resulting psychological harm. They would feel that she should be retrained for a job that has long term potential for financial and personal growth. On the other hand, many people would feel that the mother on public assistance is lazy and should take any job.⁵⁶ Because we live in a patriarchal society, it is considered acceptable for women to be economically dependent, as long as that dependency is on a man.

Race also impacts upon the way in which we choose to value or not value work. I have argued elsewhere that the work of parenting by black mothers is devalued in the controversy over transracial adoption. In that context, the complexity of the childrearing work performed by black parents is underappreciated. Indeed, there is frequently an underlying assumption that black parents are inadequate to raise black children, while whites are assumed competent to parent both white and black children.⁵⁷ Dorothy Roberts has described the relationship between the devaluation of the work black

54. I explore this hypothetical in a recent article. See Twila L. Perry, *Alimony: Race, Privilege and Dependency in the Search for Theory*, 83 GEO. L.J. 2481, 2500-03 (1994) [hereinafter *Alimony*].

55. *Id.*

56. *Id.*

57. See Twila L. Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. REV. L. & SOC. CHANGE 33 (1993-1994) [hereinafter *Transracial Adoption*] (arguing that positions in favor of transracial adoption are often premised on the assumption that whites provide superior parenting skills).

mothers perform in their own homes for their own children and the national obsession with forcing welfare mothers to work, observing that "[u]nderlying the consensus that welfare mothers should work is often the conviction that their children are socially worthless, lacking any potential to contribute to society."⁵⁸ Also, unfortunately, even feminists often fail to see the link between patriarchy and racism in thinking about the value of women's domestic labor. It continues to be troubling that all too often upper-middle-class feminists devote substantial effort to developing the argument that housework should be highly valued in the context of the divorce of an upper-middle-class woman, without addressing the troubling fact that successful professional women often pay low wages to the women, often women of color, who perform similar domestic labor for them in their homes.⁵⁹

C. *Black Families, Black Mothers and Oppositional Values*

As discussed earlier, the family values rhetoric conveniently ignores the fact that the family can also be the site for learning negative values. One negative value that can be learned in a family, whether there is one parent there or two, is racism.⁶⁰ Racism complicates the work of black parents in teaching values to their children.

While most black parents in this country would probably agree that it is important that families teach children values such as honesty, hard work, and respect for others, black parents also understand that black children must learn much more than the values of the white majority. In raising their children, black parents generally employ and pass on a "double consciousness,"⁶¹ in which the values that seem to be

58. Dorothy E. Roberts, *The Value of Black Mothers' Work*, 26 CONN. L. REV. 871, 876 (1994).

59. See *Alimony*, *supra* note 54. See generally ANGELA Y. DAVIS, WOMEN, RACE & CLASS 96-97 (criticizing middle-class feminists for failing to put the exploitation of domestic workers on their agenda).

60. See generally BARRY TROYNA & RICHARD HATCHER, RACISM IN CHILDREN'S LIVES: A STUDY OF MAINLY WHITE PRIMARY SCHOOLS 131-46 (1992) (discussing the role of family, school, community and television as sources of white children's ideas about race). See also FRANCES ABOUD, CHILDREN AND PREJUDICE 88-92 (1988) (discussing actions and attitudes of parents that are associated with racial prejudice in children).

61. This phenomenon of "double consciousness" was long ago described by W.E.B. DuBois. W.E.B. DUBOIS, THE SOULS OF BLACK FOLK 6 (1903).

promoted in the larger society must be evaluated at two levels — first a general level, and then a second level which takes into account the reality of racism and minority status. An uncritical and unreflective acceptance of traditional values can affect black families differently than white families: because of racism, blacks have less of an opportunity to live their lives in accordance with the mainstream ideal. Historian Elizabeth Pleck has argued, for example, that in northern cities in the nineteenth century, the adoption of mainstream values by blacks often promoted marital dissolution because racial discrimination against black men made traditional values, such as the male as the economically powerful breadwinner, unrealistic guides to family life.⁶² This continues to be true. A recent study indicated that the black men most likely to leave their families when faced with unemployment were those who subscribed most firmly to the idea of the male as breadwinner.⁶³

During slavery, when black people created families that were neither acknowledged nor protected by the law,⁶⁴ black families had to create their own family values.⁶⁵ In a world in which they and their children were treated as subhumans, these families had to create lives with independent moral meaning.⁶⁶ In socializing their children, they had to create values that were both consistent with and in opposition to those of the larger society. Perhaps most importantly, they had to teach their children to value themselves in a society whose message was that they were not valued and had no values.⁶⁷

The acceptance of single motherhood is one example of the ways in which black families and communities sometimes created independent moral meaning. Thus, while the nonmarital mother has long been the object of intense stigma in the larger society, many scholars have noted that black un-

62. ELIZABETH PLECK, *BLACK MIGRATION AND POVERTY: BOSTON, 1865-1900* 198, 200 (1979), cited in COONTZ, *supra* note 48, at 250.

63. COONTZ, *supra* note 48, at 250.

64. DAVIS, *supra* note 59, at 1364.

65. See Omolade, *supra* note 15, at 240 ("Black resistance to social death took the form of creating viable families, whether patriarchal or female-headed, and of developing extended kinship networks along with political and protest strategies.").

66. PATTERSON, *supra* note 10, at 6.

67. See BLASSINGAME, *supra* note 15, at 181-91 (describing ways in which slave parents attempted to inculcate self-esteem in their children).

wed mothers have never suffered the same outcast status in black communities as white women have in white communities.⁶⁸ Sociologist Joyce Ladner described the acceptance of single motherhood as reflecting a belief that a child born outside of marriage was a child who had a right to be cared for and reared in the community of his parents without stigmatization.⁶⁹ Through the years, many blacks have understood that society's judgment that the nuclear family is the only moral context in which to have a child was premised on a system that often did not reflect the realities and limitations that shape black people's lives.

The challenge of life in a racist society still requires that black people create and pass on to their children oppositional values. Angela Harris and Patricia Hill Collins have written eloquently of the way in which black women have to create a positive self in the midst of a white world in which they are consistently devalued.⁷⁰ Although some have minimized the relevance of race in the work of parenting,⁷¹ many blacks agree that preparation of a black child for life in a racist society is a major task in parenting black children and often requires teaching values that are different from those of the

68. SOLINGER, *supra* note 35, at 199-203 (describing, in the era before *Roe v. Wade*, the decisions of black women to keep their nonmarital children rather than to place them for adoption and the support this decision had from families and the community); Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 558, 558-61 (1989) (arguing that blacks and whites view teenage pregnancy differently because of cultural differences); BILLINGSLEY, *supra* note 16, at 111 (describing how even children without identifiable fathers were accepted into slave communities); Omolade, *supra* note 15, at 255 (noting that if black single mothers worked hard to provide for their families, they were generally accepted into working-class communities, although there was less acceptance in middle-class communities).

69. JOYCE LADNER, *TOMORROW'S TOMORROW: THE BLACK WOMAN* 2, 8 (1971).

70. See Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 595-601 (1990) (discussing the effect of white standards of beauty on black women); see also PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* 91-113 (1991) (describing the importance of self-definition for black women).

71. This debate often occurs in the context of the controversy surrounding transracial adoption, where advocates of the practice dispute the argument that black parents are in the best position to teach black children the skills to survive in a racist society. See, e.g., Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Transracial Adoption*, 139 U. PA. L. REV. 1163, 1219-21 (1991) (arguing that the survival skills argument has little merit). *Contra Transracial Adoption*, *supra* note 57, at 61-65 (supporting the survival skills argument).

larger society.⁷² Thus, while the family values rhetoric demonizes black mothers, it ignores the challenges these mothers meet on a daily basis to instill values of pride and self-esteem that are as important to their children's survival as any other values assumed to enjoy widespread acceptance.

A powerful example of the challenge confronting black parents can be found in Suzanne Carothers' study of the transmission of values between mothers and daughters in a southern black community. One woman in the study thus describes her political socialization in a racially segregated society:

My sister and I were somewhat awed of white people because when we were growing up, we did not have to deal with them in our little environment. I mean you just didn't have to because we went to an all-black school, an all-black church, and lived in an all-black neighborhood. We just didn't deal with them. If you did, it was a clerk in a store.

Grandmother was dealing with them. And little by little she showed us how. First, [she taught us that] you do not fear them. I'll always remember that. Just because their color may be different and they may think differently, they are just people. The way she did it was by taking us back and forth downtown with her. Here she is, a lady who cleans up peoples' kitchens. She comes into a store to spend her money. She could cause complete havoc if she felt she wasn't being treated properly. She'd say things like, "If you don't have it in the store, order it." It was like she had \$500,000 to spend. We'd just be standing there and watching. But what she was trying to say [to us] was, they will ignore you if you let them. If you walk in there to spend your 15 cents, and you're not getting proper service, raise hell, carry on, call the manager, but don't let them ignore you.⁷³

Although this excerpt deals with the simple, everyday family experience of shopping, it provides a powerful example of the way in which black women teach their children a cru-

72. *Transracial Adoption*, *supra* note 57, at 61-65; James S. Bowen, *Cultural Convergence and Divergences: The Nexus Between Putative Afro-American Family Values and the Best Interests of the Child*, 26 J. FAM. L. 487, 510 (1988).

73. Suzanne C. Carothers, *Catching Sense: Learning from Our Mothers to be Black and Female*, in *UNCERTAIN TERMS: NEGOTIATING GENDER IN AMERICAN CULTURE* 232, 339-40 (Faye Ginsburg & Anna Lowenhaupt Tsing eds., 1990).

cial value — to values themselves. It is also significant that this lesson is being taught by a person of little formal education or financial means, demonstrating that affluence and education are not prerequisites for good parenting — lessons about values and about life can be taught in many ways. Finally, in this example, the person teaching the lesson is the grandmother — a woman. This serves to remind us that the values that need to be taught can be taught regardless of the gender of the teacher, or of the learner.

V. FAMILY VALUES, FEMINISM AND PUBLIC POLICY

The discussion in the preceding section argues that with respect to some issues, black mothers have to socialize their children to have values that are in opposition to those of the larger society. Black mothers understand, for example, that the enemy is racism and that their children have to be taught to struggle against it. Similarly, with respect to issues of public policy, most blacks clearly define the problem as racism. However, when feminists consider what kind of influence they would like to have in the arena of family policy, it is not always clear what it is they perceive to be the subordinating factor against which they must struggle.

It is not difficult to observe that in most of the public discussion about family values, the voices are male and not female. Obviously, this can be partly attributed to the fact that those who are in power have the power to decide which voices and perspectives they will include, and which they will ignore. But attention must also be paid to the role of feminists in this silence. To what extent have feminists sought to be heard in this debate? Do most middle- and upper-middle-class feminists really oppose the current efforts to curtail public assistance for poor women?⁷⁴ Even if there is agreement that the immediate task is to prevent the dismantling of AFDC, questions concerning the relationship between middle-class feminists and women on welfare demands consideration of larger issues. For example, in terms of women's economic well-being over the long run, to what extent is it

74. See generally Lucie E. White, *On the Consensus to End Welfare: Where Are the Women's Voices?*, 26 CONN. L. REV. 843-44 (1994) (noting the absence of women's voices in the welfare reform debate and that "[p]ublic conversation about ending welfare has reported a growing silent resentment among middle-class women toward poor single mother[s] who reputedly 'live off the dole.'").

appropriate for women to rely on the family (their husbands), the market (their jobs), the state, or some combination of these?

Clearly, if feminists wish to make permanent long-term changes with respect to the position of women in this society they face the challenge of creating new values with respect to gender and passing these values on to their children — both male and female. But it is not so clear what the values are that feminists would wish to pass on to their children. An easy answer would be to say general ideas of gender equality. But the deeper we probe, the more complex this issue becomes. What are the specific values that feminists wish to pass on to their children about the structure of the family? Are feminists willing to say that the enemy is patriarchy? And if so, what exactly does this mean, both as a theoretical and a practical matter?

A. *The Question of Patriarchy*

Martha Fineman has noted the reluctance of feminist legal theorists to explore and truly critique the role of patriarchy in family law.⁷⁵ Although most feminists would probably agree that the cry of "family values" is at least in part a response to a perceived threat to patriarchy, feminist theory seems to be reluctant to confront the issue of patriarchy head on.⁷⁶ One question is, why is this so? It may be that at a subliminal level, many women accept the idea that male dominance is prevalent in nature and so it is natural for men to be dominant in the family. It may be that some scholars fear that challenges to patriarchy may focus attention on their

75. THE NEUTERED MOTHER, *supra* note 33, at 26-28, 31-33. "[N]otably what is left out tends to be a discussion of the family as a foundational patriarchal structure Some feminists accept traditional configurations of family but criticize historic role divisions." *Id.* at 27.

76. There have been some discussions of alternatives to the traditional nuclear family. See generally Mary P. Trenthart, *Adopting a More Realistic Definition of Family*, 26 GONZAGA L. REV. 91, 97 (1991) (arguing that the average person has a broader definition of family than does the courts or the legislature); Note, *A Family Like Any Other Family: Alternative Methods of Defining Family Law*, 18 N.Y.U. REV. L. & SOC. CHANGE 1027, 1062-64 (1991) (arguing that the legal definition of the family should reflect the social realities of different kinds of families); Note, *Looking for a Family Resemblance: The Limits of the Functional Approach to the Legal Definition of Family*, 104 HARV. L. REV. 1640, 1640 (1991) (arguing that "[t]he traditional nuclear family is rapidly becoming an American anachronism").

own lives and they may be thought of as lonely, unhappy women who denounce patriarchy only because they lack satisfying male companionship. Clearly, some women have an affirmative personal stake in the continuation of patriarchy. This will continue to be true as long as men are economically dominant in the society, and attachment to affluent men provides women with a route to economic privilege.⁷⁷ For the woman who is the beneficiary of male privilege, yet wishes to critique patriarchy, there is a troubling dilemma of dual loyalty.

A reluctance to challenge patriarchy in the family is an issue that has consequences in the family values controversy. For example, feminists may argue that families headed by single mothers should not be stigmatized, but we should question whether single mothers will ever be on the same plane as married mothers in a patriarchal society. As long as women are validated by their attachments to men,⁷⁸ and women accept the resulting hierarchies, single mothers are unlikely to be accorded the same respect as mothers who are married. Are feminists really ready to put single mother families on the same plane as traditional families?⁷⁹ Also, what does it mean, in a practical sense, to be anti-patriarchy? This question seems more easily answered with respect to relationships outside of the home, such as employment relationships. But relationships inside of the home pose more difficult questions. Obviously, opposing patriarchy within the family must mean more than a less gendered division of domestic responsibilities.⁸⁰

Developing an analysis of patriarchy in the family is a challenge not only for those women who have benefited from it, but also for those women who have not. Thus, patriarchy is a complex issue for black feminists. Black women are painfully aware that, for many blacks, the nuclear family with its

77. *Alimony*, *supra* note 54.

78. *Images of Mothers*, *supra* note 2, at 275-89 (discussing hierarchies of mothers based on the nature of their attachments to men); *Alimony*, *supra* note 54, at 2500-03 (discussing hierarchies among women based on the wealth of the men they are or have been attached to).

79. See THE NEUTERED MOTHER, *supra* note 33 (arguing for the abolition of marriage as a legal status and for the recentering of family policy around dependency and caregiving rather than the sexual tie between men and women).

80. THE NEUTERED MOTHER, *supra* note 33, at 27; *Alimony*, *supra* note 54, at 2507.

patriarchal pattern has never been an option because of the racism that has limited the economic opportunities of black men. Challenging the desirability of patriarchy in the family can be difficult for black women because it may be hard to give up what the larger society seems to value, especially if you have never been permitted to have it.

It is not surprising that much of the discourse about the black family by notable black male scholars, such as William Julius Wilson, supports the notion of shoring up the black family as a patriarchal institution.⁸¹ Improving economic conditions for black men would presumably permit them to better play the traditional male role in the family. But, as numerous feminists scholars have already argued, the solution to the problems confronting black families is not simply to "put black men in charge."⁸² Clearly, black men must be afforded better economic opportunities, but those same opportunities must also be available to black women. The task of simultaneously addressing racism and patriarchy is undoubtedly complex,⁸³ but the work must begin by accepting new forms of family for families of all races.

B. *Race, Class and Single Motherhood*

Statistics clearly have shown that many people no longer live in the traditional nuclear family and the number of births to unmarried women has risen among all races.⁸⁴ Despite these statistics, the fact remains that in the minds of much of white America, the face of single motherhood and of mothers on welfare, like the face of crime, is black. It is the image of the "lazy welfare mother who breeds children at the expense of the taxpayers in order to increase the amount of her welfare check"⁸⁵ that is used to sell programs to the pub-

81. WILSON, *supra* note 21.

82. See, e.g., Austin, *supra* note 51 (arguing that stressing the need to improve only the economic status of black males perpetuates patriarchy); Maxine Baca Zinn, *Family Race and Poverty in the Eighties*, 14 SIGNS 856, 868-69 (1989) (criticizing Wilson's implied advocacy of black patriarchy).

83. Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 AM. U. J. GENDER & L. 25 (1993).

84. Steven A. Holmes, *Out-of-Wedlock Births Up Since 1983, Report Indicates*, N.Y. TIMES, July 20, 1994, at A1.

85. Roberts, *supra* note 83, at 25.

lic that will adversely affect women.⁸⁶ The message is that black women are immoral, unfeminine and undesirable and that white women should not be like them. Indeed, as Patricia Hill Collins has noted, the way society treats black women serves as a warning to white women. She points out that the negative stereotype of the black matriarch is "a powerful symbol of what can go wrong if the white patriarchal power is challenged. Aggressive, assertive women are penalized; they are abandoned by their men, and end up impoverished and stigmatized as being unfeminine."⁸⁷ The negative image of black single mothers, especially nonmarital mothers, poses a dilemma for middle- and upper-middle-class white women who, in increasing numbers, are choosing to have children outside of marriage.

In their desire to defend the choices of upper-middle-class women to become single mothers, some feminists have argued, and indeed are seeking to demonstrate empirically, that well-educated, mature, middle-class women are successfully raising children without men. Although a challenge to the stereotype of single women as inadequate parental role models is crucial, a challenge limited to asserting the adequacy of upper-middle-class women poses a danger that these women will distance themselves from the circumstances of younger, poorer, less educated single mothers. Should this occur, it would have troubling symbolic and practical implications. It would suggest that these women are seeking to distance themselves from the negative images associated with black single mothers, and perhaps the negative images associated with black women in general. Second, it would have troubling implications for the role feminists might play, and the positions they might take regarding issues of critical importance to a wider range of single mothers such as welfare and other social programs that benefit the children of the poor.

It is important that those middle-class women whose voices are more likely to be heard in the debate over redefinition of the family not create a new hegemonic narrative of motherhood in which there are good nonmarital mothers who

86. See COLLINS, *supra* note 70, at 77 (discussing stereotypes of the black welfare mother). See generally Gwendolyn Mink, *Welfare Reform in Historical Perspective*, 26 CONN. L. REV. 879, 891-92 (1994).

87. COLLINS, *supra* note 70, at 78.

are middle-class, white and well-educated, and bad nonmarital mothers, who are poor, black, uneducated and possibly drug addicted or HIV positive. Such divisions along lines of class and race would be disastrous. What must happen instead is that women must seek commonalities that will support the development of coalitions between women of different races and classes.

The question of whether middle-class women would be willing to work in support of the interests of poor women and their children raises the question of how middle- and upper-middle-class women really feel about poor women having children outside of marriage.

The extent to which the law supports the right of women to bear children outside of marriage is not yet clear,⁸⁸ but middle-class feminists need to think about how they feel about this issue as a matter of policy. Feminist scholars have explored the question of choice in the context of decisions women make regarding whether to give priority to their families or to their careers.⁸⁹ There has been less analysis of the choices women make about bearing children outside of marriage,⁹⁰ especially the choices of poor women.

The reasons women might choose to have children outside of marriage vary. It may be in part, as Martha

88. There are cases from which it can be argued that this right is implied. In *Carey v. Population Services*, 431 U.S. 678 (1977), the Court noted that the decision to bear children is "at the heart" of constitutionally protected choices. *Id.* at 685. The Supreme Court in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and *Eisenstadt v. Baird*, 405 U.S. 438 (1972), held that the state cannot prohibit married or unmarried couples from using contraceptives based on the right of marital privacy and the equal protection clause. The Court's holdings in the above cases seems to support the argument that the right not to have children and the right to have children is protected. However, it would probably be going too far to argue that these cases place the right to decide to procreate as a single person on the same status as the right to decide not to procreate as a single person. Scholars have noted the limitations of both the privacy doctrine and the Free Exercise Clause in this context. See Martha L. Fineman, *Intimacy Outside the Natural Family: The Limits of Privacy*, 23 CONN. L. REV. 955, 958 (1991); Martha Minow, *The Free Exercise of Families*, 1991 U. ILL. L. REV. 925, 943 (1991).

89. See, e.g., Kathryn Abrams, *Ideology and Women's Choices*, 24 GA. L. REV. 761 (1990); Joan Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 N.Y.U. L. REV. 1559 (1991). See generally, KATHLEEN GERSON, *HARD CHOICES: HOW WOMEN DECIDE ABOUT WORK, CAREER AND MOTHERHOOD* (1985).

90. Lynn Smith, *Births to Unmarried Women are Increasing So Much and the Stigmas Falling So Fast that Sociologists Don't Yet Know the Consequences*, L.A. TIMES, July 22, 1993, at E1.

Fineman suggests, a resistance to patriarchal ideology.⁹¹ For women who see themselves as facing limited prospects in terms of education and employment, motherhood may be viewed as the sole way to gain status. Single motherhood may be chosen where there are few potential marriage partners.⁹² It has been noted that some women may remain unmarried not because of a shortage of available or willing men, but rather as a response to the sexism of marriage.⁹³ As a number of scholars have noted, it is still not clear, especially in the case of poor women, whether becoming a single mother is a matter of liberation, desperation, or carelessness.⁹⁴

What are the implications for feminist theory of the issue of choice? Certainly one question it raises is whether women in a position to shape feminist thinking believe that all women have an equal right to choose to become mothers regardless of their economic circumstances. Certainly women have chosen to become mothers with the knowledge that their children might have a handicapping physical condition. Their decisions have generally been regarded as a matter of personal choice. Are feminists willing to take the same position with respect to women whose children are likely to be severely economically disadvantaged? Some middle- or upper-middle-class women probably feel that they make decisions about how many children they will bear in part as a response to their financial circumstances, and poor women should be expected to do the same. However, for upper-mid-

91. THE NEUTERED MOTHER, *supra* note 33, at 125.

92. This may be true not only for poor women of color, but also for professional or middle-class women. A recent article in the *New York Times* reported that according to statistics of the U.S. Department of Education, there were more female than male undergraduates in American universities in the academic year 1992-1993. However, among black students there were 785,000 women and only 495,000 men enrolled that year. These disparities persist at the most elite levels. At Yale University, for example, among the undergraduates during the academic year 1994-1995, there were 250 black women and 186 black men. Emily Wilson, *Dreading Another Saturday Night*, N.Y. TIMES, Apr. 2, 1995, at 4A, 24.

93. See, e.g., Omolade, *supra* note 15, at 273 (noting that some black women remain unmarried because of sexism in marriage).

94. COLLINS, *supra* note 70, at 116 (discussing young men encouraging their teenage girlfriends to bear children); Roberts, *supra* note 83, at 28-29; Austin, *supra* note 51, at 555 (arguing to "consider the possibility that young, black, sexually active, fertile, nurturing, black women are being viewed ominously because they have the temerity to break out of the rigid economic, social and political categories that a racist, sexist, and class stratified society would impose upon them").

dle-class women, the choice with respect to the number of children they will bear is often dependent upon the presence and amount of a husband's income. Once again, this raises the issue of patriarchy and the need for further analysis of the implications of that institution for the family and for relationships between women.

The need for middle-class women to become active with respect to issues that appear to disproportionately affect poor women is not simply an ethical issue — it is an issue of practical importance. The assault on economic support provided to poor women raising children alone presages an assault on middle-class financial entitlements such as social security and educational loans. Similarly, the attack on the reproductive decisions of poor women cannot be separated from the current assault on the reproductive decisions of women at all levels in the society.⁹⁵

VI. CONCLUSION

The government needs to abandon its quest to restore the primacy of the traditional family in the hope that it will restore the "good old days." The "good old days" were not so good for some groups in society, including black people and women. For many blacks, the majoritarian values of earlier days meant lynchings, riding in the back of the bus and being subject to any number of other acts of violence and indignity. For women it meant being subject to domestic violence and the denial of educational and employment opportunities. The world is clearly better now for blacks and women, but the world is also becoming increasingly complex. Effective public policy must be developed in order to meet the challenges of changing demographics and values. These policies must address the problems of racism, poverty, and patriarchy.

Certainly the immediate goal must be to improve the conditions that confront children growing up in the poorest of families. This means, of course, preventing so-called "welfare reform" from taking away from poor families the economic means that ensures their day-to-day survival. In addition to providing some guaranteed income, policies must be developed and implemented to improve the health and education

95. See, e.g., DAVID BLANKENHORN, *FATHERLESS AMERICA* 233 (1995) (arguing that the law should prohibit sperm banks from providing sperm to single women for the purpose of artificial insemination).

of poor children. In seeking to address racism, there must be vigorous enforcement of anti-discrimination laws as well as a reinvigoration of affirmative action. Women must be afforded opportunities to make choices about employment, about children, and about other aspects of their lives.

Rather than longing for the "good old days," romanticizing the idea of family, and seeking to impose one set of values on everyone, the focus of the government should be on trying to develop policies that will create a just society where people can make their own choices about the most personal aspects of their lives.