
ARTICLE

WOMEN'S PLACE: URBAN PLANNING, HOUSING DESIGN, AND WORK-FAMILY BALANCE

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In the past decade a substantial literature has emerged analyzing the role of work-family conflict in hampering women's economic, social, and civil equality. Many of the issues we routinely discuss as work-family balance problems have distinct spatial dimensions. "Place" is by no means the main factor in work-family balance difficulties, but amongst work-family policy makers it is perhaps the least appreciated. This Article examines the role of urban planning and housing design in frustrating the effective balance of work and family responsibilities. Nothing in the literature on work-family balance reform addresses this aspect of the problem. That literature focuses instead on employer mandates and family law reforms. This Article fills the gap by evaluating the effect of place on work-family balance and the role law plays in creating our challenging geography. The Article argues that effective work-family balance requires attention to the spatial dimensions of the work-family conflict.

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INTRODUCTION

The past decade has witnessed a focus on the tension between workers' employment roles and their family roles. The work-family problem is sometimes articulated as a problem of gender equality and at other times as a problem of worker and family welfare. Because the work-family tension has a disparate impact on women's ability to participate in public life, easing that tension is central to achieving effective citizenship for women as a group. Reforms have focused primarily on employment policies and to a lesser extent on family law. This Article examines the role of urban planning and housing design in frustrating the effective balance of work and family responsibilities.

The work-family literature in the human resources field and business reviews increasingly recognizes coterminous family and worker roles. A consensus has emerged from that literature that some form of workplace flexibility is necessary for effective management of workers with family

responsibilities.¹ Extensive research continues into the format “flexibility” must take to be effective.² This research is employer-focused, asking what employers may do to develop a more effective workforce. However, for flexibility to be useful, variables outside of the workplace must play a pivotal role. In particular, the value of workplace flexibility is greatly influenced by the spatial dimensions of a worker’s experience. That dimension is absent from the work-family legal and policy literature, despite several decades of occasional literature in architecture and urban planning on the gender of place. This Article seeks to introduce problems of place to the legal landscape of work-family balance, sparking a new discussion in the legal community about the gender of sprawl.

Residential life in the United States is distinct in many ways from life in the workplace. The spatial dimension of that distinction—that a worker is physically separated from her dependents during the day—plays a significant role in exacerbating role tension between family life and work life. The entrenchment of that challenging spatial relationship between work and home is ongoing; housing continues to be built further from densely packed urban areas. Commuting time between work and home has increased over the course of decades and continues to increase.³ Reliance on cars for commuting has also increased, as compared to other methods of transportation.⁴ Commuting time alone adds stress to the day of an individual trying to manage responsibilities both at home and at work.

Apart from the time commuting absorbs, the increasing distance between home and work exacerbates logistical difficulties for working parents. In particular, the ability to attend to brief family matters during the workday is in large part a function of distance between home and work. A twenty-five-minute parent-teacher conference can present an enormous challenge to a parent who is an hour from his child’s school. A fifteen-minute meeting with an elderly parent’s physical therapist can absorb half of a workday if it requires an additional round-trip from work during the day. An employer’s flexible schedule permitting half-hour breaks is of little use when a dependent is more than a half hour away from the workplace. The growing

1. See, e.g., Stewart D. Friedman, Perry Christensen & Jessica DeGroot, *Work and Life: The End of the Zero-Sum Game*, Harv. Bus. Rev., Nov.–Dec. 1998, at 119, 119–29; Lonnie Golden, *Flexible Work Schedules: Which Workers Get Them?*, 44 Am. Behav. Scientist 1157, 1172 (2001); see also Ellen Galinsky, James T. Bond & E. Jeffrey Hill, Families and Work Inst., *When Work Works: A Status Report on Workplace Flexibility* 4 (2005), available at <http://familiesandwork.org/3w/research/downloads/status.pdf>.

2. See, e.g., Ellen Ernst Kossek, Brenda A. Lautsch & Susan C. Eaton, *Flexibility Enactment Theory: Implications of Flexibility Type, Control, and Boundary Management for Work-Family Effectiveness*, in *Work and Life Integration: Organizational, Cultural, and Individual Perspectives* 243, 244–47 (Ellen Ernst Kossek & Susan J. Lambert eds., 2005).

3. See Alan E. Pisarski, Transp. Research Bd., *Commuting in America III*, at 26 (2006), available at <http://onlinepubs.trb.org/onlinepubs/nchrp/CIAlII.pdf> (a major transportation research study by the National Academies).

4. See Oliver Gillham, *The Limitless City: A Primer on the Urban Sprawl Debate* 93–95 (2002).

distance between work and home which characterizes sprawl increases work-family tension.

Life in contemporary sprawled suburbs exacerbates work-family tension in other ways as well. Sprawled communities by definition are not compactly developed. Practically speaking, this means a child or an elderly or disabled dependent will need to move from one place to another during the day in a car, not on foot or by public transportation. This feature of life in sprawled communities has resulted in a substantial increase in the amount of time care-giving adults spend driving dependents to obtain health care, goods, and services both needed and desired. The spatial attribute of sprawled residential development increases the logistical challenges for worker-parents.

Finally, beyond the site map of daily life, the design of the single-family home itself has not adapted to the increasing complexity of women's roles. The single-family home is designed as a work space for the domestic production of food and services such as laundry and child care. Those tasks are no longer fully contained in homes, and the shift from the private family to a web of other providers coincides with the movement of middle-class women into the paid labor market. But, housing design has not evolved to facilitate the movement of those domestic tasks to the market. Rather, the single-family home has grown to nearly two times its 1950 size, suggesting ever grander ideas about domesticity.⁵ This growth has increased domestic management challenges for middle-class women, at a time when for most women those tasks are no longer their sole work obligation.

This Article may suggest limitations to the intentional or subconscious antidiscrimination paradigm. Discrimination, both within workplaces and within the family, is a powerful roadblock to women's equal citizenship. But it is not the only barrier. There may be many structural roadblocks that slow women's progress—one example is the built environment. For many advocates, workplace integration and genderless family roles are the primary methods of achieving equality. But if discrimination were eliminated today from the workplace, and family responsibilities were shared equally between men and women, gender would remain prominent in our geography. The spatial mechanics of family and work life are still shaped by gender roles. Echoing the basic legal realist insight, property rules structure choices.⁶ This Article supports efforts to analyze and reform structural impediments to equal citizenship whether or not they are best explained using a discrimination paradigm.

This Article investigates the spatial dimension of work-family balancing. Part I describes the key dimensions of the work-family conflict. Part II examines the traditional approaches to work-family conflict reforms, which

5. See *infra* Part III.E.

6. See, e.g., Felix Cohen, *Transcendental Nonsense and the Functional Approach*, 35 Colum. L. Rev. 809 (1935); Robert L. Hale, *Bargaining, Duress, and Economic Liberty*, 43 Colum. L. Rev. 603 (1943); Robert L. Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 Pol. Sci. Q. 470, 470–77 (1923).

have targeted both employer practices and family behavior. Part III introduces the spatial dimensions of the work-family conflict. Part IV suggests law reform efforts that do or could mitigate some of the challenges wrought by the disjointed nature of women's place. Part V concludes that the salutary employer-focused reform efforts cannot adequately relieve work-family tension, a significant obstacle to women's equal participation in public life, without attention to physical place concerns.

I. WHAT IS THE WORK AND FAMILY PROBLEM?

The articulation of the work-family tension has focused on two systems in particular: the organization of market work, and the family system of caring for dependents, including children, the elderly, the sick, and those with disabilities. Both of these systems have been the subject of sustained analysis by legal scholars, sociologists, economists, and anthropologists.⁷ Reforms have been implemented in both areas, and many more reforms have been proposed to match different aspects of the problem.

The critique of market work focuses on the failure of workplace organization to accommodate the needs of workers who also have responsibility for dependent family members.⁸ Since women on average play a greater role in taking care of dependents within the family, this failure of accommodation has greater significance to women. It has been repeatedly implicated in recent years in the failure of workplace integration and equality for women, although more conventional disparate treatment discrimination plays a significant and independent role as well.⁹

The critique of family delivery of care over the past decade has focused on gender inequality in the care of dependents as well as a failure of public support for the essentially private familial function of caring for dependents.¹⁰ Consequences of the failure to provide public and systemic support for the care of dependents include low wages and absent benefits for paid caregivers,¹¹ financial and social insecurity for both paid and unpaid caregivers, absent or inadequate care for some dependents, overworked and exhausted caregivers, inefficiencies in the delivery of

7. See *infra* Parts I-II.

8. See, e.g., Joan Williams, *Unbending Gender: Why Family and Work Conflict and What to Do About It* 64-81 (2000). Market work has been designed around an "ideal worker" whose hours and availability are unconstrained by responsibility for dependents; this ideal worker model excludes the majority of women and many men as well. *Id.*

9. See Vicki Schultz, *Life's Work*, 100 *Colum. L. Rev.* 1881, 1885, 1894-95 (2000); Michael Selmi, *Care, Work, and the Road to Equality: A Commentary on Fineman and Williams*, 76 *Chi.-Kent L. Rev.* 1557, 1565 (2001) (emphasizing the role of disparate treatment rather than the failure of work-family accommodation in explaining women's unequal workforce status).

10. See Martha Albertson Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* 87-89 (1995); Nancy Folbre, *The Invisible Heart: Economics and Family Values* 83-108, 131-35 (2001).

11. See Folbre, *supra* note 10, at 190-93; Katharine B. Silbaugh, *Commodification and Women's Household Labor*, 9 *Yale J.L. & Feminism* 81, 112-15 (1997).

care,¹² and the acceptance of dangerous, contingent, or otherwise unsatisfactory family arrangements.

Recent work across a number of disciplines has established that women's equality depends on restructuring the delivery of care in some way.¹³ While individual women have and will continue to make incredible strides, women as a class will not fully achieve social, economic, and political equality until responsibility for the care of society's dependents becomes consistent with participation in public life.¹⁴

Past reforms and reform efforts reflect differing analyses of the problem. This section describes more fully the attributes of the work-family conflict. This Article uses this description in the section that follows to better understand the relationship between reforms proposed or enacted and the vision of work-family imbalance that those reforms reflect. The Article draws from the key insights into the problem of work and family imbalance from those two sections to support the argument that we would benefit from directing some attention to issues of urban planning.

The difficulties of work and family balance have at least three components: time, flexibility, and money. Of these three, time is perhaps the most significant, as flexibility and money are in some ways dependent on the availability of time.

A. Time

One popular way to characterize the work-family conflict is to say that there is the same amount of work to do at home as there was when middle-class mothers¹⁵ were not in the paid labor force, but far fewer hours in the

12. See Folbre, *supra* note 10, at 39 (noting that inefficiencies of mother-provision of care are underappreciated); Juliet B. Schor, *The Overworked American: The Unexpected Decline of Leisure* 99–103 (1991).

13. Fineman, *supra* note 10, at 5–21, 215–19 (advocating more significant public financial support for caregivers of dependents, who she argues are usually themselves dependent on the state or a partner as a result of their care work, and that this “secondary-dependence” is as inevitable as primary dependence); Folbre, *supra* note 10, at 225–32; Karen I. Fredriksen-Goldsen & Andrew E. Scharlach, *Families and Work: New Directions in the Twenty-First Century* 8–9 (2001); Williams, *supra* note 8, at 30–39; Symposium, *Conceptions of Care Work*, 76 *Chi.-Kent L. Rev.* 1389 (2001) (collecting articles considering the way care work is delivered; the legal and social responses to the delivery of care work; the class, immigration, and racialized aspects of the delivery of care; and the impact of care work on women's economic and social position).

14. See, e.g., Sharon Lerner, *The Motherhood Experiment*, *N.Y. Times*, Mar. 4, 2007, § 6, (Magazine), at 20 (indicating that forty-five countries in Europe and Asia have instituted programs to create work-family-friendly policies to combat declining birthrates, and that the policy trend reflects an understanding that women's care giving and equal participation in the workplace must be viewed as consistent, not conflicting).

15. The paid working hours of all mothers has increased, but due to more consistent labor force participation of low-income women historically, the most dramatic change is for the middle class. Alice Kessler-Harris, *Out to Work: A History of Wage-Earning Women in the United States* 75, 142 (1982) (describing women's work history in the United States from home production of goods for the market, to sweatshop work during the Industrial

day to complete that work because of the time spent in the paid workplace. As a simple model of the problem, this has value; it conveys the speedup in work hours, or time pressure, that the last generation has experienced.¹⁶ There is a substantial debate among time-use scholars as to whether there actually has been an increase in work hours in the past generation.¹⁷ A major source of the dispute arises out of women's increasing labor force participation. If the average number of work hours per worker remained constant, the number of worker hours in the economy could have increased as women's labor force attachment has increased.¹⁸ This demographic change may also explain the perception of a speedup in wage labor hours because women's labor force participation changes the balance of women's available remaining hours to divide between unpaid family labor and leisure.¹⁹ In other words, all workers may experience a greater negative impact from a relatively constant number of work hours per paid worker because when women become full-time workers, there are fewer remaining women's hours during which to complete the unpaid family labor that sustains workers and partially determines real standard of living.

The model of rising paid labor hours leading to fewer hours available for housework yields a powerful beginning to understanding the time problem.²⁰ There is a substantial literature on changes in time use, and many particulars are in dispute.²¹ But there is a general consensus that over the past fifty years women's paid labor force hours have risen steadily, while men's have declined somewhat.²² For example, according to one survey, in 2000, men worked roughly three-fifths of the total paid labor force hours, while women worked the remaining two-fifths.²³ This approximately 60% to 40% divide of paid labor hours is a substantial change from the pattern fifty years ago. Over the period 1950 to 2000,

Revolution, and noting that for many women wage labor force participation has always been practiced against a social misunderstanding of women's economic activity).

16. See Valerie A. Ramey & Neville Francis, *A Century of Work and Leisure* 15–21 (Nat'l Bureau of Econ. Research, Working Paper No. 12264, 2006), available at <http://www.nber.org/papers/w12264>. One aspect of the problem missed by this description is that the speedup may have included an increase in paid labor force hours for all paid workers. That increase in hours cannot be hitched to the greater proportion of work-aged individuals in the paid labor force. But a substantial debate has developed over the nature of the increase in work hours, if any. Jerry A. Jacobs & Kathleen Gerson, *The Time Divide: Work, Family, and Gender Inequality* 13–40 (2004).

17. Jacobs & Gerson, *supra* note 16, at 13–40.

18. *Id.* at 23.

19. *Id.* at 62.

20. See Suzanne M. Bianchi, John P. Robinson & Melissa A. Milkie, *Changing Rhythms of American Family Life* 38–58 (2006) (providing an up-to-date and excellent summary of the data on parental busyness and concluding that parental busyness has in fact increased).

21. See Suzanne M. Bianchi et al., *Is Anyone Doing the Housework? Trends in the Gender Division of Household Labor*, 79 *Social Forces* 191, 193–96 (2000) (discussing the disputes in the literature).

22. Ellen R. McGrattan & Richard Rogerson, *Changes in Hours Worked, 1950–2000*, Fed. Res. Bank of Minneapolis Q. Rev., July 2004, at 14, 17.

23. *Id.*

women's paid labor force hours rose 82%, while men's declined 17%.²⁴ Measuring changes in work hours is a complicated process; different segments of the potential workforce, including older workers, single workers, students, or unskilled workers, may experience different trends.²⁵ A different picture emerges when we examine weekly hours of work instead of annual hours of work, or when we compare time-use diaries to the time estimates used by the U.S. Census.²⁶ But the trend lines in men's and women's labor force hours are not in dispute: men's hours have remained the same or decreased slightly while women's have increased substantially. The number of available hours in a woman's day for nonemployment-related activities, therefore, has dropped dramatically in a generation.²⁷

The image becomes more complicated when we consider the substantial variation in the amount of unpaid work a household can produce. Women in the paid labor force spend less time on all household tasks combined than women who are not in the paid labor force, and the number of housework hours for all individuals has dropped in the last generation.²⁸

While the gap between the time men and women spend in home production has narrowed over the past century, the gap is still more substantial than the gap in paid labor hours, with women doing approximately two-thirds of the household labor as of 2000.²⁹ The change in distribution of hours spent in household labor between men and women, however, is not as great as the reduction in overall hours of household labor done by anyone. Men's and women's unpaid labor hours have converged in large part because women's hours in unpaid labor have dropped; the rise in men's labor hours has been relatively modest.³⁰ For example, according to one study, in 1965, women spent 30 hours per week on housework, but by 1995 that number had dropped to 17.5 hours.³¹ Men, in contrast, spent 4.9 hours per week on housework in 1965, and by 1995 that number had increased by only 5 hours.³² Once again, while the figures may vary from one study to the next, the trends do not: men have increased family labor hours slightly, and women have decreased them more substantially.

24. *Id.*

25. Jacobs & Gerson, *supra* note 16, at 13–40.

26. *Id.*

27. See Sanders Korenman, Mei Liao & June O'Neill, Gender Differences in Time Use and Labor Market Outcomes 2 (2005), available at <http://www.atusers.umd.edu/papers/oneill.pdf>; Press Release, U.S. Dep't of Labor, American Time Use Survey—2006 Results Announced by BLS (July 27, 2006), available at <http://www.bls.gov/news.release/atus.nr0.htm>.

28. See Bianchi et al., *supra* note 21, at 196 (discussing the decrease in the amount of time spent on housework).

29. Ramey & Francis, *supra* note 16, at 44.

30. Bianchi et al., *supra* note 21, at 206.

31. *Id.*

32. *Id.*

The burden of work-family balancing, though, may be even more unequally distributed than those trends suggest, because women appear to do more “core” household tasks, such as cooking, while men’s housework hours include repairs, which place less daily stress on work-family balance.³³ Moreover, these figures compare all men and women, whether they have children or not. When children are brought into the mix, the increase in home labor time for women is greater than for men.³⁴ Women spend more time with children and take more responsibility for planning for their care.³⁵ The same is true with respect to the care of aging and disabled relatives.³⁶

Family labor does not have fixed dimensions. Understanding the variability in the amounts of household labor over time and across families helps us to understand how women navigate work and family responsibilities. Variation in household labor hours can result from differing fertility rates, rising parenting standards, technological changes, and declining housekeeping standards.

The most obvious variation in household labor results from changes in fertility rates. To some extent, having fewer children means less work.³⁷ When considering data about labor force hours of women in the aggregate, mothers of minor-aged children are not separated out. The facts that fewer women become mothers, and those who do become mothers have fewer children, have resulted in a lower birthrate overall. A lower birthrate and later childbirth have accompanied middle-class women’s more stable entrance into the paid labor force. According to one time-use researcher, “[I]f women in 1995 had the same characteristics as those in 1965—with the same low rates of labor force participation and higher rates of marriage and greater numbers of children—the decline in hours would be about 6 hours per week, not 12.”³⁸ That particular housework measure does not include child care; in other words, the presence of children raises non-child-care household labor hours, presumably covering the greater number of individuals in the household receiving household services without contributing to them. Widely discussed lower marriage rates may also lower household labor hours, although the tie between parental status and marriage has declined greatly in the past half century.³⁹

33. John P. Robinson & Geoffrey Godbey, *Time for Life* 100–01 (1997); Bianchi et al., *supra* note 21, at 198.

34. Robinson & Godbey, *supra* note 33, at 104–06; Bianchi et al., *supra* note 21, at 215.

35. See Marybeth J. Mattingly & Liana C. Sayer, *Under Pressure: Gender Differences in the Relationship Between Free Time and Feeling Rushed*, 68 *J. Marriage & Fam.* 205, 215–16 (2006).

36. See, e.g., Richard Schulz et al., *End-of-Life Care and the Effects of Bereavement on Family Caregivers of Persons with Dementia*, 349 *New Eng. J. Med.* 1936, 1938 (2003).

37. Lerner, *supra* note 14 (explaining that the belief that this is true has caused many countries to provide support to working mothers in order to combat declining birthrates).

38. Bianchi et al., *supra* note 21, at 212; see also Robinson & Godbey, *supra* note 33, at 104–07.

39. June Carbone, *From Partners to Parents: The Second Revolution in Family Law* 85–92 (2000).

Counteracting lower fertility rates is a rise in parenting standards. There is a widespread but inaccurate belief that women's increased labor hours must have resulted in fewer hours spent parenting their children. In fact, contrary to intuitions and predictions, between 1965 and 1995, maternal time spent with children on average moved steadily upward, despite dramatic changes in women's participation in the paid labor force.⁴⁰ Comparing mothers of the 1960s to those of the 1990s, when the most dramatic changes in labor force participation occurred, we see that mothers of the 1990s spend more time caring for their children than mothers of the 1960s. Explanations for this surprising trend may include time freed up by a decline in household labor hours on non-child-care related activities, a decline in the birthrate per mother, and an increase in parenting standards that have led women to shift discretionary time toward children.⁴¹

Cultural standards for the care of children, though amorphous, can be said to have risen in the past generation.⁴² That is to say professional advice about children's needs⁴³ has paralleled changes in parenting practices:⁴⁴ children are thought to need more intensive interactions with mothers, in particular, as well as significantly more enrichment as they age, which is parental-labor intensive.⁴⁵ The amount of time middle-class mothers spend transporting their children to and from extracurricular activities and doctors' appointments has risen dramatically in the past generation.⁴⁶ The rise in child-rearing standards is a factor explaining some mothers' time challenges.

40. Suzanne M. Bianchi, *Maternal Employment and Time with Children: Dramatic Change or Surprising Continuity?*, 37 *Demography* 401, 404–05 (2000).

41. See *infra* notes 42–46 and accompanying text; *infra* notes 50–51.

42. This Article calls this a “rise” in standards because it is easier to understand from a time use perspective, but increased time and attention to children may be a shift in standards rather than a rise. If the shift in standards does not improve some recognized measures of child welfare outcomes, it may not be appropriate to think of the change as a rise in standards.

43. See Sharon Hays, *The Cultural Contradictions of Motherhood* 57–59, 69, 97–98 (1996); Annette Lareau, *Invisible Inequality: Social Class and Childbearing in Black Families and White Families*, 67 *Am. Soc. Rev.* 747 (2002); Linda Hirshman, Op-Ed., *Off to Work She Should Go*, *N.Y. Times*, Apr. 25, 2007, at A27.

44. See Bianchi, *supra* note 40, at 404–05.

45. See Sandra Hofferth & John Sandberg, *Changes in American Children's Time, 1981–1997*, in *Children at the Millennium: Where Have We Come From, Where Are We Going?* 193, 195–98 (Timothy J. Owens & Sandra L. Hofferth eds., 2001); see also Jeff DeSimone & Angela Dills, *The Effects of Schooling on Parental Time in Education Production* 6 (2005), available at <http://www.atusers.umd.edu/papers/desimone.pdf>.

46. See, e.g., Martha Bianco & Catherine Lawson, *Trip-Chaining, Childcare, and Personal Safety: Critical Issues in Women's Travel Behavior*, in Fed. Highway Admin., U.S. Dep't of Transp., *Women's Travel Issues: Proceedings from the Second National Conference* 121, 124, 126 (1996) [hereinafter *Women's Travel Issues*], available at <http://www.fhwa.dot.gov/ohim/womens/chap8.pdf>; Brian D. Taylor & Michael Mauch, *Gender, Race, and Travel Behavior: An Analysis of Household-Serving Travel and Commuting in the San Francisco Bay Area*, in *Women's Travel Issues*, *supra*, at 372, available at <http://www.fhwa.dot.gov/ohim/womens/chap20.pdf>; Surface Transp. Policy Project, *High Mileage Moms—The Report* (July 24, 2002), <http://www.transact.org/report.asp?id=184>.

This rise in parenting standards exacerbates the impact of a newer time sponge in the lives of today's parents that may be less examined: sprawl. As housing has spread farther from the city center into sprawled suburbs, middle-class parenting has come to require more time spent in cars, as discussed more fully in Part III below. Today's cities are not simply the classic urban center of economic activity ringed by residential suburbs. Some economic activity has chased residential patterns. As low-paying service jobs have followed middle-class families farther out of the city, larger city-to-suburb commutes burden lower-skilled workers residing in cities. Those "reverse commutes" place new time and financial costs on low-income parents. These aspects of parental time use are of particular interest from an urban planning and equality standpoint.⁴⁷

Technology also may explain some variability in household labor hours. Economists have long theorized that technological advances would reduce household labor time. There is much to support that theory; most American women are no longer washing clothes by rubbing them on a washboard and hanging them to dry. Technological advances ranging from the iron to the washer and dryer, to electric lights, stoves, and microwave ovens have all reduced the amount of time needed to complete set tasks. As with the time spent on parenting, though, the tasks have not stayed constant. Instead, in the early years of these inventions, standards rose as the time made available by time-saving technological advances were redirected.⁴⁸

But some technologies have translated into clear time savings. Markets have arisen in some of the areas of household labor that were so time-consuming a generation ago. The most striking of these is the market in prepared foods. Whether purchased at a carryout restaurant or from a deli counter at the grocery store, many more food purchases today are made after more significant contributions of labor before sale.⁴⁹ Prepared foods may be the best example of a market response to changing family labor patterns. Their positive impact on the household time economy is obvious. Their negative impact may be less obvious: these goods require transportation either by the consumer or by the producer. Whether that transportation imposes significant aggregate time and financial costs is a product of urban planning. Prepared foods also have a price—they exchange time for money.

Finally, in very recent years, housekeeping standards have declined, especially among women working in the paid labor force.⁵⁰ At the same

47. See *infra* Part III.B.

48. See Suellen Hoy, *Chasing Dirt: The American Pursuit of Cleanliness* 153–56 (1995); Euston Quah, *Economics and Home Production: Theory and Measurement* 107 (1993); Joann Vanek, *Time Spent in Housework*, *Sci. Am.*, Nov. 1974, at 116, *reprinted in* *The Economics of Women and Work* 82, 87 (Alice H. Amsden ed., 1980); Ramey & Francis, *supra* note 16.

49. See Hayden Stewart et al., *The Demand for Food Away from Home: Full-Service or Fast Food?* (2004), available at <http://www.ers.usda.gov/publications/aer829/aer829.pdf>.

50. See Suzanne M. Bianchi, *supra* note 40, at 406–07.

time, dramatically increased house size may counteract that decrease in housekeeping standards.⁵¹ Variability with respect to time and value placed on housekeeping has developed where it had once been possible to detect greater uniformity in higher housekeeping standards.⁵² Despite changes as well as increasing variability in fertility rates, marriage rates, technology, child-rearing standards, and housekeeping standards, the overall net decline in family labor hours is not adequate to make up for the overall increase in women's paid labor force hours, thus the increasing public attention to the work-family conflict.

In addition to the time pressures created by rising combined paid and unpaid labor hours, there is a spatial dimension to the rise of work-family conflict. The relatively new logistical demands of life in sprawled communities have added time pressures to the day. The preceding discussion of changes in women's time use points to one spatial concern: if women in the paid labor force have shifted time from housework to parenting, any increases in the spatial logistics of parenting increase the stress women experience in balancing work and family responsibilities. When the primary task was to take care of the physical space of the home, the area was self-contained and the travel demands more limited. But where the focus of unpaid labor in families has shifted to children, the caregiver's spatial field is much larger; she must escort children through their daily activities external to the household. The shift in standards from housekeeping to parenting increases the mileage a family worker must cover, which increases time pressure.

The continuing gendered time distribution of domestic labor and parenting, despite radical gender integration in the paid labor force, explains the significant barrier work-family conflict presents to women's equal citizenship. Efforts to more evenly distribute household labor between the sexes are essential. But as the data in this section shows, home time use, while evolving, has been far slower to change than workplace behavior. Reform efforts aimed at easing work-family conflict certainly should not detract from efforts to integrate household labor tasks between the sexes. But neither can the ideal of integrated household labor tasks serve as the only answer to work-family tension. Further, if women and men achieved equal participation in household labor and childrearing, easing work-family conflict would still remain as a family welfare issue. Dependency is a part of the life cycle; if it increasingly will be delivered by labor force

51. See U.S. Census Bureau, Median and Average Square Feet of Floor Area in New One-Family Houses Completed by Location (2005), available at <http://www.census.gov/const/C25Ann/sfttotalmedavgsgft.pdf>. (noting that the average house size in 2005 was 2227 square feet, up from 1525 in 1973).

52. See Cheryl Mendelson, *Home Comforts: The Art and Science of Keeping House* 4–15 (1999) (discussing the meaning and history of housekeeping standards over the past several generations).

participants, of either sex, then work-family balance will require restructuring of institutions.⁵³

B. Flexibility

Distinct from the problem of time, though related, is the problem of inflexible hours and tasks. The demands of the care of dependents are marked by unpredictability. The Family and Medical Leave Act (FMLA) provided some flexibility in the form of work-release in the event of a severe illness of a worker or her family members, but schedule changes forced by unplanned events go well beyond those covered by the FMLA.⁵⁴ Schedules are usually interrupted by more mundane but necessary events such as doctors' appointments, school plays, sports tournaments, social events, and parent-teacher conferences, as well as unpredictable household needs such as meeting household repair people. The best laid work-family coverage has trouble capturing the minicrisis created by forgotten basketball shoes, permission slips, or a suspension from school. The appointments of dependents with disabilities can be even more time-consuming and far-flung geographically.

Problems of inflexibility extend beyond hours into significant, if more intangible, questions of roles. A substantial literature in psychology suggests that having multiple roles—spouse, parent, worker—enhances rather than detracts from an individual's psychological well-being.⁵⁵ However, the ability to mediate the tensions between roles to create a positive effect on well-being rather than a negative one is influenced by a person's perceived control over her roles.⁵⁶ Flexibility has a psychological as well as a practical component—"role ease," or the ability to balance and integrate roles, is important to obtaining the demonstrated benefits of multiple roles.⁵⁷

Workers delegate the immediate care of dependents to a person or institution during work hours. Schools, nursing homes, day cares, after-school programs, babysitters, coparents, friends, and other relatives provide some aspects of care of a worker's dependent. But we understand that not all aspects of that dependency are delegated, even during working hours. Parents troubleshoot minor emergencies from the workplace, as well as

53. See Fineman, *supra* note 10, at 5, 21.

54. Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654 (2000); see Katharine B. Silbaugh, *Is the Work-Family Conflict Pathological or Normal Under the FMLA? The Potential of the FMLA to Cover Ordinary Work-Family Conflicts*, 15 Wash. U. J.L. & Pol'y 193, 195–97 (2004).

55. See, e.g., Christina J. Chrouser Ahrens & Carol D. Ryff, *Multiple Roles and Well-Being: Sociodemographic and Psychological Moderators*, 55 Sex Roles 801, 804 (2006); Rena L. Repetti, *Work and Family Roles and Women's Mental Health* (Inst. for Soc. Sci. Research, Working Paper No. 6, 1987), available at <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1055&context=issr>.

56. See Ahrens & Ryff, *supra* note 55, at 803–04, 813.

57. Stephen R. Marks & Shelley M. MacDermid, *Multiple Roles and the Self: A Theory of Role Balance*, 58 J. Marriage & Fam. 417, 421 (1996).

offer advice and make decisions over the telephone. In addition, parents are decisive in determining which aspects of a child's dependency will be delegated, and which cannot. Most family caregivers cannot and do not delegate interaction with teachers and health-care providers, the purchasing of clothing and supplies for dependents, and planning on a day-to-day basis for a dependent's activities. In many ways, the aspects of dependency that are delegated during working hours can be viewed as a small share of the overall responsibility a worker assumes for managing her dependents' needs. Whether it is manifest or not, the role of parent is integrated into a person's identity even when at work. During working hours and when physically at work, a person's parental status does not disappear from her experience.⁵⁸ The roles are coterminous, not sequential.

This recognizable understanding of a person's balancing of work and family responsibilities is at odds with a more formal conception of relatively clear divisions between work life and family life. That version of roles has a worker leaving behind the family role when at work, and resuming the family role at the end of the work shift. That unrealistic notion of a clean division between work and family roles has informed many of the structures that have developed around these two spheres of daily life. The contrast between a worker's experience of coterminous multiple roles, and the organization of work life as separate from family life, causes a practical and psychological dissonance that increases the burden on workers with dependents. A worker's identity as a parent or caregiver to a dependent can be expected to intrude upon the physical and temporal boundaries of work, if at times only for brief periods.⁵⁹

Logistical circumstances that create strict distinctions between the worker and parent role may result in a dissonance between an individual's actual integration of multiple roles and the necessity of nonetheless separating the roles. Flexibility between work and family has both a practical and a psychological component, and institutional structures may place stress on either form of flexibility.

C. Money

As the real value of wages has dropped, families need more hours in the paid labor force to achieve a stable standard of living. Wages at the low end of the scale have suffered particularly severe degradation in buying power, requiring low-income individuals to work more hours at more jobs

58. See, e.g., Rosalind Chaitt Barnett & Karen C. Gareis, *Parental After-School Stress and Psychological Well-Being*, 68 J. Marriage & Fam. 101, 101-02 (2006).

59. This perspective may seem to authorize discrimination against those with family responsibilities. Most of the workforce is responsible to some extent for dependents at some point in a career, so few workers would be excluded entirely from this observation. Moreover, some evidence suggests that parents make better workers for reasons ranging from stronger workforce attachment to better time management skills. See Laura M. Graves, Patricia J. Ohlott & Marian Ruderman, *Commitment to Family Roles: Effects on Managers' Attitudes and Performance*, 92 J. Applied Psychol. 44, 53 (2007).

to stay even, or not to fall behind too quickly.⁶⁰ The high cost of child care compounds this problem, as does the decline over the past several decades of male participation in the expenses of raising children in low-income communities.⁶¹ The movement of some household production to the market in the form of services, such as prepared food, has increased available hours, but it has also increased the need for cash.

In addition, consumption standards have risen. It takes more hours to achieve the ever higher benchmark standard of living associated with the middle class, as that standard itself rises.⁶² The additional wages delivered by additional hours of work may also simply drive up the price of housing and other goods associated with the middle-class lifestyle, frustrating attempts by individuals to contain either hours or spending.⁶³

A scarcity of time, flexibility, and money characterizes the work-family conflict. Reform efforts have sought to compensate for these deficits in a variety of ways, primarily by asking employers to change their institutional structures to accommodate what are treated as otherwise fixed constraints on workers. The next section considers the major policy approaches that have been taken or proposed to relieve the work-family conflict. The section that follows that will consider the role geography plays in exacerbating time, flexibility, and money constraints. This identification of geographical inputs to work-family stress indicates the need for a reform of a sphere outside of the workplace, family roles, or social programs aimed at children's needs.

II. PAST WORK-FAMILY REFORM EFFORTS TARGETING TIME, FLEXIBILITY, AND MONEY

The last few decades have seen numerous worthy reforms proposed and enacted to ease work-family tension. The contention of this Article is that the range of pressure points could be expanded beyond the three main targets to date: employers, family law, and social welfare policy reforms such as child-care subsidies. Reforming the workplace has been enormously valuable to addressing the time, flexibility, and money dimensions of the work-family tension. But since the workplace is not the whole source of the work-family tension, the ability of even the best intentioned employer to achieve either equality in the workplace for caregivers or optimal social welfare for families in the face of work-family tension has a limit. The problem has other dimensions, as recognized in the

60. See, e.g., Katharine G. Abraham & John C. Haltiwanger, *Real Wages and the Business Cycle*, 33 J. Econ. Literature 1215, 1252–60 (1995).

61. David J. Eggebeen, *The Changing Course of Fatherhood: Men's Experiences with Children in Demographic Perspective*, 23 J. Fam. Issues 486, 500 (2002).

62. See John De Graaf et al., *Affluenza: The All-Consuming Epidemic* 24 (2001). See generally Juliet B. Schor, *The Overspent American: Why We Want What We Don't Need* (1999).

63. Elizabeth Warren & Amelia Warren Tyagi, *The Two-Income Trap: Why Middle-Class Mothers and Fathers Are Going Broke* 8–10 (2003).

literature on families and the privatization of dependency⁶⁴ and by efforts to lengthen the school day and year to better align with parental work schedules.⁶⁵ Ignored entirely in the work-family literature is the “place” dimension of the work-family tension: the challenges presented by the geographical separation of our residential, work, and educational institutions that characterizes much of American life. This section offers examples of the approaches that have been taken to work-family reform to date. The section that follows this sets out why place plays such a significant role in work-family balancing.

A. Reforms in the Workplace

Reformers have focused attention on workplace mandates and incentives that make it easier for workers with dependents to negotiate their various roles. These include both public law reforms, such as the FMLA, and private employer responses, including the provision of on-site day cares, gyms, and dry cleaners, as well as employment status policies such as flextime, telecommuting,⁶⁶ and part-time work options. Many more public law reforms have been proposed without being enacted. These include, for example, expanding the Fair Labor Standards Act to cover more workers, shortening the workweek from forty to thirty-five or thirty hours for a substantial number of workers,⁶⁷ and creating legal causes of action for workplace design that unnecessarily disadvantages parents.⁶⁸

1. Private, Voluntary Reforms in the Workplace

Most reform efforts have focused on the workplace and employer mandates or incentives that address all three of these issues. These efforts are responses to what some labor scholars call a “structural mismatch” between the needs of workers and the design of jobs.⁶⁹

The past decade has seen an explosion in human resource practices voluntarily adopted by some employers to retain and assist employees who

64. See Fineman, *supra* note 10 (spawning an extensive literature on this subject); see also Carbone, *supra* note 39, at 10–15; Linda C. McClain, *The Place of Families: Fostering Capacity, Equality, and Responsibility* 215–16 (2006).

65. Elena Silva, Education Sector, *On the Clock: Rethinking the Way Schools Use Time* 1, 4–5, 7 (2007), available at http://www.educationsector.org/usr_doc/OntheClock.pdf.

66. Telecommuting is the main “place” reform that has been implemented, although it has serious problems as a mechanism for solving place issues for women. See *infra* Part IV.A.1.

67. This idea was proposed by Professor Juliet Schor. See Juliet B. Schor, *Worktime in Contemporary Context: Amending the Fair Labor Standards Act*, 70 Chi.-Kent L. Rev. 157, 165–72 (1994). It has been endorsed more recently by Vicki Schultz. See Schultz, *supra* note 9, at 1937, 1956–57.

68. Joan Williams & Cynthia Calvert, *Guide to Family Responsibilities Discrimination* 9.1–.11 (2006).

69. Ellen Ernst Kossek, *Workplace Policies and Practices to Support Work and Families*, in *Work, Family, Health, and Well-Being* 97, 97–98 (Suzanne M. Bianchi et al. eds., 2003).

are struggling with work-life balance. These reforms include offering flexible work schedules; providing child and elder care referrals; providing paid family leave; concierge services that provide dry cleaning, grocery, and other conveniences; on-site child care or backup child care; telecommuting options; or part-time employment programs.⁷⁰

Flexible scheduling can mean many things. The most basic version of flextime allows employees to control the start time and finish time at work, shifting it from the conventional 9:00 a.m. to 5:00 p.m. to more convenient hours, such as 7:00 a.m. to 3:00 p.m. Over forty percent of workers have access to this traditional sort of flexibility.⁷¹ More flexible programs allow workers to choose this flexibility varying from day to day, rather than on a set schedule. Flexibility can also take the form of a compressed workweek, where a worker puts five days of work into three and a half or four long days. This compressed workweek is predictable once established, and in that sense is inflexible in the common sense of that word. These forms of flexibility differ from daily flexibility, where a worker can come and go from the workplace to address personal issues; a third of employees say this form of flexibility is available to them.⁷² From the perspective of role integration, this latter form of flexibility may be particularly useful. Compressing a workweek into fewer but longer days is a very different solution from transitioning between work and family roles fluidly or unpredictably throughout each day, but both are called “flexibility” in the work-family literature.

In addition, flexibility may include the availability of voluntary part-time work schedules⁷³ (as distinct from pervasive involuntary part-time work schedules found in the low-wage and contingent labor market).⁷⁴ Part-time work can provide needed flexibility. At the same time, it is associated with lower wages and stalled advancement, and rarely comes with the crucial employee benefits on which most working families depend.⁷⁵

2. Legally Mandated Reforms in the Workplace

The most significant legally mandated reform is the Family and Medical Leave Act of 1993.⁷⁶ The FMLA and other state leave policies provide time away from work in the event of the birth or adoption of a child or the medical needs of the worker or her family members, without job loss. The FMLA provides for unpaid leave only to those working for relatively large employers, and for this and other reasons, its efficacy as a work-family

70. *Id.*; see also Williams, *supra* note 8, at 72–75, 85–91.

71. Galinsky, Bond & Hill, *supra* note 1, at 5.

72. *Id.* at 9.

73. *Id.* at 4.

74. See Clyde W. Summers, *Contingent Employment in the United States*, 18 Comp. Lab. L.J. 503, 519 (1997).

75. See *id.* at 520.

76. 29 U.S.C. §§ 2601–2654 (2000).

balancing tool is in dispute.⁷⁷ While the medical leave provision of the FMLA provides some flexibility for severe emergencies, the statute is not designed to address the more common reasons a caregiver may wish to be away from the workplace for a time, such as to take an aging parent to a routine medical appointment or to attend a school event.⁷⁸

The Equal Employment Opportunity Commission (EEOC) recently issued its first guidance on unlawful disparate treatment of workers with family care-giving responsibilities.⁷⁹ While the guidance claims not to create a new protected category of workers with care-giving responsibilities, it does highlight the protection that antidiscrimination law provides against sex stereotyping and its applicability when that stereotyping is about real, perceived, or potential care-giving responsibilities. The EEOC goes further and recommends (without requiring) that employers adopt family-friendly workplace policies, including flexible scheduling that eases work-family balance.⁸⁰ This recent development in employment discrimination law is a needed floor for advancing work-family balance, addressing that portion of work-family tension attributable to employer discrimination. It is evidence of increasing pressure to address the needs of workers with care-giving responsibilities.

Congress has considered, but not passed, other flexibility-oriented reforms. While reform proposals have been numerous, examples of two varieties will suffice: one has been promoted by Democrats, and another by Republicans. Democrats, led by President Bill Clinton, urged passage of the Family Friendly Workplace Act⁸¹ to require employers to provide up to three additional days per year of leave for a child's educational needs, or for routine family medical purposes, including attending to an older relative's health needs. In the House, the Family and Medical Leave Improvements Act⁸² would have given an additional twenty-four hours in a year to volunteer at a child's school or attend a parent-teacher conference or school performance related to the child's advancement. These bills seek to provide for more fluid transitions between family and work.

Republicans, in turn, proposed the Working Families Flexibility Act⁸³ and the Family Time Flexibility Act,⁸⁴ which would allow workers to choose compensatory time instead of pay under the Fair Labor Standards Act. This would decrease the number of hours worked overall and would provide some workers with the ability to take compensatory time when it would help their individual family the most. Democrats have opposed the

77. For an elaboration of this issue, see Silbaugh, *supra* note 54, at 194–95, 202–03.

78. *Id.*

79. See EEOC, Enforcement Guidance: Unlawful Disparate Treatment of Workers with Caregiving Responsibility (2007), available at <http://www.eeoc.gov/policy/docs/caregiving.pdf>.

80. *Id.* at 5–8.

81. S. 4, 105th Cong. (1997).

82. H.R. 109, 105th Cong. (1997).

83. H.R. 1, 105th Cong. (1997).

84. H.R. 1119, 108th Cong. (2003); see also Family Time and Workplace Flexibility Act, S. 317, 108th Cong. (2003) (companion legislation).

bill in the belief that it would give employers too much leverage to persuade or prevent workers from taking the overtime pay on which they currently rely. Republicans have marketed the bill as an answer to the inflexibility of the workplace for working parents. Despite the failure to pass either of these initiatives, their prominence demonstrates awareness of the distinct work-family juggling challenge that inflexible work hours presents (and the political benefits to be gained by the salience of the issue).

These legal responses to the work-family conflict are employer-based, meaning they seek to place mandates on employers to relieve the stress caused by work-family tension. However, this is only the appropriate site of reform to the extent that employers have the sources of stress within their control. This Article argues that they only control a portion of the source of that stress, with family life and public institutional structures such as land use patterns and educational policy playing a significant role as well.

B. *Reforms in the Family*

Family life and structure have undergone intense discussion and transformation concurrent with middle-class women's increased participation in the wage labor force. Legal reforms of family law have accompanied these demographic changes.

Public law reforms of family life and roles have included better postdivorce compensation for unpaid familial caregivers,⁸⁵ the alleviation of the "marriage penalty" for families with two working parents,⁸⁶ deeper deductions for dependents and for child-care expenses,⁸⁷ and better child support enforcement and more systematic child support awards. Private responses have included the rise in the market provision of many traditional homemaking tasks ranging from food preparation to market child care. Proposals for further reforms range from the widespread call for universal preschool and other child-care proposals to calls for deliberately reducing fertility rates.⁸⁸

1. Transformation of Family Life

The last several decades have seen enormous changes in the American family that bear on the work-family conflict. Changes in family form

85. See Marjorie E. Kornhauser, *Theory Versus Reality: The Partnership Model of Marriage in Family and Income Tax Law*, 69 Temp. L. Rev. 1413, 1439 (1996). See generally *Divorce Reform at the Crossroads* (Stephen D. Sugarman & Herma Hill Kay eds., 1990).

86. Kermit O. Keeling, Radie G. Bunn & G.E. Whittenburg, *Tax Penalties Facing Parents and Married Couples: Some Relief on the Way*, 19 J. Tax'n Investments 363, 368-69 (2002).

87. See *id.* at 365-67.

88. Elinor Burkett, *The Baby Boon 202-05* (2000); Mary Anne Case, *How High the Apple Pie? A Few Troubling Questions About Where, Why, and How the Burden of Care for Children Should Be Shifted*, 76 Chi.-Kent L. Rev. 1753, 1781 (2001); Katherine M. Franke, *Taking Care*, 76 Chi.-Kent L. Rev. 1541, 1543 (2001).

include increased visibility of families built around same-sex couples, a reduction in the fertility rate, a reduction in marriage rates, an increase in single parenting, and changes in fathers' responsibilities in heterosexual families.

The increased visibility of same-sex couples and the increase in child rearing by same sex couples destabilize the gendered expectations of role division in some ways, though not in others. A same-sex couple raising children will not divide responsibilities according to gender. But a far greater number of lesbian couples than gay couples are raising children, suggesting that the gendered impact of work-family tension is not entirely eradicated by same-sex parenting: more women than men are taking up child-care duties as among lesbian and gay couples.⁸⁹ Although the number of same-sex couples rearing children has risen, it is still a relatively small portion of all children in the United States.⁹⁰

The increased rate of single parenting in the past generation, almost all of which is still done by women,⁹¹ heightens the gendered impact of the work-family conflict because those single women are bearing nearly all of the strain of balancing family and work on a day-to-day basis. At the same time, American women have delayed childbearing and had fewer children in the past generation,⁹² which has reduced child-care requirements and allowed more women to integrate work and family successfully. Related to both these trends is the decrease in the rate of marriage itself.⁹³

Men have also increased their responsibilities toward children over the course of the past generation. When this has occurred, it has reduced work-family conflict for mothers, and created it for fathers; work-family tension has then become a family welfare issue rather than a gender issue. But the increase in fathers' child-rearing responsibilities, while discernible, is not pronounced: on average, fathers spend approximately sixty percent of the amount of time mothers do with children, and in more flexible tasks than mothers.⁹⁴ While these behavioral changes have been slower in coming than some might have expected, they have provided a benefit in many households. Yet it is a mistake to conclude that fully equal sharing of parenting will resolve work-family tension, because it is a product of an overall increase in work hours, when paid and unpaid work is combined.

89. See Suzanne M. Johnson & Elizabeth O'Connor, *The Gay Baby Boom: The Psychology of Gay Parenthood* 121 (2002).

90. *See id.*

91. Leslie D. Hall, Alexis J. Walker & Alan C. Acock, *Gender and Family Work in One-Parent Households*, 57 *J. Marriage & Fam.* 685, 686 (1995) (discussing the fact that no more than four percent of single-parent families are headed by men).

92. See Stephanie J. Ventura et al., *Highlights of Trends in Pregnancies and Pregnancy Rates by Outcome: Estimates for the United States, 1976-96*, 47 *Nat'l Vital Stat. Rep.* 1, 2 (1999), available at http://origin.cdc.gov/nchs/data/nvsr/nvsr47/nvs47_29.pdf.

93. Sam Roberts et al., *51% of Women Are Now Living Without Spouse*, *N.Y. Times*, Jan. 16, 2007, at A1.

94. See W. Jean Yeung et al., *Children's Time with Fathers in Intact Families*, 63 *J. Marriage & Fam.* 136, 145-48 (2001).

Moreover, a declining marriage rate and a rise in single parenting correlate with less care by fathers for a substantial set of families.

2. Transformation in Family Law

Coincident with changes in the divorce rate and increasing expression of egalitarian ideals for marriage, family law reforms have swept the country. In particular, the distribution of income and wealth at divorce was reformed over the past generation to better compensate women for their care-giving labor as well as for the impairment to their human capital that accompanies the family care work role.⁹⁵ In addition, in 1988 the federal government mandated changes in the way state courts determine child support.⁹⁶ This change resulted in a raise in the amount of child support awarded, a result that reflects a form of increased egalitarianism in responsibilities for children. These are examples of a shift that took place in family law over the course of the past generation that to some degree aimed to recognize the contribution of caregivers. In theory, these reforms may lead to a more egalitarian division of family work, as the penalty associated with family work is reduced. A more egalitarian division of labor in turn would reduce the work-family burden on women.

C. Public Programs

Public law reforms have also been aimed at easing work-family tension, sometimes as a part of a larger concern about child welfare. For example, the past generation has seen incentives and modest financial support for the provision of child care,⁹⁷ as well as efforts to establish universal preschool,⁹⁸ which accommodates family need for care. Tax credits and deductions for expenditures on child care address both the growth in the use of child care and its impact on family budgets.⁹⁹ Government initiatives have supported after-school programs, libraries, and youth programs that

95. See Principles of the Law of Family Dissolution: Analysis and Recommendations §§ 4.09, 5.02, 5.12 (2002); Kornhauser, *supra* note 85, at 1417; Laura A. Rosenbury, *Two Ways to End a Marriage: Divorce or Death*, 2005 Utah L. Rev. 1227, 1240; Stephen D. Sugarman, *Dividing Financial Interests on Divorce*, in *Divorce Reform at the Crossroads*, *supra* note 85, at 130, 139–41.

96. See Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (codified in scattered sections of 42 U.S.C.).

97. For example, the Child Care and Development Block Grant portion of Temporary Assistance to Needy Families (TANF) provides states with funds to provide child care to families transitioning off public assistance. See Child Care and Development Block Grant Act of 1990, 42 U.S.C. § 9858 (2000); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 6, 42 U.S.C.).

98. For a summary of efforts to make universal preschool available nationwide, see Susan Meunchow, *Preschool for All: Step by Step* (Draft 2004), available at <http://www.preschoolcalifornia.org/assets/first5-guide-overview-of-status.pdf>. (presenting a report by the organization behind the recent high-profile effort in California to create universal preschool).

99. Keeling, Bunn & Whittenburg, *supra* note 86, at 365–67.

can bridge some of the time children and youth are unsupervised while their parents are at work.¹⁰⁰ Public law responses to concern about the welfare of unsupervised adolescents are, in part, reactions to the increased challenges of reconciling parental roles with increased maternal labor force participation.¹⁰¹

III. THE LESS EXAMINED WORK-FAMILY PROBLEMS OF “PLACE”

Against this understanding of the work-family policy stage, how can issues of “place” expand the debate?¹⁰² Land use patterns have changed and evolved over time in response to a number of developments, including zoning laws and federal housing policy and initiatives, as much as to consumer demand. We have seen increasingly focused analysis of sprawl’s mechanism and consequences, but without placing that analysis in the context of the work-family policy debate. This section reviews the general debate over sprawl before evaluating sprawl’s impact on work and family balance.

A. *The Conventional Criticisms of Sprawl*

We regularly hear that sprawl has changed the landscape in and around American cities.¹⁰³ Its defining attributes are lower density development, meaning the consumption of greater and greater amounts of land for the same uses that are effectuated with far less land in urban neighborhoods; single-use zoning, meaning residential areas are separated from retail areas, creating a nearly complete reliance on cars for commuting to work, as well as for small local errands such as retail shopping, school drop-offs, and social and civic activities; and a complex relationship to the city center, marked by economic and racial justice issues and divestment in urban centers.¹⁰⁴

100. See Council of Chief State Sch. Officers & Fin. Project, Using NCLB Funds to Support Extended Learning Time: Opportunities for Afterschool Programs 10 (2005), available at <http://www.financeproject.org/publications/usingnclbfunds.pdf>.

101. Carbone, *supra* note 39, at 211–26.

102. There is in fact a long history of critiques of place and women’s status. The literature about domesticity, from Victorian-era scholarship to Betty Friedan’s *The Feminine Mystique*, all have a spatial component. Charlotte Perkins Gilman and the material feminists argued for collectivized housework to be reflected in housing design where the isolation of the Victorian household would be traded in for socialization and economies of scale for traditionally female household labor. See Charlotte Perkins Gilman, *The Home: Its Work and Influence* (Univ. of Ill. Press 1972) (1903). For a rich history of the spatial dimensions of social criticism during the progressive era and earlier, see Dolores Hayden, *The Grand Domestic Revolution: A History of Feminist Designs for American Homes, Neighborhoods, and Cities* (1981) [hereinafter Hayden, *The Grand Domestic Revolution*].

103. See, e.g., Anthony Flint, *This Land: The Battle over Sprawl and the Future of America* 8–17 (2006); Gillham, *supra* note 4, at 45–46; Joel S. Hirschhorn, *Sprawl Kills: How Blandburbs Steal Your Time, Health and Money* 19–27 (2005).

104. Gillham, *supra* note 4, at 3–8; Xavier de Souza Briggs, *More Pluribus, Less Unum? The Changing Geography of Race and Opportunity*, in *The Geography of Opportunity*:

The decentralization of land use requires greater expenditures on infrastructure because water, sewage, electricity, and roads must be expanded across larger physical areas. Those costs are largely borne by public entities.¹⁰⁵ According to Henry Richmond, founder of the National Growth Management Leadership Project, “[T]he geographic size of the metropolitan areas [has expanded] five to ten times as fast as population growth.”¹⁰⁶

The particulars of its definition are debated and elaborated among sprawl analysts, as its basic attributes express themselves in countless variations. Social concern over sprawl from many corners has increased in recent years. The damaging attributes of sprawl are incremental, and hard for markets to correct. For example, consumption of land has an overall impact on the environment, and the gradual degradation on the environment has an impact on everyone. However, environmental problems are “tragedies of the commons,” where each individual may personally gain from encroaching on the commons, because the benefits of refraining can only be realized if everyone else refrains.¹⁰⁷ Wetlands and forests are giving way to development, and pollution increases with the development itself as well as with the increased auto mileage that accompanies sprawl.¹⁰⁸ Environmentalists have long expressed concerns about the long-term impact of sprawl on water, air, and health; they have criticized the systemic incentives towards sprawl¹⁰⁹ and offered a variety of alternatives such as “smart growth” development and New Urbanism.¹¹⁰

Sprawl has also been criticized as corrosive to social relationships.¹¹¹ This more diffuse concern has multiple parts. First, one of the forces that accounts for suburban development has been “white flight” from urban areas, or a desire of many whites to live separate from African-Americans, in particular following the decline of de jure segregation.¹¹² Much of the history of housing development has included overt racism in this regard, as in the case of restrictive racial covenants that were a precondition of favorable federal home mortgage guarantees from the Federal Housing

Race and Housing Choice in Metropolitan America 17, 17–21 (Xavier de Souza Briggs ed., 2005).

105. See Robert W. Burchell et al., *Sprawl Costs: Economic Impacts of Unchecked Development* 50 (2005).

106. Henry R. Richmond, *Sprawl and Its Enemies: Why the Enemies Are Losing*, 34 Conn. L. Rev. 539, 566 (2002).

107. Garrett Hardin, *The Tragedy of the Commons*, 162 Science 1243, 1244 (1968).

108. Matthew E. Kahn, *Green Cities: Urban Growth and the Environment* 110–25 (2006).

109. See *infra* Part IV.B.

110. See, e.g., Andres Duany, Elizabeth Plater-Zyberk & Jeff Speck, *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream* 229–37, 253–56 (2001); Peter Katz, *The New Urbanism: Toward an Architecture of Community* (1994)

111. Gillham, *supra* note 4, at 143–51.

112. Richard F. Muth, *Commentary, in American Domestic Priorities* 297, 297, 300 (John M. Quigley & Daniel L. Rubinfeld eds., 1985); Keith Ihlanfeldt, *The Spatial Mismatch Between Jobs and Residential Locations Within Urban Areas*, 1 Cityscape 219, 228 (1994).

Administration, and the related lending practice called “redlining,” which prevented largely African-American communities from gaining effective access to mortgages and other credit.¹¹³ The many historical de jure mechanisms of maintaining racial housing segregation have had dramatic economic consequences, as education systems and social networks have been linked to residential patterns.¹¹⁴

Sprawl makes other socially divisive practices possible as well. Zoning for single-family homes favors families with children over elderly and single individuals without children. Those groups may desire a different housing type that is smaller and without a yard sized for a swing set. Two- and three-family houses that allow residents to pool financial as well as planning resources for maintenance and expenses may be of greater appeal to single individuals or families without children. The kind of multifamily housing type of greater value to single people is not mixed together in sprawled communities with housing designed for families. Consequently, sprawl has the effect of segregating people by family type.¹¹⁵

Sprawl is also criticized for having a more abstract negative social impact. The distances between houses, the reliance on cars, and the distances to social and civic spaces decrease opportunities for natural social interactions among a variety of people. Sprawled suburbs are not cosmopolitan in this sense. Robert Putnam most prominently made this argument in his 2000 book *Bowling Alone: The Collapse and Revival of American Community*.¹¹⁶ For some, this concern sounds like a matter of taste. But to the extent that separation characterizes sprawled living, opportunities for collective responses to economic and social issues are lessened. For the many issues for which collective response is helpful, this can impede optimal solutions. Separation causes a reduction in some forms of social capital.

In addition, in recent years sprawled living has been shown to have a clear negative impact on physical health. The absence of opportunities to incorporate walking into ordinary routines has been linked to obesity in several studies.¹¹⁷ The Centers for Disease Control have linked sprawl to asthma, obesity, community degradation, disorders associated with rising

113. See Charles M. Lamb, *Housing Segregation in Suburban America Since 1960: Presidential and Judicial Politics* 2, 22 (2005).

114. *Id.*; see also Gillham, *supra* note 4, at 132–42.

115. Dolores Hayden, *Redesigning the American Dream: Gender, Housing, and Family Life* 58–59, 216–21 (2d ed. 2002) [hereinafter Hayden, *Redesigning the American Dream*].

116. See Robert A. Putnam, *Bowling Alone: The Collapse and Revival of American Community* 205–15 (2000).

117. See, e.g., Reid Ewing et al., *Relationship Between Urban Sprawl and Physical Activity, Obesity, and Morbidity*, 18 *Am. J. Health Promotion* 47, 54 (2003); Russ Lopez, *Urban Sprawl and Risk for Being Overweight or Obese*, 94 *Am. J. Pub. Health* 1574, 1577 (2004); Barbara A. McCann & Reid Ewing, *Smart Growth America, Measuring the Health Effects of Sprawl: A National Analysis of Physical Activity, Obesity and Chronic Disease* 1–3 (2003), available at <http://www.smartgrowthamerica.org/report/HealthSprawl8.03.pdf>.

temperatures, and degradation of water quality.¹¹⁸ Increasingly, public health officials express concern about the corrosive effects of sprawl on physical health.¹¹⁹

In sum, sprawl is a recognized contemporary phenomenon that has come under attack from numerous quarters. Many critics have already elaborated on the legal mechanisms by which sprawl has occurred, as well as offered reform proposals and alternative models to address the situation as it stands. This Article is not an additional elaboration of the causes of sprawl and solutions to its challenges. Rather, it is an effort to bring to the debate over sprawl an additional concern that connects sprawl to women's equality. This added concern comes from understanding the importance of work-family balance to achieving the full, equal citizenship of women in light of their historical and ongoing gendered relationship to the care of dependents.¹²⁰ It also seeks to bring the issue of sprawl to reformers whose primary focus is on achieving work-family balance through reform of the workplace, family behavior, and social institutions such as public schools. While some critics of suburban living have discussed the gendered role assumptions and expectations it embodies,¹²¹ the focus has not been on the distinctive problem of work and family balancing and the interference of sprawl with women's effective citizenship.

With respect to work and family balance, place concerns come in at least three forms. First, sprawl and other aspects of urban growth have moved people's homes farther from their workplaces. Second, single-use zoning has meant that, by definition, people cannot get everything that they need—work, housing, schools, and retail—within a tightly defined geographic area. When combined with sprawl, the distance between those daily stops has increased, raising time, flexibility, and financial burdens. Finally, the design of homes themselves has not been responsive to the decline in women who work exclusively at household labor. Housing design, which reflects lifestyles of both the nineteenth century and of the 1960s, meets the needs of working families poorly and injects serious inefficiencies into the lives of those families.

118. Richard J. Jackson, *The Impact of the Built Environment on Health: An Emerging Field*, 93 Am. J. Pub. Health 1382, 1382–83 (2003).

119. James A. Kushner, *Healthy Cities: The Intersection of Urban Planning, Law, and Health* 45–46, 141–53 (2007).

120. This connection has been thoroughly elaborated by others. See, e.g., Carbone, *supra* note 39, at 42–47; Fineman, *supra* note 10, at 233–35; Williams, *supra* note 8, at 271–76; Reva B. Siegal, *You've Come a Long Way, Baby: Rehnquist's New Approach to Pregnancy Discrimination in Hibbs*, 58 Stan. L. Rev. 1871, 1873, 1886 (2006); Symposium, *supra* note 13.

121. Clear and excellent discussions of this point include Jerry Frug, *The Geography of Community*, 48 Stan. L. Rev. 1047, 1095–97 (1996); Carol Sanger, *Girls and the Getaway: Cars, Culture, and the Predicament of Gendered Space*, 144 U. Pa. L. Rev. 705, 718–19 (1995).

B. *Distance Between Home and Work*

The supremacy of the car in the sprawl picture is decried by environmentalists because of the fuel consumption and pollution associated with the car usage itself, as well as the destruction of green spaces associated with the laying down of roads. Those living in sprawl's outer ring of communities experience the aggravation of sprawl and the car slightly differently, as they battle traffic congestion. Building ever larger houses on ever larger lots, people living in the more far-flung communities find that they can barely walk to a neighbor's house, much less pick up a quart of milk. Many newly developed communities have dispensed with the sidewalk entirely, denying people the ability to connect even geographically close points any way but in a car.¹²²

Sprawl means car-dependency to get to work, as well as to get dependents around to their daily destinations. In addition to its environmental impact, car-dependency has a less understood social cost of particular concern to women trying to balance work and family. The distance between home and work, which must be bridged in a car, places strain on the time component of work-family balance. In addition, car travel is expensive, which places strain on the money dimension of the work-family tension. Finally, a person living in a sprawled environment who loses access to a car may quickly become highly constrained in her economic and social reach. This can happen because of the expense of car ownership, or as a result of disability or age. By the age of sixty-five, one in five individuals no longer drives.¹²³

For those who do drive, the cost of car ownership is substantial. It eats up a significant proportion of the family budget, leaving less to pay for quality child or elder care and requiring more hours of work to make ends meet. Transportation costs are second only to housing in the share of the American family budget, beating out education and health-care costs.¹²⁴ These expenditures are positively linked to the amount of sprawl in a community: the greater the amount of sprawl, the greater the expense. For a lower-income household, the share of the budget devoted to car ownership is even greater: transportation accounts for 36% of household expenditures of the lowest-income families, and 14% of the expenditures of the highest-income households.¹²⁵ The high cost of car ownership prices

122. See, e.g., Dolores Hayden, *A Field Guide to Sprawl* 39, 90 (2004) [hereinafter Hayden, *A Field Guide*] (including aerial photographs of single-family housing without sidewalks); Ewing et al., *supra* note 117, at 54.

123. Linda Bailey, *Surface Transp. Policy Project, Aging Americans: Stranded Without Options* 1 (2004), available at http://www.transact.org/library/reports_html/seniors/aging.pdf.

124. *Surface Transp. Policy Project & Ctr. for Neighborhood Tech., Driven to Spend: A Transportation and Quality of Life Publication* 5, 9 (2000), available at <http://www.transact.org/PDFs/DriventoSpend.pdf>.

125. *Id.* at 10.

out lower-income people entirely, adding to the impact of price on residential choices and discouraging economic integration.¹²⁶

Car ownership varies according to race as well. According to a study by the National Academies, 24% of African-American households had no car in the year 2000.¹²⁷ Without cars, lower-skilled workers residing in the city cannot take advantage of the growth in service jobs that has resulted from the middle-class movement to the suburbs. Thus the movement of the middle class away from denser development creates logistical challenges not only for itself, but also for the service workers who support the service industries in sprawled residential communities.¹²⁸ Those service workers, who are overwhelmingly female and likely disproportionately responsible for the care of dependents, must work longer hours to support the car ownership that the new geography requires, or spend a great deal of time riding indirect bus routes to reach work. These burdens place further strain on their ability to balance work and family demands.

C. Single-Use Zoning

Zoning developed during the period of American industrialization, and its defining attributes have been the separation of land uses and the prevention of mixed-use developments. Tremendous legal effort has kept separate the different ways space is used. Industrial, commercial, retail, civic, and residential are kept separate from one another as incompatible uses that generate reciprocal nuisances. Residential uses are again separated into areas with single-family homes on sizable lots, areas with single-family homes on smaller lots, and areas with multifamily housing. This kind of separation deviates from the old urban multiuse neighborhoods in favor of the residential single-family home neighborhood, which borders the office park, which in turn borders the large shopping mall, which is separated from the recreational park by a four-lane road without sidewalks.¹²⁹

Single-use zoning developed at a time of serious public health crises in cramped city living that was too close to unregulated and effectively toxic industrial facilities. In the face of newly built factories that spewed thick air and waterborne pollutants, it established clean and dirty land uses that were to be separated from one another.¹³⁰ Today, this historic separation of uses

126. Government figures put car ownership among women on public assistance between seven and fifty percent. See U.S. Gen. Accounting Office, GAO/RCED-98-161, *Welfare Reform: Transportation's Role in Moving From Welfare to Work 5* (1998), available at <http://www.gao.gov/archive/1998/rc98161.pdf> (reporting that in 1997, twenty to forty percent of welfare mothers owned cars); Kathryn Edin & Laura Lien, *Making Ends Meet: How Single Mothers Survive Welfare and Low-Wage Work* 93-94, 223 (1997); Minn. Dep't of Human Serv. Program Assessment and Integrity Division, *Minnesota Family Investment Program Longitudinal Study: One Year After Baseline 1* (2000).

127. Pisarski, *supra* note 3, at 27.

128. See Ihlanfeldt, *supra* note 112, at 219, 229-31.

129. See Gillham, *supra* note 4, at 8-10.

130. See *id.* at 26.

is sustained in part by local desires to separate out far more subtle ways in which users may be nuisances to one another, as when single-family homeowners wish to avoid a corner restaurant or storefront because it will bring increased foot and car traffic to the neighborhood, or to avoid having multifamily dwellings nearby because they will place additional burdens on a local public school. Sometimes towns wish to avoid multifamily dwellings simply because they are lower-priced per unit than single-family housing and therefore may entail some measure of class integration. The lifestyle and environmental concerns raised by single-use development are well rehearsed in the literature on sprawl and on smart growth, which is sometimes offered as the alternative form of development.¹³¹

In addition, by separating multifamily dwellings from single-family homes, zoning laws have failed to appreciate the needs of single people, the elderly, or other housing units that do not contain dependents, children in particular. Those without children often prefer smaller housing units and may not feel the need for a private lawn area. Multiunit dwellings may meet the needs of single people by providing for the pooling of maintenance costs for common expenses from roof repairs to taxes. Multiunit dwellings also allow for the pooling of basic household maintenance tasks, such as trash and snow removal.

Separated uses stand in contrast to the healthy traditional urban neighborhood, where multifamily residential buildings are likely to contain retail businesses on their lower floors, and where office buildings and residential buildings are interspersed. Mixed-use zoning also occurs in lower-density areas, where shops and two- or three-family dwellings are interspersed. Dense development is compact, meaning that the distances between uses—such as public parks, private dwellings, retail, civic spaces, and workplaces—would be reduced, and where zoning is mixed use, these things are interspersed. It is possible in a mixed-use zone to access everything a person with complicated responsibilities needs in a very small geographic space: home, work, food, school, park, and store can be had on foot and without time or transportation investment. This is common in urban areas of Europe and the United States, although there is substantial variation among urban landscapes, including a reduction in ideal mixed-use convenience in U.S. cities as a result of suburbanization.¹³²

For twenty years, Vancouver has engaged in careful zoning to balance residential and commercial uses downtown by ensuring that residential development did not take a backseat to commercial development; the result has led *The New York Times* to label Vancouver “a leader in North America’s urban housing renaissance.”¹³³ Other cities and towns have

131. Duany, Plater-Zyberk & Speck, *supra* note 110, at 229–33; Katz, *supra* note 110, at xii–xiii.

132. See Peitro S. Nivola, *Laws of the Landscape: How Policies Shape Cities in Europe and America* 30–33 (1999); Douglas W. Rae, *City: Urbanism and Its End* 393–432 (2005).

133. Linda Baker, *The Zoning Policy That Worked Too Well*, N.Y. Times, Jan. 17, 2007, at C10.

implemented policies aimed at encouraging more compact mixed-use zoning, in an effort to decrease utility and road costs and increase quality of life by reducing commute times, improving community interactions, and preserving undeveloped green spaces. This is often termed “smart growth” development. It takes different forms, but generally encourages compact development close to public transportation, walkable neighborhoods, diverse housing types, as well as investment in center cities and older suburbs closer to city lines over the development of new suburbs farther from the city.¹³⁴ Thus there has been some push back to the growth of sprawl, including a revision in some of the core zoning ideas that contributed to its excesses.

A central point for our purposes is that there is a frequent critique of the impact of sprawl on the amorphous concept of “community,” most notably perhaps in Robert Putnam’s 2000 book *Bowling Alone*.¹³⁵ But those critiques are not approached from the perspective either of women’s workplace and family equality, or of the work and family balance explicitly. Yet in many instances the problems created by sprawl, identified as problems of “community,” are in part problems of work and family conflict. By encumbering the ability of women to integrate work and family, single-use zoning frustrates women’s effective participation in public life.

D. *The Impact of Sprawl’s Single-Use Zoning and Single-Family Home Zoning on Work and Family Balance*

A less examined question about suburban sprawl’s separation of uses and geographic expanse is what it does to time, flexibility, and finance, conceived of as the core attributes of the work-family tension.

The average worker travels fifteen miles each way to and from work every workday. She spends on average twenty-six minutes traveling each direction, adding almost a full hour to every workday for travel time.¹³⁶ In major metropolitan areas such as Atlanta and San Francisco, however, commutes take far longer.¹³⁷ Suburban residents drive either to urban workplaces or to workplaces in neighboring and similarly car-dependent suburbs, both requiring extensive travel time. Many urban residents work in service sector jobs which are sited in relatively close proximity to where middle-class people live. For many urban residents, this means a growing

134. Resources on smart growth development have proliferated in recent years. See, e.g., Andres Duany, Elizabeth Plater-Zyberk & Jeff Speck, *Smart Growth Manual* (2005); Smart Growth Online, <http://www.smartgrowth.org/Default.asp?res=800> (last visited Oct. 10, 2007).

135. Putnam, *supra* note 116, at 205–15, 283. Other versions of this critique abound. See, e.g., Bruce Katz & Scott Bernstein, *The New Metropolitan Agenda: Connecting Cities & Suburbs*, Brookings Rev., Fall 1998, at 4, 4, available at <http://www.brookings.edu/press/REVIEW/fa98/katz.pdf>.

136. Bureau of Transp. Statistics, U.S. Dep’t of Transp., 3 *OmniStats* 1 (2003), available at http://www.bts.gov/publications/omnistats/volume_03_issue_04/pdf/entire.pdf.

137. Pisarski, *supra* note 3, at 26–29.

commute out to the suburbs where service sector job growth has followed sprawled development. The time added to the workday by commuting alone is a significant burden on workers with dependents, whether they commute from city to suburb, suburb to suburb, or suburb to city.

Women's commutes on average are shorter than men's.¹³⁸ Some travel researchers have argued that women are more likely to choose workplaces closer to home in order to manage dual responsibilities.¹³⁹ If this is so, we have workforce participation patterns determined in a gendered fashion according to attributes of land use patterns. The landscape separating work from home places constraints on employment decisions of workers who take greater responsibility for family work. This constraint on job mobility should be expected to negatively influence women's wage equality. When a worker makes a residential decision for her family based on the location of her employer, or an employment decision based on family, a greater portion of family stability is tied to stability in a single job. This should give an employer a bargaining advantage once employment has begun, because her exit options are impaired by the possibility that her next job could require either a longer commute or a residential move if working close to home is imperative for her. Any decision to closely tie residential decision making to a particular employer, which this Article argues is a benefit, can have the same negative effect on bargaining power, and thus wages. But if an entire area is more densely developed, it is possible that a larger array of employment options would be available within close reach of the same compactly developed mixed-use residential choice. This improves a worker's exit strategy, which in turn improves her bargaining position with her current employer. Thus, it is the sprawled development itself, not simply the individual's decision to tie residential and employment decisions together, that contributes to a caregiver's reduced economic power. It is important to keep the wage effect of convenience-based decisions in mind when considering the quest for equal citizenship animating the analysis of land use and work-family balance.

The impact of long commutes on work and family life is greater than the daily hour, weekly five hours, that it costs each worker in time. The more significant and less examined impact is on the flexibility to manage work-family issues effectively.

The distance between work and home is ordinarily the distance between workers and their children or other dependents during the work day. In the bedroom communities that ring American cities, children typically attend local public schools, and elderly dependents live in nursing homes or assisted living facilities that are overwhelmingly built outside of the city center. Even if a worker had the flexibility to leave work for a half-hour midday stretch to attend to the many small care issues that arise from caring

138. Taylor & Mauch, *supra* note 46, at 372-73, available at <http://www.fhwa.dot.gov/ohim/womens/chap20.pdf>.

139. *Id.* at 374.

for children and elderly or disabled dependents, her dependents are too far away from her to make such an absence useful. Scheduled events for the child or elderly dependent, such as doctor and dentist appointments, school plays, or holiday parties, happen during working hours. This requires a commuting parent to take an entire half day off of work if she is to participate in them. For unexpected events, such as forgotten homework, a parent can be of no help from the workplace.

This distance between working caregivers and their dependents is an enormous practical obstacle to a more fluid relationship between work and family. The work and family industry, scholars, and to some extent politicians have given much thought and attention to the need for a measure of flexibility so that workers may respond to family needs that arise unexpectedly. Reform efforts such as the Family Friendly Workplace Act and related bills¹⁴⁰ aim to give workers a guarantee of time off from work for events not currently covered by the FMLA, such as parent-teacher conferences and doctors' appointments. These reform efforts demonstrate an awareness of the juggling and inflexibility problems workers with dependents face. They also reflect a limited vision of where those issues can be remedied. Reform efforts take the form of employer mandates to provide time and flexibility, but the geographic separation of workers from their dependents radically decreases the value of genuinely flexible work schedules. Personal hours would still amount to personal days or half days for workers who need to attend doctors' appointments, parent-teacher conferences, or meetings with a social worker, because the distance to work makes a shorter trip impractical. The very need to formalize this kind of time, rather than work it into break time or lunchtime, relates to problems of place: if the pediatrician were next to work and work were a half mile from home, the absence from work to take a child to the doctor would be so short that it is far less likely a worker would need a federally mandated break to do so.¹⁴¹

To compound matters, the single-use zoning that typifies sprawled communities assures that middle-class children spending their days out in the suburbs will want transportation, usually in a car, between school and other activities such as after-school programs or enrichment such as sports, academic support, religious education, or music lessons, in addition to their social activities. Carol Sanger, in her analysis of gender and automobiles, has described the evolution of this burden on mothers, observing that "[d]riving provided evidence of good parenting and mileage the measure of maternal contribution to family welfare."¹⁴² The amount of time children spend participating in scheduled events like these, especially middle-class children whose mothers have some post high school education, has

140. *See supra* Part II.A.2.

141. The benefit to employers of geographically close workplaces and residences has caused the creation at some points in history of worker-provided villages close to work. *See, e.g.,* Vanport City, *infra* Part III.E.

142. Sanger, *supra* note 121, at 719.

increased in the past generation.¹⁴³ Unlike doctors' appointments, these are routine and scheduled events. But the need to move children around amongst these events within their sprawled residential communities, while workers are spending their days outside of these residential communities, is the kind of strain that leads some middle-class women who have the option to decide to leave the paid labor force.¹⁴⁴

But for most women working is not a choice; a mother's wage is either the only one in the household, or, even if a wage-earning spouse or partner is present, it remains crucial to keeping a family afloat. Reformers, moreover, have focused great attention on what employers will or will not provide in terms of flexibility, as if flexible hours could solve the serious geographic constraints of long distances between work and home and too much distance for children between home, school, and activities, compounded by the fact that cars are the only effective means of transportation in sprawled suburbs. Those sprawled suburbs are designed to depend on private transportation for children; they are not designed with the expectation that almost all of the work-aged adults in the community will be unavailable during the day.

The alternative to single-use zones is mixed-use compact neighborhoods. Middle school aged children in compact mixed-use environments are able to go on foot from school to the orthodontist, to the library, to pick up a sibling, or to an enrichment activity. Younger children can be more easily escorted from school to these activities by high school aged children. Achieving that measure of independence earlier in a child's life relieves a working parent of a highly inefficient use of time in sprawled suburbs, where many mothers stay available all day to make a ten-minute drive transporting dependents from one place to the next. In a compact community close to work, a working parent can leave work to walk a child from school to his next location without a significant interruption to her day.

Because of this geographically dispersed structure to children's days, teenagers in suburbs are quick to get drivers' licenses and to depend on driving themselves places. Lawmakers recognize the safety issues with this arrangement, and must weigh the lifesaving benefits of a higher driving age against the family need for teenagers to have spatial independence.¹⁴⁵ But the dangerous requirement of a car to fulfill the need for spatial independence itself arises from single-use, sprawling development; we put teenagers in cars to overcome planning that fails to meet the needs of working parents.

143. Hofferth & Sandberg, *supra* note 45, at 195–98.

144. Duany, Plater-Zyberk & Speck, *supra* note 110, at 117; Williams, *supra* note 8, at 14–20.

145. See, e.g., Robert Davis, *16: Is It Too Young to Drive a Car?*, USA Today, Mar. 2, 2005, at B1 (describing state law efforts to raise the driving age in response to teen fatality rates, and the concern about additional years of chauffeuring for the parents).

The time and flexibility problems presented by sprawl have a particularly serious impact on low-income families, who must go farther from the city center and from jobs to obtain affordable housing and whose jobs tend to be less flexible. While low-income mothers may reside in higher-density urban neighborhoods, the jobs in the service sector that support the lifestyle of the middle class have followed the middle class out to the suburbs.¹⁴⁶ Consequently, lower-skilled low-income urban mothers increasingly find it necessary to commute significant distances to their jobs in the opposite direction from their middle-class counterparts if they are to improve their wage opportunities.¹⁴⁷ This separation of inner city residential neighborhoods from jobs, termed "spatial mismatch,"¹⁴⁸ can present dire financial challenges to low-income mothers balancing work and family. For these women, car ownership devours a third of the household budget but is necessary to respond to the spatial growth in service sector jobs. For these workers, whatever benefits of sprawl its consumers perceive are absent. These workers and their dependents pay only the logistical price of the dispersal of service jobs, without gaining the benefits of private green space or higher quality suburban schools. Moreover, the distance between a caregiver's work and home may present additional work-family balance issues where the household is located in a higher-crime neighborhood. A parent may feel additional pressures to be present or nearby to monitor the safety risks of their dependents.

Further, in low-income communities, economic activity has been compromised by the movement of the middle class to the suburbs. Those urban neighborhoods are often no longer vibrant, compact mixed-use zones with employment, retail, and residential interspersed.¹⁴⁹ In the absence of car ownership, a daily commute may mean riding several slow public buses, adding to a worker's time away from her children. For all workers, the price of distance between work and home and distance among activities of daily family life has an enormous underappreciated cost.

E. Housing Design

The interior design of housing puts an additional place constraint on balancing work and family, but of a slightly different nature than the geographic constraints presented by sprawl's single-use zoning and its expanse. Architectural historians and geographers tell a story about the twentieth-century dominance of the single-family home, which started after World War I, but accelerated tremendously in the post-World War II

146. Ihlanfeldt, *supra* note 112, at 219, 224; Ibipo Johnston, *Location, Race, and Labor Force Participation: Implications for Women of Color*, in *Women's Travel Issues*, *supra* note 46, at 338, 339, available at <http://www.fhwa.dot.gov/ohim/womens/chap18.pdf>.

147. See de Souza Briggs, *supra* note 104, at 34–35; Ihlanfeldt, *supra* note 112, at 224, 229–31.

148. Ihlanfeldt, *supra* note 112, at 219, 224.

149. See William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* 7–9 (1987).

(WWII) era. The single-family home was promoted with an explicit gender agenda of shaping and enforcing domestic roles and domestic work for women.¹⁵⁰

The suburban home is extremely inefficient from a household labor standpoint. The single-family home makes sense in an agrarian society, where most production occurs in the home and there is not a separate public work space for men's labor. But housing and employment have not been substantially coterminous since the Industrial Revolution.¹⁵¹ Yet the single-family home is common to both the agrarian and contemporary industrial economies.

Today's housing requires a large amount of household labor, energy, and land. Food is transported from markets into individual kitchens to be privately prepared and cleaned up in the highly inefficient one-meal-at-a-time process. Many consumers can barely imagine anything else—as if they had designed the ideal shelter from scratch. Children are cared for in private spaces that lack a shared public component, making informal pooling of care and supervision both challenging and awkward. Clothing, sheets, and towels are laundered in small quantities on a near-constant basis, though there are simple technologies for accomplishing this with less labor on a larger commercial scale. Over the past generation, we have formally disavowed the idea that a woman's place is in the home. But we remain attached to a vision of domestic living that depends on female labor to create a sphere of comfort protected from public life. The stability of that vision is embodied in the persistence of housing design that was fueled by the post-WWII reinvigoration of the home as a woman's work sphere. The single-family home absorbs a tremendous amount of labor. That is not just an unfortunate side effect of an optimal living arrangement: the promotion of the single-family home was based on the encouragement given to women to embrace household labor in the post-war era after leaving factory work.¹⁵²

Compounding these issues, the single-family home has grown steadily in size since WWII.¹⁵³ This trend has generated the need for more household labor. It also consumes more land farther from work, and further frustrates the pooling of tasks. The ownership of a house is viewed as a consumption decision, even regularly touted as the emblem of the American Dream, with housing floor space a reflection of what one's wages can bring.¹⁵⁴ The

150. Mona Domosh & Joni Seager, *Putting Women in Place: Feminist Geographers Make Sense of the World* 24–28 (2001); Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 22–28; Hayden, *Redesigning the American Dream*, *supra* note 115, at 23–27.

151. *See infra* notes 155–56 and accompanying text.

152. Domosh & Seager, *supra* note 150, at 24–28; Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 22–28; Hayden, *Redesigning the American Dream*, *supra* note 115, at 23–27.

153. A rising consumerism may partly explain the growth in size. *See* Schor, *supra* note 12, at 109–10. However, there have been legal incentives towards larger houses as well. *See infra* Part IV.B.2.

154. Hayden, *Redesigning the American Dream*, *supra* note 115, at 33–34.

additional work that attends larger houses is less appreciated. The combined effect of distance from work and house size and design on work-family balancing is toxic for the middle-class two-earner families in terms of labor creation and time drains.

When industrialization separated men's and women's work spaces more thoroughly as men entered factories, the single-family home was not replicated for the substantial populations who moved towards cities during the industrial revolution.¹⁵⁵ Instead, multifamily dwellings were the historic urban norm, ranging from three-family units without elevators to tenement buildings to high-rise residential hotels during WWI when elevators became the norm.¹⁵⁶ Early multifamily dwellings allowed for economies of scale by bringing electric light and central heating to less-than-wealthy households; multifamily dwellings are still far more efficient to heat and cool than single-family houses, because they have fewer walls to the outdoors per family than do single-family houses. Residential hotels took the newly developed technology of laundry machinery and gas or electric powered ovens and provided them on a collective basis, the equipment being commercially sized to provide for the household needs of large numbers of families. The industrial-sized washing facilities and kitchens in residential hotels could harness economies of scale in the delivery of services that had previously required enormous amounts of women's household labor.¹⁵⁷ They provided kitchenless apartments that depended on centralized food production that brought economies of scale to this core provisioning task.¹⁵⁸

Health conditions in these residential hotels were affected by pollution and the more limited state of knowledge about sanitation and disease prevention, and were a serious concern of reformers of the time. Conditions were far worse in tenement houses where overcrowding and poor sanitation were the norm.¹⁵⁹ But the multifamily dwelling, with the more dense packing of population and land uses, knew none of the transportation and single-use time and energy inefficiencies that are today's norm.

Charlotte Perkins Gilman saw the feminist challenges associated with separate home spaces, and at the same time proposed using housing design to challenge women's domestic roles. She saw the connection between public kitchens, nurseries, and laundries that collectivized household labor, the economies of scale those larger operations could bring to household

155. For a history of the growth of the modern city during the Industrial Revolution, see Gunther Paul Barth, *City People: The Rise of Modern City Culture in Nineteenth-Century America* 46, 230 (1980).

156. See Paul Erling Groth, *Living Downtown: The History of Residential Hotels in the United States* 183 (1994).

157. See Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 72–77.

158. See *id.*

159. See Eric R. Claeys, *Euclid Lives? The Uneasy Legacy of Progressivism in Zoning*, 73 *Fordham L. Rev.* 731, 737 (2004).

labor, and the potential to reconceive women's roles as equal to men's in the public sphere.¹⁶⁰

There are more housework-efficient household design options that would provide adequate but smaller private spaces and larger shared spaces. These shared spaces can include spaces for work, nursery, play, laundry, and day care, as well as larger production kitchens. This design can be produced intentionally, as in the case of cohousing, or it can arise from market opportunities that are created by densely packed residential living.

Today's cohousing movement attempts to provide some of these benefits through smaller homes (with small private kitchens) around larger commonly owned recreational, child care, laundry, food-preparation, and food-consumption spaces.¹⁶¹ Cohousing, though, is the product of private developments, not public planning. As such, it cannot greatly influence the retail and public services locally available. Cohousing developments have faced zoning and lending challenges based on some of the issues raised here; as a result, they have frequently been planned outside of cities.¹⁶² This limits their ability to benefit from market-based goods that can become available in dense neighborhoods able to support those businesses.

Many city apartment dwellers already experience smaller private space and the provision of household services or amenities, such as food preparation, laundry, and recreation, in public spaces. Because the population is denser in a multifamily development, it can support more local businesses that meet daily needs within closer proximity to housing, zoning permitting. However, the same change in the ratio of private to public space that cohousing embraces can and does exist in dense development, such as the old mixed-use urban neighborhood or the newer smart growth zoned area. In these areas, services are available in close proximity to housing, and housing size is generally smaller per unit. The public space is market produced, in conjunction with zoning and government incentives, rather than intimately planned as in the cohousing design. The idea of "public" space is different as well. Cohousing's public space is public only to owners and participants in the housing arrangement, but it is typically owned by the development and its shareholders. Public space in dense urban mixed-use neighborhoods is a combination of governmental spaces like parks, playgrounds, and schools and private businesses open to the public. This ratio of increased public space and

160. Domosh & Seager, *supra* note 150, at 22–23; Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 70–84.

161. See Kathryn McCamant & Charles R. Durrett, *Cohousing: A Contemporary Approach to Housing Ourselves* 19, 25 (1988); Robert C. Ellickson, *Unpacking the Household: Informal Property Rights Around the Hearth*, 116 *Yale L. J.* 226, 274–75 (2006); Rebecca M. Ginzburg, Note, *Altering "Family": Another Look at the Supreme Court's Narrow Protection of Families in Belle Terre*, 83 *B.U. L. Rev.* 875, 877 (2003).

162. See Ellickson, *supra* note 161, at 274–75; Chris ScottHanson & Kelly ScottHanson, *The Cohousing Handbook: Building a Place for Community* 244–45 (2005) (explaining that it is easier to receive regulatory approval in small town areas than in complex city areas, and that purely rural areas are the most difficult); see also Ginzburg, *supra* note 161, at 887.

reduced private space has not been the dominant design of the housing boom of the past half century, and it might be natural to assume that this represents the market bowing to consumer preferences. But the channeling of consumer demand was a more complicated process.

The drive to move working families out of the multifamily units that characterized the early growth of urban populations and into owner-occupied single-family homes came between WWI and WWII, when the federal government articulated single-family home ownership as policy. The excellent work of architectural historian Dolores Hayden explains this process.¹⁶³ Herbert Hoover oversaw the Commission on Home Building and Home Ownership that set this goal.¹⁶⁴ The federal government incentivized the growth of single-family housing through the creation of the Federal Housing Authority (FHA), which offered mortgage insurance to projects that followed strict design requirements that lent themselves to this housing form, and through the tax deduction for interest income, including mortgage interest. Racial segregation patterns also motivated planners, and segregation was encouraged by the FHA, which preferred to subsidize housing developments that came with racially restrictive covenants, and redlined loans in African-American neighborhoods.¹⁶⁵

After WWII, the war economy was powerfully transformed into a building economy. As much as eighty percent of U.S. housing was built after 1940;¹⁶⁶ it is therefore impossible to overstate the influence of both the gender ideology of the time and the federal housing policy of the time on the places we live and work today. Hayden writes,

The United States housing stock increased from 34.9 million occupied units in 1940 to 105.5 million occupied units in 2000, as tracts of small houses, usually without day-care centers or community facilities, spread over the countryside. At the same time, alternative forms of housing were discouraged. Advocates of multi-family public housing were Red-baited in the 1940s and 1950s. Single-room occupancy hotels (SRO's) were demolished as part of urban renewal. Single-family housing starts by month and year became an important indicator of economic growth. As Hoover had predicted, housing Americans was a big, big business. American banking, real estate, manufacturing, and transportation interests were intimately involved.¹⁶⁷

At the same time, federal policy encouraged women war workers to return to household labor from the paid labor market so their jobs would be available for men returning from war.¹⁶⁸ Appliances such as laundry

163. Hayden, *A Field Guide*, *supra* note 122, at 10–12; Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 22–26; Hayden, *Redesigning the American Dream*, *supra* note 115, at 51–55.

164. Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 23, 58.

165. de Souza Briggs, *supra* note 104, at 18. *See generally* Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993).

166. Hayden, *Redesigning the American Dream*, *supra* note 115, at 28.

167. Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 54.

168. Domosh & Seager, *supra* note 150, at 24.

facilities and ovens had been miniaturized from their earlier industrialized sizes to be marketable for the newly built individual homes, and those appliances were often manufactured by newly transformed war industries that redirected their efforts towards this new consumer market, itself subsidized by federal building and road programs.¹⁶⁹ The massive suburban development was no simple market response to consumer demand; it was federal government policy subsidized in many ways.

After WWII, the new single-family home was packaged in much the same way the Victorian upper-class ideal of domesticity had been: the household was to be women's workplace and women were no longer to be in the paid labor force.¹⁷⁰ Hayden coined the term "sitcom suburb" to be applied to these Levittowns—they were designed to fit a social story that precluded women's paid labor force participation.¹⁷¹ There was no incentive to design the house to require less work. On the contrary, good housekeeping became a marketing opportunity of the era.¹⁷² The household labor associated with maintaining the single-family home, particularly in the suburbs, is enormous by comparison to the multifamily dwelling, particularly when the multifamily dwelling is near services. The predominant housing type creates a need for household labor that makes demands on time that are a struggle to balance with participation in public life.

Low-income communities have as much, if not more, to gain from collectivized services and spaces, and integration with retail services and work. Affordability and community are equally important; attention to affordability alone is too narrow a focus for housing low-income families. In *Redesigning the American Dream*, Dolores Hayden describes a number of housing design experiments that have been built to better serve women. Two of her examples of the best work-family friendly housing designs that have particularly served low-income and working-class women—Kaiserville and the Nina West Homes—will illustrate the concept of affordable housing designed to meet the needs of women who both work in the paid labor force and care for dependents.¹⁷³

In Vanport City, Oregon, during WWII, Kaiser Shipyards built "Kaiserville." It was built so that women who were caring for children could also work in the shipyards. The design included housing units for women and children very near the shipyard that incorporated child-care services, schools, and centralized hot meal preparation to be consumed by families in their own homes. Kaiserville accommodated 9000 children in nurseries, kindergartens, elementary schools, and supervised playgrounds.

169. *Id.* at 24–28.

170. *Id.* at 24, 95–96.

171. See Hayden, *A Field Guide*, *supra* note 122, at 90; see also Joan Williams, *The Rhetoric of Property*, 83 *Iowa L. Rev.* 277, 328–29 (1998).

172. See Domosh & Seager, *supra* note 150, at 27; Hayden, *The Grand Domestic Revolution*, *supra* note 102, at 23–27.

173. See Hayden, *Redesigning the American Dream*, *supra* note 115, at 19–23, 134–37.

The design of the housing development by the shipyard anticipated in very practical terms the needs of WWII-era women, who would leave the household for paid employment.¹⁷⁴ In other words, a community intentionally planned by a corporation to serve working mothers had attributes very different from the developments working mothers must choose from today. In today's era of greater integration of mothers into the workplace, housing design responsive to women's evolving roles does not appear to be on developers' agendas.

Another housing design built with the needs of low-income families in mind was the development of the Nina West Homes in London in the 1970s. These apartments for single mothers included a day-care center on site. In addition, the common hallway space was wider than a typical hallway and designed to serve as a play area for children. It was visible to all of the mothers from interior windows within their housing units. This design permitted anyone in a unit to observe and supervise the children on that floor, whether her children or her neighbor's children. Nina West's concept was a design for working single mothers that allowed those mothers private family space but informal collective supervision of children.¹⁷⁵

There are ways in which these more modern and self-conscious housing developments mirror the urban residential hotels of the industrial revolution: residents are more densely packed, and many of the services provided within the home by women under norms of domesticity are instead collectively provided either by commercial actors or by the women themselves (in cohousing and Nina West Homes, for example, child care and food preparation are sometimes shared amongst residents). In either case, the services provided within the household can be provided more efficiently when produced on a larger scale without impairing the concept of private space for family gathering and eating of mass-produced meals. Taking the provision of some services, such as child care and food preparation, into public spaces—even when still provided by mothers—has the additional benefit of overcoming the isolation associated with mother's work in the single-family home in the suburbs.¹⁷⁶ We no longer believe that most women are full-time homemakers, and yet the predominant American house is still designed around that conception. The evolution of housing design to better fit the lives of women who balance work and family has not occurred.

174. *Id.* at 19–23.

175. *Id.* at 134–37.

176. The isolation of the suburban life for women has been described in multiple genres over the course of a generation. *See, e.g.*, Betty Friedan, *The Feminine Mystique* 233–36 (1963); Michael Cunningham, *The Hours* (1998). Cunningham's novel depicts this aspect of suburban life.

F. *The Issue of Choice: Do We Live Our Preferences?*

One might be skeptical of these critiques on market grounds: If there is a more desirable way to design houses and develop the physical space between residential life and work, why hasn't market developed it, and why do people choose to move farther away from work? Why would consumers deliberately frustrate their ability to achieve a balanced life? Without attempting to fully engage the debate on the constrained and flawed process of consumer choices,¹⁷⁷ there are a few attributes of decision making in this context that are worth noting.

First, there is ample evidence of high residential real estate prices in areas that are densely designed for mixed use in just the way this Article suggests. The average cost of a square foot of residential real estate in Manhattan, the classic example of the old, mixed-use, densely built zone, is \$1004,¹⁷⁸ more than ten times the national average residential price per square foot.¹⁷⁹ Generally speaking, the more densely packed an area, the higher the home prices;¹⁸⁰ if willingness to pay is a measure of value, the evidence is good that people do want high-quality, mixed-use, densely packed development. It is market tested, although its price may result from both its desirability and its artificially generated scarcity. We might conclude that mixed-use zoning will present affordable housing problems, and that sprawled zoning is a form of populism in that it offers more affordable housing choices built on cheap land. But the sprawled housing is less expensive in part because its developers do not need to fight the restrictive zoning in the middle ring, at the city's edge.¹⁸¹ In addition, the land at the outskirts is less expensive, while the increased price of creating a network of utilities and services at that distance is borne by state and local governments, not directly by developers or home buyers. In other words, the materials to produce the housing may be fairly constant, and the difference in pricing may be a combination of higher demand for the city, subsidy to development on the outskirts, and more restrictive government regulation of density at a city's edges.¹⁸² The market picture is complicated, but there is ample evidence that people do, in fact, prefer well-

177. See generally Daniel Gilbert, *Stumbling on Happiness* (2006) (offering a psychological investigation of the disparity between subjective happiness and people's predictions about what will make them happy).

178. Tom Acitelli, *Manhattan Housing Market Booms in First Quarter; Price Per Square Foot, Median Sales Price Set Records; Number of Apartment Sales Spikes 27 Percent*, Real Deal, Apr. 4, 2006, http://www.therealdeal.net/breaking_news/2006/04/04/1144151403.php.

179. Nat'l Ass'n of Homebuilders, *Median and Average Price Per Square Foot of Floor Area in New One-Family Houses Sold by Location*, http://www.nahb.org/fileUpload_details.aspx?contentID=560 (last visited Nov. 7, 2007).

180. For an interesting look at this issue, see Paul Krugman, Op-Ed., *No Bubble Trouble?*, N.Y. Times, Jan. 2, 2006, at A13. Krugman does not adequately distinguish the effects of zoning on costs of production from the effects of zoning on the desirability of mixed-use areas, since sprawled rural areas are in fact zoned as well but for sprawled patterns of use.

181. See Hirschhorn, *supra* note 103, at 30.

182. See Krugman, *supra* note 180.

developed mixed-use areas, to the extent that we can measure what people want by what they are willing to pay for it when they have the ability to do so.

Second, there is an incredible complexity in coordinating the many actors—public and private, developers, employers, retailers, consumers, and workers—to make plans together that can only increase utility when they are well coordinated. This is a problem of transaction costs. Investors may prefer to lobby for separate-use zoning that permits easy private development, rather than bear the risks and uncertainties associated with relying on so many actors for one's profit. Zoning is generally local. Developers have significant influence on local zoning rules.¹⁸³ Developers have reasons to prefer single-use zoning as it is less complicated to finance single-use projects and expertise can be developed in one form of development—residential, retail, office, or industrial. Mixed-use zoning requires a developer to invest in expanding its expertise such that it can plan and build office, residential, and retail on the same site, or else coordinate with other developers to do so. By comparison to specializing in new residential housing or Big Box stores in large retail districts, the complexity of expanding expertise is unappealing. Thus developers are in no hurry to see zoning change for the possibility of improved profits of uncertain proportions that might accompany their larger investment in a mixed-used development.

Third, as discussed at greater length in the next section, government incentives to build particular kinds of housing significantly influence and distort housing choices as well. There are several ways that government subsidizes a consumer's purchase of a newly built home in the suburbs. For example, individual consumers purchase the housing directly, but the infrastructure support, from roads to utilities to more expensive emergency services, is purchased only indirectly through the tax system. The home mortgage deduction subsidizes the building of large new houses over the restoration and retrofitting of old housing stock. Zoning provides a disincentive for developers to propose mixed-use buildings.¹⁸⁴

Fourth, in the absence of good coordination among private and public actors, mixed-use areas may not provide some of the essential benefits of sprawled communities, including green spaces and amenities ranging from good public schools to civic spaces. Today's cities have been stripped of many of their potentially wealthy residential stakeholders, and have therefore faced budget pressures that push second-tier priorities like green space off the agenda. Where amenities like green space are not provided collectively in well-designed mixed-use zones, individuals may choose to purchase them individually in the form of a small yard or climbing

183. See Hirschhorn, *supra* note 103, at 19–81 (analyzing the development industry capture of town zoning boards).

184. Sometimes industry responds to the development of new housing farther away from city centers by moving closer to residential areas, in effect chasing workers to close the geographic gap. This builds inefficiency on top of inefficiency. Pisarski, *supra* note 3, at 28.

structures on a one-by-one basis. Many other amenities that could be provided in mixed-use areas depend on coordinated planning, and without it sprawl may provide consumers with what seems like the second-best option: the privatization of these amenities. For example, the effects of local control over school funding and quality cannot be overstated: consumers knowingly choose geographic inconvenience to obtain school quality. This trade-off is so accepted by consumers that they barely think to criticize the way local control over education shapes their residential choices.

Finally, some attention is due the psychology or ideology of the single-family suburban home, and its potential for producing errors in consumer judgment. Every real estate agent knows she is selling an idea, and likely free from the constraints of a consumer's experience when she frames that idea. The realization of the American Dream¹⁸⁵ of family life is built up in the American imagination around the post-WWII Levittown single-family home. Its size has grown with the country's prosperity, and it is a psychological marker that cannot be discounted. Perhaps for just these reasons, however, we should expect the decision making around the purchase of a home to be influenced by unhelpful unrealistic meaning that may produce biased decision making. That overdetermined meaning is combined with the relative lack of experience most consumers have in choosing housing, as compared to low-cost consumer goods. The literature on behavioral economics suggests that market judgments are more likely to be sound when they spring from repeat experience, as in the case of consumer goods purchased regularly, because the consumer has better information about repeat choices. At the same time, they are more likely to be regretted or otherwise tainted by cognitive errors when they are infrequently made, such that past experience with decision making cannot serve to provide adequate information for good choices.¹⁸⁶ This theory is particularly apt with respect to a housing decision, which most people have little experience making.

If the decision to buy a home is made in error, why would consumers not simply correct it when the error is appreciated? Once a residential decision in favor of a single-family home is made, a family's sunk costs associated with investing in residential life—both financial and in terms of community building—make change difficult. It is like a marriage in this regard: huge costs are sunk at the outset built on expectations but not on experience. For those whose childhood experience included a single-family home, there may be a failure to appreciate the changes in gender roles that may make such nostalgia ill-advised. Consumers may not realize the amount of labor associated with the housing design itself or with the location of the house

185. See Hayden, *Redesigning the American Dream*, *supra* note 115, at 57–59; see also D. Benjamin Barros, *Home as a Legal Concept*, 46 Santa Clara L. Rev. 255, 255, 272, 278–81 (2006).

186. Cass R. Sunstein & Richard H. Thaler, *Libertarian Paternalism Is Not an Oxymoron*, 70 U. Chi. L. Rev. 1159, 1163, 1188, 1197 (2003).

until the decision has become laden with additional sunk costs.¹⁸⁷ It may be very late into the investment—after children are attached to friends and parents have gained familiarity with local programming and amenities—that a consumer realizes that the space itself embodies ideas about gender and family roles that are not consistent with the gender and family role choices she makes in other spheres of her life. Without good models of development to inform their choices, lack of imagination may explain why consumers choose what developers and planners offer.

There is a baseline issue with “choice” as well. Proposing planned alternatives to the way we live now makes some people bristle, as it appears to suggest government intervention into free-market decision making. This stems from a mistake about the way we live now: the decisions consumers now make and the patterns in which they live are not the result of free-market decision making. They are responses to legal pressures and incentives described in the next section. There is no preplanned baseline in evaluating residential decision making.

Many of the issues we routinely discuss as work-family balancing problems have distinct spatial dimensions. Place is by no means the main factor in work-family balance difficulties, but amongst work-family policy makers it is perhaps the least appreciated. Without an understanding of the impact of place on work-family tension, and against the distortions to the housing market, it is hard to make a claim that the way we live now reflects our own design.

IV. DOES SPRAWL'S WORK-FAMILY UNFRIENDLINESS PRESENT LEGAL ISSUES?

Architectural and urban planning scholars have long criticized single-use zoning, sprawl, and housing design. Legal scholars who have concerned themselves with work-family balance and women's equal citizenship, however, have not focused on this issue. For that reason, the law reform agenda of work-family balance advocates on this subject is largely undeveloped. Fortunately, there is a rich literature evaluating the legal influences on sprawl from other corners of the legal community, both from legal scholars interested in the impact of sprawl on the environment as well as legal scholars interested in land use and society more generally.¹⁸⁸ This part first considers two ways in which work-family advocates have developed legal responses to problems of place, without having labeled or analyzed them as such. It then reviews the legal influences on our built environment that have been offered by scholars of environmental, housing,

187. Arrol Gellner, *McMansion Trend Likely to Fade When People Get Tired of Upkeep: Like Victorians, They'll Suffer an Inevitable Fall from Grace*, San Francisco Chron., Dec. 9, 2006, at F3.

188. See, e.g., Frug, *supra* note 121, at 1090–1108; see also Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 Stan. L. Rev. 1115, 1135–36 (1996).

and land use law. Work-family policy makers need to incorporate place into their agenda by actively supporting and contributing to the land use and housing agendas of these other constituencies.

A. Place Reforms for Workers

While work-family advocates in the legal community have not focused on place in their reform efforts, a few of the reforms aimed at employers can be understood as addressing problems raised by spatial issues. Both the development of telecommuting and the development of employer-provided on-site child-care facilities aim to solve significant spatial challenges.

1. Telecommuting as a Place Reform

There are occasional work-family reforms that can be characterized as addressing “place” issues. Perhaps the clearest reform is the promotion of telecommuting. Telecommuting is offered as a method of bridging the gap between unpaid work in the home and work for an employer. It particularly addresses the problem created by lengthening commutes. Telecommuting offers employees the flexibility to stop working for ten minutes to transport a child from school to an after-school support program. In the work-family industry, allowing telecommuting is represented as a positive workplace reform.

Recent work on telecommuting casts doubt on that image.¹⁸⁹ Pink-collar telecommuters and piece workers first in the garment industry¹⁹⁰ and more recently in the computer industry are poorly paid for their hourly work, tend to have no benefits, and have little or no opportunity for advancement.¹⁹¹ Employers, however, benefit from not having to provide these workers with office space, and avoiding labor laws including minimum wage legislation and Occupational Safety and Health Administration requirements.¹⁹² For white-collar workers, the picture is closer to the ideal of flexibility, but the isolation from coworkers still takes its toll on advancement. Perhaps as important, isolation from coworkers undermines one of work’s benefits—

189. For a thorough analysis of telecommuting practices and their dangers, see Michelle A. Travis, *Telecommuting: The Escher Stairway of Work/Family Conflict*, 55 Me. L. Rev. 261 (2002).

190. Eileen Boris & Cynthia R. Daniels, *Homework: Historical and Contemporary Perspectives on Paid Labor at Home* 15–16 (1989).

191. Travis, *supra* note 189, at 265.

192. The Secretary of Labor during the Clinton administration posted a private letter ruling response to an inquiry about the Occupational Safety and Health Administration (OSHA) regulations’ applicability to telecommuters and other home laborers. The letter advised employers that OSHA regulations did still govern in that context, an interpretation that is consistent with the very broad statutory language addressing coverage within the Occupational Safety and Health Act. A firestorm erupted in the media and from organizations representing employers, and the advisory letter was removed and rescinded. Linda Rosencrance, *OSHA Reverses Coverage: Telecommuter Plan Widely Criticized*, *Computerworld*, Jan. 10 2000, at 4, <http://www.computerworld.com/news/2000/story/0,11280,40620,00.html>.

participation in the public sphere with its attendant civic, cultural, political, and economic discourses and attributes.¹⁹³

From the perspective of place concerns, telecommuting is an enormous concession to the problems that sprawl and poor urban planning have caused. In that regard, it is a policy of despair, like a morning stimulant taken to counteract the sedative taken the night before. If anything, the very creation of telecommuting demonstrates the unacceptable distance amongst the location of tasks an individual needs to attend to in a day. Telecommuting integrates work and home by making home the location of everything. While the old urban neighborhood of America or Europe integrated daily tasks with a large and multiuse public space, telecommuting retreats from mixed-use public space, putting all tasks into private space. From a quality of life standpoint as well as an equality standpoint, curbing sprawl and encouraging more work-family friendly development are better solutions.

2. On-Site Child Care as a Place Reform

Tax incentives encouraging employers to provide on-site child care are another attempt to bridge the place gap for workers whose dependents reside with them far from the workplace.¹⁹⁴ Employer-provided child care is linked to decreased employee absenteeism¹⁹⁵ and increased worker retention.¹⁹⁶ It is easy to imagine that it would also improve morale, signaling an employer's comprehension of an employee's multiple roles and a willingness to support them. Employers also have the institutional resources to provide higher than average quality child care.¹⁹⁷

While on-site child care is highly useful in easing work-family tension, the provision of this care has been sporadic in practice.¹⁹⁸ More important, it is only useful during the years when children are not yet school-aged because their entire day is consumed by child care. Because our educational system is based on children attending school in close proximity to where they live, on-site child care does nothing for the caregivers of school-aged children. Such centers also fail to meet the needs of disabled

193. See Travis, *supra* note 189, at 287.

194. See Anne L. Alstott, *Tax Policy and Feminism: Competing Goals and Institutional Choices*, 96 Colum. L. Rev. 2001, 2024–25 (1996); Erin L. Kelly, *The Strange History of Employer-Sponsored Child Care: Interested Actors, Uncertainty, and the Transformation of Law in Organizational Fields*, 109 Am. J. Soc. 606, 608 (2003).

195. See U.S. Dep't of the Treasury, *Investing in Child Care: Challenges Facing Working Parents and the Private Sector Response* 6 (1998) (citing Deborah Parkinson, *Work Family Roundtable: Child Care Services* (1995)) (discussing absenteeism).

196. See Elizabeth Cushing Payne, *Taking Care: An Employer's Guide to Child Care Options* 10 (2002) (discussing retention).

197. See Dana E. Friedman, *Employer Supports for Parents with Young Children*, 11 *Future of Children* 63, 70 (2001).

198. Five percent of employees are offered child care provided by their employer. Bureau of Labor Statistics, U.S. Dep't of Labor, *National Compensation Survey: Employee Benefits in Private Industry in the United States—March 2005*, at 26 (2005).

dependents of all ages who are expected to receive services from the town in which they reside, rather than from the town in which their caregiver works. There is no discernible trend toward employer-subsidized on-site elder care.

Employers could extend themselves further into place reforms. They could take a more active interest in planning, particularly in reducing commutes. The federal government offers a tax benefit to some employers who encourage and subsidize the use of public transportation.¹⁹⁹ They also have a significant interest in the education system, in order to ensure a prepared future workforce, but also to retain working families who base residential decisions on public school systems. Some employers do participate in voluntary but publicly coordinated efforts to reduce traffic congestion by shifting work hours.²⁰⁰

More radically, imagine employers providing elementary education on-site. This would keep parents and children spatially close together during the day, and liberate workers' residential decision making from the quality of a local school system. If high-quality day care improves worker retention and reduces absenteeism, one can imagine that employer-provided schooling would do the same. Surely such a system also would have many drawbacks, including tying workers to their employers for fear of disrupting their children's education, and a possible negative impact on the surrounding public education system characteristic of privatization.

B. *Legal Systems Implicated in the Place Pressures*

If we are convinced that there is something counterproductive about the places we live and work now, we must next ask where the law has influenced these developments. In fact, a substantial literature has arisen criticizing sprawl for environmental and aesthetic reasons, from which we may borrow. Those critiques, however, seem largely to have missed the gender equality questions raised by sprawl and housing design and policy: in what way is women's equality in the workplace, as well as socially, hampered by housing policy? This section describes a few of the discrete legal rules that have led to our current geography. The Article concludes by evaluating, in light of these laws, a gender equality question. Given what we know about care giving and its impact on women's workplace and

199. See, e.g., Wash. State Dep't of Revenue, Commute Trip Reduction Credit Program—2005 Updates (2005), available at http://dor.wa.gov/Docs/Pubs/SpecialNotices/2005/sn_05_CommuteTripProgChgs.pdf; Valley Metro Rideshare, Commuter Tax Benefits, http://www.valleymetro.org/Rideshare/Employer_Services/Tax_Benefits.htm (last visited Oct. 8, 2007) (applying Transportation Equity Act for the 21st Century, Pub. L. No. 105-178, 112 Stat. 107 (1998) (codified as amended in scattered sections of 23, 29, U.S.C.)).

200. See EPA, Work Schedule Changes (n.d.), available at <http://www.epa.gov/otaq/stateresources/policy/transp/tcms/workschedule.pdf> (providing a resource for states considering ways to reduce traffic congestion).

social inequality, should these laws be scrutinized for their detrimental impact on women's equality, however unintentional that effect?²⁰¹

This section now briefly looks at several aspects of federal and local policy that encourage work-family unfriendly land use. While this list is not comprehensive, it illustrates the active role the law plays and has played in creating the places where we live and work. The section looks at the federal guarantee of home mortgage loans, the home mortgage deduction, local taxation rules and the failure to regionally plan, zoning that discourages multifamily dwellings and subdivision of old housing, and single-use zoning more generally. After gaining an understanding of these legal influences, it is difficult to argue that the way we live now is primarily a reflection of consumer choice.

1. The Federal Guarantee of Home Mortgages

The impact of federal housing policies on race and class segregation and on the continued aggravation of urban poverty has been well analyzed by many, as has its impact on sprawl. These analyses are briefly reviewed here.

As part of the New Deal reforms intended to slow the default on home loans that had occurred during the Depression, the FHA began insuring mortgages against default in 1934. The FHA would guarantee home loans even when a buyer had put only ten percent equity into a home purchase or when a mortgage was stretched out over decades. This made housing that could take advantage of the FHA's loan guarantees far cheaper for residents than it had been previously and serves as the framework for financing homes to this day. Since the FHA offered these loan guarantees to certain housing locations and types that it deemed low risk, there was overwhelming incentive to conform housing development to those types and locations. The FHA preferred lower-density housing (housing type) and suburban housing (housing location); it excluded "redlined" urban, densely built homes from receiving guaranteed mortgages. The FHA also provided a greater subsidy for new building than for renovation of old housing to either new uses or updated old uses. This naturally had the effect of encouraging building, as well as encouraging the rot of old housing stock. While the federal government eventually prohibited redlining and created a public housing bureaucracy as well, both the segregation and the housing patterns encouraged by the FHA had already become well entrenched.²⁰² In this regard, sprawl and the creation of

201. In one very real sense, the housing policy debate has addressed issues of gender: the affordable housing crisis implicates the interests of single mothers perhaps more than any other group.

202. For this history of housing policy, see generally Victor A. Bolden, *Where Does New York City Go from Here: Chaos or Community?*, 23 *Fordham Urb. L.J.* 1031, 1035-36 (1996); Michael H. Schill & Susan M. Wachter, *The Spatial Bias of Federal Housing Law and Policy: Concentrated Poverty in Urban America*, 143 *U. Pa. L. Rev.* 1285, 1310-11 (1995).

single-family homes cannot simply be described as a market response to consumer demand. Rather, developers and builders responded to a significant financial incentive provided by the FHA home mortgage guarantee to build structures that complied with its requirements.

It can be difficult to envision change in the built environment, given that it has developed over the course of a generation, not overnight. Understanding the impact of the FHA on today's built environment is important because it blunts concern that antisprawl legislation represents illegitimate intervention into the market. Rather, aggressive zoning changes that allow for more dense mixed-use development, and financial incentives for more dense development, can be supported as a counterbalance to the detrimental effects of the FHA.

2. The Home Mortgage Deduction

Personal interest, including interest paid on a home mortgage, was deductible from the time of the introduction of the income tax in 1913 until 1986.²⁰³ In other words, the deduction was not initially designed to encourage home ownership, but applied broadly to all interest.²⁰⁴ Practically speaking, the interest on a home loan is the most significant interest deduction for most people. In 1986, Congress eliminated the deduction for personal interest, but left in place the deduction if that personal interest was paid on a home mortgage, for the first time distinguishing mortgage interest from other interest. At that point, it could be said that Congress's enactments recognized the special place of encouraging and promoting home ownership through tax policy and incentives given by the deduction.²⁰⁵

A significant failing of the home mortgage interest deduction is that it is only available to those who itemize their taxes. Itemizing deductions correlates with higher incomes because the only people who itemize their taxes are ones for whom individual deductions will prove to be greater than the standard deduction. Posit the 2006 standard deduction of \$10,300 for a married couple filing jointly. If the home mortgage interest is the only deduction that they have to itemize, they need to pay more than \$10,300 annually in interest for a mortgage to make any income tax difference at all.²⁰⁶ For a thirty-year fixed-rate mortgage begun in 2006, a home-buying couple would need to borrow \$148,000 at a 7% interest rate before they would pay \$10,300 in interest income. With 10% down, that makes the

203. See I.R.C. § 163(h)(3) (2000); Christopher Howard, *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States* 49–53 (1997).

204. See Howard, *supra* note 203, at 53.

205. This history is recounted in Martin J. McMahon, Jr., *Individual Tax Reform for Fairness and Simplicity: Let Economic Growth Fend for Itself*, 50 *Wash. & Lee L. Rev.* 459, 485–86 (1993).

206. They are likely to have property tax deductions to itemize as well, so the benefit will usually begin at a slightly lower rate in most cases; however, the trajectory remains the same as in this example.

home price at least \$163,000 before the home mortgage interest deduction gives the first dollar of benefit to a home owner. Given that it is a tax deduction, not a tax credit, the loan needs to be a good bit higher than that before the couple will find the home mortgage deduction significant: a home price of \$350,000, with a 10% down payment and a loan of \$315,000 means an interest deduction of \$22,000, or \$11,700 over the standard deduction. If the couple earns between \$61,000 and \$123,000 annually, their federal tax rate would be 25%. That means that the couple would save \$2900 as a result of the home mortgage deduction. But, if the mortgage is \$800,000 on an \$880,000 home, the couple would pay \$55,000 in interest, \$44,700 over the standard deduction. That couple would likely be taxed at the highest rate of 35%, at which point the tax savings goes up to \$15,600.²⁰⁷ In effect, this makes the deduction regressive: there is no effective benefit at lower home prices, and as the price of a house increases, the amount over \$10,300, or the expected benefit of the home mortgage interest rate, increases. It is regressive in a more obvious way as well: it is not available to renters, thus it offers substantial tax relief to the middle- to upper-middle-class household to subsidize their housing needs, while it leaves the lowest-income populations out of this powerful benefit.

The regressive economics of the deduction have been criticized elsewhere.²⁰⁸ Less obvious, perhaps, is that, by favoring bigger mortgages, the home mortgage interest deduction favors more expensive housing, which in turn usually correlates with bigger houses.²⁰⁹ Bigger houses and more expensive houses frequently correlate with more land use, exclusively single-family home zoning, and high energy- and housework-consuming structures. While the deduction for home interest mortgages does end for portions of a loan in excess of \$1,000,000, the vast majority of sprawl's inefficient housing presumably falls in between \$127,000 and \$1,000,000. It is not all home ownership that is subsidized, then, but more expensive homes, which are highly correlated with sprawl.

Moreover, the home mortgage interest income deduction is agnostic as to what type of housing receives federal subsidy. So, for example, the housing subsidy does nothing to encourage particularly energy efficient, low-impact, services-efficient housing over any other type. It is indiscriminate as to type, except to the extent that it benefits more expensive housing. The type of housing construction that it encourages is arguably unfriendly to work and family balance.

207. These numbers can be produced by any number of web sites devoted to calculating interest on mortgage loans. See, e.g., ReBuz, Mortgage Interest Calculator, <http://www.rebuz.com/calc/calculators/mortgage-principal-calculator.php> (last visited Oct. 8, 2007). Tax rates may be obtained on the Internal Revenue Service web site. See IRS, 2006 Federal Tax Rate Schedules, <http://www.irs.gov/formspubs/article/0,,id=150856,00.html> (last visited Oct. 8, 2007).

208. See, e.g., McMahon, *supra* note 205, at 464, 476.

209. Roberta F. Mann, *The (Not So) Little House on the Prairie: The Hidden Costs of the Home Mortgage Interest Deduction*, 32 Ariz. St. L.J. 1347, 1362-63 (2000).

Some have proposed a different system of taxing mortgages that would address the regressive nature of the tax and take into account the quality of housing measured by the amount of public resources that housing absorbs. The Clinton administration initiated a pilot program that would increase lending for "location efficient mortgages," termed LEMs.²¹⁰ LEMs increased borrowing power for home mortgages on a scale as the efficiency of the property increased, as measured by the proximity to public transportation and walking distance to businesses.²¹¹ While increasing the availability of credit may be a mixed blessing where income itself does not change, LEMs represent an attempt to take account of location in fixing a housing benefit. A similar ranking of location applied instead to the home mortgage deduction would create far better individual incentives to choose efficient locations. In addition to benefiting the environment, this incentive would improve options for those attempting to balance work and family. Roberta Mann has proposed replacing the home mortgage deduction with a "shelter tax credit" which would eliminate the regressivity of the home mortgage deduction while providing a higher credit for housing decisions that reflect the location efficiencies of LEMs but that provide a more prudent benefit (a tax credit) than the LEM program (greater access to lending, which can put borrowers at greater risk of default).²¹² This proposal has both a push and a pull: it both takes away the incentive to build large homes that results from the home mortgage deduction's regressivity and adds a significant incentive to choose location-efficient housing, which would lead to more development of that housing form.

3. Lack of Regional Planning

Perhaps the most amorphous but important legal cause of sprawl relates to the interjurisdictional issues presented by urban and suburban relations.²¹³ The state limitations set on taxing authority have led to a situation of suburban residents who use and benefit from the city, but pay only suburban property taxes that are expended entirely on the residents of the suburbs. The suburbs have been able to sustain exclusionary zoning that keeps the number of residents, particularly lower-income²¹⁴ residents, down. Although the numerous laws that lead to the strained suburban/urban economic relationships are too complex for review here,

210. The White House at Work, The Clinton/Gore Administration: Livable Communities for the 21st Century (Sept. 2, 1998), <http://clinton3.nara.gov/WH/Work/090298.html>.

211. Location Efficient Mortgage, Frequently Asked Questions, <http://locationefficiency.com/faq> (last visited Oct. 8, 2007).

212. See Mann, *supra* note 209, at 1394-95.

213. See Kathryn A. Foster, *Regionalism on Purpose* 4-5 (2001).

214. "Lower" here means any income level lower than the norm for a given suburb; wealthy suburbs exclude working-class residents and working-class suburbs exclude the poor.

they have been persuasively mapped out by others.²¹⁵ For our purposes, it is enough to say that the self-interest with respect to taxes and services of those who live in the suburbs has been one motivation for the development of suburbs, and the lack of a regional authority to deal with interjurisdictional tax and service issues in effect encourages the development of sprawl. Greater regional authority aimed at addressing development patterns holds promise for better growth patterns.

4. Road-Building and Utility Subsidies

Both public transportation systems and roads are highly subsidized in the United States. Each year, the Department of Transportation reports spending billions of dollars to lay down new roads, with state and local governments also spending billions.²¹⁶ A report issued by the Department of Transportation in 2005 put one year's capital outlay, exclusive of highway maintenance costs, at \$49 billion.²¹⁷ Researchers have demonstrated that transportation subsidies do result in expansion of communities that can be labeled undesirable or inefficient sprawl.²¹⁸ Federal and state subsidies for the development of roads make car travel and access to outer perimeters of the city free to developers, externalizing one of the major costs associated with developing sprawl.²¹⁹

In addition, a developer purchases land to build a single-family home and pays only for the construction and land cost. Similarly, the home buyer makes direct payments only for the home itself. The many additional costs to dispersed development, such as the running of utilities, sewer, and water, however, are paid for through taxes. Since the full costs are not internalized, developers can make housing at a lower cost outside of the city, where the land price is lower.²²⁰ The impact of this subsidy can be substantial, as the following example illustrates. In 1998, sewer hookup in suburban Tallahassee, Florida, cost \$11,000, while it cost less than \$5000 in the center of the city. But in that metropolitan area, all consumers paid a flat rate of \$6000.²²¹ Those living in high-density neighborhoods subsidize those living in sprawled ones, providing the lower-density purchasers with a significant unjustified cost savings, and burdening city purchasers with a

215. See, e.g., Duany, Plater-Zyberk & Speck, *supra* note 110, at 135–36; Gerald E. Frug, *City Making: Building Communities Without Building Walls* 17–19, 54–56 (1999); Briffault, *supra* note 188, at 1136–42; Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 Harv. L. Rev. 1841, 1906–08 (1994); Frug, *supra* note 121, at 1067–72.

216. Fed. Highway Admin., U.S. Dep't of Transp., *Funding for Highways and Disposition of Highway User Revenues, All Units of Government* (2003), <http://www.fhwa.dot.gov/policy/ohim/hs03/htm/hf10.htm>.

217. *Id.*

218. See Jan K. Brueckner, *Transport Subsidies, System Choice, and Urban Sprawl* 10 (CESifo, Working Paper No. 1090, 2003), available at <http://SSRN.com/abstract=479241>.

219. See *id.* at 10.

220. Gillham, *supra* note 4, at 126.

221. *Id.*

cost not justified by their housing needs. The costs of sprawl are not internalized by the developers and thus in turn they are not internalized by the consumer.

It is possible to imagine legal reform that would internalize many of the costs of building far from services. Rate-setting bureaucracies and public utilities could be required to vary the price on services depending on the actual cost of providing those services, for example. Developers could be forced to reimburse road subsidies both at the federal and state level, such that the cost of building on more remote land would be reflected in the price of the housing in such areas. Property tax rates could be based not only on the assessed value of the property, as is the custom, but on the assessed cost of the property in terms of emergency services and access support. Depending on the mechanism, this could create considerable disincentives for developers to choose more remote, and thus more expensive, sites for housing.

5. Zoning for Building Type: Single-Family Housing Policy

Zoning in sprawled communities promotes the development of both energy- and housework-inefficient homes. Most suburban developments are zoned for single-family homes, including relatively large minimum lot sizes. This zoning norm is valued by suburban developers because it works to prevent the creation of mixed-income housing that would lower the price of neighboring houses. The impact on work-family balance of zoning exclusively for single-family housing in suburbs has multiple dimensions. First, single-family housing that is not dense separates houses from one another and from other places an individual goes in a day: work, stores, civic institutions, parks, and school, which adds time and transportation problems to a worker's day. The use of relatively large amounts of land per dwelling pushes housing farther out from the city, making commutes longer. The inability to break down old housing stock into multifamily units through the creation of legal in-law apartments, for example, places further pressure to expand outward and to build new housing by raising the marginal cost of renovating and repairing old housing stock closer to and within the city limits.

The single-family home zoning also creates houses that may not be efficient for individuals without children, including the elderly and single adults. Consequently, these individuals often seek out housing that is not located among family dwellings, and different types of households become segregated from one another. In addition to the obvious richness lost by zoning that encourages homogeneous household types, for suburban dwellers with care responsibilities for elderly relatives, for example, zoning can stymie family-friendly arrangements that include dwellings close together or within the same building.

One might think that the potential efficiency of multifamily dwellings would create its own market, and thus that the dominance of the single-

family home proves its desirability. Recall, though, that multifamily dwellings developed by private entities need to interact sensibly with entities beyond the control of the developer or a home purchaser. For example, densely packed multifamily dwellings depend on the provision of quality public spaces, ranging from parks and recreational facilities and schools, to civic and community spaces, to commercial and retail spaces that provide services and places for individuals to go. The single-use zoning that will prevent that kind of mixed-use neighborhood, along with the abdication by local governments of responsibility for coherent public spaces in favor of delegation for their creation to private developers, leaves us with no “control” available with which to compare the consumer decision to choose the available single-family housing.

6. Separate-Use Zoning

The final example of legal rules that lead to family unfriendly sprawl is the Euclidian²²² zoning norm that separates out land uses into commercial, industrial, retail, residential, and recreational. These uses are piled together each within their own category, but are in separate zones from the other potential land uses. By preventing mixed-use development, zoning rules guarantee that those living in new developments will need to spend precious time in cars to accomplish their daily rounds. The movement toward “smart growth” and “smart development,” sometimes called the “New Urbanism,” focuses its primary attention on changing the single-use zoning rules and planning mixed-use development in its place that allows for more densely packed communities which include housing, workplaces, shops, parks, and civic and religious institutions that are accessible to one another by foot.²²³ Smart growth and New Urbanism are animated by environmental and quality of life concerns, not gender equality. But the same solutions they produce to those problems would have the added benefit of easing work-family tension and thereby supporting women’s increased participation in both the labor force and other spheres of public life. For this reason, work-family balance advocates should align themselves with these already well-established planning movements.

A combination of single-use zoning and single-family home zoning, along with the mortgage system for financing residential property, has stymied the cohousing movement, which has been a self-conscious attempt to address some of the housing design concerns that have the effect of exacerbating work-family balance. While cohousing does not address the problem of geographic distance among destinations, it is a serious attempt to create alternatives to the residential choices available to families. Because zoning rules have made it difficult to create effective cohousing

222. Barlow Burke, *Understanding the Law of Zoning and Land Use Controls* 87 (2002).

223. Duany, Plater-Zyberk & Speck, *supra* note 110, at 253–54, 259–60; Katz, *supra* note 110, at 48–49.

developments, consumer choice cannot explain the failure of this alternative to thrive.²²⁴

CONCLUSION: FRAMING SPRAWL CRITIQUES AS EQUALITY BASED

Work-family conflict presents an equality concern. In the past several years, an extensive literature has arisen within law addressing the allocation of care work in the American economy and the impact of that allocation on women's economic and political equality.²²⁵ There is an emerging consensus that women's care work plays a limiting role in their workplace advancement, although there remains disagreement about the extent of the role care work plays when compared to other more conventionally understood disparate treatment discrimination.²²⁶ Limitations in workplace advancement bleed into equality in civic and social institutions, such that challenges balancing work and family impede the achievement of full equal citizenship. Workplace antidiscrimination efforts do not exhaust the field when considering challenges to women's effective participation in public life. Neither does the promotion of equal division of household labor between men and women. Even the enactment by a heterosexual couple of equal family roles, if it is unaccompanied by a change in the tasks themselves or the mechanism by which they are accomplished, labels as equality a lifestyle that is designed and shaped by the idea of disparate gender roles.

The work-life industry that consults with businesses on balance issues, though careful to use gender-neutral language, has developed as an intermediary between women workers and employers. The extensive work already done on this topic puts us in a position to build on the evolution in our thinking about work-family tension and women's equality.

Urban/suburban relations, the FHA, single-family home zoning, and the failure to create regional governments have all been criticized on equality grounds from a race perspective. The history of American housing policy is dripping with race-based decision making designed to prevent racially integrated communities.²²⁷

A gender analysis of housing and zoning policies has not been as forthcoming among legal scholars. But the development of single-family homes and the trend away from the multifamily dwellings that characterized city life until WWII drastically reduced the avenues for developing more efficient ways to accomplish women's traditional household tasks. The isolation associated with suburban dwellings makes collectivized child care,

224. See Ginzburg, *supra* note 161, at 887.

225. See, e.g., Fineman, *supra* note 10, at 5–7; Folbre, *supra* note 10, at 3–21; McClain, *supra* note 64, at 85–114; Williams, *supra* note 8, at 271–76.

226. See generally Schultz, *supra* note 9, at 1884–85, 1893, 1898 (suggesting reasons to be skeptical about the extent of the care work effect); Selmi, *supra* note 9, at 1558, 1562, 1565–67; Michael Selmi & Naomi Cahn, *Caretaking and the Contradictions of Contemporary Policy*, 55 Me. L. Rev. 289, 310–12 (2003); Symposium, *supra* note 13.

227. See Ford, *supra* note 215, at 1847–48.

food preparation, and laundry seem unrealistic and even strange. The single-family home design reflects an ideology of domesticity for mothers, a role that was intended to replace their workplace participation during WWII. When middle-class women began reentering the labor force in the 1970s and 1980s, they did so without a rearrangement of the norms of domesticity that were so firmly entrenched in the built environment. While we are aware of “soccer moms” as a demographic phenomenon—women whose time is eaten up transporting children to far-flung activities—we do not often view their built environment as an aspect of their gendered lives.

It is time for a new discussion in the legal community about the gender of sprawl. The development in the past decade of a discourse linking work-family balance issues to women’s civic and economic equality has created a framework for thinking about urban planning and women’s equality on which we can build.

There is a role for simple consciousness raising about work-family balance in development planning. Despite the failure of many race discrimination challenges to zoning regulations, the impact of zoning on racial disparities in housing is perhaps better understood than it would have been without such challenges. Similarly, environmentalists have successfully increased planners’ awareness of environmental concerns, even as actual legal remedies to prevent growth in light of those concerns have been too slow to develop. That awareness can, and in many cases does, translate into positive developments, ranging from ballot initiatives promoting smart growth to government divisions committed to evaluating the relationship between development and environmental concerns.

At the very least, awareness of the relationship between sprawl and work-family balance, and in turn between work-family balance and women’s equality, needs to be better than it is. To gain the place at the table currently enjoyed by environmentalists, women’s advocates need to emphasize the impact of development on women’s status. Under current conditions, that impact is too poorly understood by women’s advocates themselves to gain any traction in development debates.

Moreover, a better understanding of the spatial challenges to effective work-family balancing may influence the spatial decision making of individuals. To the extent alternatives exist today, awareness of the costs of the spatial divisions frustrating effective work-family balance may encourage more mindful decision making.

This Article invites the work-family industry and scholars to look beyond their two main targets of criticism: employers and fathers. The debate has largely been about what employers and fathers can do differently or more effectively to facilitate women’s equality in light of care responsibilities. Sometimes a third target of state assistance with care work also emerges. The question of women’s place allows us to think about the stresses associated with work and family balance in terms of barriers unrelated to employers, fathers, or the expectation that care will be provided privately

within families. Place concerns allow us to see the work-family conflict as having some of its sources in other arenas.