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Rights in the Balance: Rights Consciousness, Rights Claiming and Work/Life Balance Policies in the U.S.

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Abstract:

This dissertation traces the process by which individual women come to form their consciousness of work/life balance law and policies that are available to them. Engaging primarily with Law and Society literature on legal consciousness formation, I employ a "process-based" approach, in order to conceptually disentangle the various threads that comprise the sources of legal consciousness formation. I analyze three dimensions that matter to the construction of legal consciousness: the institutional, the ideological, and the instrumental. In doing so, I seek to detect the connection between the individual and the social in the formation of legal consciousness. I use interpretive methods applied to the transcripts of interviews I conducted with 48 women in two different types of workplaces – academic institutions and various branches of the U.S. military.

This process-based approach reveals that legal consciousness around work/life balance policies is formed through formal and informal institutional structures, the communication of ideology (in particular the ideological construct of the ideal worker) and through individual agency. I find that the strongest influence on women's rights consciousness and rights claiming is ideological, and that the pervasiveness of the ideal worker norm has had negative consequences on work/life balance policies as they currently exist. However, I argue that institutional structures, including self-directed "strategic consciousness networks" offer hope for better policy implementation and, ultimately, for social change.

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Part I

Chapter 1: Rights Consciousness and Rights Claiming: A Process-Based Approach

Introduction: Rights Consciousness and Rights Claiming

This dissertation traces the process by which individual women come to form their consciousness of work/life balance law and policies that are available to them. As an individual enters a workplace environment, just as with any institutional setting, she must learn the rules and norms that are salient to that institution. Her knowledge, or "consciousness" of those rules – both formal and informal – will assist her in making choices about how to navigate them. It is that learning process with which this manuscript is concerned. In particular, how do individuals and society relate and interact in order to form this consciousness? To what extent do environmental factors such as institutional norms, ideological constructs, or individual agency affect how individuals conceive of their "rights" under certain policies? These are questions that Law and Society scholars have tackled for decades, and it is this conversation with which I wish to engage with this manuscript.

For years, Law and Society scholars have documented the interactions that individuals have with the law in their everyday lives (e.g., Engel 1984; Sarat 1990; Ewick and Silbey 1998; Gilliom 2001). Law and Society scholars have also been interested in how individuals think about the law, and in tracking the mutually constitutive relationship between legal interaction and legal consciousness (e.g., Bumiller 1992; McCann 1994; Morgan 1999; Engel and Munger 2003; Marshall 2005). These scholars are interested in questions of how people think about the law, and when and how that matters for rights claiming. In *Rights of Inclusion*, Engel and Munger (2003) offer a particularly nuanced example of how legal consciousness is shaped by interaction with the law. Through interviews with individuals covered under the Americans with Disabilities Act (ADA), the authors find that formal legal action is not always necessary for rights to play a key role in changing individuals' lives. Specifically, respondents in Engel and Munger's study

engage with rights through their definition or re-definition of *identity*. Rights, by permeating cultural norms and everyday discourse, can help transform how individuals view themselves under the law, and also how others view them as individuals.

It seems reasonable that individuals may use rights language to make sense of their experiences, and to try to take some control over how they views themselves under the law. Yet an important question concerning identity and individuals' relationship to the law remains: *how* do individuals come to use the language of the law to interpret their situations? Law and Society scholars emphasize the mutually constitutive relationship between individuals and their society in developing and perpetuating the meanings of legal concepts such as "rights", and therefore the reciprocal nature of individual and collective legal consciousness (e.g. Ewick and Silbey 1998; Schneider 1986; McCann 1994). As Chloe Schneider (1986) observes, rights claims also shape public discourse, which in turn shapes political action and eventually the law. It is not a direct relationship, argues Schneider, but rather a dialectical one. The assertion of rights can limit a group's (or an individual's) possibilities, but can also help to move them forward – particularly in the context of the dialogue and introspection of the movement itself. How specifically, though, is legal consciousness constructed? What factors might influence the presence of legal consciousness among working mothers or mothers-to-be?

Susan Silbey (2005) asks a similar question in her article "After Legal Consciousness." Silbey argues that the direction that legal consciousness research has taken at times has focused too much on the individual and the psychological, and neglected a theoretical grappling with how the individual and the social are connected (e.g. Baudrillard 2007 [1978]; Sarat & Simon 2003). Silbey argues that perhaps the best way to move legal consciousness research forward would be to focus on its formation. Specifically, Silbey argues, scholars should go back to

looking at how legal consciousness can be shaped by (and is "infinitely useful to") hegemony (360). Silbey cites recent work on institutions as being a particularly useful way to explore this connection (e.g. Goodman 2006; Doyle 2003; Haltom & McCann 2004). "In institutions cultural meaning, social inequality, and legal consciousness are forged" (360).

This dissertation brings into focus the connection between the individual and the social in the production of legal knowledge. I employ a "process-based" approach, originally proposed by Haltom and McCann (2004) in order to conceptually disentangle the various threads that comprise the sources of legal consciousness formation. Like the authors, I analyze three dimensions that matter to the construction of legal consciousness: the institutional, the ideological, and the instrumental.

Institutional Context

The first dimension of analysis in this dissertation focuses on the impact that institutional context has on shaping individuals' legal consciousness and decisions about rights claiming. This relationship between the individual and their institutional context/s, however, is complex. As so many studies of rights mobilization have attested, legal consciousness is a significant factor in individuals' ability to rights-claim. Yet, as John Gilliom (2001) points out, *context* also plays an important role in determining whether individuals choose to rights claim, or mobilize to implement rights. Gilliom's study of Appalachian welfare poor demonstrates that the mere presence of rights consciousness is not enough to cause individuals to mobilize to change unjust conditions. The mobilization that McCann (1994) observed around pay equity issues took place because those workers felt wronged, "*and* because they had the social, legal, economic, and political resources to do something…" (2001, 91). The women in Gilliom's study are confronted not only with a lack of resources, but a culture that creates "significant pressures and tendencies

against rights-claiming in the everyday lives of these welfare mothers" (92). In this case, these women's' legal consciousness causes them to understand the futility of rights claiming. Therefore, a simple formula does not exist whereby the presence of legal consciousness leads to rights claiming. The context – both cultural and institutional – matter in that norms, rules and practices present before the introduction of rights can constrain the ability of individuals to gain legal consciousness, and to rights-claim. Further, these cultural and institutional norms play a critical role in constructing individual legal consciousness.

Sociolegal studies are not the only area of research in recent years to recognize the important constructive role that institutions play. Scholars of "new institutionalism" have also conducted significant research into the importance of institutions in perpetuating political and social stability, and in bringing about social change. New institutionalists have long acknowledged the impact that institutional rules, norms and structures have on individual decision-making (e.g., Levi 1997; Weingast 2002; Theriault 2006; 2008; Smith 2007). Despite its reassuring name, however, new institutionalism scholarship is by no means a unified framework. Several branches of the "new institutionalism" exist, and indeed conflict with one another in their methodological and epistemological concentrations.

Historical institutionalists, for instance, focus on the significance of history in creating particular norms, cultures and rules that have been shaped and constrained over time, giving individual institutions their unique contexts. These scholars understand history as inefficient, fluid, and "path dependent" (meaning that historical decisions affect and constrain present and future decisions and structures). For example, the creation of one rule, norm, or institution, often closes off the possibility of other options because the establishment and persistence of such an institution significantly raises the costs of reversing that change. Therefore, future decisions are

often necessarily incorporated into historical ones, or are restricted by a need to circumvent precedent. "[Institutions] constrain choices by structuring incentives, but they also shape preferences by influencing ideas" (Whittington 2000).

Rational choice institutionalists focus on the role of institutions in dictating individual behavior. Margaret Levi (1997), for instance, argues that the two "pillars" of rational choice theory are: *constraints* (how do the rules and norms of institutions affect individuals' decision-making within them), and *strategy* (how will an evaluation of how others will act within the institutional setting affect the choices that individuals make). For rational choice institutionalists, it is clear that individual choice cannot be viewed as entirely autonomous. Rather, it is arguable that a central puzzle within this literature lies in trying to determine how we might in fact understand individual choice to be *structured* (by constraints or strategy or both). In other words, it is not simply the proclivity of institutions to constrain decision-making possibilities, but also their tendency to foster, shape and privilege certain ideologies over others that makes them specifically interesting areas to study the formation of rights consciousness.

Sociological institutionalism is engaged in explaining organization through cultural norms and frames, which give shape to institutions, and which institutions in turn serve to perpetuate and disseminate. Institutions are the context in which a "logic of appropriateness" – dictated by cultural norms and frames – constrains and constructs individual and collective action (Schmidt 2011; Scott 1995; Powell and DiMagio 1991; March and Olsen 1989). Many Law and Society scholars that focus on the significance of institutions have reflected an understanding of institutions that is largely constructivist, and in line with sociological institutionalism (Marshall 2005; Gilliom 2001; Morgan 1999; McCann 1994; Albiston 2005; 2010).

What Law and Society scholars, and those involved in new institutionalism scholarship, have come to recognize is that it is not simply the formal rules or structures of an institution that matter in shaping and constraining individual thought and behavior. Rather, informal rules, structures and norms also exist, and can be equally salient for individual decision-making. Orren and Skowronek (2004), in defining the essential attributes of institutions, observe that: "institutions establish *norms and rules* for behavior. These may be either customary or codified, but are always set in advance and enforceable through the imposition of discipline" (82, emphasis in original). This observation aptly captures the equal salience of the formal and the informal in constraining individual thought and behavior – a topic that is also well documented in Law and Society literature that focuses on legal consciousness (Marshall and Barclay 2003; Reese and Lindenberg 1998; Morgan 1999; Zippel 2004). Anna Marie Marshall (2005), for instance, notes that in the case of sexual harassment policies, "When women…fear retaliation for exercising their rights, then the remedial policies and procedures may be inadequate to address the underlying problems." In Marshall's study, "women anticipate skeptical treatment by their supervisors" and modify their thinking and formal rights claiming in relation to this informal expectation. When discussing the role of institutions in this dissertation, therefore, I take into account both the formal and informal mechanisms by which individuals may be constrained or influenced. In chapters two and three, which offer an in-depth look at each case study, I spend a significant amount of time parsing out both the formal and informal rules, norms and structures that the interview respondents identify as salient in the governing of their institutions.

Several scholars have already identified the workplace as a type of institution that is particularly prone to developing and perpetuating hegemonic norms and ideas (e.g. Morgan 1999; Marshall and Barclay 2003; Albiston 2005; 2010;). Studies that take an institutionalist

approach to the workplace are necessarily complicated by the diverse nature of workplaces. Indeed, some types of work can hardly be thought of as having an "institutional" structure in the traditional sense (e.g. those who sell goods on eBay from home, travelling salespeople, etc.). Yet is it possible to argue that most employed Americans work within a defined institutional context – a hospital, a police station, a school, a corporation, etc. Additionally, the workplace is where many individuals acquire knowledge of their rights under public policy and where they choose to either take up those rights or not. For instance, several studies have examined the complexities of implementing sexual harassment policy in the workplace, highlighting that a policy's existence alone is often not enough to encourage uptake. These studies reveal the significance of institutional context, including norms, attitudes, relationships, and workplace-specific rules that constrain individual decision-making (Marshall 2003; Reese and Lindenberg 1998; Morgan 1999; Zippel 2004). Other studies of employees in their workplace settings have focused on the important role of ideology, its cultivation in the workplace, and how it is absorbed or resisted by workers (Munkres 2008; Seron et al. 2004; Hoffmann 2003). Similarly, a plethora of scholarship has been dedicated to documenting the effects of institutional contexts on individual decision-making and ideology formation in the area of maternity and family leave policy. Mary Ann Mason et al. (2002; 2004; 2013), for instance, examine the norms and expectations within academic institutions and their effects on individual decision-making that has resulted in more women than men "leaking" from the academic pipeline. Joan Williams (2000; 2009) has documented the existence of an "ideal worker" concept within workplace contexts, and has argued that it has detrimental effects on women's decisions to seek out or take up maternity leave rights.

The work that is perhaps most closely correlated with the focus of this dissertation is that

of Catherine Albiston, who looks closely at the FMLA in action in the workplace (2010; 2005). Albiston makes a conscious attempt to understand how institutions themselves shape the reality of women's experiences with rights claiming at work. Albiston argues that the effectiveness of the law is subject to the peculiarities of institutions, their norms and power relationships. She argues that institutions simultaneously act to shape the meaning of rights and also affect the ability of women to mobilize their FMLA rights both in the workplace and in the courts. Albiston's approach also relies heavily on the blending of social constructionism and new institutionalism. "Conceptualizing the decision to mobilize rights as a social process embedded within existing social relations turns the inquiry toward determination of which contextual factors affect actors' perceptions and preferences about rights" (153).

Albiston's study suggests that working women possess a legal consciousness with regard to their family leave rights. Additionally, her work demonstrates that institutional factors are significant in shaping and constraining both their legal consciousness, as well as their ability to rights claim. This dissertation broadens the scope of Albiston's work by providing a more nuanced understanding of the institutional context in shaping individual rights consciousness. I do this by discussing the ways in which a newer form of institutional scholarship – "discursive institutionalism" – can inform sociolegal work on the role of institutions play in the formation of legal consciousness. Discursive institutionalism builds upon the three existing strains of new institutional scholarship in one important way. Discursive institutionalism introduces the study of the circulation of ideas as a central feature of its analysis. Scholars of this approach argue that institutions:

> "Are not external, "rule-following structures that serve primarily as constraints on actors… They are instead simultaneously constraining structures and enabling constructs internal to 'sentient' (thinking and speaking agents) agents whose 'background ideational abilities' explain how they create and maintain institutions at the same time that their

'foreground discursive abilities' enable them to communicate critically about those institutions, to change (or maintain) them." (Schmidt 2008, 2011).

Discursive institutionalism should be particularly attractive to Law and Society scholars who are interested in better understanding institutions, and their role in social change. Its emphasis on the significance of ideas and their communication makes discursive institutionalism an excellent framework with which to explain change and continuity, through the discursive interaction between individual and social within institutional settings. Indeed, as Teresa Kulawik (2009) argues, discursive institutionalism allows scholars to view institutions not simply as "sedimentations of discursive struggles". Rather, institutions are also spaces where discourse takes place – and these spaces shape and configure discourse, as well as play a key role in facilitating where, how, when and why it takes place. By bringing the framework of discursive institutionalism to bear, I am able to more fully develop Albiston's understanding of workplaces as institutions, and how they shape individuals' rights consciousness in the area of work/life policies.

Ideology and the Social Production of Legal Knowledge

In their study of tort reform, Haltom and McCann (2004) consider ideology to be at work alongside and within both instrumental design and institutional practices, and thus their discussion of ideology is interwoven with their discussion of the other two dimensions: instrumental actors and institutions. "In this sense, ideology refers to intersubjective conventions that constitute social life less by dictating or impeding thought than by inviting, encouraging, privileging, and facilitating certain types of interpretive constructions over others" (21). The ideology that Haltom and McCann are focused on is the popular cultural norm of "individual responsibility" and "populist antipathy toward formal state intervention in socioeconomic life" (22). The authors are particularly interested in observing how this ideology is then brought into

discussions of tort reform in order to imbue arguments with "moral power" and thus impact legal consciousness.

If, as Haltom and McCann argue, ideology is essentially "conventions that constitute social life"– then how are these conventions formed? For Haltom and McCann, ideology is not the sole agent in the complex social production of legal knowledge. It is merely one piece of a much larger pie. Instrumental actors work to shape public discourse to their own, very specific, goals and interests. Institutional factors constrain how discourse takes place, as well as what is open to possibility and what is not. Yet ideology is the least conceptually clear of these categories. In their conception of ideology, Haltom and McCann recognize that it is something that appears both in institutional practices as well as instrumental conceptions – it is therefore less of a third, distinct "category" of factors affecting the social production of legal knowledge as it is something that can be *derived from* the other two categories, embedding them with a cohesive "meaning".

In this conception of ideology, Haltom and McCann are situating themselves within a "constructivist, constitutive sociolegal theory" by retaining the notion that ideology is intimately connected with power (Ewick 2004). Ideology is not simply a set of "symbols and meaning by which individuals make sense of their world and their experience" (Merry 1985, 61). Nor, however, is ideology a "false consciousness" that masks the "reality" of class struggle (e.g. Peter Gabel and Duncan Kennedy 1984). For Patricia Ewick, ideology is a "process of meaning making that serves power" (Ewick 2004, 85). Ewick's definition of ideology comes somewhat closer to the conceptualization that I employ in this dissertation. That ideology is a *process* implies that ideology is continually being constructed. That ideology is a *process of meaning-making* implies an individual-level unit of analysis, for whom meaning is being made. Ideology

is meaning making that is taking place both on the social level of public discourse and on the individual level, in a perpetual cycle. In this understanding of the term, ideology can, in a way, be understood as the *missing link* between public discourse and legal consciousness. But, for Ewick, ideology is not merely meaning making – it is meaning making that *serves power*. It is this final element of Ewick's definition of ideology with which I must take some issue. In context, Ewick indicates that she intends to argue that ideology perpetuates hegemony, quoting Thompson, she says: "We can thus define ideology as 'the ways in which meaning serves, in particular circumstances, to establish and sustain relations of power which are systematically asymmetrical'" (84). Ewick's exact understanding of the relationship between ideology and power becomes clearer upon reading her essay with Susan Silbey (1999):

> "Presumably, ideologies lose their ability to define and organize social life when people start to question the inevitability of 'the way things are' and come to recognize the interests that operate to construct such a vision of truth and reality. What prompts these ideological penetrations is a source of continuing debate, but essential to all successful challenges is a collective, widespread rejection of the version of reality offered by the ideology…" (1026).

The problem with this understanding of ideology is that it doesn't recognize that ideology can also be used to *challenge* power. E.P. Thompson (2001), for instance, argues that, "If the rhetoric [of law] was a mask, it was a mask which Gandhi and Nehru were to borrow, at the head of a million masked supporters" (439). Teun van Dijk (1998) has produced what I believe to be one of the most thorough discussions of the subject of ideology – in particular, its social essence, and how it can best be analyzed in discourse. Van Dijk points out that ideology is inherently *social*. Even though individuals use ideologies to make sense of their own circumstances (and also play a role in public discourse that constructs ideology), it is not *personal*. Additionally, van Dijk spends a lot of time arguing that ideologies are *not* limited to dominant groups, stating,

"ideologies may function as legitimation of power abuse and inequality, on the one hand, and as a basis for resistance, challenge, dissidence and change on the other hand" (316).

Thus, if we understand ideology not simply as "serving power," but as reflective of *dominant strains of thinking* (both in service of power and in opposition to it), then ideology makes much more sense as a link between the social-level of public discourse and the formation of individual legal consciousness. Ideology can ultimately be understood as a lens – a way for individuals to view the world and make sense of what they are seeing. Further, most individuals do not simply possess *one* ideology. Indeed, as I will demonstrate in later chapters, individuals often harbor multiple, even conflicting, ideologies.

Just as Haltom and McCann (2004) focus on a particular ideological strain, I will also narrow my discussion of ideology in this dissertation to focus on a particular ideology that has developed since the advent of the industrial revolution, and took hold of the American imagination particularly in the mid-20th century – what Joan Williams refers to as the ideology of domesticity (2000). In chapter 5, I will discuss in more detail how this ideology has developed over time, and is the source of an ideological construct of the "ideal worker" that is pervasive within American workplaces.

Instrumental Design, Strategic Action

The 'Instrumental' factor of Haltom and McCann's process-based framework might be viewed as the individual unit of analysis. For Haltom and McCann, who were interested in analyzing the production of legal knowledge on a broader social level, it was important to pay the closest attention to instrumental actors who are elites, such as groups or individuals who see themselves as "tort reformers" and are thus trying to sway public discourse along lines that serve their political and ideological agendas. In this dissertation, however, I am most interested in

analyzing the interwoven relationship between institutions, ideology and instrumental actors in order to explain *the individual* and her formation of rights consciousness. Therefore, I think that it is possible to interpret Haltom and McCann's understanding of instrumental designs as the actions of individuals, who are acting with agency to affect their own or others' legal consciousness. As Haltom and McCann point out, "one especially significant aspect of most instrumental contests is the effort of some parties to control, or to influence, what others do or do not know and count or discount as relevant knowledge" (2004, 14).

Instrumental design, in the context of this analysis, therefore, might look less like politicians or activists interested in pushing tort reform, and more like a supervisor, who is interested in getting the most out of an employee. The actions of that supervisor may be driven by a particular ideology, and may have significant consequences for the legal knowledge that an employee is subject to, and what "choices" she feels constrained by. In Albiston's (2010) study of employees claiming FMLA, for instance, she finds that employees often tried to couch their rights claims in ways that would conform to managerial norms or expectations. As Albiston finds, "employers did not completely ignore the law. They complied at least partially by telling workers about their rights, or by allowing some workers to take leave. Nevertheless, they implemented the law in a way that emphasized managerial norms about work and schedules," such as rewarding production targets that undermined leave rights (179).

Haltom and McCann also discuss the *strategic* nature of instrumental action. For the authors, this strategic action took the form of interest groups or elites using or proliferating certain types of knowledge and concealing others. However, this strategic element can again be employed in a more bottom-up analysis of legal consciousness. Individuals may, for instance, have strategic reasons for seeking out, proliferating, or concealing certain types of legal

knowledge for the purposes of their own professional interests in a workplace environment. A female employee who wants to have a child, for instance, may seek out other women who have already claimed their rights in order to gain legal knowledge, either about the formal process of applying for a policy, or for information about informal norms that may make claiming her rights difficult in other ways. This act would be strategic, in that it would have implications for her professionally, but would also be a means of helping to shape the formation of her legal consciousness.

Institutional context, ideology, and instrumental design, argue Haltom and McCann, act together to construct legal consciousness. In some ways, it is almost nonsensical to try to separate their functions and consequences, since each necessarily relies upon the other, and all are working together in a consistent and often cyclical process. Nonetheless, separating them for the purpose of analysis allows scholars to glimpse with greater conceptual clarity the process of legal consciousness formation. This dissertation, therefore, will engage in a separate analysis of each of these dimensions, while simultaneously recognizing the significance of their interconnectedness.

Work/Life Balance – Who Cares?

Numerous studies have pointed out that the Family and Medical Leave Act (FMLA), the only federal policy regulating maternity leave in the United States, is a scant offering in the context of worldwide family leave policies (Haas 2004; Waldfogel 2001; Ray et al. 2008). According to a 2011 Human Rights Watch report, at least 178 countries have national laws that guarantee paid leave for new mothers, and more than 100 of those countries offer 14 or more weeks of paid leave. In contrast, forty percent of American workers are ineligible to claim a right to leave under the FMLA. The 12-week leave available under the FMLA, is also unpaid, and

only one quarter of American workplaces offer any kind of paid maternity-related leave of any duration (Ray et al. 2008). The FMLA is an historical development in American policy that was not easily achieved (Lenhoff and Bell 2013), yet the fact remains that nearly 57 percent of women with children under the age of one year are in the workforce (BLS 2011) and only 58% of employees are covered under the FMLA[1]. The FMLA, however, addresses more than maternity leave alone. The policy is also a federal attempt to address other issues that concern families who are trying to balance the tension between working and caring for a family. The policy is also available to men, and allows both sexes not only to take leave to be with a newborn child, but also applies to adoption, caring for a sick child, or an elderly relative.

The relationship between the individual and the social in the context of women and the workplace has historically often been conceptualized as a dichotomy between the "public" and the "private" spheres. Feminist scholars producing work on women's equality in the workplace have most often understood the concept of a public/private dichotomy between family life and the non-domestic sphere as problematic for achieving gender equality (e.g. Olsen 1983; Pateman 1983; Elshtain 1993; Fineman and Mykituik 1994; Fineman 1995; Kessler 2000; Hochschild 2001; 2003; Williams 2000; Williams and Cooper 2004). The problem, according to these scholars, is that much of the movement to achieve equality for women has tried to address inequality in the public sphere (fighting for the vote, for entrance in the workforce, etc.) while inequality in the home has remained unrecognized and untreated. Yet, as Okin (1991) points out, "the personal is political" (124). The private cannot be ignored, these scholars have argued, because it also profoundly affects the public. My choice to focus on work/life balance policies in

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[1] This is due to technicalities in the law, such as allowing businesses with fewer than 50 employees to opt out. In fact, 89% of businesses are not covered under the FMLA (Cantor et al. 2000).

this dissertation, therefore, is particularly appropriate, in that this is an area of the law where society is ostensibly interested in helping individuals to bridge the gap between their public and private selves.

Working mothers present a paradox within an American cultural identity that values both the privacy of the home environment, and the notion of equality in the public sphere. The rights available to them vary not only according to coverage under FMLA, but also from state to state and workplace to workplace. Some working women in America are entitled to no leave or work/life entitlements at all, and must try to negotiate family care needs and financial needs within the means available to them only in the private sphere. Others have various levels of paid and unpaid leave promises under state or federal law, or institution-specific policies, upon which they can draw to supplement their private negotiations between care needs and financial needs. This variability in terms of family leave offerings across the U.S., from institution to institution (with variability sometimes *within* the institution as well), is why, in this dissertation, I chose to look at *all* policies aimed at improving work/life balance, rather than simply *leave*. Additionally, in some workplaces, such as the U.S. military (as I will discuss in chapter two), taking maternity leave is a very different experience than trying to gain access to other rights, such as breastfeeding accommodation. Including all work/life balance policies in this analysis allows for a greater breadth of understanding how women must navigate the often complex terrain of their working environments in order to take advantage of the underlying promise of all of these policies – better work/life balance.

In a society in which political campaigns are often waged on the issue of "family values," many women have fallen through the cracks of public policy – for them, the notion of public "equality" is a political fiction. In this dissertation, I make a conscious decision to focus

primarily on mothers and the family-leave and other work/life law and policies that apply specifically to them. In doing so, I acknowledge that I am rendering invisible the similar needs and struggles that many working fathers face (Doucet 2004; 2006). However, this choice to narrow my dissertation to women is rooted in my understanding of feminist legal theory, which highlights the unique challenges that women face due to the engendering of their bodies as "different" and thus inherently unequal to men's. Pregnancy is particularly a time when the difference of women's bodies is made public, and when they are thus exposed even further to "othering" (Eisenstein 1988). Additionally, feminist scholars recognize that social structures and institutions (which include the workplace) are inherently gendered – posing a unique challenge to women. Joan Williams points out that the "status quo" of the workplace is a gendered one, which means that women must navigate workplace norms that are inherently discriminatory towards them (Williams 2000). As Patricia Smith argues, the problem of structural inequality in the workplace is one of the key battles of feminism in the 21st Century:

> "Traditional social structures essentially require women (but not men) to choose between a career and a family (or to balance one against the other, thus impairing both)…Men never had to make such a choice…The more this tradition breaks down, however, the more the conflict between work and family responsibilities will become a problem for men as well as women. Thus, the question of how to restructure our institutions to resolve this conflict is one of the most pressing issues faced in the twenty-first century" (Smith 1998, 32).

The focus of this dissertation is on the connection between the social and the individual in the formation of legal consciousness, and my analysis tracks some ways that ideology moves between the social and the individual. Yet the fact remains that there are real women who must negotiate the tension between the public and the private every day. This dissertation speaks directly to the Law and Society and New Institutionalism literatures in that it is concerned with understanding how institutions and public discourse play a role in shaping individual legal

consciousness. However, this research also has some important implications for employers and public policymakers. If social and environmental context are having as much or more of an effect on women's tendency to rights claim as the policies themselves, then public and workplace policies may need to be reassessed in order to take these factors into account.

Methodology and Case Selection

Catherine Albiston, and other scholars that look at rights claiming in the workplace, have already highlighted the significance of institutional context in constructing individuals' legal consciousness and rights claiming (Marshall 2005; Albiston 2005; 2010; Reese and Lindenberg 2003; Zippel 2004; Munkres 2008; Seron et al. 2004; Hoffmann 2001). Yet these studies do not undertake a comparative analysis of institutional contexts. This study therefore engages in a comparison of workplace contexts. This comparison allows me to ascertain with greater clarity which aspects of legal consciousness are formed due to specific institutional factors, and which are perhaps influenced through broader societal factors. A comparison of individual narratives from vastly differing sectors such as academia and the military offers much deeper insights into the importance of institutional structures in shaping legal consciousness, because one could expect to see much greater variation in institutional impact. Additionally, the choice of academia and the military were deliberate because each of these types of workplaces offers unique characteristics and cultures, which are also generally transferrable across specific institutions. For instance, the culture of academia may be said to transfer from university to university, and the culture of the military may be said to transfer from branch to branch, base to base. While each institutional site will have its own flavor, it is possible to make generalizations about the culture of these professions as "institutions", while capturing a broad range of individual participants.

Thus, I have chosen to interview women faculty of all ranks from a small, public academic institution and a larger public institution, as well as women who are actively serving or have served in all branches of the U.S. Military, including active duty, veterans and reserves. The variation between the policies and practices of these research sites should afford me the opportunity to compare different institutional environments, and women's relations with them. Additionally, by including women from this range of institutional settings I am able to document the narratives of participants with a wider range of ages and socio-economic, racial and educational backgrounds.

This dissertation draws on data from forty-eight in-depth interviews that I collected over a one-year period from 2012 to 2013. Twenty-four of these interviews were conducted with academic faculty, and twenty-four of them were conducted with former and active duty service members from various branches of the U.S. military (Army, Navy, Air Force and Air Force reserves, Marines, and Coast Guard). The ages of the women interviewed range from 23 to 58. Some of the women who participated do not have children, but are thinking about becoming pregnant or adopting in the near future. Other participants have one or multiple children. Additionally, the levels of career achievement (and consequently income levels) vary widely among the women interviewed. Among military women, fifteen of the women are enlisted members in ranks ranging from E-3 to E-7, and nine of the women are or were officers, with the highest rank represented being a colonel in the Air Force. Among faculty women, I spoke with fifteen women at a small public university in the south, and nine women at a large, multi-campus university in the northeast. Twelve women are visiting assistant professors still on the tenure-track, four women are tenured associate professors, and six are adjuncts, instructors, or visiting assistant professors. Among all of the participants, race, ethnicity and sexuality does not vary

considerably. Only three participants identified as "non-white" and only one participant identified herself as being in a same-sex relationship. Most of the participants are married or living with a partner, with only six identifying as single or separated. Finally, ninety percent of the women interviewed also identified themselves as either the primary breadwinner or "equal" in regard to wage earning in their households.[2]

Each woman interviewed was asked the same series of loosely organized questions about her experiences with taking maternity leave at her place of work, which included questions about her experiences with planning to have children, pregnancy and/or adoption, taking leave, finding information about policies, returning to work, and interactions with colleagues and/or supervisors regarding work/family issues. Each interviewee was also asked a series of questions about her opinions regarding maternity leave in the U.S. and at her place of work, and about how she might like to change policies if at all. These questions were all covered in each interview, however the format and structure of each interview was unique, and certain follow-up questions differed based on each individual's related experiences.

In analyzing the interview data, I used interpretive methods to explore women's use of legal or rights-based language, and their formation of concepts and justifications for their actions vis a vis the policies to which they are entitled concerning work/life balance. The choice of interpretive methods over something like content analysis here is appropriate, in that I was interested in a bottom-up development of concepts, rather than mapping pre-existing terms and models onto these women's language and consciousness. Since I am interested in how their legal

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[2] Only one-third of the women in this study identified as being the primary breadwinner in her household. On a national level, by comparison, 40% of all households with children under 18 include mothers who are the sole or primary breadwinner. (Wang et al. 2013). However, the majority of women in my study (22 out of 48) responded that they and their partner were "equal" breadwinners, which masks minor income differences that may bring my sample closer to the national average.

consciousness is formed, it was appropriate to use a method that would allow for inductive techniques for determining how women's knowledge of and interaction with the law had been influenced (Schwartz-Shea and Yanow 2012).

The majority of the chapters in this dissertation draw upon the interview data described above. However, chapter five also employs a content analysis of one hundred and fifty newspaper articles, spanning twenty-five years, and including coverage of the public debate over the enactment of the FMLA in 1993, and the enactment of California's Paid Family Leave in 2002. Additionally, it covers fifty articles randomly selected from 2012 discussions of "work/life balance" in the news. The purpose of this analysis is to document the themes in public discourse, and to discuss how these themes fit into ideological frameworks. In chapter five, I also engage in a discussion of how these ideologies, found in public discourse, can be linked to the legal consciousness of the women I interviewed. This analysis and the methods used are discussed in further depth in chapter five.

Chapter Outlines

This dissertation is divided into three parts. In part I, I have offered this introduction as a means of arguing that an institutional comparison is needed to further the Law and Society literature regarding legal consciousness formation in the workplace. Furthermore, I have laid out the basic structure for my analysis, which utilizes the three-dimensional process-based framework as introduced by Haltom and McCann (2004).

Part II contains two detailed case studies. Chapter two focuses on academia, and takes a look at two very different public universities, where female faculty must also absorb and negotiate their specific institutional context in order to claim their rights to work/life policies. Chapter three then turns to the U.S. military, and discusses the institutional context in which

female service members must operate in order to claim their rights to work/life balance policies such as maternity leave and breastfeeding accommodations. In each chapter, I trace in detail the formal and informal structures that the women in these case studies must navigate, and the major themes that came to the surface in the course of conducting the interviews. These chapters are not deeply analytical, but rather set the stage for the analytical chapters that follow.

Part III provides the bulk of the analytical work of this dissertation. In chapters four, five and six, I discuss the role of institutions, ideology and instrumental design, respectively in the formation of legal consciousness. The comparative scope of this dissertation allows me to make some important claims about the extent to which institutions do (and the extent to which they do not) shape legal consciousness formation in the area of work/life balance policies. In chapter four, I look specifically at the salience of rank within both institutional settings, and how institutional constructs such as rank can act as a constraint upon some individual's' ability to rights-claim, while enabling others to resist institutional norms. In chapter five, I focus on the role of ideology in transcending institutional context to help homogenize legal consciousness in interesting ways across very different institutions. In particular, I focus on stereotypes of working mothers within each institution. My institutional comparison reveals how these stereotypes share many similarities, and in fact emanate from a broader ideological construct of the "ideal worker." Finally, in chapter six I discuss the way in which individuals act with agency to form their own legal consciousness (and the legal consciousness of others) by forming "strategic consciousness networks" within their respective institutions. Furthermore, I argue that these networks offer the best means of affecting institutional change in both formal and informal policies pertaining to improving employees' work/life balance.

The concluding chapter of the dissertation begins with a brief summary of my findings,

including a discussion of how the three analytical chapters overlap in important ways. I then turn

to a detailed exposition of the normative implications of this research. Specifically, I discuss the

significance of my findings for public policy makers, employers and employees alike.

Part II

Chapter 2: Navigating Norms in Academia

Constance is a 39-year-old assistant professor, who is in her first year of a tenure-track position. She has recently given birth to a young child, and struggled considerably with the implications that starting a family would have on her career prior to getting pregnant. She says she felt the dual pressure of trying to become a first-time parent at her age, while at the same time starting a new job. Constance says she only felt comfortable trying to get pregnant in the "window" of time that would have allowed her to have her baby in the summer before she started her job, because "I was worried about how it would look at my job… I mean, I am a good worker, right? I'm a responsible person, and I didn't want to start off on…what seemed like they would think of as an irresponsible thing."

Introduction

This chapter is the first of two in-depth looks at the case studies presented in this dissertation – academia and the U.S. military. The goal of these chapters is to document the expression of legal consciousness among the interview participants in each institutional setting, and to highlight the most common themes and language employed by respondents. What factors do women faculty credit with influencing their decision-making in this area of policy? Where do these women claim to have gained their information about these policies? These case study chapters paint a detailed picture of how these women express their legal consciousness. In addition, chapters two and three act as a springboard for exploring in more detail the formation of these women's legal consciousness, as women discuss how they have navigated the formal structures and informal norms of their respective institutions. These case study chapters are by no means an exhaustive account of all of the data gathered in these interviews. Rather, they are an organized sampling of the most common and powerful themes as emphasized by the women themselves. Each of the themes raised here and in chapter three is also, therefore, picked up and analyzed in more detail in the chapters that follow, in part III of this dissertation.

This chapter proceeds in three parts. First, I survey the academic and popular literature concerning work/life balance in the academic profession, providing context for the interview data, and illuminating what profession-specific information the female faculty I interviewed may

have encountered and wrestled with as part of their legal consciousness formation. In the second (and longest) section of this chapter, I present more detailed evidence from the interview data. This section presents some of the most common themes that emerged in the interviews, and is organized in such a way so as to highlight how the respondents discussed interacting with work/life policies on both formal and informal levels. Each theme discussed in this section will begin with an illustration from Constance's story. I will then support the presence of the theme with other women's stories. This will serve to highlight that while each woman's experience is unique, the themes presented here are pervasive; reaching beyond one or a few of the women interviewed. Finally, I conclude this chapter by summarizing the important themes addressed in this case study, and reiterating how this chapter will play a role in the larger dissertation.

Female Academic Faculty in Context

Academia provides an advantageous site in which to explore the impact of institutional context on the legal consciousness formation of individuals. Its historical commitment to liberal ideals makes it a useful place to determine whether policies aimed at achieving a liberal notion of equality have accomplished their aims. The university was one of the earliest institutions to emphasize liberal ideas of equality and fairness, and to this day most academic institutions purport to shield these values from economic concerns. For example, the importance of encouraging competing ideas and innovative scholarship is so important that professors are given tenure to allow them to focus on producing high-quality scholarship rather than worrying about whether than scholarship might cost them their job (Carmichael 1988). Additionally, in recent years, most academic institutions in the U.S. have been at the vanguard in introducing policies aimed at bridging the gap between public and private considerations (Ward and Wolf-Wendel 2012). Work/life policies found within most academic institutions include maternity and

paternity leave, stop-the-clock, modification of academic duties, breastfeeding facilities and policies, and flexible work schedules.

Despite these efforts within academia, recent studies on the effectiveness of policies such as maternity leave and stop-the-clock in achieving their goals of equality of opportunity have demonstrated a gap between intention and effect. Thornton's (2005) use of survey data from 76 colleges and universities indicates that many institutions are not correctly evaluating the research periods of faculty who have used stop-the-clock policies. Similar discrepancies and even evidence of overt discrimination were also found in a 2004 AAUW Educational Foundation survey. Other research has produced compelling evidence that women with children in academia experience much greater challenges to success than their peers in other professions, such as law and medicine (Hewlett 2002; Mason et al. 2013; O'Brien Hallstein and O'Reilly 2012). Furthermore, while roughly equal numbers of males and females may enter PhD programs, women are "leaking" from the "academic pipeline," so that they are consistently underrepresented in the upper ranks of virtually all areas of high education (Townsend 2013; Mason et al. 2013).

Explaining these discrepancies appears to be a complex matter. Lynn O'Brien Hallstein and Andrea O'Reilly, among others, argue that academic women face a "unique" set of circumstances that produce these inequitable results. In the opening to their 2012 edited volume on academic motherhood, the authors summarize several studies that compare academic women with those in other professional occupations, such as law and medicine. They note that female academics have the highest rate of childlessness (Hewlett 2002) and are less likely to be partnered, and are more likely to be separated or divorced (Wolfinger et al. 2008). In addition, the authors note, post-secondary teachers receive considerably lower wages, and face more

competitive job markets relative to other professions such as lawyers and physicians (O'Brien Hallstein and O'Reilly 2012). Finally, some evidence points to large inequities in working hours, when both public and private labor are accounted for, between women and men, as being a possible explanation for the discrepancies between men and women in attaining the highest levels of professional achievement in academia (Townsend 2013; Mason et al. 2013).

The biggest factor that appears to be affecting this "unique" position of academic women, according to much of the scholarship, is that the years required for professional training and development among academic women are much longer than those in other professions (O'Brien Hallstein and O'Reilly 2012; Cooney and Uhlenberg 1989; Mason et al. 2006; Wolfinger et al. 2008). Wolfinger et al. articulate this career trajectory's challenges to motherhood very well:

> "After four to eight years in graduate school, assistant professors have about six years to publish or perish. Only after tenure and promotion from assistant to associate professor are faculty members assured of job security. The median doctorate recipient is already 33 or 34 years of age; after a probationary assistant professorship, close to 40. In terms of career development this would be an ideal time for female professors to start their families, but biologically they are already past prime childbearing age" (2008, 4).

This body of research on the challenges facing women in academia who wish to parent contributes to, and reinforces, a "negative narrative," according to Kelly Ward and Lisa Wolf-Wendel. Empirical studies such as those discussed above, have joined more anecdotal storytelling, such as that in books and blogs like *Mama, PhD*[3], to create a "mystique" that "set[s] up an expectation that make[s] it difficult to imagine how a mother in today's society would be able to balance work and family, especially in a tenure-track position." Ward and Wolf-Wendel argue that while there is plenty of evidence to back this negative narrative, in fact women in the

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[3] *Mama, PhD* started out as an edited volume of personal narratives by Elrina Evans and Caroline Grant, and later became a blog on the *Inside Higher Ed* website: http://www.insidehighered.com/blogs/mama-phd

academy *can* balance work and family, and they (and others) dedicate books to discussing how to make these challenging professional circumstances more navigable for women (Ward and Wolf-Wendel 2012; Connelly and Ghodsee 2011; Mason et al. 2013).

Such prescriptive work focuses not only on outlining suggestions for formal policy improvements at the institutional level, but also provides academic women with advice on how better to navigate academic norms and cultures in order to mitigate certain challenges. In *Professor Mommy*, for instance, authors Rachel Connelly and Kristen Ghodsee advise women to be cautious in trusting or confiding in other academic women – particularly "senior women". The authors state:

> "There was a time when the feminist movement encouraged us to think of all women as belonging to one big sisterhood….The truth is that academia is a competitive business, and the people who have succeeded made lifestyle choices that supported their goals. This is especially true for women of a previous generation…. They were often forced to make a choice between family and career….Given the sacrifices most of them had to make, they may be even more critical of you than some of your senior male colleagues…."

As demonstrated by the interview data later in this chapter, academic women are not unaware of this discourse in the literature. Even if they are not aware of what policies apply specifically to them before becoming pregnant or adopting, academic women are often very articulate about the norms and expectations of their profession regarding work and family balance. Academic women are aware, therefore, that they must involve themselves in both formal and informal navigation of their workplace environments. By engaging them in conversations about their navigation of these formal and informal structures, it is possible to observe how academic women's ideas about work/life policies are shaped, and how those ideas connect to their decision-making regarding rights and rights claiming.

Interview Data: Navigating the Formal and the Informal in Academia

The preceding section outlined the institutional and cultural context within which individual women must navigate their rights claims under federal law and their employers' work/life policies. Turning to the interview data itself, this section explores how exactly these women think about their rights within this environment, and what factors organize their thoughts and actions when choosing (or not) to mobilize their rights. For conceptual clarity, this section is divided into two parts. First, I examine the mechanisms of *formal* rights claiming within the two academic institutions I studied, and present evidence from the interview data demonstrating how women navigated these formal structures. Second, I examine the *informal* norms and structures that women negotiated in order to construct their legal consciousness and make decisions about rights-claiming.

Navigating Formal Structures

The interview data in this case study are derived from conversations with women at two distinct universities. The first, where fifteen of the participants are employed, is a small, public institution located in the southeast of the United States, and employs roughly five hundred full-time faculty members. For ease of discussion, I assigned this institution the pseudonym "Elm University". Elm University is located in a "right to work" state, so the faculty members do not belong to a union. All faculty (including visiting faculty and adjuncts) who have worked at Elm for at least one year, and at least 1,250 hours in the previous year, are entitled to twelve weeks of unpaid FMLA leave, during which time they may use any accumulated sick or vacation time to receive pay. In addition, all faculty (*excluding* visiting faculty and adjuncts) who have worked at Elm for at least one year are entitled to take advantage of a modified duties policy, which must be taken in the semester of birth/adoption or in the subsequent semester, and may be used equally by both women and men. Faculty are expected to continue to work full-time, but duties may be

"modified" so that, for example, teaching expectations may be replaced with administrative duties, with the goal of creating a more flexible working environment in the months immediately following childbirth or adoption. Requests for modified duties are formulated in an agreement between the employee and his or her department chair, and then submitted to the university's provost for approval. Additionally, faculty members who are on the tenure-track at Elm are also eligible to stop their tenure clock for one year. Finally, women who are breastfeeding at the institution are not covered formally under state law or institutional policy.[4]

The second institution ("Oak University"), where nine interview participants were recruited, differs significantly from the first in a number of ways. Institutionally, Oak is a much larger public university (employing twenty-five thousand faculty and instructional staff), located in the northeast, and is composed of several distinct colleges. Perhaps most significantly, faculty members at Oak University, including visiting instructors, are unionized. Within the past five years, Oak's faculty union negotiated a paid parental leave agreement. This leave applies to all faculty members (men and women, including visiting professors and adjuncts), who are employed at the university for at least one year, and is paid for eight weeks. All faculty members are also eligible to take the twelve weeks, unpaid FMLA if they have been employed for one year, working more than 1,250 hours that year. However, the eight weeks of paid leave may not be taken in addition to the twelve weeks of FMLA (in other words, employees are not entitled to twenty weeks of leave). Rather, they are entitled to eight weeks of paid leave, and four weeks of additional unpaid leave. Like at Elm, women or men on the tenure-track at Oak University who have or adopt a child are also eligible to stop their tenure clock for one year. Finally, in the state

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[4] All of the participants in this study also have the right, under federal law, to receive "reasonable" break time and accommodations for breastfeeding as part of the 2010 Affordable Care Act.

where this institution is located, female employees who are breastfeeding are eligible for unpaid break time to express milk, and may request a reasonable location in which to do so.

It is clear, therefore, that at both academic institutions, employees are eligible for multiple work/life policies, which may vary depending on their rank or status within the institution. This complexity can cause confusion, not just for individual employees, but also often for department chairs, and even, occasionally, for human resources offices. When beginning her new tenure-track job, for instance, Constance, as related above, tried to time her pregnancy so that she would give birth in the summer months. This was not just to avoid, as she suggested, looking "irresponsible." Constance says that she also was fairly sure that she would not be entitled to a formal leave policy under FMLA or any university policies in her first year of work, but was unclear as to whether her department chair might "kinda swing it, or maybe they would help me out with something." Indeed, when she approached her chair (who she describes as being "shocked" when she told him of her pregnancy), he was willing to help her put in a proposal for modified duties. However, the chair himself was confused as to whether or not she would qualify for the policy. The proposal was turned down by the provost's office because, as she had suspected, Constance had not yet been working there for a year. To make up for this, her chair gave her a course release for the fall semester – something that was within his discretion to grant.

Constance's confusion over what she was formally entitled to was largely due to her exceptional circumstances having a baby in her first year of employment. Yet for some faculty, their confusion is due to a breakdown the way that formal structures are supposed to operate. Nora, for instance, a 48-year-old associate professor at Elm, says that a human resources officer misinformed her that she was not entitled to FMLA because she was adopting, rather than giving

birth. It was not until over a year later, when adopting her second child, that Nora was compensated for this missed time. At Oak University, Paige, who is now 49, but was younger and an assistant, tenure-track professor at the time of giving birth to her second child, says that her HR department also misinformed her as to her rights and responsibilities concerning FMLA. Taking the unpaid leave during the Spring Semester meant that she lost her health insurance benefits for that period, requiring her to pay for COBRA. But what Paige hadn't realized was that this meant she also lost her benefits for the summer that year as well. She complains, "So I wound up having to pay COBRA for June, July and August, because I had taken the spring off, which I did – which nobody – I mean, nobody in HR told me that. I mean they gave me terrible advice, they really did."

While misinformation by HR departments was not typical among respondents, the complexity of coverage under the policies does appear to have caused women difficulties along other points of formal claim processes. For instance, a lack of clarity from supervisors or department chairs about these policies and whom they cover was more common. Courtney, a 43-year-old assistant professor on the tenure-track at Oak who is thinking about having or adopting a child, says, "You know, part of the concern is also just not really understanding what the rules are." This confusion makes it more difficult for individual employees to know what their rights are, says Courtney. She describes how she saw friends in other departments being "pressured" to make the timing of their leave-taking work to the favor of their departments. "A friend of mine... was pressured not to teach during the Spring Semester because she was due three weeks in [to the semester]… or people who have been really pressured to come back early because the idea is well that's not really fair to your colleagues, you know, or certainly not fair to the college, you can't just come back in the middle of a term." Additionally, Courtney points out, even when

departments or department chairs may be more inclined to be supportive, often they lack experience themselves in implementing work/life policies. "I mean, not a single one of my female colleagues in my department has… dealt with a pregnancy during the 10 years I've been here," she says, voicing her concern that her supervisor will not be able to clarify her rights for her if or when she does have a child.

For other women, though, it is their department chairs that they believe are one of the *best* sources of information about how to find out what they are entitled to, and to assist with formal rights claims. For instance, Alex, a 35-year-old associate professor at Elm, who was still on the tenure-track at the time of having her twins, says that her department chair was instrumental in helping her to submit and secure a successful modified duties plan that she was extremely happy with. Furthermore, he helped to clarify her rights, and ushered her through the process of claiming them at every step. "Procedurally… my department chair sent me the information, and it was like Greek to me to be completely honest. So I just said, tell me what my chances are and what I need to know." In evaluating her experience, Alex says, "I think I really lucked out when – you know, they say 'you should pick your department chair as much as you should pick the job' – that was a good piece of advice for me. Because… I was still going to be married when I was interviewing, and so kids were off my radar at that point." Alex was not aware of a need to ask about her work/life entitlements at her institution, and so did not ask these questions when applying. Instead, she trusted that her department chair would help her with any rights claims she would need to make – which, in her case, proved to be correct.

Vicky, an associate professor at Elm, is a department chair who says she explicitly tries to help junior faculty navigate their formal rights. She emphasizes the importance of a supervisor being willing and able to educate employees about their rights:

"[I]f you're a second-year faculty member thinking about having a baby, you're not going to go to anybody and go, 'I'm thinking about this, what should I do?' … [B]ut unless you've got a chair who is regularly saying to you, 'So, if and when you decide you want to have a child, let's talk, you know, these are the policies that we'll look at together'… I know not every faculty member does that and not every chair does that…."

Constance says that her fellow female faculty members were the first source to which she turned when trying to find out what her formal entitlements were in her new workplace. "They made it helpful – they kind of explained it to me," she says. Charlotte, a 35-year-old assistant professor at Elm with a one-year-old, also says that one of the best things her department chair did for her was to point her to another source of information regarding her rights and how to claim them – other mothers in her department.

"[In] my, like, fourth month during the pregnancy I told my department chair and started to ask questions about, you know, what the process was, what the procedures were. She recommended I speak to other people in the building who had recently gone through the modified duties plan…. So I gathered the proposals from two other women in the department that had already gone through it and started looking through theirs."

Charlotte was not alone in finding her colleagues to be a useful source of information about her entitlements under work/life policies in her place of work, as well as strategies and ideas about how to claim those rights. In fact, the number one source of information regarding policy entitlements cited by women in this study was their work colleagues. Tracey, a 38-year-old assistant professor at Oak, who has taken leave with two children since beginning her tenure-track job, says that her colleagues in other departments will frequently approach her to find out whether their department chairs are applying policies correctly. She recounts,

"There's a lot of people getting ready to have children, so [I] run into people, you know, going on maternity leave and stuff and discussing how their chairs are handling it and our department I found very supportive, but I know I heard stories of other people who were like, 'Is it okay if my chair does, you know, this horrible thing or that horrible thing?'"

For most of the academic women interviewed in this study, the trickiest aspect of navigating their formal entitlements seems to be their variable nature – both in terms of how

different types of employees are entitled to different things – but also in terms of how identical entitlements may be applied differently across the university. This confusion and frustration regarding variability is particularly acute at the smaller institution, Elm, where variability appears to be the greatest. Here, the unpaid FMLA leave is applicable to all types of full-time faculty (adjuncts, visiting, tenured and tenure-track alike). However, the modified duties policy only applies to those who are tenured or on the tenure-track. As was the case with Constance, the modified duties policy also does not apply to individuals on the tenure-track who have been employed at the university for less than one year. These discrepancies were the cause for complaint among several of the non-tenured or tenure-track faculty who came forward to be interviewed. Valerie, for instance, a 31-year-old visiting assistant professor at Elm, expressed frustration that her superiors were uninterested in helping her when she tried to raise the issue of visiting assistant professors not being covered under the modified duties policy.

Another frustration for tenure-track and tenured faculty who *are* entitled to the modification of duties policy is in the perceived variability in how it is implemented. Alex, for instance, was able to come to an arrangement where she was not required to teach during the semester following her delivery. Carol, too, a 39-year-old associate professor with a young child says that this was her experience.

> "It seemed like there were a couple of people who had kids around the time that I did who felt that they had gotten a good modification of duties. And the impression I've gotten is that in the semesters since then they are scaling back and scaling back how much – how much of a modification they are actually able to give people. It did not seem to be the case, at the time that my proposal went through, that there was an expectation that you do 40 hours work a week. I mean, my proposal doesn't show me doing 40 hours work a week, I wasn't pretending I was gonna do 40 hours work a week. And it seems like that is what's expected now."

The 40 hours-per-week expectation was certainly what Constance seemed to expect when she was submitting her request for modified duties (which was eventually turned down by the

provost's office anyway). Constance says, "It's not supposed to be reduced work. You're supposed to be doing the same amount of work; you're just supposed to be doing it at home. For this reason, she says, she is grateful that her course reduction worked out instead of the modified duties plan.

Formal policy, therefore, is by no means straightforward for academic women to claim, should they choose to, and finding out information about their entitlements can also be a challenge at times. Even at the larger university, where the eight weeks of paid leave is more universal, as Charlotte's statement, above, implies, there is still some confusion and concern surrounding the correct application of formal policy. As these women have discussed, often the best resources for finding out about their entitlements, and making formal rights claims have been other individuals – whether authority figures such as chairs, or other colleagues who have gone through the process of claiming rights themselves.

Law and Society scholarship has demonstrated that legal literacy – even within specific contexts where individuals function on a daily basis – is often fairly low (Kim 1999; Pleasance and Balmer 2012). Yet what knowledge of formal law individuals do pick up is often transmitted through social interaction (Hirch and Lyons 2010; Albiston 2005; 2010; Payne-Pikus et al. 2010). Catherine Albiston (2005), for instance, describes employees creating social spaces – or "informal networks for pooling knowledge about the law" (27). Additionally, Payne-Pikus et al. (2010) discuss the significance of mentoring as a key way of transmitting knowledge within legal firms. Similarly, for female faculty members at Oak and Elm universities, it appears that networks of colleagues and their department chairs are the most common source of legal knowledge about how to navigate formal structures within their workplaces.

Navigating Informal Structures

As if formal rights claiming were not complicated enough, Law and Society research, and other scholarship on institutions stress the significance of *informal* norms and structures in constraining individuals' information, perceived choices, and, ultimately, their behaviors, such as rights-claiming (e.g. Engel 1984; Merry 1988; Sarat 1990; North 1990; Ewick and Silbey 1998; Engel and Munger 2003; Albiston 2005; 2010). Like the formal structures that academic women have to navigate, which have multiple layers, including federal and state law, institutional policies, and departmental implementation, informal norms and structures are also multi-layered and complex. For instance, an individual woman may have to navigate the expectations of a supervisor, as well as the pressures placed upon that supervisor from the provost, as well as the beliefs of colleagues that "this is the way things have always been done."

One of the most powerful informal norms that academic women cited in this study was the image of the "ideal worker" – and their constant need to address their own relationship to this ideal. Joan Williams discusses the image of the "ideal worker" as someone who works full-time, does not take sick leave, and is willing to put in overtime at the drop of a hat (Williams 2000; 2009). As a faculty member in academia, you must "publish or perish" and in many other ways you are expected to demonstrate devotion to your job (Schrecker 2012). Stopping the tenure clock or taking six weeks or more of maternity leave – these are ways in which mothers are exempted from the expectations of their jobs in academia to have children. For academic women, the ideal worker norm means that they feel as though allowing their private life to be visible in their public workplace will make it more difficult for them to be taken seriously as workers.

Constance's story is an excellent illustration of the pervasiveness of the ideal worker norm in the legal consciousness of female faculty members – and thus in their decision-making regarding their rights to work/life policies. As the opening of this chapter indicates, Constance

was afraid to become pregnant within a window of time that would mean her having a baby outside of the summer months. She says: "I was worried about how it would look at my job….I felt bad. I felt like they'd been willing to take a chance on me, and so I didn't want to show up and not be a full employee." In order to remain within this window for childbirth, Constance admits that she underwent hormone treatments, and says that, had she not become pregnant within the ideal time period, she would have waited an additional year before trying again to become pregnant, at the age of 40. "I probably would have taken the risk and waited knowing well I'll just jack myself up with hormones, I'll just do IVF, I'll do whatever." When asked how this knowledge made her feel, Constance says, "it makes me really angry," but says she would not have done anything differently.

Every one of the faculty members interviewed in this study referenced the ideal worker norm in her institution, either implicitly or explicitly (though, in the majority of interviews, the reference was explicit), highlighting its salience in women's thoughts, and in their decision-making. For some women, this norm was more salient than for others when making decisions about whether or not to rights-claim. Vicky, for instance, a mother of two at Elm who is in her 40s, says that she worked from home during her entire maternity leave with her second child:

> "I was one of those really awful people who knew that they could take the time away, but would sit on the computer and do the work. Because [my son] had been born…early, I hadn't finished some of those projects that I was supposed to finish, I felt really compelled to do them, and so a week after he was born I was probably getting back on the computer and trying to do the work…."

Several of the women at both institutions also expressed that the ideal worker image was something that, to some extent, was a reality in academia. Kay, a 32-year-old assistant professor at Elm who is interested in having children says, "Yes, I feel like if you really want to be a superstar in your field – if you want to be the big name – all the major

names in my field are women who don't have children." This informal norm, therefore, affects decision-making for many women, including her own, says Kay. "Then there's like the next tier, and they do have children, and they have fantastic output, but they're not – they're not on the same caliber as the upper echelons. And I'm ok with it. But that's also why I chose…where I am."

Kay is not alone in expressing that she made career choices that were shaped around this image of the ideal worker – and her desire to sidestep the informal expectations that an academic career carries. Many other interviewees made very similar statements. Valerie, for instance, says that she does not have any role models in her field to which she can look to for guidance. She says, "The people who have tenure-track jobs who are also female, like, I know one of them has specifically told me the reason I didn't have kids was because I was in a tenure-track job." Valerie also describes shaping her career decisions around this norm. "So, I decided that I don't want tenure – I don't want to be in a tenure-track position, partially because of this issue. Like, not just like maternity leave, but just, like, the fact that our biological interval and our tenure window overlap so much, and there's basically no accommodation for that." Valerie also expresses concerns about being informally penalized should she choose to claim her right to something like stopping the tenure clock. "I think here basically you can delay your tenure review for however long, for like a year. But it's like, they're being reviewed for an extra year and everybody's putting like pressure on you like why are you getting extra time?" Women like Valerie and Kay, therefore, are shaping their legal consciousness concerning their rights and how they might be applied using their knowledge of informal norms in academia in general, and in their institutions in particular. More significantly, however, they are also shaping their behavior, and their decisions about whether or not to have children, whether or not to pursue career paths,

and whether or not to rights-claim, based on their knowledge and perceptions of informal norms.

Unlike formal policies, informal norms are not visible on HR websites or by accessible in faculty handbooks. Instead, women's consciousness of informal norms is informed through equally informal means – often through personal relationships or observations of others' behavior in their immediate context (usually departments). In order to determine a chair's expectations, several women described having watched how he or she treated a colleague who had or adopted a baby. Constance says that she turned to other mothers in her department first, before speaking with her chair about her pregnancy, to try gauge what his reaction would be. She says she was relieved when they told her, "just tell him… you know, he's really great, don't worry about it."

Several other women spoke of trying to ascertain the departmental "mood" by watching their chair for signs of his or her feelings about claiming work/life policies. Margaret, for instance, is a 38-year-old mother of a young child who had been teaching as an adjunct at Elm for several years when she decided to get pregnant. She says, "We really weren't… apprehensive. I think because I'd seen how – I'd sorta seen how other adjuncts did it…and the feeling I have from the general like atmosphere in the department is family-friendly, you know." Still, says Margaret, she felt that it was important to tell her chair about her pregnancy as early as possible. "I felt like I was being the best employee I could be to tell him as soon as possible, so he'd have plenty of time to plan." As an adjunct, Margaret knew that her chair had a lot of discretion over how easy or how hard it would be for her to take the FMLA leave that she is legally entitled to. She wanted to take the leave in the Fall Semester, as she was due in the summer, and, as a contract faculty member, her chair could have refused to allow her to return in the spring. He could also have taken away her office, or in other ways made her return-to-work

difficult, in ways that the FMLA has no means of protecting Margaret against. Being able to navigate the informal norms and expectations within her department, therefore, was essential for Margaret's decision-making, because she needed to feel secure in her department's informal norms in order to feel secure enough to claim her formal rights.

In addition to observing colleagues' and supervisors' behaviors, as Margaret did, many of the women faculty described actively seeking out other women who had claimed work/life policies before them (or were trying to do so at the same time). Just as many women had described reaching out to their colleagues as a source of information about what formal rights were available to them and how to claim them, many of those interviewed also described doing connecting with others as a source of information about the informal norms in their institutions, and even for ideas about how best to navigate those norms. The most striking example of this networking is at Elm University, where many of the faculty members have begun to voice their dissatisfaction with the perceived variability in the way that the modified duties policy has been implemented. Constance, for instance, had reached out to other female faculty members who had completed modified duty requests when attempting to complete her own. She says she requested these, "so I could see, you're just supposed to write kind of one paragraph and – it was kind of knowing what to – what the rights words were, and what to put on the form."

It seems that in fact Constance was the beneficiary of a network of women at Elm who make it a practice to share their modified duty requests – particularly those that were successful. Additionally, as Nora, a 48-year-old mother of two, and associate professor at Elm, recounts, women at the university who are entitled to the policy have begun to actively resist what they believe is unfair about the policy. They do this by discussing and passing on tips for ways to manipulate the application process to individuals' advantage.

Nora observes:
"So there's all this sort of back room talk about how to do this, and what to say and what not to say, and how to – how to get around the policy implications that the provost's office might levy upon you. So there's all this sort of hush hush talk, you might want to talk to so and so, but don't tell her I said this, and when you put your modification of duties proposal together, make sure you say this, but don't say that."

Nora and others within her network of friends and colleagues are using informal structures themselves to combat informal structures, which are causing what they deem to be unfair variability in the way that the policy is being implemented across the university. Women are therefore actively engaging informal structures as though they have important consequences (and indeed, they do) – consequences that are just as significant, or perhaps more so, than those of the formal work/life policies.

Conclusion

Dividing this chapter into women's experiences with navigating their rights to work/life policies on formal and informal levels enables us to see how decision-making and rights assertion is impacted by both the policies themselves, and the institutional and cultural environment, which often operates in ways that are very distinct from the letter of the law. Additionally, this division clarifies what may have already been evident to the reader, as it is to the women interviewed; whereas it is easy to conceptually separate formal structures and informal norms, this division becomes much less possible when an individual is attempting to claim her rights in reality. This chapter also illuminates several themes that emerged in common among most or all of the interview participants in this case study. At this point, it is important to summarize more succinctly the themes discussed in detail above.

First, in terms of institutional traits, it is evident that many of the women discuss the significance of rank and position in relation to both their decision-making and their successes in rights claiming. This salience of rank seems to translate across both universities, with a greater

significance at Elm, where faculty are not unionized, and visiting assistant professors are not entitled to the same policies as tenure-track or tenured professors, as they are at Oak University. Secondly, though relatedly, women seem to cite the variability of policies, norms, and their applications at their institutions as being problematic. In the case of Elm University, this dissatisfaction has resulted in under-the-table resistance. Third, the salience of the "ideal worker" norm appears to be very strong at both universities, suggesting that this image permeates the entire profession.[5] Relatedly, women seem to use the language of "choice" quite often to explain their decision-making in relation to ideal worker expectations – while at the same time expressing their anxiety about fitting into these expectations. Finally, though perhaps most significantly, it is clear that supervisors and colleagues play key roles, both in providing information, informal support and assistance, and in the formal process of rights claiming. As many of the women expressed, the disposition of a chair, dean or provost can make the difference between a good experience claiming work/life policies, and a nightmare scenario. In addition, it appears that colleagues are an important source of information and support for many women.

In turning to the second case study in this dissertation, it will quickly become clear that many of these themes are echoed in a very different institutional setting – the U.S. military. Lynn O'Brien Hallstein and Andrea O'Reilly (2012) are not necessarily incorrect in deeming academia to be a "unique" challenge to women who are interested in balance work and family life. However, the distinctive comparison of two workplace institutions in this project offers important perspective on the ways in which women's legal consciousness about work/life balance policies may be connected *across* institutional settings.

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[5] This is consistent with other literature (e.g. Ward and Wold-Wendel 2012; Mason et al. 2013).

Chapter 3: Navigating Norms in the U.S. Military

Chloe, 37, is a Captain in the U.S. Air Force with 17 years of service – and, at the time of our interview, she was pregnant. Under Air Force regulations, Chloe was obligated to inform her commanding officer within two weeks of a positive pregnancy test, which she did last year. Chloe says that when she told her commander she was pregnant, he accused her of "quitting." "He said, 'I've never had an officer quit on me.' And I'm like, quit? What are you talking about? Hold up – no – I got pregnant. And I was then taken out of the exercise – I couldn't participate – I didn't quit. So once I had the conversation with him, like, in his mind, I'd quit. He didn't view it as a medical thing or whatever."

Introduction

Chapter 2 provided an in-depth picture of the interview data I collected in speaking with female faculty members at two universities. This chapter serves a similar function, and presents data collected from conversations with active duty, reserve and veteran U.S. servicewomen. This chapter is divided into three parts. First, I provide a backdrop for the stories told in the remainder of the chapter, by discussing the relevant literature on women (and the very little on mothers) in the U.S. military, and the unique context of their working environment. Like in Chapter 2, the second section of this chapter is the longest, and presents in detail the common themes that emerged from the interview data. This section is organized to highlight the participants' interaction with work/life policies on both formal and informal levels, and each theme will be illustrated first by Chloe's experiences, and then collaborated by other women's stories – demonstrating that while each participants' interactions with the law are of course individual – the themes discussed in this chapter are ones that emerged again and again across the participants' interviews. Finally, I conclude the chapter by summarizing the important themes that emerged from the interview data, and briefly discussing how these case studies begin to illuminate the larger analytical project.

U.S. Military Servicewomen in Context

In January of 2013, the Pentagon announced that it would lift the ban on women in combat roles. This announcement re-sparked a public debate about the changing role of women

in the U.S. military. Servicewomen's advocates, such as the National Women's Law Center, praised the announcement: "This is a historic day… Now if the best person for the job is a woman, she will no longer be barred from that job simply because of her gender," and cited statistics on the number of women who have been serving in combat roles in Iraq and Afghanistan in the past decade. Critics of the move, such as Rep. Allen West, a retired Army officer and U.S. Congressman, argued that it would "destroy the last bastions of American warrior culture all for the advancement of a misguided vision of fairness and equality," and cited studies that suggested military cohesiveness might suffer as a result (e.g. Miller and Williams 2001).

While this chapter is not about the appropriate role of women in the military, this debate, and the typicality of this discourse in public discussion, is a meaningful backdrop to the experiences that the women interviewed for this study contend with on a daily basis. Historically, women have, of course, always played significant roles in the U.S. military. However, following the end of WWII, their role in the services began to expand exponentially – mostly in traditionally female areas such as nursing and administrative staff. Yet, in the 1970s, women were admitted to ROTC programs and military academies, and the Department of Defense reversed policies that had previously required that women be discharged upon pregnancy or adoption of children, giving them the choice to discharge or remain active duty. In the 1990s, the War in the Persian Gulf marked a significant turning point in the public discourse on women in the U.S. military. Service members who were also mothers were visibly deploying in large numbers for the first time, a fact that did not escape media comment or public debate (Francke 1997; Sadler 1997). Since the Gulf War, and particularly with the advent of the wars in Iraq and Afghanistan, women's presence in the military has only continued to grow, so that now women

make up roughly fifteen percent of all active duty service personnel, and almost twenty percent of reserve personnel (The Women's Memorial Foundation 2011).

Despite their increased presence, as Laurie Weinstein and Francine D'Amico (1997) observe, "Women's military roles and contributions are often *invisible* – until women make themselves visible by challenging gender boundaries," such as Private First Class (Pfc.) Jessica Lynch, or "by appearing to make a mistake or to fail," such as former Army reservist Pfc. Lynndie England[6] or Army Specialist Alexis Hutchinson[7]. In each of these cases, the role of women in the military is re-debated on the public stage for a time, and then once again quietly retired. In the everyday, however, military service women must constantly contend with the same tensions that are raised in these brief public moments. As one female service member observes, "Every day there's something to prove just because you're a female, and that's the way it is."[8]

Jennifer Hickes Lindquist (2008) notes in her study of job satisfaction in the military, that it is men who tend to be the most satisfied with their military careers.[9] Just why mothers may find the military a difficult career path is something that Mady Weschler Segal (1986) speculates about, suggesting that both family and the military are "greedy institutions" that are in increasing

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[6] Pfc Jessica Lynch was revered as a "hero" in the U.S. media after becoming caught in a firefight while deployed in Iraq. Sustaining injuries and imprisonment, she was finally rescued and returned home a decorated veteran. Lynndie England, on the other hand, was at the center of the Abu Ghraib prison scandal, and photographed torturing Iraqi prisoners. Jennifer Lobasz (2008) has an excellent analysis of their media portrayal as gendered symbols in the media.
[7] Alexis Hutchinson was the single mother of a 10-month-old boy whose family care plan fell through, and she went AWOL as a result of not having anyone to care for him while her unit deployed to Iraq (Williams 2009). For a more detailed discussion of her treatment in the media as a gendered public identity, see (Hampson 2011).
[8] Major Mary Hegar, a helicopter pilot who was interviewed for local news station Freedom43TV in December, 2012. http://freedom43tv.com/2012/12/05/military-women-suing-defense-department-for-ability-to-be-promoted/
[9] Interestingly, her study shows that Black men outstrip all other racial/ethnic and sex pairings in terms of their job satisfaction, and that white women's satisfaction with their military jobs is the lowest of all groups.

conflict, especially as the ranks of women and mothers in the military swell. Indeed, several other studies have pointed to high tensions between work and family commitments for female service members, and the effects of these tensions. Vinokur et al. (1999), for instance, document the negative effect of work/life conflicts on the mental health of women in the Air Force. Other studies have pointed to the sometimes-difficult task of obtaining adequate childcare arrangements (Zellman et al. 2009), or the stress that deployment causes to couples or children (Flake et. al 2009; Norris 2001), as potential causes for a unique tension between work and family among military service women. Finally, Hock et al. (2001) found that work/life tensions and a "higher commitment to the motherhood role" predicted dissatisfaction with military careers, and lower retention rate among mothers serving in the Navy.

Yet it is the prevalence of masculine culture that persists in the literature as an explanation for why service women in general, and mothers in particular, still find the military to be a uniquely challenging career path. The "American warrior culture," to which Rep. Allen alludes, is a decidedly masculine one (Enloe 2000; 2007; Feinman 2000; Goldstein 2001; Higate 2003; Duncanson 2009; Taber 2011; 2013). As Nancy Taber observes, while military occupations and branches will each have their own idiosyncrasies, "they are inextricably connected and held together by an overarching institutional expectation that members' commitment should be to the military alone. It is within a male body that this commitment is expected to be best enacted."

Other studies have documented the harm that such a strongly gendered work environment can cause its female employees. Emerald Archer (2013), for instance, demonstrates that "constant confrontation" with gendered stereotypes, "may negatively impact a servicewoman's career" by influencing the perception of *both* male and female Marines about the abilities of

female Marines (particularly in leadership roles). This stereotyping has implications for women service members' opportunities for camaraderie, mentorship and advancement, says Archer. Terms such as "dyke," "whore," or "bitch" are ones that scholars have found to be common terms for both male and female service members to use in reference to female service members (Archer 2013; Hampf 2004). As Francine D'Amico (1998) and others observe (Jeffreys 2007; Ensign 2004), this gendered environment also causes problems for military women who try to counter or report sexual advances, being labeled as "troublemakers" within their work environments.[10]

As the remainder of this chapter will demonstrate, military servicewomen are acutely aware of their institutional context, and the public discourse that surrounds their unique circumstances. In expressing their understanding of the work/life policies available to them in their workplace, and how they go about making decisions about whether or not to claim their rights to those policies, the highly gendered environment of their workplaces plays an important role in how they choose to talk about their experiences. Like female academic faculty, military servicewomen are aware that they must navigate their workplace environments in both formal and informal ways in order to effectively claim their rights. By engaging them in conversations about how they navigate these formal and informal structures, it is possible to observe how military servicewomen's ideas about work/life policies are shaped, and the ways in which those ideas connect to their decision-making regarding rights and rights claiming.

Interview Data: Navigating the Formal and the Informal in the U.S. Military

Turning to the interview data, in this section I look in detail at how the servicewomen

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[10] It is worth noting that a recent spate of news stories regarding high-level cover-ups of sexual harassment in multiple military branches briefly brought this issue into the public spotlight in the first half of 2013. Despite this, military leaders are still refusing to allow prosecutors, rather than military commanders, to investigate sexual assault in the military (McLaughlin 2013).

interviewed discussed their interactions with work/life policies in the military. This section is divided into two parts – examining servicewomen's negotiation of both formal and informal spaces in order to form their legal consciousness and/or mobilize their rights. As in Chapter 2, it is clear that both the formal and the informal are intricately connected for these women, but for the purposes of demonstrating that both are significant, I have distanced them conceptually in this section.

Navigating Formal Structures

On a formal policy level, the Department of Defense and the various branches of the military offer some of the most generous work/life policies in America. Indeed, Department of Defense offered its servicewomen paid maternity leave long before the federal Family and Medical Leave Act was even passed.[11] All branches of the military offer six weeks of paid leave for birth or adoption, whereas only sixteen percent of all U.S. employers offer paid maternity leave (Hall and Spurlock 2013), and service members may also negotiate with their supervisors to use annual leave in conjunction with this to provide an extra week or two. Servicewomen are not, however, covered under the Family and Medical Leave Act, and so do not have the option to take the full twelve weeks of unpaid leave provided by that legislation. In addition to maternity leave considerations, in 2008 the Department of Defense also approved paternity leave of 10 days for all branches, and all branches with the exception of the Army have specific breastfeeding policies in place, including deployment deferment for breastfeeding mothers of up to twelve months (Roche-Paull 2013).

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[11] This began when women were first allowed to remain active duty once becoming pregnant, in the 1970s (The Women's Memorial Foundation). This leave was (and still officially is) known as "convalescent leave" – the length of which seems to have been initially at the discretion of commanding officers, but is now a set six weeks in all branches, with the possibility of lengthening at the discretion of the chain of command.

All service branches also heavily regulate the physical challenges of pregnancy individually, though there is a great deal of similarity in these regulations across branches. All service branches, for instance, have regulations that permit pregnant service members to modify or decrease their uniform and duty requirements at the discretion of her supervisor. For example, a woman in the later months of pregnancy may often request to wear sneakers rather than combat boots for comfort, or to work reduced hours. In addition, a physical profile is altered for a pregnant service member, restricting her automatically from certain special or routine physical activities that the rest of her unit may be involved in. Because servicewomen receive their health care from military facilities, a positive pregnancy test is also not a private matter. Positive pregnancy tests are recorded in a physical profile, which is automatically passed on to the servicewoman's supervisor, meaning that if she does not inform her supervisor herself within a week or two, that supervisor will be informed of the pregnancy anyway. Finally, and perhaps most importantly, pregnancy is considered a valid reason for separation from any branch of the services. In other words, during her pregnancy, a servicewoman is given the option to honorably discharge from the military before her contract has finished.

In navigating the formal policies that she was entitled to when taking leave, Chloe says that she never had a problem obtaining her leave, and in fact was granted the ability to take additional weeks of annual leave with all three of her pregnancies. Interestingly, unlike the female faculty members discussed in Chapter 2, many of whom struggled to receive their full maternity leave benefits, or felt that they had been unfairly treated in terms of the modified duties policies or unpaid leave that they had received, *not one* of the military servicewomen interviewed said that she had had a difficult time obtaining her six weeks of standard paid convalescent leave. That is not to say that all of the servicewomen were entirely happy with their

experiences (a fact that will become evident momentarily), but in terms of applying for and receiving six weeks of paid maternity leave, which was unbroken by requirements to work,[12] no service woman related an experience where she was not readily granted this. In discussion, most of the service women voluntarily referred to convalescent leave for childbirth as a "right." As Chloe herself says, "When I signed up, I was told I get thirty days of paid leave [for childbirth], so I've earned it, so that's my right."

Additionally, Chloe and several other women praised other formal structures in place in the military designed to support parents in their ranks. Chloe says, for example, "I think that adding the paternity leave was very helpful." Eileen, a 33-year-old Staff Sergeant in the Air Force is one of many servicewomen who also said that the affordable, high-quality daycare available on base was an excellent formal support to her after returning to work with her first child. "The daycare that they have is subsidized and it was really close by where I work, so I could go over and breastfeed or visit or – you know, that was really good. So overall, it – it was a pretty good experience." A few of the women interviewed also cited mandatory parenting and pre-natal classes that were geared specifically to servicewomen as being particularly helpful, and required early-on in pregnancy, so that information about physical requirements and the length of postpartum leave were explained clearly at that point. Liv, for instance, a 26-year-old First Sergeant in the Army with an 8-month-old baby says that these classes are where she learned about what she was entitled to in terms of her leave: "At [fort name redacted] they have a post-wide pregnancy PT program and you have to go to a class and sign up for that and they tell you there, you know, after you have your baby you have six weeks postpartum leave."

Apart from their universal success with claiming convalescent leave, what is perhaps

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[12] There are a few minor exceptions to this, where some women were asked to report to sign paperwork after leaving the hospital, but not specifically to *work*.

most striking about the interviews with these servicewomen is that they all, to some degree, are aware of and have consulted a formal source of legal knowledge concerning their workplace rights – their branch's regulations. At some point in every interview, each servicewoman made a reference to the "regs" – or regulations – for her branch of the armed forces. Each branch has its own set of regulations to govern the activities and administration of that branch, and it is these regulations that make up the formal structures within which these servicewomen must claim their rights within the workplace. In other words, it is the regulations that define what those rights are, and how service members are to claim them. Each service member not only has access to these regulations for the purposes of gaining legal knowledge, but also is *encouraged* by her command to locate, become familiar with, and use these regulations to govern their behavior. As Joyce, a 58-year-old Colonel in the Air Force, with grown children, puts it: "the beauty of having regulations – all the information's there….It's not left open to anybody's interpretation or anybody's idea about what it should be, it's all there in black and white, you just have to look it up."

It is significant that the military identifies and anticipates the work/life conflicts of its female service members, codifying certain supportive measures for them to help mitigate those conflicts. Women such as Joyce express feeling a degree of security in being able to look up those regulations and bring them to the attention of their command should they wish to claim their rights. Law and Society literature also identifies the inherent value in formal rights. In the context of litigation, both Sally Engle Merry (1990) and Michael McCann (1994), for instance, argue that, while litigation may come with sizeable risks and/or costs for those who wish to take it up, still the fact remains that rights are indeed a "club" which the rights-holder can wield. However unwieldy, these scholars acknowledge, rights are surely better than no weapon at all.

Rights can also provide recognition of identity, of personhood, or of prior harm, which can also be invaluable to individuals who have previously gone unprotected by the law. Elizabeth Schneider, for instance, notes that, "the articulation of women's rights provides a sense of self and distinction for individual women, while at the same time giving women an important sense of collective activity" (1986, 323). Patricia Williams (1991) also recognizes that while formal rights probably have a limited effect on social change, they nevertheless have a symbolic importance – especially for those who have never before been recognized under the law in rights language – and that symbolism has power in and of itself, which makes formal rights significant.

Navigating Informal Structures

Of course, as so much Law and Society literature has demonstrated, formal rights mean very little in the face of informal opposition (e.g. Bumiller 1988; McCann 1994; Marshall 2005). Chloe's story illustrates all too clearly the impact of informal structures in mitigating formal rights. She identifies three distinct ways that informal norms and structures played a significant role in influencing her thoughts and actions surrounding her rights to work/life policies. The first, and perhaps most pervasive of these norms for Chloe pertained to stereotypes of female service members. In particular, Chloe talked a certain image of the female service member as someone who is trying to get out of her duty. As the story that opens this chapter illustrates, the thinking and behavior of Chloe's commander when she announced her pregnancy was directed by the impression that Chloe had "quit". Furthermore, she says that he has pulled her out of her previous job, and placed her into "another job, that's a made-up job." When asked why Chloe thinks her new job is "made-up" she replies, "um, because it doesn't exist. Nobody had the job before me and nobody will have the job after me." At the time of the interview, with seventeen years of service and at the rank of captain, Chloe feels as though she has been sidelined

purposely, and she perceives this action as pointedly punitive. Chloe's commander does not have the ability to directly "fire" her, and so, Chloe believes, he has done the next best thing. "They can't really fire me per se, when I've got so many years in. You know, so they can shove me off in a corner and give me some job that's essentially a made up job. But my paycheck still comes in and its' not – so in that respect… I don't really have a threat." This may sound like a fortunate situation for Chloe – an easy, pointless job in return for her captain's salary. But this is not how Chloe sees it. She is frustrated that she is being treated as though she is not capable of doing her job any longer once she became pregnant. "He treated me like I quit when I got pregnant….I'm a highly productive individual. I would like to be gainfully employed."

In speaking with other service women, it becomes clear that this image of female service members is pervasive throughout all of their stories, and affects each of them on some level. For some women, like Chloe, the existence of this image is only mildly damaging, in that her supervisor essentially moved her to "made up" job. While for others, this stereotype of pregnant service women, or those who had become mothers, affected their relationships or positions in more significant ways, and they find themselves targets of what they see as unfair or unreasonable treatment as a result. Zoe, a 29-year-old veteran who served in the Air Force for 3 ½ years, says that when she found out she was pregnant and would be a single mother, she had never intended to leave her career. "I knew that it was gonna be a stressful experience, but I also knew that I was gonna have my schooling paid for, and that I would rise up in the ranks, and that this was what I had wanted to do since I could remember, you know?" She says, though, that she decided to get out when a supervisor approached her after learning of her pregnancy, and threatened her. This threat, said Zoe, had everything to do with his expectation that she was trying to get out of something when she got pregnant.

"[T]he new NCOIC said to me, um, 'mark my words, when you get back [from maternity leave], as soon as your son is six months old, I'm deploying your ass.' And I was like, what? Oh – what? And he was like, 'yeah. You said you wanted to go on TCNs, and deployments and all this kind of shit when you got here, you're leaving when your son's six months old, so get your little family care plan together.'"

Six months post partum is the earliest that women in the Air Force are required to be eligible to deploy again. In the Army, women are expected to be eligible four months post partum. Zoe insists that she knew she would potentially have to deploy, but that it was the fact that her supervisor had made her feel as though she would be specifically targeted because he perceived that she was trying to get out of it that made her start to think about leaving. "You know, I knew that it was a possibility…As soon as any – like my bucket comes up, or whatever, I want to go…but it would have been vastly different, because I knew the intention isn't to separate me from my child. You know, and that was his intention. And to cause me kind of like undo, you know, stress."

Gina, a 36-year-old Chief Petty Officer in the Coast Guard, says that when she announced her pregnancy, her lieutenant commander (not her immediate supervisor, but the rank above him) "said that I am of no use to him anymore. And basically it had been all out war between him and I from that moment on." Gina says that this officer would go out of his way to ensure that she was assigned duties that would be difficult for her to do when her daughter was very young. Gina and her husband are both Coast Guard, and were stationed in Guam at the time. Gina says that as soon as she returned from her maternity leave, this officer insisted that she be sent out on a case, despite the fact that her husband was currently out at sea.

"I mean it's not like you can just… go for a day and then come back. I mean it was… probably gonna be a week-long thing and my daughter was nine weeks at that point, and I was breastfeeding…it was ridiculous. He made the ship that my husband was on come back and drop my husband off, so that he then could watch our daughter to send me out to that island for absolutely no reason at all."

Gina argues that the worst part was knowing that "there were other qualified people that could have done it…I think he was just making a point."

These stories illustrate a clear gap between the law on the books (military regulations that are intended to make work/life balance more manageable for service women) and the law in action (women's experiences with fearing job loss, the loss of status or the loss of their commander or colleagues' respect because of pregnancy). This sense of feeling "targeted" at work because of their rights-claiming is not unique to military service women. In fact these same gaps between law and implementation have are documented by Law and Society scholars in many areas of the law, such as sexual harassment policies (Bumiller 1988; Morgan 1999; Quinn 2000; Marshall 2005) and at FMLA claimants in a corporate environment (Albiston 2005; 2010). What is clear from both the Law and Society literature, and the evidence in these interviews, is that these experiences – whether they affect an individual personally, or are heard secondhand – have the power to change decision-making and rights-claiming (as it clearly did for Zoe, who had the option to stay in her career, but chose instead to leave). Knowledge of the potential for these informal norms and attitudes among commanding officers and colleagues, therefore, becomes an important part of a servicewoman's legal consciousness development in her workplace.

The second source of informal ordering that Chloe mentions as being significant to her is the Air Force's ranking system – a system that is formal in structure, but with power that extends beyond its formal parameters. During her first pregnancy, with her twins, Chloe needed to reduce working hours and eventually go on bed rest. The decision to reduce hours and go on bed rest was not Chloe's – her OB wrote the prescription for her profile, and in the Air Force, what the profile says the service member is physically able to do is what the service member must do and

no more. Chloe's first sergeant, however, questioned the decision. "I remember the first sergeant questioned why I even got put on half days and then why I was getting preference. Like, questioned the medical necessity for me to have reduced hours…. I was basically so low ranking and young… I just said, 'ok, whatever,' you know, whatever they told me to do, that's what I did." The decision to alter her profile, however, ultimately lay with Chloe's OB, so nothing more was said about it.

Following her second pregnancy, however, Chloe found herself once again on the wrong side of her immediate supervisor's discretionary powers. When her daughter was seven months old, Chloe was told that she would be sent on a short-notice tasking overseas for six weeks. She was given 10 days to prepare for this deployment, despite the fact that she was breastfeeding her daughter at the time. "In the Air Force regulation," Chloe says, "commanders can use their discretion and not deploy them or whatever. And mine chose to….Now I never once asked to get out of it. I never went to anybody and said, 'hey can you not send me,' cause I didn't really feel like that was an option I had." Chloe's commander at the time, a female, would have been within her formal jurisdiction to allow Chloe to defer deployment for an additional few months until she had finished breastfeeding her daughter. She was also within her jurisdiction to *not* exercise this authority, and was explicit with Chloe that she was not going to do so. Additionally, Chloe would have been within her rights to request that her commander allow her to defer the deployment, and also chose not to do so. She cites her low rank as one reason that she did not exercise her right to make that request.

Rank, and the power differentials associated with workplace hierarchy, are not exclusive to the military, but the military's very core mission means that adherence to ranking means that its salience is arguably greater in this working context than in others. Several Law and Society

scholars have documented the significance of unequal power structures in the workplace and its effects on rights mobilization and rights consciousness (Albiston 2005; 2010; Edelman et al. 1993; Edelman 1999; Yamada 2007; Skaggs 2008). Many of the servicewomen interviewed for this study echoed Chloe in discussing the significance of the structure of military hierarchy and rank to their personal experience. While rank itself is a formal structure, much of its organizational power derives from informal norms. Subordination in rank requires deference to authority, and finding the line between when an individual should defer, versus when she should challenge authority under formal regulations that are in her favor, is a very fine line – one that many servicewomen are reluctant to cross. Indeed, the chain of command is the first thing that service members are taught upon entry, and serious consequences result in breaking that chain of command (Powers 2011).

Piper, a 23-year-old former Army specialist who, at the time of our conversation, had just finished her contract, has a young son and is intending to study to pursue another career path. Piper says that she requested to use her annual leave after her six-week convalescent leave, but her chain of command refused. "And basically the way the military works is if you're pregnant and you want an extended period of time, as long as your chain of command oks it, you can have more time. My chain of command didn't want me to have any extra time. So I got six weeks, and then I had to go back to work," she says. When asked whether she felt if she had a choice to take the two extra weeks, Piper says, "Um, if I would have pressed for it, I could have taken the extra two or three weeks, however long I wanted, but I didn't really press for it." She says that her supervisor had told her to save the time for doctor's appointments or other needed time off for her son. She says that she's fine with the outcome, because, "when I got out of the military I had a whole lot of days saved up, so I could end my job sooner, and still get paid for it." Whether or

not Piper was happy with the outcome, the fact remains that her initial request was denied, and, though she could have pushed harder to use her additional leave when she wanted to, she chose not to.

Jane, a 29-year-old Captain in the Marines, says that rank has everything to do with young enlisted service members not speaking up for themselves regarding their rights. She claims that a lot of the ease that she has enjoyed in her experience with childbirth and returning to work as been because of her rank. Specifically when it comes to pushing for policies to apply to them that are not as straightforward as maternity leave (such as breastfeeding), Jane says, most lower-ranking servicewomen will be reluctant to do so, given their position.

> "I know now a lot of women personally… you know, if you're an aircraft mechanic, and you work in a hangar bay, there's not really a decent place to go pump, and while, you know, there – while there's a Marine Corps order that says you have to be given a certain amount of time and a space to do it, most women, you know, lower ranking females, are not going to push that. They're not going to fight for that – in most cases, they're not going to fight to get a space set aside just for that."

Many of the service women are aware of the complications that these power relationships can present for women claiming their rights and meeting their work/life needs. For that reason, several describe their commitment to keeping an eye out for other service women at lower ranks. Sophia, for instance, a 23-year-old with an infant, who is a third class petty officer in the Navy, says she tries to look out for those mothers around her of lower rank. She says she actively tries to offer support and guidance to her fellow sailors:

> "I noticed that, you know, I'd try a lot harder to be more of a role model, especially for the really younger girls, um, like we have – we have an 18-year-old girl in the shop who's pregnant, and newly married and you know, I try to – I try to help steer her and a couple of the others….all of my E-3 and below sailors – and I'm – they're not precisely mine, but I call them mine – all of my E-3 and below sailors in my shop, um, they all know my address and they all know my phone number, and they all know they have a… place to crash anytime they need it."

It is these relationships that represent the third significant theme that Chloe reflects upon as having influenced her thinking about rights and her rights claiming. The relationships, both with colleagues and supervisors, Chloe explains, can often be key. In relating her experiences, Chloe describes meeting active resistance to her desire to continue pumping breast milk for her third child (now four years old) when she was sent overseas six months after giving birth. In a foreign country, housed in a barracks with other service women, Chloe was unable to pump or store her breast milk. "I'm fighting with them over there trying to find space or sanitary places where I can do this – pump and stuff – and it got to the point it was so bad, I threatened them. I was like, 'I'm gonna go congressional!' Somebody needs to protect me – somebody needs to stand up for me.'" Eventually, she sought connections with the hospital on base, and, she says, "It was the nurses – the females – who were very sympathetic and made it happen." The nurses – who were in a different branch of the armed forces altogether – made arrangements for Chloe to stay in a room at the hospital, where she was able to pump and store her milk in their break room freezer. "I nearly had a nervous breakdown. That's how upsetting it was for me," says Chloe, who says that without the assistance of the nurses, she would have had to cease breastfeeding against her will. Nevertheless, when Chloe finished her six weeks abroad and was preparing to return home, she was informed that she would not receive an expected decoration for her work there. "And I asked why I didn't get the decoration 'well, you threatened to go congressional and that put a bad taste in everybody's mouth.' So it had nothing to do with my performance."

Chloe's experience on her overseas tasking demonstrates the significance of interpersonal relationships in two ways: first, that positive relationships, like those she created with the Army nurses, can make all the difference in a service member's ability to claim her rights (in Chloe's

case, the right to breastfeed at work).[13] Equally, Chloe's negative relationships with her commanding officers, generated because she threatened to break the chain of command due to her needs not being met, resulted in her losing an anticipated decoration because she gave people a "bad taste".

Other women, such as Eileen, a 33-year old Staff Sergeant in the Air Force, describe the salience of their interpersonal relationships for their conceptualization of rights, and their ability to claim them. Eileen describes how another female she worked with who had breastfed informed her of her right to request space and time to pump at work. When asked whether this woman made the difference to whether or not she continued breastfeeding when returning to work, Eileen says,

> "Absolutely. And I felt like I wasn't alone, because there was another woman there. You know, it sounds ridiculous – and cause the men were – they were nice, and they were helpful, but you know, sometimes she would say the things I would like to say to those guys on my behalf. You know what I mean? So I wouldn't have to say, 'can I slip away?'"

Many of the service women describe the need to "band together" to counter the masculine culture in the military – and the images of female service members as trying to get out of duty. As Gail, a 31-year-old captain in the Marines points out,

> "There are very few female marine officers, only six percent of the officer corps is female, and so – which is kind of nice, because we tend to be kind of a close-knit group, but you know, it's also – you have plenty of female officer friends, but only a few of them

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[13] The Army does not have a breastfeeding policy in its regulations (and it is the only branch not to have one). However, the Army's "Guide to Female Soldier Readiness" does contain this "leader tip": "It is critical that leaders support their Soldiers. The ability to successfully continue breastfeeding after returning to work involves space, time, and support. Leaders need to provide female Soldiers with social and administrative support if the decision is made to continue breastfeeding after returning to work. Providing designated space in the workplace where mothers may express breast milk is important since many active duty mothers do not have private offices. If a designated room cannot be provided, the use of empty conference rooms or offices may suffice."

have children, you know, or – they have children and immediately got out of the Marine Corps because they didn't feel like they could uphold, you know, having a career and having kids…."

Brianna, a 34-year-old E-4 in the Army agrees that female service members often feel the need to band together due to the male dominated culture surrounding them. "There's a lot of male – male counterparts that don't know squat [about female service members' rights] because they just don't – they don't want to learn it. So you have to know it…. and of course you have, you know, like smoke pit – smoke pit lawyers, that are like, oh did you hear about this, and did you hear about that – so you know everybody starts to Google it and try to find new regulations or whatever." In these examples, it is possible to see how service women rely upon strategic networking not simply for information and support – but often connect with one another out of a shared experience with and desire to resist a male-dominated culture in their workplace. Much like the academic women, service women seem to rely upon each other a great deal for legal knowledge about their workplace – both in terms of sharing and interpreting the formal regulations to which they are entitled, but also in understanding and navigating its informal norms and culture.

Conclusion

As in chapter two, by distinguishing the formal and the informal levels within which women must navigate their rights to work/life policies in the workplace, the gap between the law on the books and the law in action is made clear. Additionally, the inextricability of the formal from the informal is evident, as women who have claimed their rights formally find that informal consequences await. Finally, it is possible to see how service women's thinking about their rights, and their decision-making about rights, are impacted by both the formal and informal structures surrounding them.

It should also by now be clear that themes illuminated by the women's interviews in this chapter overlap a great deal with the themes raised by women in the academic case study. The salience of rank, of an "ideal worker" norm, and of relationships or professional networks, is equally perceptible in this workplace as they are in the universities studied. Where these two institutions seem to differ most significantly is in the actual policies that are in place – and the clarity (or lack of clarity) that results in women's rights consciousness as a result. The significance of this difference will be discussed in more detail in chapter four, as I probe the institutional factors that impact women's rights consciousness and rights claiming.

In turning to Part III of this dissertation, I now undertake a more thoroughly analytical approach to the interview data. Whereas the method of analysis in this chapter involved distinguishing between formal and informal levels of the law, the next three chapters will treat the formal and informal as interconnected mechanisms, and I will instead conceptually distinguish the institutional, the ideological, and the instrumental for the purposes of analysis. Throughout the next three chapters, I will return to each of the themes touched upon in these case study chapters, and spend some time comparing in greater depth my findings across the cases.

Part III

Chapter 4: Institutions as Discursive Sites

Introduction

In the chapters contained in Part III of this dissertation, I analyze my comparative interview data in the light of each thread of Haltom and McCann's (2004) process-based framework of legal consciousness formation. I open the analysis in this chapter by examining the institutional context of academia and the U.S. military. Here, I discuss how institutional structures, norms, and processes impact legal consciousness formation upon individuals in the area of work/life balance policy.

I begin this chapter by briefly explaining how I conceive of *institutions* and the role that they play in social change and stability. I discuss how this conception fits within new institutionalist literature, and within the broader aims of the dissertation. I argue that the framework of discursive institutionalism allows me to distinguish institutional context from individual agency in a way that is useful for analyzing the processes that govern how ideas are transmitted and internalized within institutional settings. I focus here on how both formal and informal institutional structures operate in transmitting ideas, and save a discussion of which particular ideas are salient in this process for the next chapter.

Following this, I engage in an analysis of the interview data, relating how the interview participants themselves feel that the institutions in which they work structure their thinking and decision-making about work/life balance policies. These women's personal narratives illuminate the degree to which institutional factors have impacted their rights consciousness and rights mobilization. More specifically, I focus on one institutional structure – institutional hierarchy, or rank – in order to follow more precisely how institutions and individuals interact in a recursive process.

I conclude this chapter with a discussion of the insights that this comparative analysis of

two case studies provides into the institutional impact on rights consciousness formation. I argue that the comparative perspective of this dissertation allows me to more closely identify *how* institutions work to shape rights consciousness. This discussion sets up my understanding of the role that ideas play in institutional settings, and is developed more fully in the next chapter, which deals more directly with the role of ideology in forming rights consciousness.

Discursive Institutionalism and Rights Consciousness

As discussed in Chapter 1, discursive institutionalism focuses on the significance of ideas, and how these ideas are communicated within an institutional setting. For scholars of discursive institutionalism, institutions are external structures, which *constrain* individuals (in the same way that other new institutionalist strains understand them). Yet, for discursive institutionalists, institutions are also simultaneously constraining and *enabling* – in that these same structures may also be used to communicate critically about the institution, and to change it (Schmidt 2008; 2011). Discursive institutionalism can be either constructivist or positivist, but ultimately it is most often engaged in explaining or demonstrating "the causal influence of ideas and discourse" (Schmidt 2011). Discourse does not always matter. Therefore, the important questions for discursive institutionalists are, *when, why* and *how* do ideas and discourse matter in institutional settings?

Discursive institutionalism offers an important starting point for scholars interested in understanding how rights consciousness is formed in institutional contexts. These scholars are essentially interested in the communication of "rights" as ideas; how rights are interpreted and communicated among individuals, and how these ideas then drive rights mobilization. In their edited volume, *Institutional Work*, Thomas Lawrence, Roy Suddaby and Bernard Leca (2006; 2009) argue that the previous work of new institutionalists has understood institutions in terms of

how they constrain and govern individual action. Their theory of "institutional work" (which is in essence an attempt to clarify discursive institutionalism scholarship) aims instead to describe a *recursive* relationship between institutions and individual action. Their analytical focus is on how actors shape institutions. Institutions require actors, and exchanges of ideas between actors, in order to change, but also in order to stay the same. Institutional context and individual agency are, therefore, interwoven concepts that are also distinct in their significance. Individuals operate within institutions, and are in a sense the mechanisms that carry out the formal rules and informal norms of institutions. Institutions cannot exist without individual agency, and it is the consensus of individuals that is essentially what constructs an institution to be precisely what it is (see also Wetherell et al., eds. 2001; Powell and Dimaggio eds, 1991; Phillips et al. 2004; Kulawik 2009).

In this dissertation, I understand the institution of the workplace to be a discursive environment. Individual actors are both shaped and constrained in their thinking and action by their workplace settings, while at the same time being enabled by these same structures to change or maintain them through a discursive process of interacting with their institutional setting on a daily basis. In the analysis of the interview data that follows, I first discuss the ways that women in each institution have been constrained by their workplace contexts in both their rights consciousness and their rights claiming. I then argue that some women have used their institutional contexts to challenge existing structures. Women's involvement in this discursive process within the institutional setting of the workplace provides a key insight into how their understanding of rights in the workplace develops. Additionally, an analysis of the discursive interaction between institutions and agency allows for greater insights into how rights consciousness is – or is not – put into action within the institution, necessarily affecting the rights

consciousness and actions of others within that space.

Discursive Institutions: Evidence from the Interview Data

In relating their experiences with work/life balance policies in their respective workplaces, women in academia and the U.S. military both seem to recognize certain institutional processes and structures as being particularly salient to them. While many of the interview questions asked women to talk about their impressions of multiple facets of their workplaces, I chose to focus closely on rank as a salient institutional structure in this chapter. My reasons for this focus are twofold. First, this institutional structure was most often identified by the women I interviewed as salient in their thinking and decision-making regarding their rights at work. Second, focusing on one institutional factor made sense for the purposes of concentrating the analysis of the interaction between individuals and institutions in a more detailed way. The interview participants discussed ways in which rank both constrained and enabled their rights claiming. In what follows, I will first discuss how female faculty members and servicewomen described the constraining effects of institutions on their rights consciousness and rights claiming. I will then detail how these women describe using institutional structures to challenge institutional norms and, in small ways, affect institutional change.

Institutions as constraints

Much like the majority of workplaces in the United States, both academic institutions and the various branches of the U.S. military are heavily dependent upon hierarchical structures in order to function effectively. Each institution has a distinct hierarchical structure, where individual women are intuitively aware of the appropriateness of their actions within their respective rank. The consequences of acting in a way that might be deemed "inappropriate" for your rank within a hierarchy are real, though they can be complex. Rank is an institutional

structure that is codified in both institutions, and there are certain written rules, rights and expectations within academia and the military that are assigned to various ranks.

In academia, rank is closely tied to obtaining certain benefits. Faculty members at Elm University, for example, are only entitled to their university's modified duties policy if they are tenured or on the tenure-track. Additionally, challenging this link between rank and benefits is particularly difficult, since those faculty members with the least power to enact change within the university (contract faculty) are those who are most interested in changing the policies. As Valerie, a 31-year-old visiting assistant professor at Elm University, has discovered, it is often difficult to persuade those in a position of power granted to them by rank to advocate for those without power. Valerie feels strongly that the variation in policies at Elm across ranks is unfair. Tenured and tenure-track faculty at Elm are entitled to a "modification of duties" policy in the semester following their return from FMLA leave, while visiting faculty are only entitled to FMLA. "I've complained about it to everyone that I've spoken with, you know, very loudly, and they're like oh well, you know, you should just hope to have a different position. And I was like, oh right, ok it's ok if we screw these people over, as long as we're not one of them." She goes on to voice her dissatisfaction with the fact that the exclusion seems even more arbitrary in that the policy applies to senior instructors – a position that is technically of a lower rank than a visiting assistant professor. "It's ridiculous," she argues.

This variability of benefit distribution across ranks in academia is constraining not simply in that certain faculty have fewer rights to mobilize. It is also constraining in that the variability makes knowing what rights they are entitled to difficult for most faculty in the academic institutions. Danielle, a 32-year-old visiting assistant professor at Elm who already had one child during the summer months at her institution, said that upon becoming pregnant a second time she

struggled to find out what she would actually be entitled to in terms of maternity leave, and said she was shocked to find out that her leave would be unpaid. "So it was a little worrisome, you know, because it's not clear, and um, nobody could give me a straight answer 'til, like, the very last minute…so yeah, that was a scary, scary part." Alex, a 35-year-old associate professor with twins, is also confused by her entitlements at Elm, because she says that not only is the modification of duties policy applied differently across ranks, but even among tenured and tenure-track faculty there seem to be differences in terms of how the policy has been applied. For instance, she herself was happy with her modified duties plan, but a friend of hers in a similar standing with the university was given a very different plan, which she was not happy with. Referring to her colleague, Alex says, "Her experience with kid one versus kid two has been different. So I don't think I would get the same deal now as I did then."

In both universities, there was also a consensus that the institutional structure of the tenure-track in academia significantly constrains women's rights mobilization in the area of work/life balance because of its coincidental alignment with a woman's fertility "clock". The anxiety around this is once again due to the institutional benefits that are tied to certain ranks. Faculty members who are not on the tenure track are presumably trying to get there. Crucially, those on the tenure-track are expected to perform a certain number of specified duties (publishing, teaching and service) within a small window of time (usually 5-7 years), before going up for tenure. If tenure is not achieved, the faculty member is often discharged from the university. If tenure is granted, this rank bestows certain privileges on the faculty member – not least of which is a significant easing of the professional duties required to obtain tenure and/or a period of sabbatical. Waiting to have children until achieving tenure, therefore, is a rational goal for faculty members, primarily because an institution must now have "just cause" in order for a

faculty member to have her employment terminated. In other words, she is significantly more secure in her job once reaching the rank of tenured associate professor.

The structure of tenure is meant to liberate faculty to think and work about potentially controversial topics without fear of institutional retribution (Carmichael 1988). Many of the faculty members I interviewed, however, talked about the tenure process as something that is also constraining – primarily to their ability to claim their rights to work/life balance policies before achieving tenure. The prospect of endangering their job security while on the tenure track was particularly frightening for several of these women. Paige, a 49-year-old associate professor at Oak explains why she waited until she was tenured to have her two children, now 9 and 6. "I Just literally didn't know if I would get tenure or not, and if I – if I had had a baby and I didn't get tenure, then what would we do … how would we take care of …a pediatrician? I mean, the tenure process… even if you're doing fine, it's such a hazing process." Carol, Kay, Nora, and several other faculty women all expressed very similar justifications for waiting until they were post-tenure to have children. "I don't mind waiting, it's just – I feel like it does tie my hand a bit," says Kay, who has not yet had children, but is waiting until she is tenured to do so.

The fact that rank is not linked with the distribution of policy benefits within the military (as it is in academia) results in some important differences in rights mobilization of maternity leave across the two institutions. As mentioned briefly in Chapter 3, all of the service women interviewed said that they had had no problem with claiming their right to maternity leave in the military. The comparison between the implementation of maternity leave at the two institutions strongly suggests that the universal application of the policy across all ranks has a lot to do with this. As Chloe and many others expressed, maternity leave is simply viewed as standard - a "right" that is routinely given to all employees. In contrast, while most academic women I

interviewed did receive some form of maternity leave (most often under FMLA), nearly all discussed having had some concern over whether or how that leave (and, in particular, how *paid* leave) could be claimed.

In the military, rank is less associated with increased benefits, and more with increased authority. Service members are required to follow a very strict "chain of command," whereby they are required to deal almost exclusively with their immediate supervisor, and only in very exceptional circumstances is that chain of command to be superseded. If an individual breaks the chain of command inappropriately, she is potentially subject to consequences as significant as demotion, discharge or even imprisonment. The chain of command is so embedded an aspect of the military as an institution, that none of the interview participants had broken it, nor did they mention anyone else who had broken it. By threatening to "go congressional" during her time overseas, when she was not able to express and store her breast milk, Chloe came the closest to breeching the significance of the chain of command. As a consequence for simply *threatening* to disrupt the formal structure of rank in her institution, she was withheld a decoration at the end of her overseas tour.

An important question that Chloe's experience raises is why service women describe having difficulty claiming their rights to breastfeeding, or other types of work/life balance policies that are in addition to convalescent leave, and which apply just as universally as maternity leave policies across ranks in the military. What explains the difficulties that some women, such as Chloe, described? While "appropriateness" within ranks is codified in some way in both institutions, much of what is deemed "appropriate" or "inappropriate" within the hierarchical structures of academia and the military is also informal, and normatively driven by other actors within the institution. These actors, and their understanding of "appropriateness"

also drive most of the institutional constraints concerning rank that the interview participants described experiencing. As Vicky, an associate professor and mother of two who has been at Elm University for over 11 years, says: "I mean, when it comes to what you will claim, I think the further along you are and the more confident you are in your career, then you're more likely to ask for what you need, which is unfortunate, because the people who generally need these resources are not in that position." Just as Vicky describes women in lower ranks in academia lacking "confidence" to claim their rights, Jane, a 29-year-old captain in the Marines, says that lower-ranking service members are also reluctant to claim their rights to institutional policies. "[W]hile there's a Marine Corps order that says you have to be given a certain amount of time and a space to do it, most women, you know, lower ranking females, are not going to push that."

These feelings of constraint are not formal constraints, such as the chain of command, or variations in policies according to rank. The constraints are institutional, in that they are driven by informal norms that exist in the institution, but they are also the result of a kind of institutional learning that these women have undergone. They have learned that certain norms of behavior exist within the institution, and that some individuals within the institution are likely to promote adherence to these norms. If individuals who are interested in promoting adherence to norms are also in positions of power vis a vis women who are interested in rights claiming or gaining knowledge about their rights, then they are able to maintain those norms through the use of formal or informal consequences. Rank, therefore, becomes salient not simply as an institutional structure where certain codified rights to benefits or processes of grievance are formally organized. Rank is also an informal structure within an institution, where individuals take part in maintaining its salience as well as the salience of other institutional norms through discourse.

Kay's experience illustrates this process concretely. In academia, the hierarchical structure is very much tied to the process of tenure. On the tenure track, Kay has formal expectations of a certain number of publications, service and teaching, which are written into the rules that govern her institution. However, Kay also describes an awareness of expectations for tenure-track faculty that go beyond these formal rules. Kay has chosen to wait to become pregnant until after achieving tenure, because she perceives that those who would review her tenure case would expect her to achieve more than colleagues who had not had children. Even though Elm University has a policy where Kay would be entitled to "stop-the-clock" of her tenure expectations, Kay has observed that, informally, individuals expect more. Furthermore, Kay fears consequences to her tenure review by these more senior individuals should she choose to mobilize her right to the "stop-the-clock" policy.

The significance of maintaining informal norms also begins to explain the discrepancies between the implementation of the military's maternity leave policy, and the implementation of other work/life balance policies such as those for breastfeeding mothers like Chloe. Even though regulations are very specific regarding the needs of pregnant and postpartum service members, their inclusion in the military is a relatively new phenomenon, and these regulations are very different from a blanket understanding of the need for "convalescent leave." This is a term that is stretched to meet the needs of postpartum women, and does not recognize "maternity leave" specifically. Many of the service women interviewed described feeling as though their superiors were unclear about the regulations that pertained to pregnant and postpartum women. An informal norm within their workplace, therefore, is that service members should not have to require special treatment beyond the scope of their usual duties. This norm seems to lead to some supervisors being unknowledgeable about policies that allow pregnant and postpartum women to

modify their duties to accommodate physical needs. As Penny, a 24-year-old former Navy seaman relates, "I know it is difficult for people that are at places where… the higher-ups don't know the rules, they don't know anything about what they're supposed to do for pregnant women."

In the cases of several women who did not have the regulations properly applied to them, the chain of command became the default structure to which they submitted. Their need to question the chain of command, which had applied rules inappropriately to their situation, was constrained by both formal and informal norms around them. Yvonne's story is an excellent example of this. Yvonne is now 33, but was a single mother in her mid-20s when she served as a corporal in the Marine Corps and had her first child. She returned to work seven weeks after a Cesarean and was incorrectly put back on full duty, and would be required to run in a three-mile squadron run immediately upon her return. In all service branches, postpartum women are in fact given four to six months after giving birth to return to their regular physical training requirements. When Yvette mentioned this to her supervisor, his response was, "There's nothing I can do, you know, you have to go and we can't get you back into medical." Yvonne notes that, "he probably could've just ordered me not to go." But, she says, "When the order comes from above, he's like, 'you just have to show up and talk to the corpsman.'" Rather than straightening the mistake out himself, Yvonne's supervisor instead required her to turn up at the exercise, where she felt obliged to run. "I made it all three miles and I hurt so bad," she says. Eventually, it became apparent during her run that something was wrong. Yvonne says,

> "I fell out at one point in the formation and somebody comes and starts yelling at me, I'm like 'Listen, I had a C-section six, seven weeks ago" … and he just looks at me and he's like 'Oh, let's get the corpsman over here' and the corpsman came over and I'm like, 'I feel fine if I just kind of jog/walk, I'll be - I think I'll be fine.' I was in really good shape beforehand and during my pregnancy and I…and so, she's like 'Yeah, just come see me afterwards I'll just make it up right… you're going to have your six months.' And so she

wrote it out for me. She's like, 'that was wrong,' she's like, 'but you know, it happens sometimes.'"

Yvonne did not feel comfortable confronting her supervisor about her right to reduced physical training requirements postpartum. Instead, she deferred to the appropriate action for her rank and position – she obeyed the order to turn up and run. Furthermore, the medical officer at the training exercise also knew that Yvonne had been denied her rights, and was not surprised by Yvonne's decision to adhere to the norms associated with her rank, nor did she question it. In fact, the Marine Corps' written regulations permitted Yvonne to either question her supervisor or to turn up to the exercise and insist on her medical status being changed then and there. Instead, Yvonne deferred to her supervisor's decision to require her to run. In her case, the institutional constraints on her rights claiming were not formal or written, but based upon her perception of the normative constraints of rank within the Marine Corps. Yvonne's story, therefore, illustrates well the salience of rank, both as an institutional structure with both formal and normative rules and expectations attached to it.

Assigning particular policies according to rank, or requiring adherence to chain-of-command within formal institutional rules is one way of constraining women's rights claiming and decision-making. But the informal action and interpretation of what is appropriate in a position in the hierarchy is also a way of maintaining the institutional structure of rank. Individual agency, and individuals' actions that work to create and perpetuate both institutional rules and norms, are key to understanding how institutions act to constrain individuals in their formation of rights consciousness and their mobilization of rights.

Institutions as Enablers

According to a theory of discursive institutionalism, institutions do not simply constrain individual actors to maintain the status quo. They can also enable individuals to work for or

affect change within the institution. The same formal and informal structures that constrain some members of an institution may be appropriated for the purposes of challenging norms or rules and affecting change. Institutional hierarchy or rank is once again a useful structure in which to critically analyze this process at work.

Affecting formal rule changes within an institutional setting can be a very difficult thing to achieve. As Valerie discovered at Elm University, often those who are most interested in affecting change are those with the least power within the institutional hierarchy. Additionally, organizing collective action to initiate formal change, while not impossible (Oak University, after all, negotiated paid family leave through its faculty union in recent years), is often very challenging. Effective collective action requires both substantial resources, as well as a shift in cultural expectations – or *ideas* – within the institution that no longer make the status quo justifiable for a large number of individuals (Beland 2009; Blyth 2002; Schmidt 2002; Cox 2001).

But what part do individuals play in institutional change? Individuals may, of course, take part in or lead a collective effort. Carol, for instance, was part of a small team of women who worked to bring about the modification of duties policy at Elm University. However, collective action is not an individual's only potential for affecting change within an institution. As the social movement literature suggests, ideas are important in determining the policy agenda of collective movements that seek to challenge the status quo. It is therefore as instigators in the introduction, discussion, and perpetuation of ideas that individuals play a key role in institutional change. Institutions may indeed constrain the development of individuals' rights consciousness or their ability to rights claim. However, institutional structures can also be appropriated to vocalize ideas that challenge institutional constraints and assert rights – particularly with regard

to informal constraints.

Within the interview data, it is possible to see several different ways that both faculty members and service women were enabled by institutional structures to challenge existing institutional norms. Within the academic case, for instance, some women described using their tenure status as a way to assert their rights openly. An excellent example of this is Carol at 39-year-old tenured professor at Elm, who discussed using her tenured status to her advantage when she needed to breastfeed her baby while teaching – not an activity that Carol believes would have generally have been deemed "appropriate" at her institution.

> "I taught …a night class that was a class about violence. And I had to … breastfeed her. And I would do it in the hall sometimes, but occasionally I would, like, there she'd be, and I'd have a blanket over her, and I'd be gesticulating with one arm, talking about domestic violence and here's the baby breastfeeding. And I just remember being like, this is so freaky, you know. But it was sort of like – there wasn't the anxiety around that that I think would have been there had I been an untenured professor, because it kind of felt like, yup this is freaky, and they can't fire me, you know?"

Similarly, Gina, a 36-year-old mother of two who is an E-7 in the Coast Guard, says that she is using her rank as a way to challenge what she perceives is a norm among officers in the Coast Guard to not have more than two children.

> "I have never met, in the Coast Guard, an active duty mom that had more than two kids….I think it's a taboo, like, that everybody all of a sudden is gonna think wow, she's a baby machine now and, you know, kinda give up on me or whatever…. I have a promotion coming up this summer. I'll be making W-2… so that was it, and I decided that I'm not gonna have the Coast Guard tell me how many kids I can have, I'm gonna do it."

Additionally, supervisory roles play a key role in the dissemination of ideas that affect women's rights consciousness and rights claiming. In many cases, women in both academia and the U.S. military described either having their supervisors resist institutional norms on their behalf, or engaged in this resistance themselves on behalf of others. Pam, for instance, a 49-year-old senior instructor at Elm, had her daughter before the modification of duties policy was

introduced at her university. Pam says that if she had not been "able to spend as much time with my child as I really felt that I needed and wanted to do…I would have either quit my job or not had a child….I definitely did not want to have to put my child in daycare at six weeks." Pam did not have to put her child in daycare at all, in fact, because her supervisor allowed her to take her baby to work with her every day for the first three years of her life. At work, Pam hired students to watch her child, taking her on walks around campus or playing with her in the office. This arrangement is certainly not typical at the university, but was not only supported by Pam's department chair – he was the one who suggested it to her. Pam explains that this kind of resistance to institutional norms by her chair is something that he does consciously and consistently. "My chair has always done stuff like the way he wants to do it and not exactly the way the policy is written or what's expected, because he decides what is right and does it. I mean he's very supportive of the faculty and um he's that way, really, for everyone."

Several service women described similar experiences with their supervisors. Emma, for instance, a 28-year-old Marine describes her supervisor as having "jumped through hoops" to accommodate her during her pregnancy, and even visited her at the hospital after she gave birth in order to assist her to fill in her leave paperwork. Additionally, many women acted or spoke up in resistance to institutional norms with which they disagreed, using their rank as a means of making this challenge effectively. Gina, for example, describes speaking up on behalf of lower-ranking colleagues if they are given a hard time about needing space or time to express breast milk.

In demonstrating that women have been able to use institutions to introduce and perpetuate ideas that resist the status quo, I do not mean to suggest that the enabling power of institutions is equal to their constraining power. To the contrary, as may be evident from the

analysis above, there are far more examples in my interview data of women feeling constrained in their decision-making by their institutional surroundings. Indeed, those women who felt most comfortable trying to influence their institutional norms were all in positions of relatively greater power within their institution's hierarchy, and thus less constrained by this institutional structure. However, this analysis demonstrates how ideas that are resistant to the status quo might be introduced into the discursive processes of an institution, and might take hold. As one woman brings her child to class to breastfeed, another might see this action and interpret her institutional norms differently because of it. These are the roots of institutional change.

Conclusion

In this chapter, I have presented empirical evidence to support a theory of discursive institutionalism. For the purposes of providing a consistent discussion of the discursive process at work, I focused primarily on rank, because both academia and the military have a consistent ranking structure across specific workplaces that made this possible. Workplaces are discursive environments, and individual actors are constantly circulating ideas within them – ideas that both maintain and challenge the status quo. I have demonstrated how women's rights consciousness and rights mobilization concerning work/life balance policies can be both constrained by formal and informal institutional structures such as rank, and enabled by them.

Women from both academia and the military often described institutional hierarchy as something that affected either their ability to rights claim (as was the case with Valerie) or their decision not to claim their rights (such as in the case of Kay and Yvonne). Whether this constraint was due to formal rules associated with rank within the institution, or (as was more often the case) with informal norms, institutional factors indeed proved to constrain women's rights consciousness and rights claiming.

Consistent with a theory of discursive institutions, however, I also presented evidence from the case studies to demonstrate that women are able to employ the institutional structure of rank in order to introduce or perpetuate ideas that *resist* the status quo. This "enabling" aspect of institutions was specifically evident for women who had attained higher ranks within their institutions, and were able to use this position of power to safeguard them against some of the consequences that women of lower ranks might suffer if they were to step outside the bounds of "appropriate" action for their rank.

This chapter focuses on the significance of formal and informal institutional structures within this discursive process. It takes the time to demonstrate the important relationship between institutions and individuals – and the significance of *ideas* within that relationship. It does not, however, spend a great deal of time considering *which* particularly salient ideas are affecting rights consciousness and rights claiming within the workplace. For a discussion of the significance of ideology in the formation of rights consciousness in institutional settings, I turn now to my next chapter.

Chapter 5: Ideology and the Shadow of the Ideal Worker

Introduction

In Chapter 4 of this dissertation, I began an in-depth analysis of the process of rights consciousness formation for women in the area of work/life balance policy by examining the connection between institutional context and individual agency. I discussed how formal and informal institutional structures act to both constrain and enable individuals to formulate, perpetuate, and pass along ideas. In this chapter, I will spend more time on the concept of ideology, looking both at how ideas about work/life balance rights are transmitted within institutional contexts, but also *what* ideas emerge as particularly salient. In this chapter, I document some interesting and important similarities between my case studies. These similarities suggest an underlying connection between this area of public policy and a particular strain of ideology, which is present in the broader American cultural context. I argue that this ideology's strong presence in both cases points its ongoing reproduction across many workplace contexts.

This chapter is divided into four sections. First, I engage with Law and Society and other relevant literature that discusses the important connection between ideology and public policy, both in helping to shape policy itself, as well as policy outcomes. I focus specifically in this chapter on the impact of one particular ideological construct that proved to be salient for all of the women in this study – that of the "ideal worker". Thus, in the second section of this chapter, I spend some time unpacking the existing literature on this particular concept, its role in a larger ideology, and the extensive documentation of its permeating presence in American culture. In the third, and largest, portion of this chapter, I then turn once again to my interview data to discuss the impact of the "ideal worker" ideology on individuals' rights consciousness and rights claiming in the area of work/life balance policies in my specific case studies. I find that this ideology is prevalent in both institutions, but takes on unique institutional characteristics in the

form of institutional stereotypes of which each the women who participated in this study is aware. Finally, I conclude this chapter by discussing the significance of the findings that a comparative institutional study can bring to the examination of how ideology functions within institutional settings to shape rights consciousness and rights claiming. I argue that my findings complicate the relationship between ideology, public policy and rights claiming, by demonstrating that the ideologies that are embedded within public policy can both combat and *contribute to* challenges that individuals face with rights claiming within an institutional setting.

The Connection between Policy and Ideology

As I have described elsewhere in this dissertation, many Law and Society scholars before me have documented the significant role of cultural discourse in shaping rights consciousness and rights claiming (Albiston 2010; Quinn 2000; Scheingold 1974; McCann 1994; Bumiller 1987; Ewick 2004; Ewick and Silbey 1998; Marshall 2005; Gruber 1998; Williams and Cooper 2004). Additionally, in Chapters 2 and 3 of this dissertation, I systematically demonstrated the importance of informal norms in affecting women's decisions about rights claiming in the area of work/life balance policies. It is clear, therefore, that informal schemas and norms can play a significant role in nullifying rights or rights granting polices, or in making the mobilization of those rights extremely difficult for individuals.

Yet culture, and the ideologies that are present within it, do not simply shape consciousness, as Patricia Ewick argues (2004). Rather, consciousness also shapes ideology, in that individuals are constantly involved in a larger discourse that serves to perpetuate or shift dominant ideologies over time. Therefore, ideology is, in a sense, time-bound. It exists both as something that is constructing and being constructed in a particular historical moment. This time-bound nature of ideology is significant particularly in its relationship with public policy

formation.

A large body of research indicates that the formation of policies themselves can also be intimately connected to ideology, and the norms and informal schemas that exist within certain ideologies present in the larger culture (Minnow 1999; Gustafson 2011; Gilliom 2001; Nussbaum 2004; Bumiller 2008; Sigal and Jacobsen 1999; Hancock 2004; Jordan-Zachery 2008; Gilens 2000). These scholars, therefore, note that the relationship between policy and cultural norms may not simply be one of culture resisting policy, but culture informing policy formation. Ange-Marie Hancock (2004), for instance, argues that a discourse of "disgust" around welfare recipients has led to the marginalization of recipients from the debate regarding welfare reform policy, and the creation of policy that is informed by what is essentially an empirically debunked "public image" or stereotype. Other scholars such as Dorothy Roberts (1997) Julia Jordan-Zachery (2008) likewise make convincing connections between the discourse surrounding Black women's sexuality and public policy formation.

In this chapter, I will further these strands of literature on the connection between policy and ideology by arguing that not only does ideology and culture shape legal consciousness, and ideology inform policy – but policy choices that are historically embedded can also impact the formation of ideology and legal consciousness. Existing scholarship has indicated that policy backlash can give rise to stereotypes that may cause individuals even more difficulties with claiming their rights under policies aimed at improving gender imbalances (de Silva de Alwis 2011; Williams 2000; Tinkler 2012). This chapter provides empirical evidence to support the claim that social policy can have harmful effects on those it purports to help, particularly when its cultural implications are not taken into account. In the personal narratives presented below, it becomes clear that stereotypes exist in the two very different institutional settings examined.

While these stereotypes are institution-specific, they share one important characteristic, in that they reflect an institutional culture that stigmatizes mothers because they are taking time away from their work to meet family needs. I argue that the design of work/life balance policies to allow women to do just that has contributed to the creation and persistence of these stereotypes.

Ideology, Policy and the "Ideal Worker"

Several scholars, most notably Joan Williams, have documented the existence of an "ideal worker" concept within workplace contexts (Berns 2002; Williams 2000; 2009; Williams and Cooper 2004; Fuegen et al. 2004; Kessler-Harris 2001; Kelly et al. 2010). Williams in particular has argued for its detrimental effects on women's decisions to seek out or take up maternity leave rights. In *Unbending Gender* (2000)*, Williams argues that both men and women face challenges posed by the notion of the "ideal worker" – which she claims is pervasive in American workplace culture. The ideal worker is childless *or* has an invisible caretaker at home, looking after domestic considerations and care needs so that the worker need not be concerned with these things. He or she is able to work full-time and overtime, anytime. The ideal worker does not take maternity leave or need to pick up a sick child from school. The notion of the ideal worker, in other words, presents a dichotomy between "good" workers as those who are entirely devoted to their jobs, and "bad" workers as those whose time and attention is consistently pulled to things outside of work.

The ideal worker norm did not emerge from thin air. Rather, Williams argues, it is part of a larger ideology, which she calls an "ideology of domesticity." Williams documents how this ideology is both historically *and currently* pervasive in American thought, culture and law.[14]

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[14] For instance, Williams cites a contemporary Washington Post poll (1998) indicating that two-thirds of Americans believes it would be better for women to stay home and care for family and children. Yet this ideology is not time-bound. In a Pew Center study twelve years later, 37% of

Susan Moller Okin is a feminist theorist who tackles the history of this ideology head-on, arguing that liberal theorists have long ignored women, relegating them to a "private" sphere, which is irrelevant to the political or "public" sphere. It is the ideological separation of these two spheres that is the primary source of continued injustice for women, argues Okin.

Yet the ideology and practice of domesticity remain intimately connected in American culture and politics. Several feminist scholars point to the significant connection between gender and caregiving expectations in the American workplace. Martha Albertson Fineman's (1995) work, for instance, emphasizes cultural ambivalence toward the strong caregiving ties of many women in America, arguing that it is this bond that should in fact be recognized by law and society as the nuclear family, rather than the sexual bond of man and wife. Laura T. Kessler (2001) follows in Fineman's footsteps and looks specifically at the traditional role of caregiver that a large percentage of women still carry out in their private spheres, arguing that law and legal tradition has systematically ignored this role and the impact of its existence on women's equality of opportunity in the workplace. Kessler suggests that a normative solution is needed to adjust this disconnect, because it is the ideological *undervaluing* of women's caregiving work that causes it to be overlooked and under-addressed in the workplace.

Further complicating this literature on the overlooked private lives of women is the growing body of scholarship critiquing the active role that many work/life policies have played in further entrenching gendered roles. Fathering literature in particular, has highlighted this critique, illuminating the problematic emphasis in institutional policies and culture on the need for *women* to have time to care for private needs, while men are expected to maintain their public identities without giving attention to private ones. As the fathering literature demonstrates, men

respondents said that "mothers of young children working outside the home" is a "bad thing for society" while only 27% of respondents said it is a "good thing for society" (Taylor 2010).

are not only increasingly interested in being more involved in the development and raising of their children (Brandth and Kvande 1998; Doucet 2004; 2006; Wall and Arnold 2007), but fathers can also make distinct and important contributions to child-rearing (Doucet 2004; 2006; Featherstone 2003). Other studies have demonstrated the challenges that specific public policies and institutions pose to rectifying the imbalance of caretaking due to their contribution to perpetuating gendered identities (Hobson 2002; Jesmin and Seward 2011; Haas and O'Brien 2010; McKay and Doucet 2010).

The policies that have resulted from this historical and contemporary connection between women and caregiving roles, therefore, have emphasized the need to give *women* time away from work to care give.[15] This continued connection between the ideology of domesticity and public policy has had unforeseen consequences for women's equality. I now turn to my interview data to discuss ways in which the ideology of domesticity – and the ideal worker norm – have had a significant impact on the rights consciousness and rights claiming of women in both case studies. In speaking with my interview participants, I identified two distinct workplace stereotypes tied to the ideal worker norm, and here I document the ways in which these women wrestled with the stereotypes when thinking through their rights.

Mothers Are Not Ideal Workers

Literature on both academia and the U.S. military documents to some extent what is expected of an ideal worker in these environments. In academia, for instance, faculty are expected to pursue tenure-track careers that lead to full professorship, which most often requires

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[15] This ideological connection is so strong that even when men are granted equal leave time for caregiving, women are still much more likely to take the time than men According to the Bureau of Labor and Statistics, women were 30 times more likely to cite birth or adoption of a child as their reason for taking leave in any given week in 2011, even though they were less than 4% more likely than men to take leave from work overall (Bureau of Labor and Statistics 2011).

a grueling research and teaching schedule. As has been discussed in previous chapters, these expectations are frequently coupled with an understanding that faculty must not have commitments that take their time and attention away from this program – particularly the research element. Recent studies of male and female academics, for instance, have demonstrated that the individuals in these careers who are most successful at maintaining a high-level of research output are married men with children, and the least successful are married women with children (Townsend 2013; Krapf et al. 2014). These findings further emphasize the significance of unpaid domestic work in the "ideal worker" construct. Married men with children are successful, the authors of these studies suggest, because a female partner either fully or largely completes the "second shift" of housework and childcare within the home, allowing them to devote more time to their primary career. Married women with children, on the other hand, are conversely those who are doing a disproportionate share of the domestic work, and are thus disadvantaged in the time they are able to devote to paid work (Hochschild 2003; Mason et al. 2013; Townsend 2013; Krapf et al. 2014).

In the military, the ideal worker is much more overtly masculine. As Cynthia Enloe (2000) notes, masculinity and the U.S. military are intimately connected. Yet, in a volunteer military, recruitment of women soon became necessary in order to sustain its numbers. In opening the military to women, Enloe argues, officials "believe that they need to recruit and deploy women in only those ways that will not subvert the fundamentally masculinized culture of the military" (2000, 237). A woman in the U.S. military, therefore, is not an ideal worker simply by virtue of being female. Pregnancy and childbirth further complicate this by reminding their fellow workers and superiors of their female-ness in very explicit ways. In both the military and academia, my research demonstrates that institutional stereotypes have developed

surrounding these ideal worker norms – and how women with children do not meet them.

The Military Mother who is Trying to Get Out of Deploying

When speaking with military service women, it became clear very quickly that a stereotype existed, and that each of the women I spoke to was in some way reacting to it. In all but one of the 24 interviews, the service member identified the stereotype explicitly. Essentially, the stereotype is that women who become pregnant in the military do so in order to get out of duty in some way – particularly overseas deployment. Mothers in the military, therefore, do not fit the ideal worker image in their workplace, because the ideal worker in a military environment is one who is physically fit, and always ready to do his or her duty when called upon. A pregnant service member, however, does not fit this model, in that she receives "special treatment" – which includes deferral from deployment for four to six months after childbirth, [16] and exemptions from other typical duty requirements, such as uniform regulations or physical training exercises.

In detailing what the stereotype is, many of the women I interviewed were also careful to identify themselves as individuals who do *not* fit the stereotype. For example, Grace, a 33-year-old Sergeant First Class in the Army, clarified that she was aware of the stereotype, but that she wasn't deployable when she got pregnant herself.

> "I mean there's a little bit of a stigma for people – especially women – that are staying behind [from a deployment]…It's 'oh, did she get pregnant to get out of deployment? I mean – which, I'd been pregnant before it was even known that we were deploying, but there's still always that little bit that, you know, the possibility of that chatter… it's more – I think, more of a gossip thing."

Grace goes on, however, to point out that she knows another woman who might better fit the stereotype.

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[16] Depending upon the branch of service – see chapter 3.

"[A soldier under my supervision] was actually in Afghanistan when she found out she was pregnant…. [F]rom the view of the command, they were not out to do her any favors. You know, she got sent home, technically she could have been punished. I mean, it didn't happen, but it definitely leaves a bad taste in the command's mouth in a situation like that."

Similarly, Joyce, 58, currently serves as a colonel in the Air Force. However, she left active duty for the reserves when she decided to start her family, and only re-entered when her children were school age. "I separated [from active duty] what, a year and a half before the war [in Afghanistan] kicked off, so it wasn't like I did it because I had to go to war," she explains, clearly indicating her knowledge of the stereotype and her own position outside of its reach. She continues, though, to relate that:

"[A] friend of mine was in a similar situation only she delivered her baby in August of 1990… and her husband was already deployed to Desert Shield, and when she came back to our squadron, which is a deployable squadron, a flying squadron, she went over to a non-deployable squadron… and people talked about that. Even years later people talked about that, how she didn't, you know, that – that she was given special treatment or that she not – you know, that she didn't do what she was – what she should have done, which was deploy."

Sophia, a 23-year-old 3rd Class Petty Officer in the Navy, however, had a harder time defending her position vis a vis the stereotype. Sophia, who is not married, became pregnant unintentionally while on a deployable ship, and had to leave her boat for shore duty as a result. Sophia insists that she is not one of the "girls who mess up" and "put a stigma on all the rest of the pregnant girls." Yet she felt as though she needed to hide her pregnancy from her fellow sailors when she left her ship, fearing that they would think she fit that stereotype.

"There were a few people like that, they were like, ah, yeah, I see what you're doing, you know. And I kind of tried to keep it really quiet that I was pregnant when I was leaving, um, I told a lot of people I was leaving because of a bad back. So I – I didn't want to be known as that girl who got pregnant or got knocked up and had – had to leave the boat."

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Many of the service women who were interviewed also went beyond simply mentioning the stereotype and defining themselves in opposition to it. A number of them also said that their decision-making, or that of other women they knew, has been influenced in the whole or in part by the existence of this stereotype. For instance, some, like Gina, a chief petty officer in the Coast Guard, said that they consciously tried to work harder than their colleagues as a way of combatting the image. Gina says:

> "I feel like already because we're females we have to work twice as hard to earn the respect that the males are already given, and then when you have these impressions running around in everybody's minds, and then it just – it spurs me on even more. I moved up pretty quick in my advancement, and a lot of that is just my initiative and my drive to prove people wrong. I'm tired of hearing it."

Adrienne, a 38-year-old Air Force major, took a similar, though slightly different approach to combatting the stereotype. During her pregnancy, Adrienne took pride in doing tasks that were above and beyond those recommended by her military "profile".[17] Adrienne talks about meeting wounded warriors on the flight line right up until delivery, and also braving a massive snowstorm to go into work at eight months pregnant because she knew she would be able to get there before her supervisor to make sure that her work was being overseen at a critical time. She says she made these decisions because "I just didn't want them to appear that I was using my profile to get out of work." And that she was "just doing what you're supposed to do as a leader." She says of her profile:

> "I think it recommended like you not stand for so many – for such a period of time or something like that – and then it allows you to wear tennis shoes if you wanted. Which is another thing, I never wore tennis shoes. I was so proud not to wear tennis shoes my whole entire pregnancy. I wore my boots – my combat boots the entire pregnancy. I um, I guess I just didn't want them to think I – that I was – because I was on profile I was

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[17] A system used by the military to determine what a service member should be expected to do mentally, physically and medically for certain jobs and for their particular circumstances. A pregnancy, therefore, changes an individual's profile temporarily.

taking the easy way out I guess."

Adrienne takes pride in wearing her combat boots while pregnant, and performing other tasks that she would be within her rights under military regulation to forgo. In this way, Adrienne is signaling to herself and to others that she is an ideal worker. She is not someone who fits the stereotype, but rather is eager to show others that she does not need to claim her rights as a pregnant member of the Air Force.

Adrienne is not alone in her interest in projecting the image of an ideal worker in the military. Liv, a 26-year-old Army sergeant, says that she was so worried about how being pregnant when her unit was planning to deploy would look that she offered to waive her post partum period of deferred eligibility for deployment.

> "[My supervisor] said 'oh you know, you getting ready to deploy with us?' and I said, 'well – well sir, I'm pregnant, you know, and I'm due in February,' and I – and at that time, they weren't supposed to deploy until a little bit later, so I said, 'I could waive my post partum time and I can, you know, deploy with you guys' and you know, he was all for that. He doesn't have any children…. However, my sergeant major who is married… said that he wouldn't allow me to waive my post partum time to meet them in Afghanistan."

Not all of the service women felt that their decision-making due to the stereotype was a way to combat it. Some of the service women said that they knew a lot of their colleagues simply accepted that children and the military do not go together. Gabrielle, a 36-year-old lieutenant colonel in the Air Force says, "A good number of us [mothers in the Air Force] will punch at that 10 year point. Because at that point in time, you've either gotten married or you haven't and you want to, uh, and you've had children and you're trying to balance and it just – something's gotta give basically." Leaving the military after 10 years of service means that women choosing that path are losing out on significant benefits and compensation that can only be attained after 20 years of service. The existence of the stereotype, Gabrielle believes, causes many women to

think that balancing a military career and family are simply not possible, and so they leave, meaning that women are much scarcer in the higher ranks, where a certain length of service is a pre-requisite. This trend in the military is strikingly similar to the problem of the "leaky pipeline" in academia, where women are also largely underrepresented at the higher ranks (Mason et al. 2013; Wolfinger et al. 2009; Krapf et al. 2014).

While not all of the service women interviewed felt that they had been especially harmed by the existence of the stereotype, a few did. Zoe, for instance, the Air Force veteran whose story was told in chapter 3, had felt specifically targeted by her supervisor for retaliation because of her pregnancy. Even when more formal consequences are not evident, some of the women claim that the effect that the stereotype can have on relationships, both with their chain of command, and their colleagues, can also be significant. Brianna, a 34-year-old Army specialist with two children, whose husband is also serving in the Army, also felt personally targeted because of the existence of the stereotype about mothers in the military. Brianna says that not long after having her first child, she was deployed to Kuwait. "Little did I know, um, I was pregnant with my daughter…. [My] first sergeant was irate. She was livid. She told me I should be a housewife, um, that the Army isn't for me. Um, I'm a substandard soldier. She gave me 45 minutes of what she thought about me being pregnant." Brianna said that she felt particularly hurt by being a target of this first sergeant, because prior to this incident, she had looked to her as a mentor for how to become a strong female leader in the military. "She really got in my head, she really messed with me…I joined the military to serve my country. I come from kind of like a rich background of military in my family. And so for me to deploy, I was very proud… So a lot of me felt like I let my unit down, I let myself down, I let my family down." Though their relationship remained a strained one for a time, Brianna was relieved when she was later transferred, and no

longer required to work with that supervisor.

The Academic Mother who is Not Serious About her Career

In the interviews with women faculty members, a similar, though distinct stereotype emerged. Most of the women interviewed referred to an explicit stereotype – that women who have children at an academic institution are not serious about their careers. In addition, the minority of these women who did not explicitly reference a stereotype still talked about how having a family could cause them professional difficulties, but their discussion of this tension was more of an implicit one.

Some of the women talked about interactions with colleagues in their workplaces where the stereotype – and how to counteract it – were discussed outright. Valerie, for instance, a visiting assistant professor with a 2-year-old son, discusses how this stereotype was related in stark terms to her by another female colleague:

> "[I]t was like Labor Day or something, that we had classes, but none of the local public schools had classes. A couple of the parents brought their kids to the office. But I did have someone tell me – I didn't bring my son, you know – but I did have someone tell me, you know, as a woman I wouldn't do that if I were you. People have trouble taking moms seriously, and they won't take you seriously if they see you walking around with your son. They won't think you take the job seriously."

Carol, a 39-year-old associate professor with a young child, says that she also had an interaction with a colleague that made her aware of the stereotype.

> "[My colleague] is a woman who is not – does not have a partner and does not have kids, and…she is a person who – the excessive energy around – 'oh let's talk about your kids, oh it's so exciting that you're pregnant' – felt suspicious to me…. I mean, it was very nice of her… but I just remember feeling like she was wanting to peg me as, ok, now she's a mom. Like, she's not really a scholar, she's a mom, and so I'm gonna talk to her in a baby voice about the kids…. I don't think that this was intentional. I don't think that this was, you know, some sort of consciously hostile thing. But it felt to me like I'm being stereotyped."

Overall, the women employed at the academic institutions seemed less concerned than the service women had about needing to distinguish their own position outside of the stereotype. Though some, like Carol, made conscious choices to avoid being stereotyped, not every individual interviewed in this case made this distinction as starkly or as comprehensively as the service women had. Instead, the academic women who identified the stereotype explicitly went on to deny its validity. Simultaneously, however, each woman interviewed in this case study discussed the difficulties that she had faced in trying to remain good at her job while balancing it with her family demands. Therefore, the phrase "work/life balance" (and a concern for achieving it) was a consistent theme across these interviews. What seemed to be a trend among academic women was to discuss the choices that they had made in response to these demands. Many of the female faculty interviewed said that their knowledge of the stereotype had caused them to feel conflicted, or to feel anxious about navigating work/life balance policies. Additionally, some faculty admitted that a consciousness of the stereotype had some serious effects on their decision-making.

Several of the academic women interviewed, like the service women, talked about feeling the need to work harder to counter the narrative that they are somehow shirking their duties. Louise, for example, an assistant professor at Oak University with four children, says that she feels anxiety about appearing to be a good worker. "I mean… I don't want people think that I'm just cashing it in – taking advantage of people's goodwill." Louise talks about feeling guilty for not making her time on bed rest with her latest pregnancy count more in terms of working toward her publishing record. "I mean, I read tons of stuff online, you know… like, everybody dreams of having seven weeks where you're sitting on your bed doing nothing but that… but it doesn't ever work out that way." Louise goes on to say that even though she worked on article

revisions and read during this time, and despite being "on track" with her publication record, she felt like "I lost that summer." Vicky, too, an associate professor whose story is told in chapter 2, had admitted to working while on maternity leave for similar reasons. These stories are consistent with a recent national study of U.S. mothers, which reported that 43% of women surveyed did at least some work for their employer while on maternity leave (Declercq et al. 2013).

Other academic mothers felt that they had to make some difficult personal choices in order to respond to the stereotype. Constance's story, as highlighted in chapter 2, for instance, provides a clear example of engaging in personal sacrifice to conform to ideal worker norms. Terrified of becoming pregnant at the "wrong" time in her career, Constance chose to undergo a physically demanding hormone therapy in order to conceive within a certain window of time. Marie, too, made a personal choice that for her was extremely difficult. Marie is a 31-year-old visiting assistant professor who does not yet have children, and is waiting to do so until she secures a tenure-track job. Marie feels that the stereotype is particularly acute as a visiting assistant professor. Even though she wants to ask about policies available to her, she says, "It's this question you're told you cannot ask because it'll work against you in the job evaluation, and they'll assume that you're about to go out and have a whole litter of babies, so – yeah, I feel very silenced about [it]. I couldn't ask if just in case, what are my rights, how would you handle it – nothing." In addition to this tension, Marie also feels conflicted because she is a Catholic, and until recently was not taking birth control. As a married woman, Marie was faced with a potentially impossible situation. She says, "the choice I was looking at was not so much contracept as not contracept, although that was my solution. The choice I was looking at is

abortion or my career… that's not a choice.[18]" Marie made a difficult decision for her to go against the teachings of her religion in order to counteract the stereotype that she faces in her career.

Most commonly, however, the academic women who were in faculty roles in particular mentioned making career sacrifices in order to be able to better balance the demands of their jobs and the demands of their families. This decision seems to be a way of trying to take ownership of the stereotype and nullify its significance by discussing it in terms of personal choice. Alex, for instance, says:

> "Yeah, I think at some point I decided, am I going to be the most aggressive publisher in the world, or am I going to be ok with not being the most aggressive publisher in the world, and spend more time with my kids? And I made that decision and you know I was a little worried. I did fine with tenure, I was a little worried with tenure, I think everybody is, but I certainly at that point, when I was turning in my packet I was like, I wish I had, you know, been a little bit more productive at least you know somewhere in there. But at the same time it was a decision I made."

Alex takes responsibility for her decision to make some career sacrifices to attain a better work/family balance. At the same time, however, the stereotype of her as someone who is not as serious about her career seems to have caused her some doubt about her choices when she was going up for tenure. Therefore, even though her personal decision-making was a way of voicing her autonomy from the stereotype, she was not entirely able to escape its power to cause her anxiety.

As was the case with the service women, not all of the academic women interviewed said that they had felt personally targeted because of the stereotype. A few, however, did experience

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[18] Both the use of contraception and abortion are forbidden under the teachings of the Catholic Church. Marie chose to use contraception because she felt that if she were to become pregnant she would have to give up her career because the constraints of being a mother in academia would be too great. Additionally, because of her religion, abortion is an unthinkable option for Marie.

personal attacks or discrimination because of their decision to have children. One assistant professor interviewed, who does not yet have children, but is thinking about having them in the near future, was not affected herself, but had a friend who she felt had been targeted, and this experience made her wary of having children pre-tenure.

> "[O]ne of my colleagues went up for tenure, and she had stopped the clock, and she was just really, really worried about tenure, because – she ended up getting it, but I guess at her panel interview people… what she told me was that people had said like, you know, you had that whole extra year, what were you doing? And said well, you know, I had an infant at home, I wasn't really – I just didn't have the opportunity to focus on my research, it wasn't like a sabbatical year and – just even having to defend that just seems really shortsighted to me."

Other women felt more directly targeted. Danielle, a 32-year-old visiting assistant professor with a young child, says that she felt singled out by a fellow faculty member while pregnant. Her job involves field work, so she was frequently out in the field working, rather than in her office. "I had a particular faculty member contact the dean telling the dean that I'm not in my office, that I'm not doing my job, because I'm not face to face. And so I got an email that was forwarded from my dean, asking where am I, and I simply replied, I'm in the field…." Danielle expressed, like many of the other women interviewed, that she had been working extra hard during her pregnancy to make up for the fact that she was going to take time off. That was why this colleague's behavior seemed especially perplexing to her. When asked why she thought that colleague had targeted her to report to her dean, Danielle said, "she was very, very conservative in her beliefs, and being at the time unmarried and pregnant, probably added to her personal views towards me." In Danielle's opinion, therefore, the institutional construct of the ideal worker reinforced and heightened other ideological constructs that this co-worker held in her mind about who is a "good mother".

Nora, a mother of two children, felt even more explicitly targeted because of the

stereotype. Nora is an administrator, and when she was applying for an advanced position, she said that the person interviewing her said to her outright, "she said she was concerned about my ability to do the job because I had a child…. So at that point in time I was like… you've got to be kidding me." Nora says that she feels her job and the stereotype that exists there is counterproductive. "Um, there's nothing enlightened about that. The first – it ought to be congratulations, how can we make it so that you can enjoy and – and have a healthy experience for you and your child, and then embrace you so that you come back to us ready to go, and that's just never happened that I've seen."

Eve, a 33-year-old mother of two, who is an assistant tenure-track professor, said that she almost didn't to return to her job in the year that she was interviewed because of an experience where she had felt targeted. She said that, at first, her supervisor and her colleagues had been excited and happy for her when she returned to work from maternity leave with her most recent child.

> "[A]nd then as we started to get into the evaluation process of my work those conversations kind of started to change a little bit. Like my evaluation, my mid-tenure review. I started getting comments. I had my lowest annual review the year that I [took maternity leave], with the comment written that my personal life was affecting my work…. Um, comments being made perhaps I should consider getting a nanny instead of using childcare if I wanted to be successful in my job. Have I ever thought about working part-time, so that I can spend more time at home with my children? Comments like that from my colleagues and from my immediate supervisor that was – that I was not expecting…. It made me start to think that maybe I couldn't do it. Like, wow – maybe I can't be the mom that I want to be and be the professional that I want to be at the same time, and it really kind of started to weigh heavily on me, reconsidering my options for employment. Maybe I needed to go part-time, maybe I needed to do different things – I almost didn't come back this year."

The irony is that when asked whether she personally felt that her performance at her job had suffered because of having her second child, Eve emphatically denied it. "No. Not at all. Not at all. I felt like I was able to balance it. I had a great support system at home, and so I thought

I… was doing fine. I really did…. I actually felt – hey I can do this! Like, this is really manageable. So I was really surprised with the outcome."

In both academia and the U.S. military, each of the women interviewed had either an explicit or an implicit understanding of the ideal worker norm as it exists within her institution. The expectations of their individual jobs are drastically different, but the ideological model of domesticity – which sets expectations upon women that they should be primary caregivers and in charge of the domestic sphere – leads to similar expectations of an ideal worker within each workplace setting. Ideal workers are not meant to be focused on what is going on at home – and women in these workplace settings are constantly struggling with that expectation. These women are also often doing battle in their workplaces with stereotypes, which expect them to *underperform* in their jobs because they have domestic commitments. Though each woman in this study combats these constructs and the larger ideologies behind them differently, it is possible to see a clear connection between the ways that ideal workers are conceived within these institutions. Larger ideological constructs such as the ideal worker, therefore, permeate workplace cultures and take on unique institutional flavors. Yet the core of the construct remains, and clearly affects how women think about their rights in these cases.

The Role of Policy in Creating and Reinforcing Stereotypes

Most Law and Society scholarship has treated stereotypes as norms that operate in the "shadow of the law," governing attitudes and behavior in ways that are not governed by the law, or are norms that perhaps have grown out of an absence of law. Norms that exist in the shadow of the law may even be in conflict with laws or policies themselves. Catherine Albiston (2005; 2010) discusses the power of such stereotypes to regulate women's abilities to bargain for their rights under the Family and Medical Leave Act. She notes that,

"Over time, the interconnected and mutually reinforcing systems of meaning among, and work have come to form an invisible cognitive framework that gives meaning to leave for family or medical purposes. In particular, seemingly neutral features of work, such as attendance and time invested in work rather than productivity, have come to define 'good workers'" (2005, 17).

The narratives presented in this paper illustrate the relevance of Albiston's observation in broader context. The power of normative constructs such as the ideal worker (and the stereotypes that emerge around them) – which are essentially what Albiston is describing when she talks about "systems of meaning among gender, disability and work" – have proved to go beyond what is possible to regulate with policy. Attitudes and behaviors such as those described above may be discouraged by the policies in place in these institutions, but hearts and minds cannot be effectively changed by policies alone, and in fact cultural change must often happen before policies can be truly effective.[19]

While this observation alone is interesting and important, another significant finding emerges from this research. The opportunity for institutional comparison provided by these interviews – the ability to look at two very different workplaces, with very different policies and non-policy normative ordering – reveals connections that go beyond institution-specific norms. The stereotypes that are visible in the military, and academia, are all connected to values associated with being a good worker. Further, the stereotypes that are present in these institutions indicate that mothers are being defined as antithetical to the ideal worker – they are in fact workers who shirk their responsibilities.

The reality is, though, that these stereotypes are closely tied to the policies that mothers in these institutions – and in workplaces everywhere – rely upon to be able to bear or adopt a

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[19] This is one of the fundamental points that critical legal scholars make. "[L]iberal rights rhetoric ordinarily fails to consider that fundamental social changes are necessary to allow people to exercise their rights" (Tushnet 1984, 1380).

child and initiate a bond with that child before returning to work. Whatever importance this time may hold for the health and wellbeing of the mother and the child, the fact is that maternity and other work/family balance policies create a legal system in which mothers *are* receiving exemptions from workplace duties that other workers are not entitled to. The stereotype in the military is that military mothers are trying to get out of deployment. Deploying is an essential duty, which, upon sign up in the armed forces, is potentially required of anyone at any time. While it may not be true that an individual is *trying* to get out of deployment, a mother may often not deploy with her unit due to pregnancy. Childbirth and the subsequent deployment deferral make mothers an exception to that duty. Likewise, in academia, as a faculty member you must "publish or perish" and in many other ways you are expected to demonstrate devotion to your job. Stopping the tenure clock or taking six weeks or more of maternity leave that keeps you out of the office, away from students, and delays your publishing – these are all ways in which mothers are exempted from the expectations of their jobs in academia to have children.

The stereotypes observed in this study are important to record and wrestle with, therefore, not simply because they hold power in and of themselves to shape attitudes and behaviors (often in negative ways), but they also reflect the inherent problems in the current structure of work/family policies themselves. It seems that work/family policies might often be implemented without taking into account how an institutional culture might react, and begin to shape norms and attitudes around those policies. Indeed, through an examination of two workplace-specific cultures, it appears that as long as their workplace policies are structured to exempt mothers from work for family needs in ways that other workers are not permitted to be exempt (or do not ordinarily opt to be exempted), then mothers will continue to struggle against stereotypes that paint them as workers who are (intentionally or not) shirking their responsibilities.

Conclusion

In this chapter, I have discussed the salience of one particular ideology – the ideology of domesticity – and its pervasive "ideal worker" norm in the context of two specific institutions. I have revealed how the ideal worker norm operates within these institutional settings, taking on distinct institutional flavors that are clearly internalized by *all* of the interview participants to some degree or another. Each participant reacted to these stereotypes in different ways, and rights-claiming was not uniformly affected by the internalization of these norms. However, the process of how these women gain legal knowledge about work/life balance policies in their workplaces becomes clearer. By understanding the pervasiveness of these norms, their origins, and how they are communicated within an institution and internalized by individuals, it becomes obvious that public policy – born within a particular historical and ideological context - can both assist with and complicate rights claiming.

This is a particularly difficult juncture at which to conclude this analytical chapter. Women in this study often cited the existence of work/life balance policies such as maternity leave and other "special accommodations" as having been essential to helping them stay in their jobs. As Louise, an associate professor at Oak University, put it: "I needed those policies… those policies saved my ass." Yet it is also clear from this analysis that the current status of work/life balance policies is also problematic. They rely heavily upon an ideology of domesticity, which perpetuates norms of women's caregiving. The persistence of this ideology within institutional policy then reinforces that ideology within workplace norms and cultures, which also creates additional tensions for women to navigate if they want to claim these policies. This analysis begs normative discussion about how policies might be better designed and implemented to take these ideological and structural complexities into account. In my final chapter I will take up this

question in more detail, using suggestions and commentary from the interview participants themselves about how workplace policies might better take these ideological difficulties into account.

At this point, however, it is important for me to continue with an analysis of the process of rights consciousness formation by turning to the topic of "instrumental design" – or the degree to which individuals act with agency to affect their own rights consciousness and the rights consciousness of those around them. Over the course of this chapter, several women mentioned discussing the presence of ideal worker norms in her workplace – and what that meant for her personal decisions about rights claiming – with her colleagues. In the next chapter, I spend time discussing this communication between individuals in depth, and what it means for the transmission of legal knowledge and the production of legal consciousness.

Chapter 6: Strategic Consciousness Networks in Practice

Introduction

Individuals gain their knowledge and develop their thinking about the law from institutional norms and structures (Marshall 2005; Albiston 2005; 2010; Hoffmann 2001), from picking up on and perpetuating ideologies that are prevalent in public discourse (Ewick and Silbey 1998; Sherwin 2000; Doyle 2003; Goodman 2005; Haltom and McCann 2005), and from personal experiences with the law (Sarat 1990; Gilliom 2001; Engel and Munger 2003). The evidence presented in the preceding chapters of this dissertation have thus far supported and enhanced the Law and Society literature that points to the role of institutional context and ideology in forming legal consciousness. What I aim to do in this chapter is to spend some time elaborating on the third dimension in which social interaction affects legal consciousness formation – instrumental design. Specifically, I introduce and develop a theory of how individuals strategically interact with others in order to instrumentally affect their own legal consciousness and the legal consciousness of others around them.

As I mentioned in the opening chapter of this dissertation, Haltom and McCann discuss instrumental design largely in the context of individual elites, who strategically seek to alter public discourse regarding tort reform to bend to their own political and ideological objectives. While this is the particular context for their analysis of the instrumental design element of their framework, I do not believe that Haltom and McCann view instrumental design as a dimension that is specific to elites. Rather, instrumental design is simply the individual dimension of these interwoven processes, and the notion of "design" indicates that an element of strategy, or calculation, is important to understanding how legal consciousness is formed.

In chapters two and three, it was apparent that the women interviewed in both case studies described taking part in a kind of informal, strategic networking process, which affected

the formation of their legal consciousness. This networking appears to have served not only to inform women's legal knowledge, but was sometimes also effective in providing emotional and professional support, and in improving women's likelihood of perceiving success in claiming their rights. I develop more fully in this chapter a theory of how individuals strategically seek to influence their own legal consciousness and the legal consciousness of those around them within a particular institutional and policy context. Moreover, I argue that the phenomenon of "strategic consciousness networks" is one that has been hitherto largely overlooked or ignored in Law and Society scholarship. Yet it is a phenomenon that, once better understood, can inform future research on legal consciousness formation, and offer important signposts for policymakers in thinking about how to affect social change within institutions.

Strategic Consciousness Networks: Evidence from the Case Studies

Since "strategic consciousness network" (or SCN) is an inductively derived concept, presenting the evidence from which this concept was derived is perhaps the best method of demonstrating the definition and functioning of the phenomenon. However, it will be useful at this point for me to provide a working definition of SCNs as I conceive of them in the context of my case studies. SCNs are loose, informal connections among actors within a workplace, created for the purposes of navigating workplace norms and policies more effectively. These connections are sometimes formed through actual relationships (or friendships) between individuals, and sometimes only through acquaintance and observation. These connections can be horizontal (among peers) or vertical (across ranks in a hierarchical structure). These networks are "strategic" in that they are workplace-specific and, most importantly, they offer those involved in these networks professional advantages. Moreover they are networks of "consciousness" where members gain and share a degree of knowledge of and interaction with the law.

In speaking with women in academia and the military, I detected three distinct patterns in the ways that SCNs seem to influence women's legal consciousness. First, these networks offer information, which builds women's legal knowledge and understanding of their formal rights, as well as the informal norms that are often just as important to understand and navigate in order to rights claim. Second, these networks offer emotional and professional support for women. Some women credit this support with motivating them to claim their rights, where they might otherwise have not mobilized, or to stay in their job, where they might otherwise have been temped to quit. Finally, these networks can focus collective resistance to policies or norms that individuals feel are unjust.

Providing Legal Knowledge

In both institutional cases, women described turning to other mothers in their workplace for *information and education* – both about formal policies available to them, as well as about informal norms in their workplace and how to navigate them. In the academic institution, for instance, Carol, a 39-year-old associate professor at Elm University, says, "I turn to my – my professional friends, my friends who are also faculty who have kids – I turn to them for so much. You know, they are my number one resource, I would say, in terms of just information." Kay, 32-year-old assistant professor at Elm, who is thinking about having children, agrees that asking other women is where she would begin to gain knowledge about her rights. "So what I would start by doing is like asking all my friends, you know, what's the policy in place."

Several women talked about going to colleagues first for information and clarification of the policies in place at their institutions. Lyla, a 45-year-old tenure-track assistant professor at Oak University, says that one colleague who was pregnant at the same time as her would engage her in conversations about university policies on several occasions. Lyla says that, importantly,

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"she and I spent a lot of time talking and she's the one who turned me on to the person in human resources that was my big advocate." This human resources contact indeed eventually was instrumental in helping Lyla to claim her right to stop her tenure clock, even though she submitted her paperwork to do so late, because, says Lyla, an interim department chair had not explained the policy well enough to her. Taylor, a 38-year-old assistant professor at Oak, also credits conversations with other mothers with providing her with important legal knowledge. Being from another country, Taylor says that she "wasn't aware of their policy" when she first became pregnant at Oak, and was "naïve" about what she would be entitled to. She became pregnant at the time that Oak was negotiating with its faculty union to implement its paid family leave policy, and she says that her colleague provided her with a lot of information about the process – since it would inevitably affect her. "I have a friend… who has a son who is twelve days older than my daughter and she's on the faculty senate, so she kept sending me updates about what was happening with family leave."

Constance, a 39-year-old in her first year as an assistant tenure-track professor at Elm, says that she sought out other mothers in her department before speaking to her department chair directly about her pregnancy, specifically because she wanted to gain an understanding about the informal norms of her department regarding pregnancy and work. She wanted to know what to expect when speaking to her supervisor, what the atmosphere in the department was toward new parents, and what strategies she should use in speaking with him. Constance says, "I asked some of the other female faculty in the department what I should do, and how I should handle it. And they said, just tell him – and tell him the baby's coming in June, and it won't affect your teaching, um – and you know he's really great don't worry about it."

Developing relationships does not seem to be a necessary aspect of SCNs. Some women

in the academic institution, for instance, did not necessarily learn about the informal culture of their department through *relationships*, but through *observation* of other women – a sort of non-relational form of SCNs. Paige, for example, a 49-year-old associate professor at Oak University, says that she had a colleague approach her to tell her that observing her experience had had a significant impact on her decision-making.

> "One woman… said to me, you've shown me how to do it. You know, you've shown me that it's doable…. And I had no awareness that I was doing that, you know, I had none whatsoever, but for some reason, just seeing me do it sort of helped her concretely imagine this possibility, which I just think is great, you know. Like, in the most sort of mechanical sense of cognitive priming… as opposed to actual mentorship."

In the military, the institutional structure of the maternity policy means that the information that women seek from their SCNs is somewhat different. In the academic institution, women are often entitled to very different things in terms of their leave time (depending on their rank and time of service). In contrast, as I explained in Chapter 3, all women in the military are granted a set 6 weeks of paid leave. "I guess it's just expected that a mom's going to get so much maternity leave," says Natalie, a 39-year-old Air Force Major. Natalie's networks with other mothers in the civilian world are her source of information for what other workplaces offer, and thus inform her feelings of contentment with what she is offered in the military.

> "I've heard that you're – I don't know the amount of time that you're allowed, but you – some people have to save up their paid time to be able to use that during their time off, or some people have to take it without pay, which to me would probably cause some people to come back – back to work sooner…."

Natalie says that because leave is such a "given" in the military, it is just the perceived "extras" that leave women things to network with each other about at work to gather information. "I guess it's just the amount of time that people talk about. Are they going to take extra time? Is that going to impact everybody else in the job because they want to take extra time?" Indeed, extra time, as well as whether or not to breastfeed, and how to go about requesting policies that

are not seen as being so routine, seem to be where military women seek out SCNs for information on formal policies and informal norms.

Despite the apparently straightforward nature of maternity leave in the military, however, more minor aspects of pregnancy and returning to work can be tricky to navigate, such as gaining permission to reduce hours, change duties or uniforms when pregnant, or getting space and time to breastfeed when returning to work. Penny, a 24-year-old former enlisted member of the Navy, says that talking with other women who have been through a pregnancy in the military is important, even if you do know what leave you are entitled to up front, because there is a lot of paperwork, special instructions, and other minor details to navigate, and it can often be confusing to try to do so without any guidance. "I feel like with the Navy it's a lot of… probably with all of the branches of the military – it's a lot of runaround, and you kind of have to figure out things as you go along. But – and um one of my friends actually – I was good friends with a couple people – and they had been through it, so they knew what I had to do, so I basically talked to them." Penny found out that she was able to have her hours reduced toward the end of her pregnancy, and change her combat boots for sneakers – both options that not every service member chooses to take.

Breastfeeding upon returning to work is another area where service women sought out council and information from SCNs with other service women who had experience with claiming their rights. For example, Eileen, a 33-year old Staff Sergeant in the Air Force, describes how another female she worked with who had breastfed informed her of her right to request space and time to pump at work. "She taught me, you know, tips, and she said you know these are your rights that, you know, you're allowed to go do this, and uh she showed me the

AFIs[20] [to have]."

Providing Emotional and Professional Support

Many of the service women interviewed talked at length about their experiences with fellow service women who stood up for them, mentored them, or offered them emotional or professional support. To be clear, emotional support in the context of SCNs is not solely for the purposes of making individuals within the network feel warm and fuzzy, though that may be an effect of this support. The key component of the support that these networks offer – what makes them *strategic* – is that they provide a *professional* boost. Perhaps due to the military ethos of "looking out" for one another, the military case seemed to be a particularly good source for discovering the importance of emotional and professional support produced by SCNs. Several of the service women described other men and women advocating on their behalf, or taking it upon themselves to act as advocates for other service members. Kelly, a 45-year-old sergeant first class in the Army with two children, says that many offices on her base are places where families feel comfortable helping each other out. She describes colleagues picking up each other's children, and others bringing their children into the office on occasion. "I mean it's just – the military's one huge family for the most part. Do we all talk about our children? Absolutely."

As was detailed in Chapter 3, several women discussed the significance of other service women advocating on their behalf. Chloe, for instance, described how Army nurses assisting her with breastfeeding while on a short-term deployment meant that she was not forced to cease breastfeeding early. Gail, a captain in the Marines also pointed out how important this advocacy and support was particularly important for women in the officer corps, because of their smaller ranks.

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[20] Air Force Instruction is one of several general types of instruction to which Air Force service members are subject.

In addition to horizontal professional support, however, military service women seemed to also benefit a great deal from emotional and professional support vertically, or across ranks – both from women and from men. Several women described supportive supervisors, who "looked out" for them during pregnancy and upon their return to work. Eileen, for instance, said that a higher-ranking colleague in the Air Force stood up for her on a number of occasions with her male colleagues when she needed to slip away from the office to breastfeed. Emma, a 28-year-old enlisted Marine, describes being enthusiastically supported by her supervisor. Emma says that her immediate supervisor's wife had a child around the same time as her, and that both her supervisor and his wife were in the hospital the day after she had given birth. "He took care of all the paperwork, right then and there" so that she didn't have to report to her base to do so. In addition, she describes him as "jumping through hoops to accommodate for me."

Other women also described actively advocating on behalf of their subordinates. Gabrielle, for instance, a 36-year-old Lieutenant Colonel in the Air Force with two children says that her status as an officer and as a mother means that women are always seeking her out for advice and support, and she is always ready to give it. "When folks do seek you out for your opinion or hey how did you manage this, or how did you do that – I always make myself available for that…. I try never to be judgmental." As mentioned in Chapter 3, even those service members of lower ranks, such as Sophia, a third-class petty officer in the Navy, discussed actively looking out for their subordinates who were pregnant and in need of advice or assistance.

Academic women also used SCNs to give and receive similar forms of emotional and professional support. Eve, a 33-year-old assistant professor at Elm explains that many women who are in tenured or tenure-track position at the university have formed an informal network,

where women offer advice on how best to navigate the modification of duties policy. Eve says that other faculty members are often pointed to her to ask for advice on applying for the policy, since she has done so twice. "I think it's just word of mouth. I think… we kind of network together. Or people have just pointed in my direction. We're a relatively small campus, even for as large as we are, it's a small community. And I think it's just word of mouth…." Carol, in particular, also often finds herself at the center of a network that helps faculty claim modification of duties for the first time. She notes that in recent years, this process has become harder for women at the university.

> "God these days, those kinds of conversations are like, how am I gonna get a decent modification of duties? And um, and the answer is, I don't know. Like, what I've been hearing… essentially, people submit a modification proposal, and it gets bounced back – you need to do more work. And they submit it with more work, and it gets bounced back. No, you need to do more work."

More and more, says Carol, women are turning to other women who have undergone the process for help and advice on how to have their proposal accepted. Barbara, for instance, a 36-year-old assistant professor at Elm, says that networking with other colleagues who had undergone the modification of duties application significantly helped her to develop a successful plan of her own.

> "The people who were particularly helpful were three of the colleagues who had done the modified duties prior to me, so I was able – they sent me their plans, and I was able to look at them and then… one of them in particularly – I sent her my rough draft, and she made comments about what I should change and so, in that process, I was able to get it really refined, and then when I sent it to the appropriate people from there, it got accepted without any changes needing to be made."

Where military service women and academic women seem to diverge most strikingly in their use of SCNs is in the degree to which emotional and professional support is given across ranks. As discussed in more detail in Chapter 4, the institutional hierarchies and rank are salient in both academia and the military, and these institutional factors have significant effects on how

women make decisions regarding their rights. SCNs are simply another element of legal consciousness formation where rank is salient for women both in academia and the military. As both Vicky, an associate professor (in chapter 4), and Jane, a Marine (in chapter 3), have observed, rights claiming is harder for those at the bottom of the ladder, and higher ranks correspond with greater opportunities for rights claiming.

It would seem, then, that academic women would make it a priority to look out for those in lower ranks in ways similar to those reported by military service women. However, the emotional and professional support that took place through SCNs at the academic institutions seemed to be more segregated by rank than the military. While full professors, associate professors and tenure-track assistant professors were all entitled to the modified duties policy at Elm, or the paid leave policy at Oak, visiting assistant professors and adjunct faculty at the academic institution were not entitled to these policies. Furthermore, tenured or tenure-track professors rarely made mention of this, and none said that they had taken any action to advocate for changing this. On the other hand, visiting faculty and adjuncts felt this distinction keenly, and repeatedly mentioned feeling a lack of professional support in this area from other faculty members. Valerie, a 31-year-old visiting assistant professor at Elm is the most vocal about this. She says that she felt that her department chair and other faculty in her department had been "supportive" when she got pregnant, but that the support had seemed hollow, in that it had not been useful to her professionally. She says,

> "I think that the chair of my department said something like, you know, ok I really encourage you, I really think kids are great, you should plan to have as many kids as you know as you possibly want, like, that's – that's really awesome and I'd be supportive of you making that a goal in your life or something like that. He didn't say *and* [emphasis hers] I'll go and fight for you on the faculty senate committee about this policy that I consider to be full of shit. So it was supportive… but it didn't go as far as, in an ideal world, as I think it could."

Valerie is in fact so fed up with what she perceives as the lack of support for mothers in academia, that she has decided not to pursue a tenure-track career. Her experience of a lack of mentorship and professional support has had an impact on her career choices. She discusses the lack of women at the top ranks of academia as both a failure of policy, and a failure of mentorship.

> "I think that women see these policies and they're like screw it – like, I don't want that job, and then they're all leaving. And then – so the girls who are in grad school… like all of my mentors in grad school were male. And none of them were like, hey, it sucks to be a woman in tenure, like have you thought about that? Because I don't think they had that experience. I don't think they knew."

The lack of professional support across these ranks in academia does not mean that professional support is not a key component of SCNs. Rather, the fact that Valerie and others like her *sought* these types of connections but were not able to find them in fact speaks to the important work that SCNs can do when they are present, and the significant impact that their absence has not only on individuals' legal consciousness, but also on their professional opportunities.

Providing the Building Blocks for Organized Resistance

Thus far, it is evident that women use SCNs both as a source of legal knowledge, and as a tool for emotional and professional support, both in academia and in the military. In some cases, however, these SCNs play a more active role in providing individuals an outlet for their resistance to policies or norms that are collectively seen as "unfair." To be clear, SCNs in this role are not yet organized resistance – they are not unions, or mobilized interest groups of any kind. Rather, I argue, SCNs can form the *foundation* for such collective action, by bringing individuals together in a looser, more informal way, that later may take a more organized shape.

An excellent example of SCNs performing this "resistance" function is evident in the

"back room" talk among faculty mothers at Elm University, particularly surrounding the modification of duties policy. Many of the faculty interviewed felt that the provost's office at Elm had been unfair or inconsistent in how it was approving plans to modify workloads. Charlotte, for instance, a 35-year-old assistant professor with a young child, says that she has been disturbed by the inconsistencies in how the policy is being applied across campus – inconsistencies that she has heard about through SCNs. She says these reports make her nervous about timing the birth of her next child.

> "It also seems to vary in terms of the modified duties as to what you can get depending on when you are due. So, I don't know who else you've talked to at the college, but – so we have two women in the department that were – that gave birth in November and they got relief of their teaching duties in the spring, so they didn't come back until August, so that's almost a full year. Then we have one right now who gave birth in April or May and has the fall off or modified duties and won't come back until January, but then we have others who come back, you know, a lot sooner. So I think it – sometimes it depends on the actual timing of the birth, which I'm kind of curious about. Compared with others across campus – I have a colleague in another department whose department chair was trying to get her to teach an express class, which would basically start like the day after her FMLA ends….I guess as someone who feels like I want to contribute to the college beyond my department…something about that feels kind of unfair, I guess."

Charlotte says that many other faculty members that she has spoken to share her perception of this unfairness, and the interview data bears this out. Alex, for instance, a 35-year-old mother of two, who is an associate professor, says that she was very happy with her own modification of duties plan, but that hearing recently of a colleague's struggles with the policy has angered her, and made her fearful for the next time she will need to use it. Alex gets emotional when talking about the fact that a friend and colleague of hers has been required to teach a new class upon returning to work after her maternity leave, and thus was not able to modify her duties to exclude teaching for that semester, as she had been able to. "Up until [my colleague's] deal, I would have sung praises about the process… But when I see something like that happen, it just – it's like, well then why is there not a standard policy across the campus?"

This widespread sense of unfairness – and, more importantly, the discussion of this sense of unfairness among women who are networking to help each other with their applications for the modification of duties policy – has developed into a kind of loose network of resistance to the policy. Nora, for instance, the 48-year-old associate professor at Elm who was introduced in Chapter 2, described "back room talk" that was taking place at Elm among female faculty about how best to get around the policy's requirements so as to get the "best deal".

Military service women also seem to use SCNs as a means of resisting – though unlike the academic women, this resistance focuses on military culture, rather than policy. As Gail, a 31-year-old captain in the Marines pointed out in Chapter 3, the heavily male-dominated nature of the military often causes women to come together to resist what can often be perceived as a misogynistic culture. Brianna, a 34-year-old E-4 in the Army agrees that female service members often feel the need to band together due to the male dominated culture surrounding them. This leads to a rise in what Brianna calls "smoke pit lawyers," – colleagues who share information about regulations and norms in order to try to assist each other in navigating what is often a difficult workplace culture. Service women rely upon SCNs not simply for information and support – but often connect with one another out of a *shared experience with* and desire to resist a male-dominated culture in their workplace.

Sometimes resistance to this culture means service women publicly speaking up for their female colleagues. Gina, for instance, a 36-year-old mother of two who is an E-7 in the Coast Guard, says that she has often tried to speak up for her lower-ranking colleagues when others have given them a hard time for being pregnant in the service. "[T]here's a real junior E-4, um, who I've kinda kept an eye on and just made sure that – that she was doing ok…. Her immediate co-workers are fine, but I've heard other guys in the office giving her shit about, um, you know,

taking time to get her pump, and stuff like that, it drives me crazy. So, you know, I always speak up when I hear it…." Liv, a 26-year-old Army E-5 says that she remembers a female colleague speaking up for her in a similar way. "Somebody said, 'you know, [Liv] just got pregnant to get out of the deployment,' and [my colleague] said, 'no she didn't, she just got back.'" In this case, Liv's colleague helped her to resist a common stereotype that military service women who become pregnant must often face – that they got pregnant in order to "get out of" deploying overseas. By standing up for her, Liv's colleague actively challenged this stereotype on Liv's behalf.

Theorizing Strategic Consciousness Networks

SCNs, as evidenced in these cases, are sometimes formed through relationships, and sometimes not. They are sometimes used to gather information, sometimes to gain emotional and professional support, and sometimes as a way to share a common desire to resist policy or cultures surrounding policies in a workplace. While not uniform in their impact, it is clear from these interviews that SCNs can have an important effect on individuals' legal consciousness. For this reason, further theorizing about the structure and function of SCNs in this formative process is important. I turn now to Law and Society and social movements literature to try to gain a better theoretical grasp on these networks, and the specifics of their role in forming legal consciousness.

Law and society scholars have long been interested in how institutional norms and structures can shape individuals' legal consciousness and rights mobilization. Internal organizational norms and processes can shape the discourse around rights and outcomes for rights claims in a significant way (Heimer 1999; Quinn 2000), and can create substantial obstacles to individuals who might want to claim their rights (Edelman et al. 1993; Marshall

2005). Edelman and Suchman (1997) observe that organizations are involved in a three-fold process of shaping understandings of the law, through facilitative, regulatory and constitutive legal environments that not only has an impact on individual legal consciousness, but also is part of an endogenous process of constructing law itself. As Edelman puts it, "[T]he state may help to constitute organizations through legal definitions of corporations, of shareholders, and of employees. But the constitutive environment is shaped more by organizational institutions than by the pens of legislators" (2004, 245). Workplaces as organizations, therefore, provide a context in which workers develop their legal consciousness concerning legislation that applies to their workplace identities – and especially that legislation which must be implemented and executed *within* the space of the workplace.

Institutions are clearly important providers of context – they are an important source that these women draw upon to develop their legal consciousness, and SCNs are necessarily a part of this institutional context. As we have seen, an important quality of SCNs is that they are institution-specific. Indeed, it is their institution-specific nature that differentiates SCNs in these cases from general public discourse. SCNs are not made with family members or friends outside of work – although women do seem to be speaking to these individuals for support and information. SCNs, however, offer institution-specific information, advocacy, and sites where resistance to institution-specific norms or policies can be voiced. After all, if a woman in the Air Force were speaking with a tenure-track faculty member at an academic institution, these women might indeed be able to provide emotional support for one another as working mothers, but the legal knowledge, support, and resistance to institution-specific norms or policies are unique to the intra-institutional SCNs that women developed in their respective cases. In other words, the *strategic* function of such a network depends on its institutional specificity in order to be of the

greatest effectiveness for the women utilizing it.

Yet SCNs are also necessarily *distinct* from institutional context. They exist within, and are influenced by institutional norms, cultures, policies and structures, but are *informal* networks that are not institutionally directed or created. Influenced by institutional context, SCNs provide a separate source of influence on individual legal consciousness, since they are sources of information (and misinformation) regarding institutions and how to navigate rights claiming in them, they are also sources of *support* from and *resistance* to the institutional context as well. Therefore, while SCNs may at times reproduce and reinforce institutional contexts, they can also be sites for resistance to these contexts.

While my specific use of the term "strategic consciousness networks", and the definition I derive using my interview data is unique to this study, scholars of social movements, Law and Society, and institutions have picked up on the informal strategic connections that individuals make in various ways. Catherine Albiston, for instance, in studying how individuals choose to claim their rights to FMLA, recognizes that individuals make strategic connections, and that these connections help shape individuals' consciousness and rights mobilization.

> "[R]espondents in this study indicated that the existence of legal rights prompted them to talk with others about their experiences in the workplace, to discuss whether their employers' actions were legitimate, and in some instances, to band together to resist their employer's reinterpretation of family and medical leave. In this sense, then, informal rights mobilization can be understood as a social, rather than individual, process of meaning construction as well as action." (2005, 43).

Similarly, Elizabeth Hirsch and Christopher Lyons document the importance of what they identify as workplace relationships in helping to form a higher degree of racial consciousness and perceptions of discrimination among non-white workers.

> "The increase in racial group identification and cohesion afforded by numbers makes discrimination a more accessible social construct for understanding negative events…. [T]he process of identifying experiences as discrimination is embedded in a larger

workplace context and set of relations that influence the likelihood of naming, and subsequently reporting, discrimination" (2010, 293).

Several scholars have observed that such informal strategic relationships, networks or connections are particularly important when allowing individuals who desire to express *resistance* to connect with others wishing to do the same. Ewick and Silbey, for example, argue that telling stories of resistance may lay the foundation for more organized collective action: "The narrative structure of these anecdotes suggests, if nothing else, that these stories had been told before to friends, acquaintances, coworkers, and family. In fact, sharing stories of resistance may be one means through which individual encounters with power become the basis for collective action" (1998, 220). Karen Brodkin Sacks (1988), in documenting the process of organization to collective action among Black women hospital workers, in fact traces how women's friendships and informal networking among co-workers led to more formal organizing. In this way, Sacks clearly connects what I call SCNs with more formal collective action – with SCNs serving as the potential foundation for such mobilization. More recently, Katherine Kellogg (2009) has found that what she calls "relational spaces" – places where reformers can comfortably talk and develop strategies of resistance to the status quo – can help to develop what she calls "relational efficacy" among reformers. This again emphasizes the importance of more informal connections in the workplace as the building blocks to more formalized resistance.

Significantly, though, SCNs are not *only* used as ways for individuals to voice resistance. They are also sources of information and support. Such a combination of functions means that they have the potential to affect women's legal consciousness in multiple ways, and to also impact their decision-making when it comes to rights mobilization. Phoebe Morgan (1999) documents the importance of relational connections for women's rights consciousness – and their decisions to mobilize their rights or not – in the area of sexual harassment. What is interesting to

note about Morgan's study, however, in contrast to this one, is that for Morgan's subjects, the most significant relationships for the development of their rights consciousness and decision to mobilize or not are *familial*. In contrast, women in this study are citing relationships within their *workplace* as significantly impacting their legal knowledge and decisions to rights claim.

This contrast highlights another important point – that SCNs, as they are formed in these cases – may be phenomenon that depend in large part upon the nature of work/family policy itself. In other words, something about work/family policies – as opposed to, for example, sexual harassment policy – means that women are more likely to reach out to others in their workplace to form significant SCNs. A number of possible explanations for this come to mind – for instance, the relative lack of stigma for claiming something like maternity leave, versus accusing someone of sexual harassment, or the fact that many more women who have claimed these policies are likely to be present in the workplace, as compared with other types of policies. One could also imagine, however, other policies where strategic connections may be important to make, and thus might make for important areas of future study on the existence and function of SCNs. For instance, hour and wage, workplace safety, or health care policies may all be areas with lower levels of associated stigma (in comparison with sexual harassment or discrimination policies), and with which a higher number of employees have engaged.

Conclusion

In this chapter, I have explored the concept of instrumental design, and focused in on the agency of individuals as a means of affecting their own legal consciousness and that of others around them. I provide evidence from in-depth interviews conducted at two very different types of workplaces to demonstrate that informal connections – or "strategic consciousness networks" – are an important source of information, support and resistance for women regardless of their

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institutional environment. However, I argue that these networks are necessarily *institutionally connected*, and that they can potentially lay the foundation for more formal collective action within the workplace.

In her book *Talking About Politics: Informal Groups and Social Identity in American Life*, Katherine Cramer Walsh (2010) makes an important observation that "public discussion" is something that scholars tend to assume takes place among "political professionals" – that political elites, the mass media and interest groups are where individuals primarily derive their ideas about politics, and their political understanding. Walsh argues that in fact scholars should not overlook the significance of *informal* interactions in shaping individuals' ideas and knowledge about politics, and provides some excellent in-depth ethnographic evidence of the power that informal interactions have in shaping political consciousness. Before Walsh, Melissa Harris-Lacewell (2004) also tied the formation of group identity and ideology within Black communities in America to the everyday interactions that individuals had with each other in social spaces – such as church or the local barber shop.

Identity and political ideology are both dynamic constructs that require social interaction for their formation, and these scholars highlight the importance of informal social networks in their development. So, too, legal consciousness requires social input. However, *what* that social input looks like is a conversation that perhaps needs to be more fine-tuned in Law and Society scholarship. My observation of SCNs, and their role in shaping women's legal consciousness in this particular area of policy, strongly suggests that Law and Society scholars should focus more closely on the significance of informal interactions in shaping legal consciousness. Scholars of institutional change, social movements and public opinion formation in American politics, and indeed Law and Society research have all touched on the significance of these interactions, but

the work of scholars such as Walsh suggests that this emphasis needs to be intensified. My contribution to moving this conversation forward is in observing and beginning to theorize about the existence and significance of SCNs in workplaces contexts, and their effects on legal consciousness formation.

Part IV

Chapter 7: Conclusion

Introduction

This is a dissertation that traces the complex ways in which individuals come to form their rights consciousness – what are the processes and institutional mechanisms that shape how people come to think about themselves as rights holders? Additionally, what aspects of an institution have bearing on how individuals think about their rights, and whether or not they choose to claim them? As I discussed in Chapter 1, better understanding how rights consciousness is *formed* leads to a better understanding of the efficacy of public policy in achieving its stated goals. In the case of work/life balance policies such as maternity leave, for instance, the intended goal may be to attract and retain qualified female employees, to support them in furthering their careers, and to provide some sort of "equal playing field" within their career trajectories. If that is the case, then it is important to find out how employees perceive these policies, and whether they are having their intended effects as women choose to claim them or not. Are work/life balance policies making the workplace more "equal"? Do women perceive them as having a positive effect on recruitment, retention and advancement of female employees? The women's stories presented in this dissertation paint a complex picture in answer to these questions. Women do perceive these policies as attempts to help them. But many women also point to ways that these policies in their current forms are sometimes *problematic* for their career advancement, workplace equality, and retention.

By focusing on three separate threads of this process of rights-consciousness formation, this dissertation illuminated some important insights about the relationship between the individual and the social in rights consciousness formation. Consequently, it has also made clear some significant points about the relationship between law and broader cultural norms. In the remainder of this chapter, I examine some of the themes engaged in chapters 4-6, and how these

findings overlap and speak to one another. I then discuss how public policy might adapt to better reflect these insights, keeping in mind that this dissertation has highlighted at many points the great limitations of the law in bringing about cultural change.

The Promise of Equality

Many feminist theorists have long scrutinized "formal" legal equality – a model of legal equality, which has as its priority women's assimilation into male-dominated spheres. This emphasis, which was necessary for early feminists to use in order to achieve *formal* equal treatment under the law (such as the ability to join certain sectors of education or the workforce), was in fact limited in its ability to bring women *actual* equality in areas such as the domestic and care workload, pay equity, and other aspects of women's day to day lives that were outside the reach of the law (Fineman 1995).

The argument for maternity leave sprung from a change in the feminist movement from one that called for formal legal equality of women to one that recognized the differences between women and men. Specifically, many feminists began focusing on the physical aspects of childbearing, and instead emphasized equality of *opportunity*. Christine Littleton refers to this as a transition from "symmetrical" models of sexual equality to "asymmetrical" models ([1987] 1991). Herma Hill Kay's arguments for maternity leave as a method of dealing with women's physical differences in childbearing are an example of this "asymmetrical" model: "During the temporary episode of a woman's pregnancy...she may become unable to utilize her abilities in the same way she had done prior to her reproductive conduct. Since a man's abilities are not similarly impaired as a result of his reproductive behavior, equality of opportunity implies that the woman should not be disadvantaged as a result of that sex-specific variation" ([1985] 2002, 328). Still more feminist theorists take an even more radical approach, arguing that this focus on

the public sphere is problematic, and that it is the undervaluing of *private* work, such as caregiving, that is the true source of inequality (e.g. Elshtain 1993; Okin 1991; Kessler 2001). Arlie Hoschild's work in particular highlights the significant impact of the "leisure gap" and the additional affects of domestic work on women who work outside the home (2003 [1989]; 2001 [1997]).

While all of these theoretical approaches have value in tackling the problem of women's inequality in the workplace, this dissertation points out that the simple goal of achieving women's increased *presence* in the workplace – and particularly at higher ranks – is an important one. In both chapters 4 and 6 interview participants emphasized the significance of having other women in their workplace to turn to for help, advice and support. In particular, having women in places of power made an important difference to several of the women in this study in their ability to rights claim. As the discussion in Chapter 4 highlighted, while rank can be a constraining institutional structure for many women, it can also enable resistance to pervasive norms within an institution. Women in higher ranks in the workplace, therefore, who can breastfeed in class without fear of reprisal, or speak up on behalf of lower-ranking colleagues when their peers invoke hurtful stereotypes, are not simply key to helping other women claim their rights. The presence of women in these roles enables a process whereby rights consciousness within institutional settings can *change*. If institutions are discursively constructed, then individual understandings of norms and of policies themselves and how they are to be implemented can be fundamentally affected by other individuals with institutional power taking it upon themselves to affect that discourse. In this dissertation, I call attention to several instances where women cited the normalizing effects of other women (and men) having "gone before them" in their workplaces – claiming work/life balance policies, or challenging

ideal worker norms – and claiming that these actions were instrumental to their own rights consciousness formation.

Women continue to represent a minority of higher ranks in both academia and the U.S. military. In academia, according to an AAUP report, women comprise 46% of all full-time faculty, only 28% of full professors and 36% of academic deans (Curtis 2011). In their study of the impact of children on academic careers, Mason et al. found that women are 21% less likely to get promoted than their male colleagues (2013, 84). The story is even starker for women in uniform seeking to gain the highest ranks in their career path. Women in all branches of the military make up just 16.6% of all officers, and just 7.1% of all top positions (generals and admirals). In the Marine Corps, there is just one female general (CNN 2013). While the number of women in higher ranks in both of these institutions has improved in recent decades, this shortage of women in places of power has real consequences today for women's rights consciousness and rights claiming, as the stories in this dissertation have shown.

As Chapter 5 highlighted, however, the promise of formal equality for women in higher ranks within the workforce is fundamentally limited by powerful ideologies that still dominate American discourse around work and family. Ideal worker norms overshadow women's legal consciousness about work/life balance policies in both academia and the U.S. military. Women in both institutions were attuned not only to the notion of an ideal worker construct within their institutions, but also to stereotypes that painted mothers as unable to fit within those constructs. Faced with these stereotypes, mothers in this study often found it hard to be taken seriously in their careers, which some felt affected them professionally, particularly in their career advancement. Women "leaking" from career pipelines because of childbearing "choices" or constraints have been cited for the lack of women in advance positions in many professions

(Mason et al. 2013; Townsend 2013; O'Brien Hallstein and O'Reilly 2012; Thornton 2005; Haas 2004; Hewlett 2002; Vinokur et al. 1999; Waldfogel 1998; 2001; Cooney et al. 1989). Yet few studies have investigated the harm caused by ideological constructs in and of themselves on mothers' career advancement.[21] While the purpose of Chapter 5 was not to provide a systematic study of the effects of ideal worker-inspired stereotypes on women's career advancement, it does provide evidence upon which to base such future research. In this dissertation, I link individuals' rights consciousness and rights claiming with conceptions of the ideal worker. Future scholarship, therefore, is needed on whether this ideological construct might be linked with other facets of women's equality in the workplace.

The discussion of the ideal worker norm and its related stereotypes in Chapter 5 highlights the limitations of women's formal equality in an additional way. The presence of women in the higher ranks of these institutions is not enough to combat norms. These women must also *actively challenge* these norms in order for their presence in the higher ranks of the workplace to make a difference to institutional norms or individuals' rights consciousness and rights claims. If women in the higher ranks of a workplace also ascribe to ideological constructs such as the ideal worker norm – and many interviewees pointed to instances of their female superiors doing so – then their mere presence in these positions is not enough to change cultural expectations. Indeed, a female supervisor's adoption of such ideology may even fuel its cultural power further. If a woman is seen to be perpetuating stereotypes pertaining to other women, then the justifications for that stereotype receive a greater degree of gravity.[22] This argument is in

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[21] Notable exceptions include Williams 2009 and Kelly et al. 2010.

[22] Pheterson's (1986) article offers an excellent discussion of the concepts of "internalized oppression" and "internalized domination" in the contexts of race, gender ethnicity and class. "Internalized domination perpetuates oppression of others and alienation from oneself by either denying or degrading all but a narrow range of human possibilities" (148).

tension with recent popular discourse, encouraging women to *Lean In*[23] (Sandberg 2013).

Internalizing and perpetuating workplace norms that are distinctly masculine in order to "get ahead" may indeed gain some women, such as Sheryl Sandberg, individual success. Yet if this continues on an individual basis, nothing changes systemically. Women must still conform to gendered expectations in the workplace.

The Limits of the Law

Perhaps the biggest contribution of the discussion in Chapter 5, however, was to highlight the limits of public policy in bringing about social change. My analysis demonstrates how stereotypes connected to cultural norms can be reinforced by policies aimed at combatting those very same norms. This is a normatively problematic observation for policymakers and those interested in affecting social change regarding women and their roles in the workplace, because it underscores the difficulty of taking ideology and culture into account in public policymaking. Additionally, policies such as maternity leave, breastfeeding accommodations and other work/life balance policies are cited by many women (including those in this study) as instrumental to their workplace retention. How, then, can work/life balance policy reconcile this tension between its complex relationship with entrenched ideology and its intended positive effects on women's workplace equality?

Several of the participants in this study made the same connections between the stereotypes that surrounded them as mothers in the workplace, and the policies aimed at improving their work-life balance. These women primarily cited the inherently *gendered* nature of work/life balance policy as the root of the problem. As Jane, a 29-year-old captain in the Marines points out,

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[23] Sandberg's book exhorts women to "be ambitious in any pursuit" and to work on "internalizing the revolution" (2013, 11).

"[I]f you're a pregnant female marine, then you're, you know, everyone knows you're taking maternity leave, so you are – you're going to be away from work. You made a personal choice that is going to take you away from your job for a certain amount of time. Whereas for a male marine who has a pregnant spouse, it is, uh, a show of virility. Uh, that's kind of a – a conflict."

In searching for answers themselves to this tension, a few of the interview participants asked: what if work/life balance policies were aimed at *both* men and women equally? Some women pointed to an increase in recent years in men's interest in child-rearing, arguing that work/life policies aimed at women do not just cause problems for women, by stereotyping them as non-ideal workers. In fact, such norms are even harder for men who are interested in work/life balance to overcome, since at least for women there is an institutional expectation that they will be bad workers. Men, on the other hand, in choosing to take these policies are aware that they are actively choosing to be viewed negatively. Other women cited medical, emotional or cultural needs that men have to care-give, arguing that they are similar to women's needs. "Our dads need their time with their infant children, says Danielle, a visiting assistant professor at Elm University. "Especially those critical first couple of months."

Paternity leave is in fact available under the Family and Medical Leave Act. Additionally, at both the academic institutions I studies as well as in the U.S. military, many possible options existed for men to take advantage of work/life balance policies. For instance, in both academic institutions, men were eligible to stop their tenure clocks upon the birth or adoption of a child. At Oak University, men are equally eligible to claim the paid family leave policy, and at Elm, they are also eligible to modify their teaching duties in the semester following the birth or adoption of a child. In other words, at the academic institutions, men and women had few differences in terms of the work/life balance policies at their disposal.

In the U.S. military, the story is somewhat different. Since 2008, male service members in

all branches of the armed forces are eligible for 10 days of paternity leave upon birth or adoption of a child. Many of service women who took part in this study were married to men who also serve, but most of these women had given birth prior to the introduction of paternity leave. A few, though, did mention that their children's fathers had been afforded the leave, but had mixed feelings about it. Some women claimed that it was not enough time for men to have off, especially when considering that women had six weeks, whether for birth or adoption of a child. Others complained that it was not being implemented correctly. Natalie, for instance, a 29-year old Air Force Major, says that her husband could not get his leave straight after their youngest child's birth.

> "He didn't get to take it – it was like backdated to him. I think with men they'll be like, 'you can get it, but you can't have it now…' we didn't get to use it when he was actually born. It was maybe a month later, and I don't know if that's the correct way or not, but at the time that's what we did. I mean it would be nice if it was, you know, the two weeks once the baby is born and then the dad can go help too."

Sophia, too, a 24-year old seaman who was not married to her baby's father, was frustrated because he was told he could not have paternity leave, because they were not married. "They would not give it to him, because he's not married to me. They – the ship said he wasn't entitled, though the regulations – they do say that he can have paternity leave, whether he's married or not. So, but it's harder for a father who's not married to the mother to fight for paternity leave."

Even when men are not restricted by differences in policy or difficulties in claiming work/life policies such as paternity leave, however, men and women do not access these policies equally. The problem, say women in this study, and studies elsewhere, is not that men do not have access to work/life balance policies like paternity leave – it is that, even when they do, men do not take it. According to the Bureau of Labor Statistics, women were 30 times more likely to

cite birth or adoption of a child as their reason for taking leave in any given week in 2011, even though they were less than 4% more likely than men to take leave from work overall (BLS 2011). This discrepancy can serve to exacerbate the stereotype that women are not ideal workers, when men have leave available to them and are not taking it, but women are. The fact that maternity leave is so often conflated with disability – or sick leave – only serves to compound this problem. When asked about whether they thought leave was important, most of the women brought up the temporary physical disability that childbirth causes as a justification for maternity leave policy. However, women who adopt children, or men who wish to take advantage of family leave policies aimed at fathers, are not able to justify their leave-taking in these terms.

One solution, some women suggested, was to make work/life balance policies like family leave not just equally accessible, but mandatory. The argument is that this might help to diminish the problems associated with men opting out of the leave, and would also help to combat the image of mothers as choosing to shirk their workplace responsibilities while fathers do not. "[I]t would be great if it was mandatory for both men and women so that it wouldn't affect… people by gender," says Mandy, a member of staff at Elm University, and 34-year-old mother of three. "I think, you know, if being the dad in the military, they don't have to decide to take their leave it's – it's actually just given to them to – kind of two free weeks and then they can help everyone adjust," agrees Natalie, an Air Force major and mother of five.

As a country, Sweden has attempted to create policy that does just this, mandating that men take at least two months off during a child's formative years, and providing eligibility for much more time should a father choose to use it. The resulting statistics suggest that such culture-conscious policies – while falling far short of achieving total gender equality – are pushing Swedish society in the right direction. Eighty-five percent of Swedish men take paternity

leave, and women's participation in the workforce is around 72% - compared with around 60% for women in the U.S. (Bennhold 2010; Hansegard 2012; Theodossiou 2012).

Sweden's policies, while moving their society in a positive direction, have not secured total workplace equality. For one thing, the mandatory time that Swedish men must take is still less than most women in Sweden take off for caregiving. Additionally, women's workforce participation is still much lower than men's. The mandatory element of the policy may therefore solve some problems – such as men not being expected to take leave at all for childcare, but it has not fully dealt with the unequal caregiving expectations of men and women. Additionally, Sweden's approach does not take into account the discrepancies that occur between those men and women who have children and those that do not.

Another problem that mandatory leave does not fully address is the physicality of childbearing that women and men experience differently. Marie, a visiting assistant professor who wants to have children but does not feel she can yet, explains why this may be, noting,

> "I think part of it is because in many institutions, their policy about getting women into the academy is to assume that women are like men and treat them like men too – and there's something to be said for gender neutrality. But I think it also fails to address the fact that…anatomically… pregnancy and childbirth create a blackout date that exists for women and not so for men, no matter how generous your leave policy is for new fathers."

Paternity leave, even at its most generous, therefore, has never fully addressed the connection between ideology and policy in the area of work/life balance. Even in Sweden, where public policy has tried to engage cultural caregiving expectations in perhaps the most comprehensive way thus far, policy has never fully eliminated the problem of the ideal worker norm. Furthermore, it is unrealistic to expect workplaces in the United States to adopt similarly generous work/life policies in the near future. Yet this recognition of the limitations of current work/life balance policies must not be confused with a critique of the *initiative* to bring about

equality in the workplace for women through public policy. While policy is indeed *limited* in its ability to bring about social change, is it far from *futile*. The rights to maternity leave, to express breast milk at work, and in other ways to make balancing work and family life possible, have improved the daily lives of many working women in America – and have made staying in the workforce possible, as several women in this study have attested. These rights represent an important step forward for women's equality, and formal, legal recognition that something must change about the historical exclusion of mothers from the workforce. As Patricia Williams (1987) points out, "rights" is the "magic wand of visibility and invisibility, of inclusion and exclusion, of power and no-power." However problematic these policies may be for women, their existence represents recognition on the part of a company (or, in the case of FMLA, the country as a whole) that mothers are valued as employees too. Any suggestions for policy change, therefore, must take into account the lived experiences of the women the policies are meant to help, and recognize both the harm and the good that these policies are doing in their current form. The policies themselves have been important tools for individual women in improving their personal circumstances, and this must not be undervalued. However, policy has been must less effective at bringing about *systemic* changes to the way that work and family are imagined and structured in American society.

Towards Solutions: Changing Workplace Discourse

I argue that the best way forward for work/life balance policy is to consider more closely the findings in Chapter 6. Workplaces are discursive institutions, and the key to changing workplace culture lies in changing institutional discourse. There is an important caveat here, however. As we have seen, the ideal worker norm is not a workplace-specific ideological construct, but rather something that is much broader and more pervasive in the American psyche.

I am therefore not suggesting that a few simple policy fixes will bring down generations of ideological norms. I am, however, arguing that social change starts with changes in discourse. Who is involved in the conversation about work and family is changing as the makeup of the workplace has gradually changed to include more women and mothers, and these individuals have the opportunity to affect social change by changing the discourse about the ideal worker. This is not an easy norm to tackle, as this dissertation has shown, but it is possible for institutions to better support those individuals who choose to challenge the idea that mothers are not good workers. In Chapter 6, we saw women strategically networking with others in their workplaces in order to form their own legal consciousness and to rights claim more effectively. In other words, these women are finding solutions to some of the issues with policies through these connections – perhaps some of the best policy solutions, therefore, will take these strategies into account and find ways to support them.

In *Making Rights Real* (2009), Charles Epp documents the effects of court-led reform on bureaucratic practices, trying to understand how legal tools can play a part in helping activists to push forward social change. He discovers that practices such as programs to ensure strict implementation and compliances with policies – such as training programs and oversight bodies – drastically improved the effectiveness of policies aimed at social change. The women interviewed in this study discussed again and again how such measures aimed at improving policy *implementation* would help to negate the effects of the stereotypes they find themselves combatting. Much of the problem with institutional culture, argued some of the interview participants, has to do with a lack of knowledge and understanding of the challenges that working mothers face in claiming their rights – whether these challenges are with formal policy claims or informal norms. The significance of educating the workforce about these policies, and

their intended effects, therefore, was a recurring theme among the participants - particularly, with women in the military.

Service members in all branches of the U.S. military receive a great deal of regular training. Gina, a Chief Petty Officer in the Coast Guard, believes that these training requirements are a good place for the military to start changing the conversation about pregnancy and family in the services.

> "I think that when we are doing our annual required training and things along those lines that – that, um, sensitivity as far as the – the issues of, um, pregnancy in the workplace, um, being a – you know, a working mom, and things along those lines, um, should be addressed, and if somebody is, um, you know, it should be similar to workplace harassment, or something along that lines. Um, they should take a very strong stance."

The training alone is not enough, Gina argues – taking a "strong stance" is also important, in order to demonstrate that the military is serious about changing its workplace culture. This argument demonstrates Gina's faith in the power of training to change institutional discourse, but only if the language of that training forceful enough to convey that this is an issue the institution is serious about.

Once again, the significance of rank became salient when interview participants talked about the importance of combatting the ideal worker norms with education in the workplace. Many women argued that individuals in leadership roles, who are aware of the problems that working women face, can be particularly effective. Emma, a 28-year-old corporal in the Marines, says that her experience with having her 2-year-old was made significantly easier by the support she felt from her immediate supervisor, who was a father, and whose wife was pregnant at the same time as Emma.

> "I honestly think that a lot of how he was was because…he was more – a lot more sympathetic because he'd already been there. You know, as opposed to somebody who has never had kids before and really doesn't know what's going on with the mom or just

with the pregnancy in general. I just think that really has a lot to do with it"

Brianna agrees that educating leadership in the military about the needs and rights of mothers would make a significant difference to how stigmatized they become. She thinks the military should "educate leaders more on what to expect you know… yes we're girls…but we're not, you know, we're still soldiers. We're still out here doing the same exact thing….Yes, you know, we ovulate and we do all that other stuff too, you know, so you need to be prepared on how to deal with us. I don't think a lot of them are."

This proposal that educating institutional leadership as a means of combatting ideal worker norms – and the stereotypes of women that comes out of them – takes into account the findings in all three analytical chapters of this dissertation. First, it recognizes that changing *conversation* in the workplace is crucial to more individuals claiming their rights to work/life balance policies, and to those policies having their intended effects. Second, it recognizes the salience of rank within an institution, and the power of higher-ranking individuals to affect institutional discourse disproportionately. Finally, it recognizes that leadership plays a key role in the strategic consciousness networks (SCNs) that individuals form in order to raise their rights consciousness and when deciding whether or not to rights claim. Institutional leaders can provide important *informal* support to individuals within workplace environments, encouraging the good work that SCNs do in increasing rights consciousness and rights claiming, and playing an important role in challenging ideal worker norms.

The problem, of course, with the solution of better educating leaders to challenge ideal worker norms within their workplaces is that it requires a genuine institutional commitment to changing these norms. The reality is that most workplaces are founded on capitalist goals, and the ideal worker is a construct that is fundamentally linked to capitalist ideology. While many

institutions pay lip service to ideals of equality and advancement for mothers (and parents) in the workplace, the reality is that most institutions and the individuals who lead them have a vested interest in perpetuating the ideal worker norms within their institutions, because these norms make workers produce – whatever the personal costs to individuals. In the past, what caused American workplaces to change their priorities were not the workplaces themselves, but calls from society as a whole to better improve working conditions.

The real possibility for change, therefore, lies within the SCNs that individuals are already forming around work/life balance policies in their institutions in order to better navigate and to challenge institutional norms and policies. Individuals who seek out others in order to shape their own rights consciousness and those of others around them hold the power to change institutional discourse – particularly those in leadership positions. Public policy that creates rights for mothers in the workplace, recognizing them on paper as important citizens – even if that recognition is, at times, hollow – is an important step forward. But these rights are only one piece of the puzzle in improving the lived experiences of working mothers. The women in this study have sought ways to join together with other parents and supportive individuals in their workplaces to claim their rights and to exercise resistance to ideal worker norms and the stereotypes that arise from them. It is in this loose collection of individuals – the building blocks of collective resistance – that the real hope of social change lies for working mothers.

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