
**CAN ALL WOMEN BE PHARMACISTS?: A CRITIQUE OF
HANNA ROSIN’S *THE END OF MEN***

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INTRODUCTION

Hanna Rosin’s book, *The End of Men*, provocatively argues that the dominance of women has arrived.¹ The new economy, Rosin contends, values women’s skills more than those of men, and women are now triumphing in education, management, and other spheres. She further posits that whatever inequality persists is the product of women’s choices – tradeoffs women make to secure the life they desire. Things have changed, and there is no more need to whine about the old days, Rosin concludes. A provocative thesis, to be sure, but we could not help but wonder whether it was true, and so one of us (Michael Selmi) embarked on his own mini sociological experiment by observing the day of his departure for the Conference at which this Essay was presented to see just how much things had, or had not, changed.

In the morning, I dropped my children off at the bus stop where there were three other children waiting with their mothers, all of whom had advanced degrees (the mothers, not the children) and who would then return home to wait for their children’s day to end. The children’s bus would take them to their middle school where together they would spend the day with fourteen

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¹ HANNA ROSIN, *THE END OF MEN: AND THE RISE OF WOMEN* (2012).

different teachers, two of whom were men, and one of those a physical education teacher.²

As I drove to my office, I passed a fire station. If I were to have stopped to look inside, I would likely find all men, and almost certainly all white men.³ Nearby I passed a library, and if I had gone inside, I would have found all women, unless I was looking for the director, who is a man. Continuing my drive, I encountered road construction crews and, while slowly moving past, I looked to determine the gender composition and I saw one woman who was directing traffic. For some reason the construction sites remind me that we have work that needs to be done at home, and if I were to have called a plumber, there is a ninety-nine percent chance that the plumber I reached would have been a male, and the same would be true for the electrician we also happen to need.⁴ If I were to call for someone to clean our home, however, I would have to look hard to find a man (unless I wanted our yard cleaned, in which case it would almost certainly be a man).⁵

At the law school, if either of us were summoned to the Dean's office, we would first encounter an army of assistants with various titles but all of whom are women; entering the inner sanctum of the Dean's office, we would likely find only men. And if we were looking for someone to complete a men's

² The percentage of male teachers has declined significantly from the 1970s. This issue is discussed further *infra* Part I.C. For a discussion of the decline in the number of men in the teaching profession over time, see Richard Ingersoll & Lisa Merrill, *The Changing Face of the Teaching Force*, @PENN GSE: A REVIEW OF RESEARCH, Fall 2010, at 1, 8-9, available at http://www.gse.upenn.edu/review/sites/gse.upenn.edu/review/files/rev-GSEJournal10_Fall%20FINAL.pdf.

³ Nationwide about 3.6% of firefighters are women. *Firefighting Occupations by Women and Race*, NAT'L FIRE PROTECTION ASS'N, <http://www.nfpa.org/itemDetail.asp?categoryID=955&itemID=23601&URL=Research/Fire%20statistics/The%20U.S.%20fire%20service> (last visited Feb. 24, 2013). In the county where I live, Montgomery County, Maryland, about 100 of the 1200 paid firefighters are women. Danielle E. Gaines, *Montgomery County's First Female Firefighter Retiring After Three Decades of Service*, GAZETTE.NET (Sept. 28, 2011), <http://www.gazette.net/article/20110928/NEWS/709289528/1081/montgomery-county-s-first-female-firefighter-retiring-after-more-than&template=gazette>.

⁴ Based on data compiled by the Department of Labor, approximately 1.3% of plumbers and pipefitters are women, along with 0.7% of heating, air conditioning, and refrigeration installers and repair workers, and 2.2% of electricians. See *Nontraditional Occupations for Women in 2009*, U.S. DEP'T LAB. (Mar. 2010), www.dol.gov/wb/factsheets/nontra2009_txt.htm#um93bus_CSo. A recent report noted that "[t]hirty-three years after the federal government established the target of 6.9%[,] . . . women are less than half that target at 3.27% of the construction trades workforce." SUSAN MOIR ET AL., *UNFINISHED BUSINESS: BUILDING EQUALITY FOR WOMEN IN THE CONSTRUCTION TRADES 7* (2011), available at http://scholarworks.umb.edu/lrc_pubs/5/.

⁵ Bryce Covert, *Women Need an Increase in the Minimum Wage*, FORBES (July 24, 2012, 10:18 AM), <http://www.forbes.com/sites/brycecovert/2012/07/24/women-need-a-raise-in-the-minimum-wage/>.

basketball team, we could safely wander into any of the many constitutional law classes where ninety percent of the professors are men, but would be sure to avoid family law where women dominate.⁶

Before heading to the Conference, I went to my daughter's school for a track meet where there was a lot of activity going on. Boys were playing a baseball game nearby while girls played softball. In the cross-country race, the boys and girls ran separately, and there were two soccer teams playing nearby with very young kids (maybe ages five or six) running in circles, as they do at that age, but doing it on separate boys' and girls' teams, conveying the impression that even when they are doing the same thing, boys and girls must do it differently.⁷

At the airport the TSA agents presented me with one of the first integrated work forces I encountered all day – approximately two thirds were men, but the women were present and seemingly performing the same tasks as their male counterparts. On the plane, all of the flight attendants were women, though there is little question that this is an area that men have infiltrated.⁸ When I was leaving the plane, the cockpit crew that was saying goodbye was all male and, in fact, I can only recall one instance when I have flown that the voice attached to “this is your captain speaking” belonged to a woman.⁹

⁶ In 2007 and 2008, the last years for which numbers are available, 19.8% of Deans were women, while 77.6% of the constitutional law professors were men, with women teaching 61.6% of the family law classes. See ASS'N OF AM. LAW SCH., STATISTICAL REPORT ON LAW FACULTY 2007-2008, at 18, 29, 31 (2008), available at <http://www.aals.org/statistics/report-07-08.pdf>.

⁷ It is hard to know what effect sex-segregated sports have on children, but there is little question that they can send a message of difference and inferiority particularly to young girls. For helpful discussions, see EILEEN MCDONAGH & LAURA PAPPANO, PLAYING WITH THE BOYS: WHY SEPARATE IS NOT EQUAL IN SPORTS (2007), and MICHAEL MESSNER, TAKING THE FIELD: WOMEN, MEN AND SPORTS (2002). Messner contends that youth sports are organized on essentialist views of boys and girls and can send strong signals that urge gender conformity. See Michael Messner, *Gender Ideologies, Youth Sports, and the Production of Soft Essentialism*, 28 SOC. SPORT J. 151, 151 (2011).

⁸ As of 2007, 73.6% of flight attendants were women, down from 80.7% in 1980. See Rogelio Saenz & Louwanda Evans, *The Changing Demography of U.S. Flight Attendants*, POPULATION REFERENCE BUREAU (June 2009), <http://www.prb.org/Articles/2009/usflightattendants.aspx>.

⁹ Approximately 4.3% of pilots for hire are women, according to data maintained by the Department of Labor. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, REP. NO. 1040, WOMEN IN THE LABOR FORCE: A DATABOOK 41 tbl.11 (2013), available at <http://www.bls.gov/cps/wlf-databook-2012.pdf>; see also Mireille Goyer, *Why So Few Women Pilots?*, AVWEBINSIDER (Sept. 27, 2010), http://www.avweb.com/blogs/insider/WhySoFewWomenPilots_203344-1.html. It has long been asserted that the reason for so few women was the fact that most pilots came from the military, but that is no longer true. See Susan Carey et al., *Airlines Face Acute Shortage of Pilots*, WALL ST. J., Nov. 12, 2012, at B3.

As I think back on when I began teaching almost twenty years ago, I wonder how much things have changed, and the answer seems to be not so much. I did not have children back then, but if I were to have borrowed some, the daily school ritual would have been nearly identical, with the possible exception that my children now have a female school principal (and with the other exception that when I first started teaching at the University of North Carolina Law School, I had a female Dean). The composition of the firefighters, police officers, construction workers, gardeners, housekeepers, plumbers, electricians, teachers, pilots, and flight attendants would pretty much look like they do today.

No one can deny, or should deny, that we have made progress on issues of gender equity over the last three decades, but progress should never be confused with victory. When one looks out into the workplace, or the schools, the strongest vision remains one of difference rather than equality, and the same is true when we dissect wages; women continue to trail men in most fields and in virtually every field over time.¹⁰ We might speculate about why this is, but it seems clear that to declare that women are not just catching up but have triumphed is strongly contradicted by the data.

Rosin's book does not purport to offer an academic discussion but is based instead on personal observations, including a sojourn to Alabama, and selective use of data. She also explores more than just issues of workplace equality, including the freedom she sees women exploring in college in what she describes as the hookup culture, but we will concentrate our Essay on the workplace and recent data. The workplace has been the traditional focus of gender equality because, for better or worse, it remains a place of status, power, and financial security, and has also been a traditional source of inequality for many women. One could certainly contest the supremacy of the workplace as a defining image of equality, but this Essay will take that issue for granted and demonstrate that Rosin has wildly exaggerated the progress women have made. She also curiously emphasizes trends – such as women's attendance in college or law school – that have been in place far too long to qualify as trends, leaving us to wonder what might motivate these persistent Pollyannaish claims of the end of gender inequality.

At the end of this Essay we will offer some thoughts on why these claims continue to be recycled, and why they are met with initial enthusiasm by what appears to be a receptive audience. But first we will focus on three responses to Rosin's arguments: (1) the notion that the 2007 to 2009 recession marked the end of male dominance in the workplace; (2) the claim that women's achievements in college and graduate school signal a break in the old system of male supremacy; and (3) that there is diminishing persistence of gender segregation in the labor market. Finally, we will offer some thoughts on why there is a desire to see existing relations as the product of choice or fairness

¹⁰ This issue is discussed *infra* Part I.B.

rather than social norms and discrimination, or, most likely, some combination of all of the above.

I. ROSIN'S EVIDENCE FOR THE RISE OF WOMEN

A. *The Recession*

Part of Rosin's argument for the ascendancy of women has to do with their relative performance during the recent recession, which according to the National Bureau of Economic Research lasted from 2007 to 2009.¹¹ As is well documented, men suffered greater job losses during the recession as many traditionally male industries, in particular construction, declined substantially in the weakened economy.¹² During this time, men suffered greater job loss and stronger erosion of their wages than women. In fact, this has been true of most recent recessions and primarily reflects not only the evolving nature of the economy but also men's superior economic position, which means they have farther to fall when the economy sours.¹³ But to say that the recession demonstrates the triumph of women is to stop the movie at the midway point.

Since the end of the recession, men have fared significantly better than women. *Bloomberg* reported that men had obtained nearly ninety percent of the jobs during the first years of the recovery; this included some men moving into traditionally female-dominated fields such as retail, health care, and finance.¹⁴ Men also saw a bump in their wages during this time and the relative gains women made during the recession have all but been eliminated during the recovery.¹⁵ Rosin also missed what should have been obvious – recessions and economies tend to be cyclical, and the changes she highlights were likely temporary rather than structural.¹⁶

¹¹ Press Release, Bus. Cycle Dating Comm., Nat'l Bureau of Econ. Research 1 (Sept. 20, 2010), available at <http://www.nber.org/cycles/sept2010.pdf>.

¹² See, e.g., LAWRENCE MISHEL ET AL., THE STATE OF WORKING AMERICA 340-41 (12th ed. 2012) (discussing the greater impact of the 2008 recession on male employment).

¹³ *Id.* at 340 (“During downturns . . . unemployment rates among men tend to increase much more than among women.”).

¹⁴ Lorraine Woellert, *American Men Dominate Job Gains Taking 88% of Spots*, BLOOMBERG (Apr. 3, 2012, 2:30 PM), <http://www.bloomberg.com/news/2012-04-03/american-men-dominate-jobs-recovery-taking-88-of-spots-economy.html>; see also Don Lee, *Newly Created Jobs Go Mostly to Men*, L.A. TIMES (July 15, 2012), <http://articles.latimes.com/2012/jul/15/business/la-fi-men-women-jobs-20120715> (“Since the recession ended in June 2009, men have landed 80% of the 2.6 million net jobs created . . .”).

¹⁵ *Men's Wages Fight Back*, PAYSACLE, <http://www.payscale.com/mancession> (last visited Feb. 24, 2013).

¹⁶ See Joyce P. Jacobsen, *The Great Recession's Impact on Men 3* (May 22, 2012) (unpublished manuscript), available at <http://jjacobsen.web.wesleyan.edu/wps/GenderMen.pdf>; see also RAKESH KOCHBAR, PEW HISPANIC CTR., THE DEMOGRAPHICS OF THE JOBS RECOVERY: EMPLOYMENT GAINS BY RACE, ETHNICITY, GENDER AND NATIVITY 6 (2012), available at http://www.pewhispanic.org/files/2012/03/PHC-Labor-report-FINAL_3-21-12.

It is also an odd phenomenon when one finds gold amid another's misfortune. The idea that the recession heralded women's supremacy ignores the fact that for many women, the declining fortunes of men invariably leads to a lower and more stressful standard of living for men and women alike. Indeed, recent studies suggest that women's satisfaction or happiness has decreased during the time that Rosin suggests they are rising to the top,¹⁷ and to ignore the negative consequences of the economic shift is to evince her deeply problematic methodology, which seems to be little more than performing some Google queries in search of supporting evidence.

There is, to be sure, a semblance of truth in her claim, but it is certainly not a new truth or insight. There is little question that the mythical high school-educated auto worker with a lake house and a solid middle-class life has largely vanished, at least as the model for our median worker. Those jobs still exist, and they remain good, if repetitive, jobs, but they have been on the decline for the last thirty years. Although most academics would likely think pig iron was a new tapa, they continue to yearn for the steel mills that disappeared long ago, taking most of those good union jobs with them.¹⁸ But the point here is that this disappearance occurred a long time ago and it seems peculiar to point it out now.

The actual pressing social question is the lengthy transition from that manufacturing economy to a more skills-based service economy and how we convince high school students that their father's high school degree will not bring the same economic power for their generation. There may have been a time when we envisioned all those children of the auto and steel workers migrating to Apple with their engineering degrees in hand, thinking that we would perhaps all be working at Apple. That, however, turned out only to be true for the Chinese.¹⁹ If we were telling this story a decade ago, the emphasis would be on getting more of those high school graduates to obtain more schooling, ideally with a college degree attached. Yet the progress in increasing the number of college graduates – as opposed to merely increasing

pdf.

¹⁷ See, e.g., Betsey Stevenson & Justin Wolfers, *The Paradox of Declining Female Happiness* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 14969, 2009), available at http://www.nber.org/papers/w14969.pdf?new_window=1 (“[M]easures of women's subjective well-being have fallen both absolutely and relatively to men.”).

¹⁸ For a discussion of the decline of the steel industry, see PAUL A. TIFFANY, *THE DECLINE OF AMERICAN STEEL: HOW MANAGEMENT, LABOR AND GOVERNMENT WENT WRONG* (1988).

¹⁹ See Charles Duhigg & Keith Bradsher, *How the U.S. Lost Out on iPhone Work*, N.Y. TIMES (Jan. 21, 2012), http://www.nytimes.com/2012/01/22/business/apple-america-and-a-squeezed-middle-class.html?pagewanted=all&_r=0 (“Not long ago, Apple boasted that its products were made in America. Today, few are. Almost all of the 70 million iPhones, 30 million iPads and 59 million other products Apple sold last year were manufactured overseas.”).

the number of individuals who attend college – has been modest.²⁰ Women are doing better than men on that front, but this fact has been true for many years now. And that is certainly one response to Rosin’s claims: the trends she has identified began at about the time wide ties and bell bottoms were in fashion.

Ultimately, the issue framed by Rosin is not whether men lost more jobs during the recession or whether women have higher college attendance rates, neither of which qualify as news, but whether the new economy values women’s skills more than men’s. To state that question is to raise an issue that Rosin does not adequately address, namely, what would it mean for the economy to value women’s skills? For our own purposes, we want to place the emphasis on skills that are quantifiable rather than on the soft skills sometimes associated with women, such as empathy, conflict avoidance, or teamwork.²¹ It is also worth emphasizing that to suggest that women have distinct skills is to acknowledge continued segregation in the labor market. Conceivably, women might simply be doing better than men at the same occupations or tasks, but that is not what the data show or what Rosin suggests, an issue to which we now turn.

B. *Pharmacists Yes, but What Other Occupations?*

In her book, Rosin cites as evidence of the rise of women their dominance in some of the fastest growing occupations.²² This is one of those advocate’s half-truths: while it is true that many of the occupations that are projected to have the greatest growth over the next decade are fields dominated by women, they also tend to be low-wage occupations that offer limited room for advancement. Table 1 provides a list of the ten projected fastest growing occupations based on work done by the Bureau of Labor Statistics, including the 2010 median wage.²³ The top two fastest growing occupations, by significant margins, are

²⁰ One of us has discussed this issue previously. See Michael Selmi, *Unions, Education, and the Future of Low-Wage Workers*, 2009 U. CHI. LEGAL F. 147, 168-73.

²¹ A recent discussion regarding women in management placed this issue in context nicely. The authors observed:

People who have greater emotional intelligence, meaning greater ability to perceive emotions, understand emotions, use emotions to facilitate thought, and regulate emotions, may be more likely to be leaders. Women tend to score higher than men on emotional intelligence, so if this skill helps people to get into formal leadership positions, we would expect women to outnumber men among managers.

Heather A. Haveman & Lauren S. Beresford, *If You’re So Smart, Why Aren’t You the Boss? Explaining the Persistent Vertical Gap in Management*, 639 ANNALS AM. ACAD. POL. & SOC. SCI. 114, 124 (2011) (citations omitted). The authors go on to conclude that “little evidence suggests that differences between men and women in personality traits and interpersonal skills can explain women’s underrepresentation in top management; instead, such differences are due to cultural factors.” *Id.*

²² ROSIN, *supra* note 1, at 117-19.

²³ The data discussed in Table 1 are taken from a 2012 study by two economists from the Bureau of Labor Statistics. See C. Brett Lockard & Michael Wolf, *Occupational*

personal care aides and home health aides, both of which tend to be dominated by women and both of which are low-wage jobs. Indeed, they are the lowest-wage jobs of any of the top twenty fastest growing occupations. Veterinary technologists and technicians is the sixth fastest growing field but the next highest that is female dominated, and is likewise a moderately low-wage job, though higher than the two fastest growing occupations. Meeting planner comes in tenth, the highest paying of the female-dominated positions, but it is hard to see how the road to supremacy for women will be blazed by meeting planners, home health aides, or veterinary technicians. It is also worth noting that many of the fastest growing occupations do not require a college degree, which suggests that women's educational advantage will likely have less relevance for these occupations.

Table 1. Projected Job Growth 2010-2020

Occupation	Number	Percent	Median Wage
Personal Care Aide	607,000	70.5	19,640
Home Health Aide	706,300	69.4	20,560
Biomedical Engineer	9700	61.7	81,540
Helper (Brickmason)	17,600	60.1	27,780
Helper (Carpenter)	25,900	55.7	25,760
Veterinary Technician	41,700	52.0	29,710
Reinforcing Iron	9300	48.6	38,430
Physical Therapy Assistant	30,800	45.7	49,690
Helper (Pipefitter)	26,300	45.4	26,740
Meeting Planner	31,300	43.7	45,260

Rosin selects for special treatment the emergence of female dominance among pharmacists, an area deemed by *Forbes* magazine as the highest-paying field for women.²⁴ Notably, pharmacist is not on the list of fastest growing occupations and, given the need for advanced training, it is unlikely that this will be a path most, or even many, women can take. This is also an area where the truth is not quite as rosy as Rosin suggests, though there is no denying that women have made substantial inroads into the profession, and, it appears, without a substantial deterioration of wages.²⁵

Employment Projections to 2020, MONTHLY LAB. REV., Jan. 2012, at 84, 100. In Table 1, the female-dominated jobs, as measured by the Department of Labor, are highlighted in bold.

²⁴ See Jenna Goudreau, *The 20 Best-Paying Jobs for Women in 2012*, FORBES (July 16, 2012, 4:40 PM), <http://www.forbes.com/sites/jennagoudreau/2012/07/16/the-20-best-paying-jobs-for-women-in-2012>.

²⁵ In a 2012 paper, two well-known economists declared pharmacist the most egalitarian of professions. See Claudia Goldin & Lawrence F. Katz, *The Most Egalitarian of All Professions: Pharmacy and the Evolution of a Family-Friendly Occupation 2* (Nat'l Bureau

Currently, the majority of pharmacy students are women: of the total number of students enrolled in pharmacy degree programs in 2011, 60% of students were women.²⁶ Women, however, have been graduating from colleges and schools of pharmacy at a higher rate than men for several decades now. The American Association of Colleges of Pharmacy reports that from 1989 to 1990, 60% of students receiving their first professional degree in pharmacy were women and that women made up 67% of pharmacy students by 2004.²⁷ These numbers contrast with the 30% of pharmacy graduates who were women in the 1970s.²⁸

Despite the predominance of women, men are still better paid. In 2011 male pharmacists made a median weekly salary of \$1998, while women pharmacists made a median weekly salary of \$1898.²⁹ Similarly, a study conducted in 2001 found that female pharmacists in full-time positions were paid a mean hourly wage of \$30.73, compared to \$31.88 for male pharmacists employed in full-time positions.³⁰ One reason for the pay disparity is that women are significantly more likely than men to work part time. In addition to the increase in women in the field, more pharmacists of both genders are working part time. In 2009, 29% of female pharmacists worked part time while 18% of male pharmacists engaged in part-time work.³¹ These numbers increased from 23% for women and 11% for men as recently as 2000.³² Thus, although the trend toward part-time work is increasing for both genders, women continue to work part time more often than men.

Though more than half of both pharmacy students and practicing pharmacists are now women, comparatively few women are pharmacy owners. In 2004 only 2.1% of female pharmacists were owners or partners, compared with 10.3% of male pharmacists.³³ By 2009 this gap had closed partially: 8.1%

of Econ. Research, Working Paper No. 18410, 2012).

²⁶ Claudia Goldin & Lawrence F. Katz, *The Cost of Workplace Flexibility for High-Powered Professionals*, 638 ANNALS AM. ACAD. POL. & SOC. SCI. 45, 52 (2011).

²⁷ Stephanie F. Gardner & Cindy D. Stowe, *The Impact of a Gender Shift on a Profession: Women in Pharmacy*, 2007 F. ON PUB. POL'Y ONLINE, no. 1, at 2, <http://forumonpublicpolicy.com/archive07/gardner.pharmacy.pdf>.

²⁸ Goldin & Katz, *supra* note 26, at 52.

²⁹ BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, MEDIAN WEEKLY EARNINGS OF FULL-TIME WAGE AND SALARY WORKERS BY DETAILED OCCUPATION AND SEX 4 (2012), available at http://bls.gov/opub/ee/2012/cps/annavg39_2011.pdf.

³⁰ Gardner & Stowe, *supra* note 27, at 5.

³¹ *Trends Reveal Shifts in the Pharmacy Profession Toward More Patient Care*, BUS. WIRE (Feb. 28, 2010, 9:45 PM), <http://www.businesswire.com/news/home/20100228005089/en/Trends-Reveal-Shifts-Pharmacy-Profession-Patient-Care>.

³² *Id.*

³³ Laura Enderle, *Closing the Gender Gap in Pharmacy Ownership*, PHARMACY TIMES (July 25, 2011), <http://www.pharmacytimes.com/news/Closing-the-Gender-Gap-in-Pharmacy-Ownership>.

and 11.6% of female and male pharmacists, respectively, were owners or partners.³⁴

Although there remain disparities within the pharmacy profession that are disadvantageous to women, it seems clear that this is a profession in which women have made important inroads, and it also seems that they have done so without producing a deterioration in wages or status. A number of years ago, Barbara Reskin and Patricia Roos studied jobs that went from predominantly male to predominantly female, such as bank tellers, and they found that the transformation typically carried a significant wage penalty.³⁵ But as far as we can tell, that has not been true for pharmacists. It is difficult, however, to find comparable occupations, or positions in which women are paid more than men. For example, a recent analysis of data from the 2000 census found that for the fifteen highest-paid occupations, women's median salary was less than men's in all of them.³⁶ Even at the low end of the pay scale, men earned more than women in all but one occupation, and the analysis found only five of more than 10,000 occupations in which women earned the same as men.³⁷ The Economic Policy Institute's 2012 report found that men outearned women at every educational level³⁸ and when the focus was on hourly wages, men had higher wages at every decile with particularly high differences at the upper end of the wage scale.³⁹ A 2012 study focusing on Associate of Arts degrees typically granted by community colleges came to the same conclusion – men outearned women in nearly all relevant occupations.⁴⁰

The data on salary are compelling, and not explained by the usual explanations. Study after study finds disparities that are not explained by experience or productivity, and, equally important, women come out on the short end of all of the studies, whether it is in the low-end jobs just discussed, mid-level jobs such as veterinarians,⁴¹ or high-end jobs like doctors and lawyers.⁴²

³⁴ *Id.*

³⁵ See BARBARA F. RESKIN & PATRICIA A. ROOS, *JOB QUEUES, GENDER QUEUES: EXPLAINING WOMEN'S INROADS INTO MALE OCCUPATIONS* 81 (1990).

³⁶ Daniel H. Weinberg, *Earnings by Gender: Evidence from Census 2000*, MONTHLY LAB. REV., July/Aug. 2007, at 26, 27.

³⁷ *Id.*

³⁸ MISHEL ET AL., *supra* note 12, at 217 tbl.4.15, 218 tbl.4.16.

³⁹ *Id.* at 189 tbl.4.5, 190 tbl.4.6.

⁴⁰ See INST. FOR WOMEN'S POLICY RESEARCH, IWPR No. C395, *GENDER SEGREGATION IN FIELDS OF STUDY AT COMMUNITY COLLEGES AND IMPLICATIONS FOR FUTURE EARNINGS* 1 (2012).

⁴¹ See David M. Smith, *Pay and Productivity Differences Between Male and Female Veterinarians*, 55 INDUS. & LAB. REL. REV. 493, 502 (2002) (finding pay differences of nine percent between men and women that were not explained by productivity factors).

⁴² A recent study of early-career attorneys in the private sector found significant pay differences between men and women that were not attributable to the "differences in the capital that men and women bring to their careers or on the choices they make." Ronit

The experience of women in the medical profession is revealing. On average, and as of 2003, women earned approximately seventy-two percent of what men earned, and the unequal salaries were across the board by specialties, with women earning less than men in every specialty.⁴³ This included pediatrics, the one specialty in which women were a majority and in which women earned two-thirds as much as their male counterparts, even though pediatrics was the lowest-paid specialty overall.⁴⁴ As further discussed below, this is not because women were choosing specialties that were less time intensive, as is evident by the lower pay in pediatrics, but rather seems to be a function of the penalties women suffer in female-dominated jobs. As Philip Cohen and Matt Huffman explain, “Women in female-dominated jobs . . . pay two penalties: Not only is the average wage in their jobs lower than that for comparable male-dominated jobs, they also earn less relative to men in the same jobs.”⁴⁵

It would be easy to continue this analysis but the picture remains clear and remarkably stagnant: although women have made significant progress in many areas, there remain discrepancies in every area. It would be one thing if women were underpaid in some professions but overpaid in others, but there are no data to support that story. The optimistic portrayal that Rosin presents of women’s ascendance does not extend much beyond those pharmacists who increasingly work for mega-corporate chains dispensing Lipitor and its generic equivalent.

C. Education

Rosin places substantial weight on evidence of female dominance within education, touting in particular their greater attendance and graduation rates. But this is hardly a new phenomenon. Women’s college attendance rates first surpassed men’s in 1978 and they also accounted for a higher share of what are defined as first professional degrees as far back as 1983.⁴⁶ The percentage of women aged twenty-five to twenty-nine who had some college education was higher than that of men beginning in 1987, and the percentage with a bachelor’s degree exceeded the rate for men beginning in 1991 – more than twenty years ago.⁴⁷ Black women earned more bachelor’s degrees than their

Dinovitzer et al., *The Differential Valuation of Women’s Work: A New Look at the Gender Gap in Lawyers’ Incomes*, 88 SOC. FORCES 819, 843-44 (2009).

⁴³ See ANN K. BOULIS & JERRY A. JACOBS, *THE CHANGING FACE OF MEDICINE: WOMEN DOCTORS AND THE EVOLUTION OF HEALTH CARE IN AMERICA* 81 (2008).

⁴⁴ *Id.*

⁴⁵ Philip N. Cohen & Matt L. Huffman, *Individuals, Jobs, and Labor Markets: The Devaluation of Women’s Work*, 68 AM. SOC. REV. 443, 457 (2003).

⁴⁶ See MICHAEL PLANTY ET AL., NAT’L CTR. FOR EDUC. STATISTICS, NCES 2007-064, *THE CONDITION OF EDUCATION* 129 tbl.8-1, 130 tbl.9-1 (2007).

⁴⁷ *Id.* at 175 tbl.27-2, 176 tbl.27-3.

male counterparts as early as 1985 and a higher percentage of Latina women than Latino men did so in 1984.⁴⁸

Despite these long-standing higher attendance and graduation rates, women's wages continue to trail men's across the board. There are a number of reasons for the persistence of these wage gaps across educational levels but, given that Rosin emphasizes the educational triumph of women, we want to emphasize here how women continue to segregate themselves by college major in a way that does not seem to be providing economic power. Table 2 indicates the number and percentages of degrees conferred in computer and information sciences, engineering, education, and psychology for three years. With respect to computer science, women made significant progress during the mid-1980s, effectively doubling the number of bachelor's degrees they received.⁴⁹ But that progress was reversed in the 1990s when the number of bachelor's degrees went from a high of more than 12,000 in 1984 to fewer than 7000 in 1994. The trend improved in the early 2000s but has now reverted to a level near 7000. Meanwhile, the number of bachelor's degrees for men has increased substantially, though again with some variation so that today men earn more than four times as many degrees as women.

Table 2. College Degrees Granted

Major	Men			Women		
	1984	1994	2010	1984	1994	2010
Computer Science	20,416	17,528	32,410	12,023	6999	7179
Engineering	82,841	66,157	73,833	12,454	11,713	14,896
Education	22,200	24,424	20,726	70,110	83,016	80,539
Psychology	12,812	18,668	22,275	27,143	50,751	74,941

The pattern for engineering degrees is similar, though the primary difference here is that the number of bachelor's degrees awarded to women has been remarkably stable since 1984, when women earned 12,454 degrees compared to 2010, when women earned 14,896. A similarly stable pattern has existed for men, who earn nearly five times as many engineering bachelor's degrees as women. An encouraging sign in both areas is that the number of women obtaining master's degrees has steadily increased over time, although there has been a modest decline in computer science over the last few years. Men still

⁴⁸ *Id.*

⁴⁹ The data discussed in Table 2, and this and the following two paragraphs, are taken from the *Digest of Education Statistics*, tables 292, 293, 294, and 303, which provide historical data on degree-granting institutions. THOMAS D. SNYDER ET AL., NAT'L CTR. FOR EDUC. STATISTICS, NCES 2008-022, DIGEST OF EDUCATION STATISTICS 436 tbl.292, 437 tbl.293, 438 tbl.294, 447 tbl.303 (2008).

earn more than three times as many master's degrees as women in both fields.⁵⁰

The opposite patterns reveal themselves when we look at traditionally female areas of specialization. Women earn approximately eighty percent of the bachelor's degrees awarded in education and have done so since as far back as 1984; women have also earned three times as many master's degrees in education as their male counterparts since 1985. Turning to psychology, there has been a strong influx of women into the field since roughly the mid-1970s. Prior to that time, women and men earned about the same number of degrees; but by a decade later, twice as many women were earning psychology degrees as men, and today they earn more than three times as many degrees. The same pattern is present with master's degrees, often a prerequisite to a teaching position, and today women earn four times as many degrees as men.

Moving from education to employment, we find persistently high levels of segregation, and the persistence of many traditional roles. School teachers are one of the most obvious areas. In 2011, 84% of public school teachers were women, up from 74% in 1996.⁵¹ Women have made significant inroads in school administration, as 59% of public elementary schools now have female principals. The numbers are far lower at secondary schools, however, where only 29% of the principals are women.⁵² Women accounted for 82.8% of all librarians in 2010; but as was true with principals, even though men comprised only 17.2% of librarians, they held 40% of the directorships of university libraries.⁵³ And despite years of litigation to open up the ranks of firefighters to women, as of 2010, only 3.6% of the nation's firefighters were women.⁵⁴

There are many other indicators, most of which have been discussed by others – the number of corporate executives, board members, partners in law firms, and the building trades.⁵⁵ The evidence seems relatively clear and

⁵⁰ In 2010 men earned 13,017 master's degrees in computer science while women earned 4936; within engineering men earned 30,521 master's degrees while women earned 8825. See THOMAS D. SNYDER & SALLY A. DILLOW, NAT'L CTR. FOR EDUC. STATISTICS, NCES 2012-001, DIGEST OF EDUCATION STATISTICS 461 tbl.318, 463 tbl.320 (2012).

⁵¹ C. EMILY FEISTRITZER, NAT'L CTR. FOR EDUC. INFO., PROFILE OF TEACHERS IN THE U.S. 2011, at xi tbl.1 (2011), available at <http://www.edweek.org/media/pot2011final-blog.pdf>.

⁵² SUSAN AUD ET AL., NAT'L CTR. FOR EDUC. STATISTICS, NCES 2012-045, THE CONDITION OF EDUCATION 2012, at 52 (2012), available at <http://nces.ed.gov/pubs2012/2012045.pdf>.

⁵³ DEP'T FOR PROF'L EMPS., LIBRARY WORKERS: FACTS AND FIGURES 3 (2011), available at <http://ala-apa.org/files/2012/03/Library-Workers-2011.pdf>.

⁵⁴ *Firefighting Occupations by Women and Race*, supra note 3.

⁵⁵ See, e.g., Stuart Pfeifer, *Women Make Better Corporate Leaders Than Men*, Study Finds, L.A. TIMES (Mar. 27, 2013), <http://articles.latimes.com/2013/mar/27/business/la-fi-m-o-women-make-better-corporate-leaders-than-men-study-finds-20130327> (“Globally, women make up about 9% of corporate board members, the study said.”); Chelsea Phipps, *Big Law and Women: Closing the Gap, Very Slowly*, WALL ST. J. (July 23, 2012, 6:38 PM), <http://blogs.wsj.com/law/2012/07/23/big-law-and-women-closing-the-gap-very-slowly/>

convincing: occupational segregation remains a defining feature of the workplace. To be sure, there has been a decline in occupational gender segregation over the last thirty years, attributable mainly to women moving into predominantly male fields rather than movement by men into women's fields. At the same time, in the last half decade, progress in occupational segregation has stalled, as was also reflected in educational trends where movement into the sciences and engineering seemingly plateaued some time ago.

The list of gender-segregated occupations could go on, but the point has been aptly made in virtually every major study – the labor market remains highly segregated by gender. Outside of those pharmacists, it is difficult to see where it is that women are triumphing over their male counterparts.

D. *The Issue of Choice*

In her book Rosin suggests that women are finding for themselves, and by implication choosing, flexible workplaces in a way that enables them to better manage the tussles of work and family life.⁵⁶ There is little doubt that some women are trading income or power for flexibility, but the reality is that a preference for flexible work arrangements cannot explain the persistence of occupational segregation or wage inequality.

There are at least three reasons to conclude that the observed inequality is not the product of women choosing more flexible occupations. First, the existing data do not support Rosin's proposition. Men, in fact, tend to have more flexible jobs than women. Data compiled by the Department of Labor for 2004 indicate that a higher percentage of men than women have access to a flexible work schedule.⁵⁷ An important earlier study by Donald Tomaskovic-Devey found that women were not clustered in jobs that could be defined as flexible, a conclusion that had been supported by other studies.⁵⁸ And to date

("Women make up for 15% of equity partners nationwide, which, on the whole, has not changed since 2006.").

⁵⁶ ROSIN, *supra* note 1, at 264. This was also part of a question posed to me by Rosin at the Conference, where she suggested that some of the continuing disparities were the result of choices women were making to obtain a more balanced life.

⁵⁷ See Press Release, Bureau of Labor Statistics, Workers on Flexible and Shift Schedules in May 2004, at 1 (July 1, 2005), available at <http://www.bls.gov/news.release/pdf/flex.pdf>.

⁵⁸ See DONALD TOMASKOVIC-DEVEY, GENDER & RACIAL INEQUALITY AT WORK: THE SOURCES & CONSEQUENCES OF JOB SEGREGATION 47 (1993) ("Although human capital theory builds a plausible argument about the tradeoffs between family and market work, it is not consistent with the actual distribution of sex-segregated work."). An earlier study by Denise and William Bielby concluded that, "on average, women report working at jobs that require slightly more effort [than men]." Denise D. Bielby & William T. Bielby, *She Works Hard for the Money: Household Responsibilities and the Allocation of Work Effort*, 93 AM. J. SOC. 1031, 1055 (1988). Although these studies did not use the language of a flexible workplace, they were designed to test the basic human-capital argument that women worked

there is nothing that has demonstrated that women are in fact trading income for flexible schedules.

By itself, these studies, and the lack of contrary findings, should suffice, but it is clear that in this realm data often have limited appeal. For example, at the Conference where this paper was presented it was stated as a truism that female medical students were choosing disciplines that allowed for greater flexibility, but that would not explain why women were paid less than men regardless of the discipline, including in the female-dominated area of pediatrics. Moreover, the authors of a comprehensive study on women in medicine found there was no evidence to suggest the pay disparities for doctors could be explained by work preferences.⁵⁹ In fact, they concluded, “[o]ver the last several decades the work effort of female physicians has come to resemble more closely the work effort of men who share their household composition.”⁶⁰

The second explanation is also related to a data point, but it touches on a different issue. One of the counterintuitive facts of the labor market is that the best-paying jobs also offer the most flexibility.⁶¹ Even though we tend to think of high-paying jobs as demanding long hours, they also tend to come with less oversight and greater responsibility that can provide meaningful flexibility to those who hold them. That does not mean that workers will take advantage of the flexibility, and there remains a strong perception among workers that they are likely to be penalized for actively pursuing flexible work options.⁶² And there is some support for that belief, though it also seems clear that, to the extent workers are penalized for having a flexible work schedule, men and women are both penalized.

The third explanation, and more important point, is that low-wage workers do not have a choice to trade income for flexibility. Most low-wage workers have little to no flexibility; in fact, many if not most low-wage workers do not

at jobs that required less effort, or less investment, as a means to facilitate work in the home.

⁵⁹ See BOULIS & JACOBS, *supra* note 43, at 157.

⁶⁰ *Id.* Approximately fifteen percent of female doctors worked part time, compared to six percent of male doctors, but this was a decrease from prior decades. *Id.* at 156.

⁶¹ This is a widely documented phenomenon and not surprising when one makes the connection between flexibility and being in control of one’s schedule. *See, e.g.*, Press Release, Bureau of Labor Statistics, *supra* note 57, at 1 (finding that management and professional occupational groups were most likely to have access to a flexible schedule); *see also* JEAN FLATLEY MCGUIRE ET AL., WORKPLACE FLEXIBILITY 2010, FLEXIBLE WORK ARRANGEMENTS: THE FACT SHEET 2 (2010), available at <http://scholarship.law.georgetown.edu/legal/13/> (describing a 2005 study that found that “managerial, administrative and professional occupations have considerably more flexibility than all other occupational types”).

⁶² Again, this is a well-documented phenomenon. For one such study, see Elizabeth D. Almer et al., *Is It the Kids or the Schedule?: The Incremental Effect of Families and Flexible Scheduling on Perceived Career Success*, 54 J. BUS. ETHICS 51, 52 (2004) (finding a penalty for men and women who took flexible work arrangements, based on a survey of accounting firms).

have any access to paid sick leave, and for them, not showing up to work may mean losing their job.⁶³ One might see part-time work as a choice for flexibility, and again this is undoubtedly true for some workers, but many part-time workers are what are defined as involuntary part-time workers – those who would prefer to work full time and may be juggling multiple part-time jobs.⁶⁴ Even if one sees part-time work as reflecting a choice for flexibility, it is important to keep in mind that few part-time jobs will ever lead to a high-wage or powerful position.

But the real issue here is the same issue that has been at the heart of debate for years – why should women be the ones to make this tradeoff? Even if one were to accept the proposition that many women are trading income for flexibility, treating this as a matter of choice seems baffling, particularly among those who advocate equal parenting.⁶⁵ In fact, to celebrate this choice would be to acknowledge defeat with respect to equality on the home front. Ideally, men and women would both be choosing flexibility or balance but, and this is certainly one of the problems with the way the debate has proceeded in the last few years, we have come to think of this as, again, a women's issue. There is even the returning sentiment – returning in that this was the prevailing sentiment for so many years – that child rearing is a woman's province. Some scholars will refreshingly simply state as much these days,⁶⁶ while more commonly it is an implied assumption.

⁶³ It has been estimated that forty percent of the private workforce is without access to any paid sick leave, with the lowest-paid workers having the least access. See MAJORITY STAFF OF JOINT ECON. COMM., 111TH CONG., EXPANDING ACCESS TO PAID SICK LEAVE: THE IMPACT OF THE HEALTHY FAMILIES ACT ON AMERICA'S WORKERS 5 (2010) ("Today, just 35 percent (7.9 million) of workers in the bottom quartile in firms with 15 or more employees have access to paid sick leave."); Gregory Acs, *A Good Employee or a Good Parent? Challenges Facing Low-Income Working Families*, 4 U. ST. THOMAS L.J. 489, 498 (2007) ("[The jobs of low-income working families] simply do not offer them the same level of pay, benefits and flexibility as those held by moderate-income families."); Stephanie Bornstein, *Work, Family, and Discrimination at the Bottom of the Ladder*, 19 GEO. J. POVERTY L. & POL'Y 1, 9 (2012) ("[L]ow-income families are the least likely to have access to paid sick days or unpaid family and medical leave . . .").

⁶⁴ Bornstein, *supra* note 63, at 11.

⁶⁵ Vicki Schultz has recently offered a critique of the notion that flexible work arrangements are beneficial for women's equality. See Vicki Schultz, *Feminism and Workplace Flexibility*, 42 CONN. L. REV. 1203, 1207 (2010). She writes: "Ultimately . . . allowing people to exercise individual choice for flexible work options will frequently exacerbate, and even create, new forms of sex segregation in the workplace rather than undermining those patterns." *Id.* at 1216.

⁶⁶ See Nicole Buonocore Porter, *Embracing Caregiving and Respecting Choice: An Essay on the Debate over Changing Gender Norms*, 41 SW. U. L. REV. 1, 5 (2012) (arguing that "changing gender norms is unwarranted, unrealistic and unnecessary").

II. WHY DO WE NEED THE “END OF MEN”?

It is difficult, and perhaps a bit unfair, to provide a scholarly response to what is a popular book, and certainly some of the exaggerated claims made in *The End of Men* are designed for the sole purpose of selling books, truth be damned. At the same time, one must assume that Rosin intends a serious point regarding the decline of the hegemony of men and she deserves credit for having sparked interest in a debate that has grown perilously obsolete and stale. There is also an interesting and unasked question lurking in the background, and that is, why is there such a strong need to see the glass as not just half full, but made of crystal?

In some ways, Rosin’s argument is simply a variant on the more familiar opting-out theme – an argument that is similarly based on misinterpretation of data and used to explain or justify women’s state of economic well-being.⁶⁷ To be sure, the two approaches differ in their emphasis but both ultimately seek to explain the way things are, leaving out of the equation either discrimination or entrenched social norms. Our social gender norms are familiar, as Richard Banks noted at the Conference, to anyone who has ever had a baby and experienced the immediate gender-based treatment the child receives.⁶⁸ Our social norms undeniably help shape the gendered expectations and behavior of our children, but that is an issue on which the disagreement primarily involves matters of degree.

But an issue that has been surprisingly neglected in the debate over gender equity is the persistence of discrimination. It seems there is a sentiment that discrimination has largely faded from the labor market, at least in a way that influences women’s decisions. In this view, which is shared by a majority of the Supreme Court, discrimination is an isolated phenomenon that arises from rogue actors within admirable institutions.⁶⁹ The data, however, paint a different picture, and this is true even if we focus only on recent studies.

For example, there has been a series of resume studies that document bias against women and mothers. A 2007 study found significant disparities in call back interviews for resumes that indicated the applicant was a mother compared to those without such an indication.⁷⁰ More recently, researchers

⁶⁷ In her 2010 book, Joan Williams provides a comprehensive critique of the opting-out thesis. See JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* 13-23 (2010). For a sympathetic but nuanced discussion, see Brenda Cossman, *The “Opt Out Revolution” and the Changing Narratives of Motherhood: Self Governing the Work/Family Conflict*, 11 J.L. & FAM. STUD. 407, 408 (2009).

⁶⁸ Hanna Rosin’s Keynote Address: Evaluating Claims About the “End of Men,” YOUTUBE (Dec. 17, 2012), <http://www.youtube.com/watch?v=CnBbAh2yYyA>.

⁶⁹ An example of this sentiment can be found in the Supreme Court’s decision in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), where the Court was clearly skeptical that the plaintiffs’ statistical evidence revealed discrimination. *Id.* at 2555.

⁷⁰ See Shelley J. Correll et al., *Getting a Job: Is There a Motherhood Penalty?*, 112 AM. J. SOC. 1297, 1330 (2007).

from Yale asked professors to evaluate the resumes of graduates for positions as laboratory managers, and they found that male candidates received higher scores and higher salary offers than female candidates despite identical resumes.⁷¹ Another recent study that focused on engineering and science found that women exited engineering positions more frequently than men, but not because of the demands of the position. Rather, women were leaving for positions in other fields and the primary reason was the limited opportunities for promotion and the poor pay offered to women within the engineering field.⁷² Studies focusing on lawyers found that human capital factors could not explain the difference in pay or positions, and a study of veterinarians found that substantial pay disparities existed that could not be explained by differences in productivity.⁷³ A detailed analysis of women entering the workforce right out of college found that women one year out of college earned on average eighty-two percent of what men earned, and that controlling for the factors of occupation, major, employment sector, hours, and other factors left one-third of the gap unexplained.⁷⁴

Another study, published in 2007, sought to understand the mechanisms of discrimination: how it is that discrimination continues to effect women in the workplace.⁷⁵ The authors analyzed claims that had been filed with the Ohio Civil Rights Commission, and, although it was more qualitative than quantitative in nature, they found that all of the various stereotypes regarding women were present in the complaints, all of which were successful in that they received cause findings by the state agency.⁷⁶ The authors found amid the complaints questions about the appropriateness of women in certain jobs, questions about their dependability, and the frequent sexualization of women

⁷¹ See Kenneth Chang, *Bias Persists for Women of Science, a Study Finds*, N.Y. TIMES, Sept. 25, 2012, at D1. The male candidates were offered salaries of \$30,328, whereas the salaries offered to women were \$26,508. *Id.*

⁷² JENNIFER HUNT, INST. FOR THE STUDY OF LABOR, IZA DP No. 6885, WHY DO WOMEN LEAVE SCIENCE AND ENGINEERING? 11 (2012), available at <http://ftp.iza.org/dp6885.pdf>. The study did not find any significant differences regarding exits from science jobs. *Id.*

⁷³ Dinovitzer et al., *supra* note 42, at 819-64 (“Across the sample, men earn 5.2 percent more than women, net of credentials (human and social capital), work profiles, opportunity paths and structures and legal markets.”); Smith, *supra* note 41, at 493 (finding pay differences of fifteen percent that were not explained by productivity factors – patients or revenues).

⁷⁴ See CHRISTIANNE CORBETT & CATHERINE HILL, AM. ASS’N OF UNIV. WOMEN, GRADUATING TO A PAY GAP: THE EARNINGS OF WOMEN AND MEN ONE YEAR AFTER COLLEGE GRADUATION 21 (2012), available at <http://www.aauw.org/files/2013/02/graduating-to-a-pay-gap-the-earnings-of-women-and-men-one-year-after-college-graduation.pdf>.

⁷⁵ Vincent J. Roscigno et al., *Social Closure and Processes of Race/Sex Employment Discrimination*, 609 ANNALS AM. ACAD. POL. & SOC. SCI. 16 (2007).

⁷⁶ *Id.* at 24-25. The authors reviewed cases that had been filed between 1988 and 2003, and the focus on cases that had received cause findings narrowed the database from 61,000 claims to 14,091. *Id.*

that often led to harassment.⁷⁷ And contrary to the claims Rosin makes, the authors found that the soft skills typically associated with women worked to their disadvantage.⁷⁸ Finally, a study of merit rewards in a corporation found that they were administered in a biased fashion, with the author specifically concluding that although women received the same performance evaluations as men, “different salary increases [were] granted for observationally equivalent employees,” which the author attributed to “consciously or unconsciously discount[ing] the performance of employees because of their gender.”⁷⁹

These studies are certainly not definitive proof of persistent and ongoing discrimination; no study can make that claim because, in the end, we are required to interpret the findings. But it is a mystery why anyone who is concerned about gender equality would ignore these studies, which offer consistent documentation of inequality that cannot be explained by nondiscriminatory factors. The consistency by itself should be compelling: outside of occasional analyses of the wage gap, there are no studies that fail to leave some portion of the observed inequality unexplained. This might be because such studies are not published given that a conclusion of no discrimination might be seen as uninteresting, but the number of published studies documenting discrimination surely should be neither discounted nor ignored. Nor is there any reason to believe that women’s choices, however defined, explain the inequality they encounter.

It is, however, the desire to explain the world as a product of choice that requires explanation, though this too may be relatively easy to understand. There appears to be a weariness that surrounds the question of gender inequality, particularly among those who emphasize women’s agency in this more recent wave of feminism. Professor Katie Eyer, for example, recently noted that even victims of discrimination are reluctant to make attributions of discrimination based on what she considered a “just world” notion, a belief system that seeks to see the world as a product of just outcomes.⁸⁰ The world that we see, one might conclude, has to be the product of choice because women have taken control of their lives, and maybe it is not so bad if some women choose traditional female occupations, especially if they ultimately enjoy them. Can’t women, one might ask, choose to be a librarian?

The answer to that question has to be yes, but that cannot be the end of the story, or the end of men. Perhaps this is where the debate needs to focus, on how we define choice or discrimination, and more specifically, how

⁷⁷ *Id.*

⁷⁸ *Id.* at 41-42 (“[W]e have seen that soft skill criteria and gatekeeper evaluation often work to the disadvantage of women over men in hiring and mobility processes, sometimes subtly and sometimes quite explicitly.”).

⁷⁹ Emilio J. Castilla, *Gender, Race, and Meritocracy in Organizational Careers*, 113 AM. J. SOC. 1479, 1483, 1485 (2008).

⁸⁰ Katie R. Eyer, *That’s Not Discrimination: American Beliefs and the Limits of Anti-Discrimination Law*, 96 MINN. L. REV. 1275, 1304 (2012).

discrimination and prevailing social norms circumscribe our choices, men and women alike. It is not an easy question to answer and one that data are not likely to resolve; indeed, one author recently went so far as to suggest that any choice is meaningful,⁸¹ but if that is true then those of us interested in gender equality might as well admit defeat. Women can certainly choose to be librarians but they should also have the opportunity to be the head of those libraries; they should also have the ability to choose to be a firefighter with good pay, early retirement, and flexible schedules, just as they should be in a position to fly a plane rather than provide service in the cabin.

CONCLUSION

There is much to be said for Hanna Rosin's book and the debate it has provoked, but if we were booksellers, we would likely place it in the fiction section. The nonfiction book regarding gender inequality would look something like this: women have made significant progress in breaking down barriers over the last three decades and there is little question that the economic condition of women has improved, some might say rather dramatically. But we still live in a gendered world, as anyone can see by simply walking around. And one area in which the progress has not been so strong is in the gender norms that we find in the home. Despite our pledges of equality and equal parenting, women remain the primary caretakers, even when men might be sharing more of the burden. Women are still primarily the ones who manage the illness of children, set and attend appointments, and arrange and participate in carpools, and there is a growing complacency over this arrangement, one in which we seem to have come to terms with the inevitability of a gendered world. The question is whether we should declare victory and head home, or take on new marching orders; the choice, one might say, is ours.

⁸¹ Cossman, *supra* note 67, at 408.