THE “OPT OUT REVOLUTION” AND THE CHANGING NARRATIVES OF MOTHERHOOD: SELF GOVERNING THE WORK/FAMILY CONFLICT

Brenda Cossman*

I. INTRODUCTION

“The double shift,” “the glass ceiling,” “the mommy track”: Women’s efforts to balance work and family have given rise to a host of buzz words over the last two decades. Now, it is the “Opt-Out Revolution”—the title of Lisa Belkin’s New York Times Magazine article in 2003 that described the decision of upper middle class, professionally trained women to leave the work force and to stay home to care for their children.1 Her Sunday magazine cover story, headlined as “Q: Why Don’t More Women Get to the Top?” alongside the answer: “A: They Choose Not To,”2 tracked the decisions of eight women graduates from Princeton now living in Atlanta, and four women in San Francisco, three with MBAs, to trade in their briefcases for diaper bags.3 Belkin maps their decisions onto what she identifies as a larger trend amongst highly educated women to opt out of the labor market in favor of motherhood.4

The “opt out” revolution became the media’s darling. The CBS Early Show did a feature on “More Stay at Home Moms” featuring Belkin’s “opt out” story.5 Within a few months, the story had appeared on the cover of Time Magazine, with “The Case for Staying Home: Why Some Young Moms are Opting Out of the Rat Race.”6 Within the year, the CBS Sunday Morning Show declared women were “Staying Home with the Kids,” the CBS Early Show featured a story declaring that mothers were “Trading Career for Home,” and the New York Times continued to

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3 See Belkin, supra note 1, at 42, 44, 58.
4 See id. at 44.
follow the story, keeping it alive in September 2005 with a front page story, “Many Women at Elite Colleges Set Career Path to Motherhood.”

Belkin’s “opt out revolution” story also became the focus of a feminist maelstrom, with academics and the mommy blogosphere denouncing the article. Some engaged with her statistics, denying that there was an “opt out” revolution at all. Others have argued more normatively that there should not be an “opt out” revolution, that women should be staying at work, while yet others argued that the phenomenon was being misdiagnosed in some form, suggesting for example that women are actually being pushed out. Many of the critiques dispute the “opting” part of the opt out revolution narrative, suggesting that in the context of an inflexible and demanding labor market, and highly gendered world of child rearing, the decisions made by these women are not best understood in the discourse of choice.

I want to tell a different story about the “opt out” narrative. Rather than simply highlighting the extent to which choice is constrained by market and familial arrangements and ideologies, I take this rhetoric of choice seriously, by focusing on its significance and discursive power in this new narrative of motherhood. I argue that the “opt out” revolution can be usefully understood in the register of self governance, that is, a mode of governance in which subjects are called upon to govern themselves through the choices that they make. Opting out, and making motherhood a full time project is part of the contemporary governance regime that insists that subjects “make a project of their lives,” that they take responsibility for their own and their family’s wellbeing and personal happiness. It is symptomatic of a broader trend in contemporary governance that includes not only those mothers who stay home but also those who stay at work, a trend wherein all mothers are called upon to self manage the work/family terrain through the choices available to them. Motherhood emerges as a practice of self

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9 See Linda Hirshman, Homeward Bound, AMER. PROSPECT, December 2005, at 20, 24 (suggesting that choosing to opt out of professional opportunities is no less unjust merely because it is labeled as a choice).
11 See discussion infra Part III.
12 See NIKOLAS ROSE, POWERS OF FREEDOM: REFRAMING POLITICAL THOUGHT 61 (1999); Michel Foucault, Governmentality, in THE FOUCALUT EFFECT: STUDIES IN GOVERNMENTALITY 87–104 (Graham Burchell et al., eds., 1991); Michel Foucault, Technologies of the Self, in TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHEL FOUCALUT 16, 22 (Luther H. Martin et al., eds., 1988).
governance, dissolving any broader sense of collective responsibility for the work/family conflict.

II. THE “OPT OUT” REVOLUTION

In the article that started the storm, Lisa Belkin interviewed ten women, eight of whom had graduated from Princeton, living in Atlanta and belonging to the same book club.13 These eight women of Princeton origin are described as doing things “that women once were not expected to do. They received law degrees of Harvard and Columbia. . . . They waited to have children because work was too exciting. They put on power suits and marched off to take on the world.”14 Out of the ten member Atlanta book club, only one of them works full time (she has no children), one works with her husband, “one works part time, two freelance,” and the remaining five are “not working at all.”15 Belkin corroborates these personal anecdotes with statistics, like the U.S. Census which shows that the number of new mothers who returned to the labor market fell from 59 percent in 1998 to 55 percent in 2000, and to the number of children being cared for by stay-at-home mothers, which increased by 13 percent in less than ten years.16 The Atlanta women’s stories are buttressed with interviews of women in a San Francisco mother’s group and, what Belkin describes as, “dozens of other women.”17 Based on these interviews, her own experience, and a smattering of statistics, Belkin’s thesis is that “something more is happening here. It’s not just that the workplace has failed women. It is also that women are rejecting the workplace.”18 And so the narrative of the opt out revolution was born: highly trained professional women choosing to leave the workforce to care full time for their children.

The basic narrative is repeated in each of the major news stories. The Time Magazine cover story tells of Cheryl Nevins, a labor lawyer in Chicago who is about to quit her job with the arrival of her third child. The CBS Early Show repeats the same opting out narrative in its “Trading Career for Home” story. This time it is Christina, who after university, “married a doctor, had a son, then another, and decided that her real career was a home.”19 In “Staying Home with the Kids” on CBS’s Sunday Morning, we meet Jessica Schwartzberg, who quit her job in product development after the arrival of her first child, and Nadine Kerstan, who is

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13 Belkin, supra note 1, at 42, 44.
14 Id. at 42.
15 Id. at 44.
16 Id.
17 Id.
18 Id.
described as having “no intention of returning to work at all.” Each story is interspersed with the same statistics: the four percentage point reduction in the number of new mothers who returned to the labor market between 1998 and 2000, from the U.S. Census. The stories each repeat that 22 percent of women with graduate degrees stay home and that there has been a 15 percent increase in number of the stay at home mothers in the last 10 years. From the Harvard Business School survey of its classes of 1981, 1985 and 1991, the stories report that 38 percent of its female graduates in their child rearing years were in the workforce. From a Catalyst research firm study, “26 percent of women at the cusp of the most senior levels of management don’t want the promotions.” The statistics are used to confirm the basic “opt out” narrative that emerges from the personal narratives: that highly educated, professional women are increasingly choosing to leave their high power jobs to stay home with their children.

III. WHAT’S WRONG WITH THE OPT OUT REVOLUTION? THE FEMINIST CRITIQUE

The media stories about the “opt out” revolution have produced a feminist maelstrom, condemning the Belkin article and the many other stories that followed. Although they often overlap in the arguments of the critics, three distinct modes of critique emerged: descriptive, a normative, and an analytic.

A. The Descriptive Critique: Actually, There Is No Opt Out Revolution

Some commentators have questioned the statistics upon which the “opt out” revolution is premised. Belkin relied heavily on one statistic: the 4 percentage point decrease in new mothers’ employment in between 1998 and 2000. The opt out stories were revived in 2005 when Census data again showed a 2 percent decrease in the labor market participation of mothers. But, when these statistics are subject to closer scrutiny, the “opt out” story becomes a little less clear. Heather Boushey of the Center for Economic and Policy Research has shown that men’s employment dipped during the same period, and that although women’s employment dipped during the same period, and that although women’s
employment dipped, there was little difference between mothers and non-mothers when older mothers are taken into account—instead of focusing solely on “highly educated, thirty-something mothers.” Further, she has shown that highly educated mothers are the least penalized by having children and least likely of all groups of mothers to leave the labor market to care for children. Boushey concludes:

The data stands in opposition to the media frenzy on this topic. In spite of the personal anecdotes, highlighted in various news stories, women are not increasingly dropping out of the labor force because of their kids. The main reason for declining labor force participation rates among women over the last four years appears to be the weakness of the labor market.

Commentators like Boushey and Coontz conclude that there is no statistically significant opt out revolution. Notwithstanding the anecdotal stories, women with young children are not opting out of the labor market. The opt out revolution is, in their view, a myth.

In a slight variation, other commentators critique the “opt out” narrative for declaring a trend without the statistics to back it up. In what is more of a methodological critique, several critics have pointed to the extent that the media stories, beginning with Belkin, have declared a trend based on a few anecdotal stories. Joan Walsh for example declared, “I was stupefied by the limited sample in Belkin’s story, whose headlines trade in absolutes.” Joan Williams, in her study of the media reporting of the opt out revolution, was similarly critical of the extent to which many of the stories declared a trend without statistical support. Belkin, and the multiple media stories that followed, stand accused of drawing broad

29 Id. at 12. Controlling for other factors, Boushey found that of women with children under the age of six, 55.6 percent with high school degrees were in the labor market, compared with 66.6 percent of those with college degrees, and 73.2 percent of those with graduate degrees. Id. at 11 & tbl. 5.
30 Id. at 2.
31 A number of critics denounce the opt out revolution, specifically in terms of a myth. See, e.g., E. J. Graff, Essay, The Opt-Out Myth, COLUM. JOURNALISM REV., March–April 2007, at 51, 54 (“By offering a steady diet of common myths and ignoring the relevant facts, newspapers have helped maintain the cultural temperature for . . . ‘the most family-hostile public policy in the Western world.’”). Others simply declare its non-existence. See, e.g., Laura T. Kessler, Keeping Discrimination Theory Front and Center in the Discourse over Work and Family Conflict, 34 PEPP. L. REV. 313, 321 (“In sum, there is no ‘opt-out revolution,’ not even a mini one.”).
33 WILLIAMS, supra note 10, at 18–19.
generalizations from the anecdotal experience of a few interviews. While stopping short of declaring the “opt out” revolution a myth, this variation of the critique nonetheless casts doubt on its accuracy.

B. The Normative Critique: Women Shouldn’t Opt Out

A second and highly controversial response to the “opt out” revolution story was a normative critique: women should not be making this choice. This critique does not take issue with whether the “opt out” revolution is occurring; it either assumes that it is or attempts to add demographic support to the “opt out” phenomenon. Linda Hirshman, in a highly popularized and controversial article in the American Prospect,34 undertook a study of women who had announced their weddings in the New York Times Style section in 1996, and found that 85 percent of the brides she located were not working full time, and half were not working at all.35 She further cited several studies, including one of Harvard Business School MBAs which found that only 38 percent of female graduates were working full time, and a 2004 study by the Center for Work Life Policy which found that 43 percent of women with graduate or prestigious bachelor degrees who now had children had taken time out of the labor market.36 Based on these various studies, Hirshman concluded that the “opt out” revolution was real; highly educated professional women are leaving the workplace for child rearing.37 And she proceeded to denounce the “opt out” revolution as a failure of choice feminism.38 In her view, feminism’s celebration and retreat to choice left it without a language within which to criticize the highly gendered ideology of the family.39

The family—with its repetitious, socially invisible, physical tasks—is a necessary part of life, but it allows for fewer opportunities for full human flourishing than public spheres like the market or the government. This less-flourishing sphere is not the natural or moral responsibility only of women. Therefore, assigning it to women is unjust. Women assigning it to themselves is equally unjust.40 Hirshman is unequivocal in her proscription: women should work. “Prepare yourself to qualify for good work, treat work seriously, and don’t put yourself in a position of unequal resources when you marry.”41 And of the New

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34 See Hirshman, supra note 9, at 20–26; see also LINDA R. HIRSHMAN, GET TO WORK: A MANIFESTO FOR WOMEN OF THE WORLD (2006) (effectively translating the controversial article into a short book, with all the same basic arguments of the value of work and the lack of value of choosing to stay home).

35 Hirshman, supra note 9, at 23.

36 Id. at 22.

37 Id. at 23.

38 Id.

39 Id. at 24.

40 Id.

41 Id.
York Times brides, who seem quite happy with their decisions, she is equally unequivocal in her judgment: “what they do is bad for them, is certainly bad for society, and is widely imitated, even by people who never get their weddings in the Times.” The choice to stay home with children is, in her view, a lesser choice:

A good life for humans includes the classical standard of using one’s capacities for speech and reason in a prudent way, the liberal requirement of having enough autonomy to direct one’s own life, and the utilitarian test of doing more good than harm in the world. Measured against these time-tested standards, the expensively educated upper-class moms will be leading lesser lives.

A few anecdotal narratives also appeared of women who had opted out, and who, now divorced, are watching the economic consequences of that choice come home to roost. Terry Hekker, in a Modern Love column of the New York Times Style section, told of her shock in the face of a divorce after 40 years of marriage as a stay at home housewife. Over 25 years earlier, Hekker had written an op ed in the New York Times, on the satisfaction of life as a housewife. Now, she faced the devastating financial consequences—of a woman in her 60s who received only short term alimony and who would have to enter the work force. Of the new opt out revolution, she wrote:

I read about young mothers of today—educated, employed, self-sufficient—who drop out of the workforce when they have children, and I worry and wonder. Perhaps it is the right choice for them. Maybe they’ll be fine. But the fragility of modern marriage suggests that at least half of them may not be.

A similar personal narrative is told by Katie Allison Granju who pursued a flexible work-at-home writing career while caring for her children, and then confronted “a sudden and unexpected shift of seismic proportions”: a divorce and its economic consequences. Did not women of her generation, she wonders, “learn the risks of depending too heavily on our spouses for future economic security by watching

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42 Id. at 26.
43 Id.
46 Hekker, supra note 44, at 9.
middle-aged women who had been full-time mothers limp into the workforce in droves as divorce rates skyrocketed during the 70s and 80s?" Granju reflects: “Apparently, however, we didn’t get the message. I know that I didn’t . . . . I fear that many of Lisa Belkin’s opt-out pals are setting themselves up for the same rude awakening.” These personal narratives are not as judgmental as the Hirshman critique, yet they gently suggest that opting out may not be a wise choice.

C. The Analytic Critique: “Opt Out” as Misdiagnosis

A third response to the “opt out” revolution is an analytic critique that the phenomenon has been misdiagnosed. These critiques seem to accept that something is happening with women in the labor market, but it is not adequately captured by the idea that women are opting out in favor of full time motherhood. Joan Williams, for example, writes that, although the descriptive critique is helpful as far as it goes, it nevertheless:

[O]verlooks the elephant in the room: The effect of children on women’s employment may not have increased over time, but it is substantial. The Opt Out story reflects the brute reality that most high-level jobs remain overwhelmingly male, and in fact, large numbers of mothers stay home full time and many more have left the fast track.

Williams goes on, however, to provide a very different analysis of the work/family conflict, arguing that many women are actually “pushed out by workplace inflexibility, the lack of family supports, and workplace bias against mothers.”

Many critiques cluster around this question of choice; specifically, the role that choice plays in the “opt out” revolution narrative; and question whether women can be said to be freely choosing to leave the labor market, highlighting instead the more systemic factors that limit women’s options within the labor market and the gendered norms of child rearing. Some emphasize the ideological significance of the rhetoric of choice, particularly, its role in obscuring the more

48 Id.
49 WILLIAMS, supra note 10, at 7.
50 Id.
structural obstacles in the work/family conflict. Catherine Albiston, for example, has focused on the “rhetoric of choice” in the opt out narrative, arguing that it “tends to frame the work and family conflict as a private dilemma rather than a matter for public policy” and “helps obscure how institutions constrain the alternatives from which women must make their choice.”

Yet others argue that even if it is a choice for the few, it is not a choice available to the many. These critics trouble the idea of choice by highlighting the class and race bias of the “opt out” narrative. Some specifically contrast the opt out narrative with welfare reform that forced poor women with very young children into the labor market, while others highlight the economic demands on working and middle class women to work to support their families.

IV. THE OPT OUT REVOLUTION AS SELF GOVERNANCE

The feminist critiques of the “opt out” revolution narrative suggest that Belkin’s story of more and more mothers freely and cheerfully leaving the labor market may be a little too simplistic. The descriptive critique challenges the “more” part of the story, while the misdiagnosis critique suggests that women’s relationships to work/family are rather more complex than captured by the idea of

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53 Id. at 45; see also Heather Hewitt, Telling It Like It Is: Rewriting the “Opting Out” Narrative, THE MOTHERS MOVEMENT ONLINE, www.mothersmovement.org/features/05/h_hewitt_1005/opting_out_1.htm (“On an individual level . . . the ready phrase ‘opting out’ may provide an easier explanation . . . than calling out the complex array of cultural, structural, economic and personal pressures that influence mothers’ behavior. As Peskowitz points out, it’s a lot easier to use a rhetoric of personal choice . . . than to acknowledge the greater forces that often compel us to make certain choices.”).
54 See, e.g., Michael Selmi & Naomi Cahn, Women in the Workplace: Which Women, Which Agenda?, 13 DUKE J. GENDER L. & POL’Y 7, 8 (2006) (arguing that most women are not professional women, and do not need “better part-time work, shorter work hours and greater workplace flexibility”); rather, the majority of women need solutions that would help them to spend more time in the workplace, such as longer school days, more public day care and access to higher education. See Albiston, supra note 52, at 47 (arguing that Belkin’s “generalized rhetoric of choice, based on a few extremely privileged women with high salaries, builds a universal master narrative on the experiences and available choices of upper-class, white, straight women”). As a result, Belkin fails to “acknowledge that ‘opting out’ does not have the same cultural meaning across race and class lines. For mothers who receive public assistance, opting out is not viewed as virtuous conformity with biological imperatives, but as lazy opportunism.” Id. at 46–47. “[T]here is far less support for poor, single mothers, and particularly women of color” to make the choice to opt out. Id. at 47; see also Douglas, supra note 51, at 10 (discussing the class/race bias of the opt out revolution).
55 See Albiston, supra note 52, at 34 & n.17.
56 See Selmi & Cahn, supra note 54, at 24.
“opting out.” Yet, it would be a mistake to dismiss the narrative of choice that these women deploy to describe their lives. The narrative of choice is an increasingly important terrain of self governance on which individual mothers are called upon to manage their own work/family conflict. Rather than highlighting the extent to which choice is constrained by market and familial norms and practices, I argue that it is important to take this choice seriously, by focusing on its discursive significance in a newly emerging narrative of motherhood. I tell the story of the “opt out” revolution in the registrar of self governance, drawing on Foucault’s work on governmentality, and suggest that it is on this terrain of freedom that motherhood and the work/family conflict is being reconstituted.

A. Self Governance and the Practices of Freedom

“Foucault’s later work on governmentality began to explore governance as the conduct of self-conduct and technologies of the self.” These technologies of self consist of ‘those intentional and voluntary actions by which men not only set themselves rules of conduct, but also seek to transform themselves, to change themselves in their singular being, and to make their life into an oeuvre that carries certain aesthetic values and meets certain stylistic criteria.’ These technologies of the self “permit individuals to effect by their own means or with the help of others a certain number of operations on their own bodies and souls, thoughts, conduct, and way of being, so as to transform themselves in order to attain a certain state of happiness, purity, wisdom, perfection, or immorality.”

“Individuals ‘not only set themselves rules of conduct, but also seek to transform themselves, to change themselves in their singular being, and to make their life an

57 The value-added aspect of the normative critique is rather less clear to me. Telling women that they should not make certain choices is bound to be deeply politically unpopular (witness the outpouring of rage directed to Linda Hirshman), and fails to recognize the centrality of choice in contemporary modes of governance. See Judith Stadtman Tucker, Everybody Hates Linda, THE MOTHERS MOVEMENT ONLINE, Dec. 2005, http://www.mothersmovement.org/features/05/hirshman/homebound_1.htm; Homesick Home, http://thehomesickhome.blogspot.com/ (Dec. 1, 2005, 5:09 PM), available at http://thehomesickhome.blogspot.com/2005/12/failure-to-cause-i-never-joined.html; see also Linda R. Hirshman, Unleashing the Wrath of Stay-at-Home Moms, WASH. POST, June 18, 2006, at B1 (responding to Tucker’s Web article). The stories of women who opted out, and now confront the economic challenges of a post divorce world, may, on the other hand, be a useful cautionary tale, particularly for public policy and legal regulation of the post divorce family. See supra notes 44–48 and accompanying text.

58 BRENDA COSSMAN, SEXUAL CITIZENS 12–13 (2007) (citing Foucault, Technologies of the Self, supra note 12 at 19, 22; Foucault, Governmentality, supra note 12).


60 Foucault, Technologies of the Self, supra note 12, at 18.
“Individuals are called upon to cultivate their self; to make themselves a project of self-mastery and self-transformation.”

Other “scholars have explored how contemporary regimes of subjectification increasingly rely on the self-discipline and the government of oneself. Nikolas Rose describes the analysis as one that directs attention to ‘the ways in which individuals experience, understand, judge, and conduct themselves’.\(^{63}\)

Technologies of the self take the form of the elaboration of certain techniques for the conduct of one’s relation with oneself, for example, requiring one to relate to oneself epistemologically (know yourself), despotically (master yourself), or in other ways (care for yourself).\(^{64}\)

“It is an approach to governance that presupposes the freedom of the governed to make choices. It seeks to shape the conduct of others by acknowledging and using this capacity of the subject.”\(^{65}\) He argues “individuals are incited to live as if making a project of themselves: they are to work on their emotional world, their domestic and conjugal arrangements, their relations with employment and their techniques of sexual pleasure, to develop a ‘style’ of living that will maximize the worth of their existence to themselves.”\(^{66}\) Note the inclusion in this list of one’s “domestic and conjugal arrangements”—Rose highlights the role of the family “in this project of self governance as one of the multiple sites where individuals are called upon to make ‘a project of themselves’.”\(^{67}\)

“Individuals must make their families, their marriages, their children, their sex lives, their domestic happiness a personal project. They must actively assume responsibility for the pursuit of their wellbeing and that of their family.”\(^{68}\)

Alan Hunt similarly argues that this is a mode of governance that “seek[s] to stimulate and activate the controlled choices of individual citizens.”\(^{69}\) It is also one “increasingly based on expertise, often ‘vested in the hands of experts’ but also often reintroduced to allow non-experts to train themselves to become experts.”\(^{70}\)

Hunt emphasizes the role of self help in this governance, arguing that it has

\(^{61}\) Cossman, supra note 58, at 72 (quoting and citing FOUCALUT, supra note 59, at 10).

\(^{62}\) Id. at 13.

\(^{63}\) Id. at 72 (quoting NICHOLAS ROSE, INVENTING OUR SELVES: PSYCHOLOGY, POWER AND PERSONHOOD 29 (1996) (citing Michel Foucault, Technologies of the Self, supra note 12; Michel Foucault, Governmentality, supra note 12)).

\(^{64}\) ROSE, supra note 63, at 29.

\(^{65}\) Cossman, supra note 58, at 72 (citing ROSE, supra note 12, at 3–4).

\(^{66}\) ROSE, supra note 63, at 157.

\(^{67}\) Cossman, supra note 58, at 73 (quoting and citing ROSE, supra note 63, at 157).

\(^{68}\) Id.


\(^{70}\) Cossman, supra note 58, at 13 (citing HUNT, supra note 69).
become a central technique for this self regulation. “[T]hrough sustained self-
scrutiny and self-control, the individual is ‘obliged to live life harnessed to projects
of its own identity, its normality, its weight, its mental and physical health.’” 71

B. Motherhood: Governance Through Choice

The “opt out” revolution is part of these emerging projects of self governance. Individual women are being called upon to take responsibility for their lives and their families, for negotiating the competing and conflicting demands of work and family by choosing one over the other. It is the very existence of choices in relation to the work/family conflict that are to be managed, negotiated, and balanced that produces motherhood as a project of self governance and reconstitutes the identities of women as mothers through their chosen child rearing projects. Choice operates not as a mere chimera for an underlying subordination but, rather, is the very terrain on which the project of motherhood and its identities are constituted. It may indeed operate to obscure the more structural obstacles facing women who seek to balance work and family. Yet, that is not all it does. The women of the opt out revolution—the upper class, highly educated, professional women capable of commanding (and leaving) six figure salaries are indeed women with some choices. It is absolutely crucial to the “opt out” narrative that their choices are not entirely fantastical. They choose to become doctors, lawyers, MBA-wielding executives. They can choose to leave them, temporarily at least, because of the financial backing of wealthy husbands. They could choose to hire nannies, and continue in their high pressure jobs. But they choose not to. Now, they choose motherhood. It is precisely the fact that this is a generation and demographic of women with choices that makes their choice to “opt out” so significant.

The women of the “opt out” revolution, over and again, emphasize their choices against the backdrop of managing the needs of their families. Some express a process of intense self-scrutiny, a process of looking hard at their needs and desires, and those of their families, and coming to the conclusion that opting out is simply the right choice for them. Consider the story of Katherine Brokaw, one of the Princeton women in Belkin’s story, who went on to Columbia Law School, and then, to become an associate at a New York law firm. 72 Her husband was offered a position in Atlanta, where she took up a position in a local firm. 73 Three years later, she was pregnant with her first child. 74 She took a three month maternity leave with access to firm e-mail, and she went back to work full time. 75 Within a few months, she had been put on a major case, which had been “moved up on the calendar by the presiding judge” and produced a “crushing schedule, up

71 Id. at 73 (quoting HUNT, supra note 69, at 218).
72 Belkin, supra note 1, at 45–46.
73 Id. at 46.
74 Id.
75 Id.
to 15-hour days, seven days a week, while still nursing her daughter, who was not sleeping through the night.\footnote{76} After preparing for the trial, it was postponed, which produced a period of "soul-searching."\footnote{77} She decided to quit when she realized her goal, becoming a partner, would make her "actual life" worse.\footnote{78} She is now a full time mother to her three children.\footnote{79} "I wish it had been possible to be the kind of parent I want to be and continue with my legal career' she says, ‘but I wore myself out trying to do both jobs well.'\footnote{80} Or consider Cheryl Nevin, the labor lawyer in the \textit{Time} Magazine cover story who was about to quit her job with the arrival of her third child.\footnote{81} "It’s hard. I’m giving up a great job that pays well, and I have a lot of respect and authority,’ she says. The decision to stay home was a tough one, but most of her working-mom friends have made the same choice. She concludes, ‘I know it’s the right thing.’\footnote{82}

For both of these women, the process was one of intense self scrutiny of the menu of choices and of reaching the right choice for themselves and their families. In contrast other, younger women, like Vicky McElhaney Benedict, who graduated from Princeton in 1991 and then from law school at Duke, present their decisions to quit as much less angst-ridden.\footnote{83} She said, "[e]ven before I became a mother, I suspected that I wouldn’t go back to work."\footnote{84} She is described as secure in her decision to stay home with her children: "This is what I was meant to do."\footnote{85} While the difficulty of the decision thus varies, either way, everyone is described as ultimately happy with their choices. Denise Stennet, an opt out mother from a CBS News story reflects:

There’s no way I could have that career, that financial stability, and maintain the life I have with my children today. I think it’s better for me. And that’s a personal choice. It’s all about making decisions that are right for you and your family. For another woman, maybe the answer is no. But for me, I made the right decision.\footnote{86}

Jessica Schwartzberg of the CBS News story says: “It was a great decision. I have no regrets, none, zero.” Choice is the mantra of these news stories. Whether it is in

\footnote{76} Id.\footnote{77} Id. (quoting Brokaw).\footnote{78} Id.\footnote{79} Id.\footnote{80} Id. (quoting Brokaw).\footnote{81} Claudia Wallis, \textit{The Case for Staying Home}, \textit{TIME MAG.}, March 22, 2004, (quoting Cheryl Nevins).\footnote{82} Id. (quoting Nevin).\footnote{83} See Belkin, supra note 1, at 46.\footnote{84} Id. (quoting Benedict).\footnote{85} Id. (quoting Benedict).\footnote{86} Id.
the words of the “opt out” women or the broader reflections of the narrator, the
story is one of women freely and self consciously choosing to leave the labor
market to stay home with their children.

The misdiagnosis critique emphasizes that many of these women were in fact
pushed out by the demands of their profession. Several of the women, including
Katherine Brokaw, are held up as a counter examples of mothers who actually
wanted to stay at work, but whose requests to move to more part time hours were
rejected, and who were effectively forced to quit.87 As a result, the critics tend to
put her decision to quit in quotation marks: “she ‘chose’ to quit,”88 to highlight
their critique of the choice narrative. Some go further. Susan Douglas writes:
“Their ‘choice’ was to maintain their punishing schedules or to quit. I am sorry,
but this is not a choice.”89

There is little doubt that the crushing demands of their workplaces, and the
refusal of their employers to allow part-time or flex hours, forced these women to
make a choice that would not have been their first choice. Yet, this should not
completely negate the idea that choice is at play. Brokaw could have stayed in her
demanding job, like many other mothers do. Or she could have looked for another
job, one that was less demanding, was part-time, or did offer flex hours. She did
not do so. She made a choice amongst a range of options that were available.
These may not have been an optimal range of choices—obviously they were not—but they were choices nonetheless. Indeed, it was the fact that the choices were not
optimal that makes the decision-making process so difficult for Brokaw and that
led to the process of intense self-scrutiny. Workplace inflexibility, identified by
critiques like Williams’, does not negate choice. Williams herself insists that
“choice and discrimination are not mutually exclusive.”90 Yet, many other critics
gloss over this observation, arguing instead that the “opt out” narrative is a myth,
that women are pushed out, and that their own insistence on the language of choice
is a kind of self justificatory narrative.91

87 See Belkin, supra note 1, at 46; cf. Williams, supra note 10, at 9 (describing Julia
Panley-Pagetti being “fired while on maternity leave”); Graff, supra note 31, at 54
(describing Dr. Diane Fingold’s request for a three and a half hour reduction in her week,
the rejection of the request by her medical practice, and her move to a different practice
that “was willing to accomodate her part-time schedule”).
88 Graff, supra note 31, at 53.
89 Douglas, supra note 51, at 10.
90 Williams, supra note 10, at 47.
91 See, e.g., Graff, supra note 31, at 54 (“Still, if they were pushed out, why would
smart, professional women insist that they chose to stay home? Because that’s the most
emotionally healthy course: wanting what you’ve got. ‘That’s really one of the agreed-
upon principles of human nature. People want their attitudes and behavior to be in sync,’
said Amy Cuddy, an assistant professor in the management and organizations department
at Northwestern Kellogg School of Management. ‘People who’ve left promising careers to
stay home with their kids aren’t going to say, “I was forced out. I really want to be there.”
It gives people a sense of control that they may not actually have.’”).
Not all of the feminist commentators deny choice so fully. Some of the academic commentary draws on Joan Williams’ work to advance a more nuanced analysis of women’s choices in the context of work/family. 92 Some, like Laura Kessler, specifically acknowledge that women are making choices, while insisting on bringing the constraints against which these choices are made into sharper relief. 93 Yet others acknowledge this false dichotomy between choice and constraint, but then seem to relegate choice to the background, with greater emphasis placed on the constraints and the extent to which the idea of choice obscures these constraints. 94 Consider for example the writing of Miriam Peskowitz, who attempts to develop a more nuanced discussion of choice. She is critical of the “opt out” narrative because it obscures the underlying structural constraints, and “forecloses any discussion about what ‘choice’ means and about what kinds of options women have.” 95 She tries to avoid simple victim/agent dichotomies suggesting that women make choices “in response to a limited set of workplace options, and a culture that has a constricted imagination of work family.” 96 Choice is thereby affirmed. But, she also worries that the popularity of the opt out narrative obscures this background: “Words like ‘choice’ and “options’ substitute for a much richer and complex human tangle of desire and circumstances, consequence and limitations; of foibles and regretted decisions.” 97 Yet, even Peskowitz’s discussion at times falls back on a distinction between “a bunch of decisions” and “real choice,” suggesting that women may be able to make the former, but do not have the latter. 98 Choice here begins to fade.

Many of the critics worry that to acknowledge choice is to deny structural and cultural constraints. Given the dominant and popular discourse of choice, their...
anxiety may be legitimate. Yet, their critique—particularly when it verges towards the claim that women are not really making a choice—falls right into the false dichotomy of victim/agent, free will/determinism, that constitute the very discursive problem of choice as an all or nothing proposition. Moreover, it risks negating the agency of the women who stay home to care for children, partial though it may be. Instead of denying choice as illusory or self justificatory, or viewing it exclusively through the lens of constraint, feminist critiques of the “opt out” revolution would, I believe, be better served if it recognized the centrality of choice in contemporary modes of governance. Women are being called upon to make choices, to negotiate through the albeit limited range of options available to them. Indeed, making the choice as individuals becomes their moral imperative. And once made, the popular discourse of choice operates to immunize their decisions from critique: because choice is paramount, and to criticize an individual’s decision is to fail to respect their life project.

V. SELF GOVERNANCE AND THE WORKING MOM, OR “THIS IS HOW SHE DOES IT”

The ideas of self governance and self management applies not only to mothers who stay home, but also to those who stay at work, who are also increasingly called upon to self manage the work/family terrain through the choices available to them. Working mothers must find ways to balance the competing demands on their time. Through an array of self help books, magazine articles, and talk show segments, working mothers are proffered advice on better managing their time, making more efficient decisions, running a smoother household, and otherwise managing the work/family terrain to maximize their own happiness and that of their family. Not unlike the “opt out” narrative, the message is one of self governance, that is, of individual women self regulating through choice. Once again, the work/family conflict is reconfigured in highly individualized terms, in which individual women are called upon to resolve the competing demands on their time through the choices available to them.

99 Williams has written extensively of the extent to which the “rhetoric of choice,” so deeply embedded in American legal and political culture, “diverts attention from the constraints within which an individual’s choice occurs onto the act of choice itself.” Williams, supra note 92, at 1564 (citation omitted).

100 Kathryn Abrams’ work on “partial agency” may be a better place to begin these discussions. Although Abrams emphasizes the structural constraints facing women, she also seeks to theorize the role and meaning of agency within these constraints. See Kathryn Abrams, From Autonomy to Agency: Feminist Perspectives on Self-Direction, 40 WM. & MARY L. REV. 805, 830–31 (1999); Kathryn Abrams, Sex Wars Redux: Agency and Coercion in Feminist Legal Theory, 95 COLUM. L. REV. 304, 348 (1995). In the context of the opt out debates, the idea of partial agency might allow the conversation to circumvent the either/or nature of the debate about choice.
A. The Advice Genre

In an Oprah show entitled “Moms with Careers: How do they Do it?,” Oprah interviews women struggling with the work/family balance. One mother, Connie, describes herself as feeling “torn until she found the secret to striking a balance in her busy life.” In Connie’s words:

I surrendered to the fact that things don’t have to be perfect and that I can be a great wife and a great mother and a great career woman and not have to control every situation...Struggles are a part of life, and it’s basically how you manage them that separate people who do well and people who don’t.

Oprah’s narration tells us that “her new found sanity arrived when she changed her outlook.” Connie elaborates: “I just look at things differently...When I surrendered the need to control situations or control what was going on around me is when I felt better and more at peace.” Connie’s secret, then, was simply a change in attitude. There is no broader systemic issue of family, market or state; just a personal narrative about managing competing demands by surrendering to imperfection. This is of course classic Oprah discourse—overcoming obstacles through personal transformation. Yet, it is resonant with the more general advice being directed to working mothers.

It is a narrative repeated a million fold in the self help literature. The self help books directed to working mothers, with titles like This Is How We Do It and How She Really does It: Secrets of Successful Stay at Work Moms offer advice on “staying at work, staying sane, staying satisfied, and staying at the heart of your family.” The secrets range from having a more positive attitude and avoiding guilt, to establishing boundaries and being more organized, to recognizing that there are shortcuts to making homemade cookies, and of course, “letting go of perfect.” The message that appears over and again is that working mothers need to find balance. For example, the website of the magazine Working Mother includes different sections, including: “Balance You,” “Balance Work & Career,”

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102 WENDY SACHS, HOW SHE REALLY DOES IT: SECRETS OF SUCCESSFUL STAY-AT-WORK MOMS, at front jacket (2005).
103 See id. at 32.
104 See id. at 51. A whole chapter is then devoted to “Giving Up the Guilt.” Id. at 69–92.
105 Id. at 54, 60–62.
106 Id. at 52.
107 Id. at 59.
108 Id. at 66–68.
and “Balance Family.” Each of these sections then provides advice to these balance seekers.

Labor market conditions are addressed in the section on Best Companies, which provides a list of “2008 Working Mother 100 Best Companies.” This list is compiled by a measuring company performance in seven areas: “workforce profile, compensation, child care, flexibility, time off and leaves, family-friendly programs and company culture.” There is generally a vetting of these family friendly companies, and profiles with information about each of the companies.

This genre of writing is categorically pro-work, with an emphasis on how employers could and should make the work place more family friendly by implementing more family friendly policies. Responsibility is placed here on employers—they should change the way they do things. However, this responsibility is cast in a rather positive, role model light: employers should do this in order to become role model employers. This is not about government regulation. Rather, it is about employer self regulation, about what employers ought to do to become model employers. It is self regulation, but this time up one level, focused on the employer not simply the individual mother.

Despite this overture to the responsibility of the employer, the emphasis through most of this self help literature is on women. The literature advises women to make better choices, through better time management and organizational skills, as well as adopting more realistic attitudes. The solution to the work/family conflict is largely individualized: working mothers just need to self govern—a little better than they current do.

B. Work/Care and the Self Governing Mother

The opt out revolution and the debates around choice need to be connected to and contextualized within the feminist legal debates on work/care. These debates have tended to focus on the failure of public policy on at least one of three levels: the state, the labor market, or employer and the family. Some feminist legal theorists have argued for an acknowledgement of women’s caregiving roles within family and/or state policy, while others advocate policies to ensure women’s labor

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110 Id.


114 See Douglas, supra note 51, at 10.
market participation.\textsuperscript{115} This is a complex debate, the nuances of which are beyond the scope of the paper. However, each of the multiple positions within the work/care debates focuses the role of the state, the market and/or the family in caregiving, and the appropriate regulatory approach at each of these levels.\textsuperscript{116} Despite the significant differences in the positions, each advocates some form of regulatory response.\textsuperscript{117} The law is called upon as part of the solution to recognizing and accommodating women’s role in caregiving.\textsuperscript{118} The proposed solutions are broad and even contradictory; some advocate for greater recognition of women’s caregiving roles within family law and the division of marital property,\textsuperscript{119} while others argue that such a solution only encourages greater dependency and that a better response is to encourage women’s labor market participation.\textsuperscript{120}

The shift to self governance, however, pushes the attention away from the state/market/family to the individual. Further, this shift from the more structural or institutional to the self also displaces law and legal regulation in solution to work/family conflict. Rather, in the discourse of the opt out revolution, the problem of the work/family conflict becomes an individualized dilemma to be negotiated by each woman.

It is perhaps not surprising that the role of the state would disappear in this discourse, since the American state is not often seen in broader popular discourse as having a role in caregiving. The disappearance of the responsibility of the market and the employer has not gone uncontested. Rather, these employment conditions are the site of the most significant contestation in the controversy generated by the opt out revolution, as the analytic critique argues that it is hostile market conditions that have pushed these women out.\textsuperscript{121}

What is perhaps most surprising, however, is the disappearance of the family, or more specifically the husbands within the family unit. Each of the women of the opt out revolution are able to opt out of the workforce precisely because they have husbands with rather significant salaries to support them.\textsuperscript{122} Yet, much of the choice discourse is the choice of the individual woman, rather than a family

\textsuperscript{115} See Albiston, supra note 52, at 39–40. No wonder the work/care debates within feminist legal theory have generated an enormous literature.

\textsuperscript{116} Id.

\textsuperscript{117} See id.

\textsuperscript{118} See id. at 47–49.

\textsuperscript{119} See Williams, supra note 92, at 1609 & n.286.

\textsuperscript{120} See Albiston, supra note 52, at 39–40.

\textsuperscript{121} See Douglas, supra note 51, at 10.

\textsuperscript{122} See, e.g., Belkin, supra note 1, at 46 (“A native of Dallas, [Vicky McElhaney Benedict] ‘had fabulous offers from firms back home, but I didn’t take them,’ she says. Though not yet engaged, she decided to follow Charlie Benedict to Atlanta instead, ‘where I joined a law firm that was not as high-profile.’ She made the choice, she says, looking back on it, ‘because I knew that the long-term career was going to be his.’”).
choice.\textsuperscript{123} The discourse of choice is one that is entirely individualized.\textsuperscript{124} The significance of this individualized choice is one with potential temporal consequences.\textsuperscript{125} If the relationship breaks down, it remains unclear how well family law of the future (or even of the present) will compensate women for their caregiving and their opportunity costs.\textsuperscript{126} Given that a woman chose to stay home, any economic cost may be framed as her choice, rather than as a choice made by the family unit as a whole, and as a cost that should be shared by the family as a whole.\textsuperscript{127}

VI. CONCLUSION

The self governance discourse of the opt out revolution may thus operate to deflect attention away from the multiple levels of state, market, and family that constitute the terrain of women’s choices. However, pointing out this obfuscating effect should not be equated with denying the fact of choice. Rather, this Article’s argument is that it is precisely the degree of choice operating in these women’s lives that makes the narrative so powerful, and so difficult to effectively challenge. Instead of denying the descriptive, analytic, or normative reality of choice, an effective feminist response may be to shift its analysis to the terrain of self governance and governmentality, and begin to consider the multiple ways in which motherhood is being reconfigured on this terrain.

\textsuperscript{123} See id.
\textsuperscript{124} See id.
\textsuperscript{125} See infra notes 44–48 and accompanying text.
\textsuperscript{126} See Williams, supra note 92, at 1609.
\textsuperscript{127} See, e.g., id. (“Although judges are more subtle, a student in my Property class accurately expressed the theory underlying such rulings: ‘If a woman takes time off to spend with her kids,’ he said, ‘that’s her choice. Don’t expect me to pay for it.’”).