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ARTICLES

GENDER WARS: SELFLESS WOMEN IN THE REPUBLIC OF CHOICE

JOAN WILLIAMS*

A central theme in American thought is that society is a "republic of choice" comprised of autonomous individuals with rights, making choices in pursuit of their own self-interest. This ideology is covertly gendered. Professor Williams examines the abortion and "working mother" debates and shows how, in both contexts, mothers who pursue their own self-interest often are condemned as selfish. The reigning ideology, she concludes, is best described as recommending selflessness for mothers and self-interest for others. She applies this analysis to the rhetoric of choice in the abortion and the "working mothers" debates. Pro-choice advocates have defended abortion as the right of women to choose their own destinies. Professor Williams argues that this rhetoric taps Americans' anti-government feelings in a powerful way, but also awakens gender fears of selfish mothers and unnurtured children. These fears should be addressed by combining choice rhetoric with reassuring messages that pro-choice advocates share with their opponents a reverence for motherhood. She argues that the abortion controversy is not the place to challenge the norm of selflessness for mothers, but that the "working mothers" debate is. Whereas in the abortion context women's claims for choice and autonomy pit them against the sanctity of life itself, in the "working mothers" debate women's rights can be framed as a matter of equality with men and fairness to children. To accomplish this requires a challenge to the rhetoric of choice, which deflects attention away from the constraints within which women's choices occur. In the context of work/family conflict, choice rhetoric is an integral part of a gender system that leaves women with different—and less desirable—choices than men. Feminists need to challenge both the rhetoric and the institutions that make child nurture dependant on the selflessness of mothers.

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Could I raise a kid alone? I have never wanted to raise a child alone, because as a child with one parent I was so economically and emotionally vulnerable that I couldn't do that to a child. My mom had raised three after my father left, while working at secretarial jobs. She drank herself to death and the three of us feel lucky that we are not more screwed up than we are. I rationally know the difference between my mother and myself. But could I do it?

Could I make it if I tried to raise a kid alone? I couldn't afford much in the way of help, how would I do it? Would I have a difficult pregnancy? I had already been sick as a dog for two weeks—would it continue? [There was] no parental leave, no maternity leave: plus the first woman to come up for [promotion] couldn't ask for it if it had existed. If I refused to abort and called his bluff and he decided to stay with me (which, I see in retrospect would have been more likely to occur), then what? I worked the second shift in our house and had accepted that role—it seemed a fair trade at the time for the security of marriage and, although I resented it somewhat I reminded myself that he was from a traditional family and he might change later and, after all, since we had no children, the burden was something I could live with. In other words, all the child-rearing responsibilities would have been mine.

Finally, although I wasn't labelling it correctly then, the abuse had started—in my heart of hearts I knew he would do to his children what he had so often reported his dad had done to him. I didn't want him to raise a child.

[So I aborted]. My friend Linda, who had had an abortion, went with me. It was horrible.

Instead of focusing on what a bad, selfish person I was, as I have, I can see how the real villain is a system that gave no support or aid to my mother and that would not have supported me. If at that time I had believed that I could continue to work at a job that meant so much to my dignity and have a child, I would have happily done it.¹

INTRODUCTION

Abortion and work/family conflict are related in ways not often recognized. In practice, the economic marginalization of caregivers plays a

¹ Where not footnoted to a specific source, narratives such as this were told to me personally. I have changed identifying details.

contributing role in many abortions.² More abstractly, the phenomena also are linked by the rhetoric of choice: abortion is defended on “pro-choice” grounds; mothers “choose” to scale back work commitments because of their children’s needs.

The rhetoric of choice stems from liberal imagery of autonomous individuals making choices in their own self-interest. This imagery, purportedly gender-neutral, in fact is covertly gendered. While this imagery endorses self-interest as the proper motivation for all adults, the ideology of conventional femininity condemns mothers who pursue self-interest over their children’s needs as “selfish.” A more accurate understanding of liberalism would recognize the way it excludes mothers from the republic of self-interested choice, mandating selflessness for mothers and self-interest for others.

The rhetoric of choice often translates the power differential between men and women into conflicts within individual women and among groups of women. Only by understanding how to control this gender dynamic can feminists translate conflicts among and within women back into conflicts over the power differential between men and women. Underlying this approach is a postmodern sense that our rhetorics are social constructions that frame our range of possibilities.³ If we as feminists want to reconstruct the framework of women’s lives, close attention to rhetoric is vital to empower women—and men—to reimagine a differently gendered world.

This Article argues that feminists need to become more self-conscious about the gender eddies that swirl around the rhetoric of choice. The rhetoric is appropriate only where one’s rhetorical goal is to focus attention on the act of “free” choice. But, of course, choice always occurs within constraints. Where one’s goal is not to defend a realm of freedom currently enjoyed, but to challenge the constraints limiting that “freedom,” the rhetoric of choice helps reinforce the gender structures feminists need to challenge.

Part I explores the way choice rhetoric deflects a challenge to the disempowerment of mothers into an internal gender war within individ-

² Half of the aborting women surveyed in one study identified concern about how a child would interfere with their job, employment or career as a key factor in their decision to abort, and about two-thirds said they could not afford a child. See Aida Torres & Jacqueline D. Forrest, *Why Do Women Have Abortions?*, 20 *Fam. Plan. Persp.* 169, 171-72 (Table 2) (1988) (showing percentages of women having abortions for particular reasons). The study allowed women to list more than one reason, and most women did. The average was almost four. *Id.* at 171.

³ For a fuller discussion, see Joan Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 *Duke L.J.* 296 (attempting to move beyond parallel debates over sameness and difference that have split feminists and African-Americans by exploring “mirror-image” controversies).

ual women. It also examines the linkage between the political ideology of liberalism and the ideology of conventional femininity. Part II argues that in the abortion context feminists have used the rhetoric of choice with little understanding of the ways it awakens gender fears about selfish mothers destroying babies to pursue their own self-interest. While choice rhetoric should not be abandoned in the abortion context since it helps protect abortion rights, these gender fears need to be addressed.

Part III argues that feminists should challenge the rhetoric of choice in the context of the debate over "working mothers."⁴ When women speak of their "choice" to scale back work commitments in deference to their children's needs, they help recreate and legitimize the system of marginalizing caregivers by enshrining as ideal workers adults without primary responsibility for children. The system blocks mothers from the traditional avenues of power and responsibility and is a key element of women's disempowerment both inside and outside the household.

Legislatures, not courts, soon will be the focus of efforts to ensure meaningful access to abortion services for women.⁵ Moreover, resolving the work/family conflict entails sweeping social and economic reforms that will require profound social change. Consequently, this Article departs from the conventional focus on analysis of legal doctrine. It starts instead from the model of lawyer as persuader in the realm of social discourse and focuses on how to reframe existing rhetorics to achieve feminist goals. The first step in that process is to build coalitions among a broad range of women.

I

DOMESTICITY AS THE DANGEROUS SUPPLEMENT OF LIBERALISM

A. *The Republic of Choice*

The rhetoric of choice long has played a central role in liberal thought. In his recent study, *The Republic of Choice*, Lawrence Friedman argues that the "enthronement of the individual choice" dominates modern legal culture.⁶ He maintains that "the scope of individualism

⁴ I place "working mother" in quotes to highlight the problems with the term. It implies, first, that a woman who cooks, cleans and cares for a family is not working; in fact, of course, if she has no help (and often even if she has) she is working hard. Thus, the term itself contributes to the devaluation and invisibility of women's work. The term also signals that ordinary mothers are not employed; only working mothers are. We do not, of course speak of "working fathers" because we assume fathers are employed.

⁵ See Linda Greenhouse, Both Sides in Abortion Argument Look Past Court to Political Battle, N.Y. Times, Apr. 20, 1992, at A1, B11.

⁶ Lawrence M. Friedman, *The Republic of Choice* 27 (1990).

was more limited in the nineteenth century” than it is today.⁷ Friedman convincingly argues that when we use the same liberal language of autonomy and freedom prevalent in the nineteenth century, we mean something different by it. The celebration of freedom in the nineteenth century referred primarily to economic freedom; private life continued to be constrained by traditional norms of sexual, religious, and other forms of personal propriety.⁸ In contrast, freedom in the twentieth century involves not property but personal choices and style of life.⁹ Notes Friedman, “Popular culture and opinion surveys suggest that people feel they should be able to select, out of a rich menu of possibilities, whatever patterns of living and behaving seem to suit them.”¹⁰ According to this modern understanding, “each person has the right to the free development or unfolding of . . . personality.”¹¹

Friedman’s study accurately describes both the shifts in, and the centrality of, choice rhetoric in mainstream legal discourse. His book aptly reflects contemporary liberalism’s official story,¹² characterizing the twentieth-century strain of individualism as an increase in freedom.¹³ Writing in the tradition of Whig history,¹⁴ Friedman depicts our legal history as a procession from dark to light, from a less to a more perfect realization of our sacred Anglo-Saxon freedoms.¹⁵

Yet some of his examples may give us pause. Take the story that opens Friedman’s book—of a homeless person who lived in a “coffinlike cardboard box”¹⁶ in sub-zero temperature in New York City. This man resisted a city order to come to a shelter, protesting, “They can’t take me, unless I do something wrong.” “We’ve got rights,” another homeless man asserted.¹⁷ Friedman uses their stories to explain the “republic of choice” he celebrates as an increase in human freedom.¹⁸ Don’t they

⁷ *Id.*

⁸ See *id.* at 27-35.

⁹ See *id.* at 35-38.

¹⁰ *Id.* at 37.

¹¹ *Id.* at 35 (quoting “fundamental” law of German Federal Republic, before reunification of Germany).

¹² For a different analysis of liberalism’s “official story,” see Robin West, *Jurisprudence and Gender*, 55 *U. Chi. L. Rev.* 1, 12-13 (1988).

¹³ See L. Friedman, *supra* note 6, at 47; see also *id.* at 37 (noting that zone of “choice,” already great in past, seems to have expanded even more in 20th century); *id.* at 87 (calling our times “golden age of . . . individualism”).

¹⁴ For a different perspective, see Robert N. Bellah et al., *Habits of the Heart* 32-35 (1985) [hereinafter *Habits*] (critique of 19th century utilitarian individualism and 20th century “expressive” individualism).

¹⁵ See L. Friedman, *supra* note 6, at 37-38, 87.

¹⁶ *Id.* at 1 (quoting Josh Barbanel, *On the Streets, Tough Test for New Homeless Policy*, *N.Y. Times*, Nov. 15, 1985, at B1).

¹⁷ *Id.*

¹⁸ *Id.* at 18-50.

evidence instead an ideology that quite literally encourages the poor to celebrate their right to sleep under bridges? The rhetoric of choice focuses on defending the right of the homeless to choose between life on the streets and shelters that often are inhumane, filthy, and unsafe. This formulation deflects our gaze from the inhumanity of a society as rich as ours that offers only these two choices.

Here—as elsewhere—the rhetoric of choice diverts attention from the constraints within which an individual's choice occurs onto the act of choice itself.¹⁹ Feminists ignore this dynamic at their peril.²⁰ Feminists also must learn to assess and control the gender dynamic that arises when their demands for liberation use the standard legal language of autonomous individuals with rights making choices in their own self-interest. The next section argues that such rhetoric awakens gender fears of selfish women and unnurtured children.

B. Women's Exclusion from Self-Interest Ideology

Historian Ruth Bloch has documented the complex processes behind the covert gendering of self-interest ideology. An understanding of these processes must begin with a history of the concept of "virtue," which has had a complex relationship to "self-interest" in evolving political ideology.²¹ Bloch begins by detailing the process by which virtue

¹⁹ Friedman shows little awareness of this central dynamic within the rhetoric of choice. At times he notices the way choice averts our gaze from the extent to which individuals are actually free to choose: the "culture of individualism does not depend on whether people are actually free to choose or as free as they think they are or would like to be. It is enough that they believe they are." L. Friedman, *supra* note 6, at 60. Yet Friedman fails to follow through the implications of this insight. Although he conscientiously notes that "powerful voices" have challenged the ideology of choice, *id.* at 46-47, he is quick to discount these voices, explaining that ideas of individualism and choice "do not enter people's head by magic. They reflect common-sense judgments; they seem plausible to people; they rest on aspects of reality of the modern world." *Id.* at 61; see also *id.* at 47 (stating that modern popular ideal exalts person who creates way of living for himself by making choices that are open to individuals). The fact that choice analysis is "common sense" reflects less its validity or "reality" than its central role in structuring our form of life. Liberalism's grip on American political discourse in general, and on legal discourse in particular, has led American women to frame the issues of abortion and work/family conflict in terms of choice.

²⁰ For other contemporary feminist critiques of choice, see Kathryn Abrams, *Ideology and Women's Choices*, 24 *Ga. L. Rev.* 761 (1990); Lucinda M. Finley, *Choice and Freedom: Elusive Issues in the Search for Gender Justice*, 96 *Yale L.J.* 914, 931-40 (1987) (book review); Alice Kessler-Harris, *Equal Opportunity Employment Commission v. Sears, Roebuck and Company: A Personal Account*, 35 *Radical Hist. Rev.* 57, 68, 72 (1986); Robin West, *Colloquy: Submission, Choice and Ethics: A Rejoinder to Judge Posner*, 99 *Harv. L. Rev.* 1449, 1455-56 (1986). At the turn of the century, Charlotte Perkins Gilman warned against assumptions about men's and women's choices. See Charlotte Perkins Gilman, *Women and Economics* 8, 141-68 (3d ed. 1900). For a comprehensive look at the analyses developed to challenge the traditional individual choice model, see Deborah Rhode, *Justice and Gender* 165-67 (1989); Deborah Rhode, *Occupational Inequality*, 1988 *Duke L.J.* 1207, 1216-27.

²¹ Ruth H. Bloch, *The Gendered Meanings of Virtue in Revolutionary America*, 13 *Signs*

ceased to be associated with the manly "virtù" required for citizenship in a virile state, and instead became associated with feminine virtue that belonged in the private spheres of the home, the church, and voluntary associations.²² Bloch corrects the view that the demise of classical notions of virtue led to a culture bereft of virtue, dedicated instead to an unremitting celebration of self-interest.²³ Gradually, she argues, our society relocated the communal, selfless values that republicanism had associated with manly virtù into spheres allocated to women.²⁴ As a result of this process, between 1780 and 1830,²⁵ women became associated with virtue and men with self-interest in a dichotomy that crystallized two complementary formulations that linked political and gender ideology: the ideology of conventional femininity (what historians term the ideology of domesticity) and the strain of mainstream liberalism that enshrines the importance of self-interest.²⁶ A close reading of Carol Gilligan's *In A Different Voice*²⁷ suggests that this allocation persists up to the present.

Gilligan's "different voice" resonates so deeply with contemporary women not, as is often assumed, because she describes their behavior, but because she describes women's voices in a more literal sense.²⁸ Gilligan's "conventional feminine voice"²⁹ reflects how conventional gender training instructs women to behave; her narratives demonstrate how many women internalize society's mandates.³⁰ *In A Different Voice* is best un-

37 (1987).

²² See *id.* at 42-44, 53-58; see also Linda K. Kerber, *Women of The Republic: Intellect and Ideology in Revolutionary America* 265-88 (1980) (noting that ambivalent relationship between motherhood and citizenship would be one of most lasting and paradoxical legacies of revolutionary generation; women decided what Revolution meant to them as women and began to invent ideology of citizenship that merged domesticity of pre-industrial women with new public ideology of individual responsibility and civic virtue). For a fascinating study of the relationship of republicanism and male gender ideology, see generally Hanna F. Pitkin, *Fortune is a Woman: Gender and Politics in the Thought of Niccolo Machiavelli* (1984).

²³ Bloch, *supra* note 21, at 53-58.

²⁴ *Id.*

²⁵ The analysis of the ideology of domesticity presented in this paragraph is drawn from Nancy F. Cott, *The Bonds of Womanhood: Woman's Sphere in New England, 1780-1835*, 63-74 (1977). For an insightful article that places Cott's analysis in historiographical context, see Linda K. Kerber, *Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History*, 75 *J. Am. Hist.* 9 (1988).

²⁶ See Joan C. Williams, *Domesticity as the Dangerous Supplement of Liberalism*, 2 *J. Women's Hist.* 69, 78 (1991). Only much later did self-interest ideology come to dominate mainstream liberalism. See James T. Kloppenberg, *The Virtues of Liberalism*, 74 *J. Am. Hist.* 9 (1987). Another implication of Kloppenberg's work is that self-interest ideology has dominated liberalism only intermittently. *Id.* at 30.

²⁷ Carol Gilligan, *In A Different Voice* (1982).

²⁸ Williams, *supra* note 26, at 69, 69-76.

²⁹ *Id.* at 71, 79-80.

³⁰ See *id.* at 71. I do not mean to assert that all women do. See Carol Gilligan, *Moral Orientation and Moral Development*, in *Women in Moral Theory* 25 (Eva Feder Kittay and

derstood as a status report on female gender ideology.

One of Gilligan's crucial findings is that "femininity" retains major components of the ideology of domesticity.³¹ Domesticity saw motherhood as the central and defining female role, the mother as nurturant and empathic.³² Domesticity, moreover, associated mothers with a selflessness that gave them elevated moral status: only by giving up self-interest and living for others could women achieve the purity that established them as moral reference points both for their families and for society at large.³³ Gilligan's data suggests that the theme of selflessness remains strong in the ideology of contemporary femininity.³⁴ Her interviewees equate "goodness with self-sacrifice,"³⁵ often referring to the influence of their mothers: "endlessly giving,"³⁶ "selfless,"³⁷ and "example[s] of hard work, patience and self-sacrifice."³⁸

If Gilligan describes the different voice of women in the language of domesticity, she describes its opposite in the language of liberalism. Gilligan picks up on the liberalism embedded in Lawrence Kohlberg's description of the stages of moral development. She contrasts women's voices with Kohlberg's "morality of rights and noninterference,"³⁹ which

Diana T. Meyers eds., 1987) (reporting study in which equal proportions of women focused on justice and on care; with one exception, no man focused on care); Pamela S. Karlan & Daniel R. Ortiz, In A Diffident Voice: Relational Feminism, Abortion Rights, and the Feminist Legal Agenda 16-17 & n.57 (1992) (unpublished manuscript on file with author) (analyzing complex relationship of the "different voice" and behavior of men and women). Although large numbers of women support the ideology of selfless motherhood, men may well support it in higher proportions than women. One study of professional women found that half of the women, but two-thirds of the men, agreed that "[e]ven if a woman has the ability and interest, she should not choose a career field that will be difficult to combine with childbearing;" half of the women, but only one-third of the men, approved of a mother of pre-schoolers taking a part-time job. See Alice Rossi, Barriers to the Career Choice of Engineering, Medicine or Science Among American Women, in Women and the Scientific Professions (Jacquelyn Mattfield and Carol van Aken eds., 1965), quoted in M. Rivka Polatnick, Why Men Don't Rear Children: A Power Analysis, in *Mothering* 21, 27 (Joyce Trebicot ed., 1983).

³¹ Id. at 71.

³² See Ruth H. Bloch, American Feminine Ideals in Transition: The Rise of The Moral Mother, 1785-1815, 4 *Feminist Stud.* 101 (1978) (analyzing 18th to 20th century American literature bearing on question of mothering).

³³ Id. at 116, 120.

³⁴ C. Gilligan, *supra* note 27, at 70-71. The selfish/selfless dichotomy also is important to antifeminist women. See Jane Sherron De Hart, Gender on the Right: Meanings Behind the Existential Scream, 3 *Gender & Hist.* 246, 253 (1991) (quoting ERA opponent: "Feminists praise self-centeredness and call it liberation"); see also id. at 254 (self-sacrifice is virtue that makes family life possible).

³⁵ C. Gilligan, *supra* note 27, at 70. One woman described the "moral person [as] one who helps others; goodness is service, meeting one's obligations and responsibilities to others, if possible without sacrificing oneself." Id. at 65-66.

³⁶ Id. at 54.

³⁷ Id. at 136.

³⁸ Id. at 93.

³⁹ Id. at 22. See also id. at 18-19 (discussing Kohlberg's theories).

celebrates "separation, autonomy, individuation and natural rights,"⁴⁰ and equates "maturity with personal autonomy."⁴¹ All these words reflect the liberal image of society as a set of autonomous individuals who produce the greater good by pursuing their own self-interest. What liberal tradition celebrates as the legitimate pursuit of self-interest, however, Gilligan discounts as merely selfish. "You go about one-fourth [for] others and three-fourths [for] yourself," says Jake, Gilligan's paradigm male.⁴²

Gilligan's book, and recent work in women's history, suggest that domesticity acts as the "dangerous supplement" of mainstream liberal ideology.⁴³ Jacques Derrida's notion captures the way the two ideologies are both complementary and mutually exclusive: domesticity sets up women's selflessness against men's pursuit of self-interest; women's focus on humane values against men's ambition. Derrida also stresses that one element of these formulations sets the standard by which the other is measured:⁴⁴ one pole is associated with "femininity," but the other is the way normal adults (not abnormally feminine ones) behave.⁴⁵ Derrida's formulation, finally, reminds us that subservient "feminine" values have the potential to well up and destabilize the grip of the dominant liberal ones.

Gilligan's work demonstrates the neatly matched binary opposites integral to the covert gendering of the liberal pursuit of autonomy. One key dichotomy is between personal affiliation and achievement. While these attributes are not *necessarily* mutually exclusive (how many people advance without "interpersonal skills"?⁴⁶), the domesticity/liberalism force field formulates affiliation and achievement as opposites. Understanding this formula reveals a central aspect of the cultural arrangements the domesticity/liberalism pair encodes.

The development of domestic ideology was an integral part of the late-eighteenth-century shift from traditional, agricultural, task-oriented labor to modern, time-disciplined industrial labor.⁴⁷ Whereas traditional society interspersed leisure, family life, and work, modern society isolates

⁴⁰ Id. at 23.

⁴¹ Id. at 17.

⁴² Id. at 35.

⁴³ See Jacques Derrida, *Of Grammatology* 141-64 (Gayatri Chakravorty Spivak trans. 1976); see also Jonathan Culler, *On Deconstruction: Theory and Criticism After Structuralism* 85-225 (1982) (elaborating on Derrida's discussion). This argument is developed in Williams, *supra* note 26, at 72-73. For a discussion of the relevant work by historians of women, see Kerber, *supra* note 25.

⁴⁴ J. Culler, *supra* note 43, at 102-03.

⁴⁵ C. Gilligan, *supra* note 27, at 96-98.

⁴⁶ Note how the gender policing is enforced rhetorically. Outside the home sensitivity to others is not "nurturing"—it is depersonalized and regendered male, a "skill."

⁴⁷ N. Cott, *supra* note 25, at 55-74.

“work” from family life both temporally and geographically. Domesticity’s polarized dichotomy between affiliation and personal achievement explains why adults who choose to define their lives around relationships naturally do so at the cost of status and power and adults who choose to pursue power and status naturally do so at the expense of those in affiliation with them.

This description diffuses any challenge to a system in which parenting is one-sidedly allocated to the mother, who serves as the sole-source supplier for her children’s needs, and consequently is precluded from the conventional paths to status and power premised on a “full-time” commitment that is inconsistent with child-care responsibilities. The affiliation/achievement dichotomy legitimized the work and family roles developed after the Industrial Revolution by presenting them as the natural result of biological sex differences, rather than as a societal choice to bar caregivers from the accepted patterns of adult self-development. This societal choice is an integral part of liberalism’s definition of normal self-development as involving the pursuit of self-interest rather than, for example, the care of others or pursuit of the common good.

The dichotomy between selfishness and responsibility is a second dichotomy integral to the covert gendering of the liberal individual with rights making choices.⁴⁸ These concepts surface in Gilligan’s abortion study, in which women characterize as selfish a decision to abort on the grounds that a pregnancy would jeopardize their careers or other projects of self-development.⁴⁹ This rhetoric signals the covert norm of selflessness for mothers, who should eschew accepted paths of self-development to the extent those paths conflict with their actual or potential motherly responsibilities.

One key implication of Gilligan’s data is that twentieth-century women have a different relationship to domesticity than did women in the nineteenth century. To simplify dramatically, nineteenth-century women knew that their sphere was one of selflessness and affiliation and that they were barred from the sphere of male achievement. Twentieth-century women are not formally barred from “ambition.” Yet Gilligan documents the contexts in which twentieth-century women may feel caught in a clash between the mandates of self-development (modeled on

⁴⁸ See C. Gilligan, *supra* note 27, at 73 (noting “reiterative use by the women of the words *selfish* and *responsible* in talking about moral conflict and choice.”). For exploration of the theme of selfish women in an earlier context, see Christopher Lasch, ‘Selfish Women’: The Campaign to Save the American Family 1890-1920, 4 *Colum. F.* 24 (1975).

⁴⁹ C. Gilligan, *supra* note 27, at 71-105; text accompanying notes 111-114 *infra* (discussing right to life condemnations of abortion). As Part III of this Article discusses in detail, the allegation of selfishness also emerges in condemnations of “working mothers.” See text accompanying notes 372-74 *infra*.

male life patterns and justified by liberalism) and the contradictory mandates of domesticity. Gilligan's narratives show that many twentieth-century women internalize both "mainstream" values⁵⁰ and values that stem from domesticity. Although Gilligan tends to silence the "male" values in her subjects, they crop up again and again. Her interviewees want to successfully enter professions that are based on the male model: scientists, physicians, college professors, or presidents.⁵¹ They are ambitious. They want money and power and recognition, and many abort fetuses that stand in the way of these ambitions.

Gilligan's data suggests not a "different voice" that consistently rejects autonomy and ambition, but a conflict her interviewees feel in pursuing their ambitions. A poignant example is Ruth, whose (second) pregnancy conflicts with her desire for an advanced degree. She is ambitious, but she distrusts that ambition because she knows it could lead her to ignore the perceived needs of her family.⁵² To Ruth the abortion decision

would [mean] acknowledgement to me that I am an ambitious person and I want to have power and responsibility for others and that I want to have a life that extends from 9 to 5 every day and into the evenings and on weekends, because that is what the power and responsibility mean. It means that my family would necessarily come second.⁵³

It seems odd that Gilligan cites Ruth's interview as evidence of a "different voice" that favors affiliation over ambition, given that this woman likely had an abortion.⁵⁴ Ruth's interview reads more accurately as the lament of a woman caught in a matrix of irresolvable conflicts of ideology and social role. On the one hand, Ruth believes that successful parenthood is a key to adult fulfillment. On the other hand, she also appears to believe that professional "success" is her birthright.⁵⁵ She feels conflicted because she knows that to achieve success she must act like an ideal worker—working eight hours a day as well as overtime—a

⁵⁰ However, Gilligan relied in part on a study of Harvard College students who could be expected to identify more than would the general population with norms of career success traditionally associated with males. She also relied in part on a study of women who were particularly conflicted about abortion decisions, for whom issues concerning motherhood and selflessness were evidently more troubling than for many other women. For a listing of critiques of Gilligan's theory and methodology, see Karlan & Ortiz, *supra* note 30, at n.57.

⁵¹ C. Gilligan, *supra* note 27, at 101.

⁵² *Id.* at 96.

⁵³ *Id.* at 97.

⁵⁴ Only four of the 29 subjects interviewed by Gilligan decided to carry their pregnancies to term. Twenty-one women had abortions, two miscarried, and two could not be contacted to determine their decisions. *Id.* at 72.

⁵⁵ Ruth's apparent conviction that she is entitled to professional success reflects class privilege. Clearly, many poor and working-class women would not feel the same entitlement.

lifestyle that she believes precludes her ability to meet the legitimate needs of children.

The interview with Ruth reveals a woman caught in a society in which self-development involves selfishness. To pursue conventional "success," one must be selfish within the family, for one must either ignore the needs of one's children or appropriate one's spouse's labor, ordinarily at the cost of the spouse's "success." Success involves selfishness *outside* the family as well, in the realm of economic "man" (gender intended) pursuing his own self-interest.

Gilligan could read her interview with Ruth—and many others—in this way. To explore fully the conflict Gilligan notes between femininity and adulthood, she would have to challenge both the norms of femininity and those of "normal" adulthood.⁵⁶ Instead, much of Gilligan's analysis merely reports—and reifies as "women's voice"—the process by which women traditionally have convinced themselves to sacrifice self-development in favor of their responsibilities to children. Ruth's attempts to do so emerge in the following excerpt.

To be ambitious means to be power hungry and insensitive. *Why insensitive?* Because people are stomped on in the process. A person on the way up stomps on people, whether it is family or other colleagues or clientele. *Inevitably?* Not always, but I have seen it so often in my limited years of working that it is scary to me. It is scary because I don't want to change like that.⁵⁷

Here, Ruth projects an extraordinarily negative image of the professional life she also wants. Not only do professionals have to ignore their children, she seems to be saying; they have to treat people in the workplace in an uncaring and manipulative manner.

In fact, of course, they do not *have* to, and most adults' projects of self-development do not require them to "stomp" methodically on other people. One might say Ruth's formulation is part of the process of talking herself out of her own ambition. This would be accurate as far as it goes, but the notion of domesticity as dangerous supplement again provides the link between political and gender ideology. Ruth is mobilizing domesticity's critique of self-interest.

In its original context, domesticity's critique asserted that true women wanted none of "that bank note world"⁵⁸ of paltry money grub-

⁵⁶ See C. Gilligan, *supra* note 27, at 97 (discussing clash between femininity and adulthood). Part of *In A Different Voice* challenges these norms. For an insightful discussion of the tension within Gilligan's book, see Karlan & Ortiz, *supra* note 30, at 38-45.

⁵⁷ C. Gilligan, *supra* note 27, at 97 (parenthesis in original).

⁵⁸ N. Cott, *supra* note 25, at 68.

bing and alienated human relations. Domesticity articulated an internal critique of capitalism, a "*cri de coeur* against modern work relations,"⁵⁹ and simultaneously established the home as a haven from the heartless world of nineteenth-century capitalism.⁶⁰ Ruth's negative characterization of work life mirrors domesticity's critique of modern work relations. This critique is the "danger" that threatens to destabilize the liberal/capitalist mainstream, yet Ruth's formulation also shows how domestic ideology serves to defuse this threat. Her critique occurs not in the context of an argument that a world in which "success" involves "stomping" is immoral and should change; instead, the thrust of her argument is that success is *undesirable*. The language of conventional femininity encourages women to characterize their inability simultaneously to achieve success and to meet the needs of their children as a choice to reject a world filled with people whose success is built upon insensitivity to the needs of others. Domesticity turns a critique of "success as stomping" into an argument that the speaker's disgust is so strong that she *chooses* not to participate in such a world.

In Ruth, and in many other professional women of our generation (myself included), the first gender war thus emerges. It is a gender war within Ruth herself. Her ambivalence is about the extent to which she wants to remain true to the ideology and the lifestyle of domesticity. The part of her attracted to the ideals of domesticity conflicts deeply with another part of her that was socialized into the culture of professionalism,⁶¹ a culture that stresses self-development through one's career.⁶² Professional culture arose around the life patterns traditional to males. Consequently, it clashes with many women's internalized sense of what

⁵⁹ Id. at 70.

⁶⁰ Id. at 68; see also Christopher Lasch, *Haven in a Heartless World: The Family Besieged* (1977) (discussing importance of family ties and contemporary society's erosion of family life). Cott explains:

In accentuating the split between "work" and "home" and proposing the latter as a place of salvation, the canon of domesticity tacitly acknowledged the capacity of modern work to desecrate the human spirit. Authors of domestic literature, especially the female authors, denigrated business and politics as arenas of selfishness, exertion, embarrassment, and degradation of soul. These authors suggested what Marx's analysis of alienated labor in the 1840s would assert, that the worker . . . feels at ease only outside work, and during work he is outside himself. He is at home when he is not working and when he is working he is not at home. The canon of domesticity embodied a protest against that advance of exploitation and pecuniary values.

N. Cott, *supra* note 25, at 67-68.

⁶¹ See Habits, *supra* note 14, at 65-71 (discussing culture of professionalism in contemporary American life); Burton J. Bledstein, *The Culture of Professionalism: The Middle Class and the Development of Higher Education in America* 80, 87, 120 (1976) (discussing culture of professionalism in its original mid-Victorian context).

⁶² See B. Bledstein, *supra* note 61, at 159-202 (discussing careers and decisions regarding which profession to enter).

mothers owe their children.⁶³ This internalized sense reflects the covertly gendered norms within liberalism that mandate selflessness for mothers and self-interest for others. The same norms are at work in the contemporary controversies over abortion and “working mothers” in which ambivalence about gender is externalized.

Traditional theorists miss this dynamic altogether. Instead, they promulgate the formal ideology of self-development for all. This is the self-image of contemporary liberalism, but its false gender neutrality cripples our ability to understand crucial dynamics within American politics and American law.⁶⁴ We have seen the gender war that pits women against themselves. Now we turn to the gender wars that pit women against each other.⁶⁵ Parts II and III analyze how the abortion debate and the debate over “working mothers” pit women against each other instead of uniting them against a power structure that fails to attend to their needs.

II

ABORTION: SELFLESS MOTHERS IN A SELFISH WORLD⁶⁶

Much like slavery before it, abortion has become an epic contro-

⁶³ See *id.* at 147-58 (implying links between culture of professionalism and male gender ideology); Joan Williams, *Sameness, Feminism and the Work/Family Conflict*, 35 N.Y.L. Sch. L. Rev. 347, 352-56 (1990) (discussing contemporary firm practice as expression of gender privilege).

⁶⁴ As my analysis of Friedman’s book suggests, I agree with Robin West’s observation that mainstream liberalism is in some sense “male.” Unlike West, however, I define its relationship to men. West appears to argue that liberalism reflects some innate “male” part of men’s psychological make-up, and her critique of liberalism reflects some innate feminine part of women’s make-up. See West, *supra* note 20, at 1449-50, 1455-56. Instead, I believe that liberalism melds political and male gender ideology: to assume that male gender *ideology* reflects the actual behavior of males only helps to recreate the gender troubles we as feminists are trying to avoid. The problem is that male gender ideology is a stunted picture of human potential—as is the female gender ideology West embraces as “femininity.” West, *supra* note 12, at 28-30. Our goal as feminists is to reformulate ideas of “real” man- and womanhood in less stunted ways that do not track and reinforce current power inequities and stunted notions of human potential.

⁶⁵ For a book that explores how to develop an “ethics of criticism” in feminist practice, see *Conflicts in Feminism* (Marianne Hirsch & Evelyn F. Keller eds., 1990). The project is an important one if conflicts in feminism are to avoid tracking the gender wars discussed herein.

⁶⁶ For analyses of the abortion debate that focus on similar themes, see Mary Ann Glendon, *Abortion and Divorce in Western Law* (1987); Ruth Colker, *Abortion and Dialogue*, 63 Tul. L. Rev. 1363 (1989); Ruth Colker, *Feminism, Theology and Abortion: Toward Love, Compassion, and Wisdom*, 77 Cal. L. Rev. 1011 (1989); Ruth Colker, *Feminist Litigation: An Oxymoron? A Study of the Briefs Filed in William L. Webster v. Reproductive Services*, 13 Harv. Women’s L.J. 137 (1990) [hereinafter Colker, *Feminist Litigation*]; Elizabeth Mensch & Alan Freeman, *The Politics of Virtue: Animals, Theology and Abortion*, 24 Ga. L. Rev. 923 (1991); see also Gary Leedes, *Liberalism, Republicanism and the Abortion Controversy*, 35 Vill. L. Rev. 571 (1990).

versy in which the very soul of our disquiet republic seems capable of bursting.⁶⁷

The Supreme Court's 1973 declaration in *Roe v. Wade*⁶⁸ that abortion is a constitutional right⁶⁹ seemed in tune with the twentieth century's acceptance of more open sexuality and tolerance of a wider range of options for women. Yet this case led to a cultural firestorm.⁷⁰ What makes the abortion debate so obsessive, so interminable, so central to our country's self-definition?⁷¹ This question is especially intriguing because until recently abortion was not a particularly divisive issue.⁷² Common law permitted early abortions,⁷³ and, in fact, abortion providers openly advertised their services.⁷⁴ One doctor estimated that in 1860 one in ten married women had attempted or had an abortion.⁷⁵ While the public did not condone abortion, abortion certainly was not viewed as a major moral crisis.⁷⁶

In recent years, however, the controversy over abortion has been tremendously divisive. A wide range of feminists—from Rosalind Petchesky⁷⁷ to Catharine MacKinnon⁷⁸ to Mary Ann Glendon⁷⁹—have

⁶⁷ Jane Maslow Cohen, *Comparison-Shopping in the Marketplace of Rights*, 98 *Yale L.J.* 1235, 1236 (1989).

⁶⁸ 410 U.S. 113 (1973).

⁶⁹ See *id.* at 154.

⁷⁰ Some commentators believe that public reaction to *Roe v. Wade* played a significant role in the sharp shift to the right in American politics during the 1980s. See, e.g., Rosalind P. Petchesky, *Abortion and Women's Choice: The State, Sexuality and Reproductive Freedom* 242-43 (1984); Mensch & Freeman, *supra* note 66, at 1119.

⁷¹ See Alasdair MacIntyre, *After Virtue* 6-7 (2d ed. 1984) (describing interminability of abortion debate).

⁷² See R. Petchesky, *supra* note 70, at 78.

⁷³ See James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy, 1800-1900*, at 3-4, 265 n.1 (1978). Abortions were legal before quickening, which ordinarily occurs late in the fourth or early in the fifth month of pregnancy. *Id.*

⁷⁴ See *id.* at 50-57 (reproducing family planning advertisements); Marlene S. Wortman, *Women in American Law: From Colonial Times to The New Deal* 163-65 (1985) (same).

⁷⁵ See J. Mohr, *supra* note 73, at 76. This doctor later increased his estimation to one in every five women. *Id.* at 77. Mohr asserts that even though these estimates may be too high, they are evidence of a dramatic increase in the rate of abortion after 1840. *Id.* at 46-85.

⁷⁶ Historian James C. Mohr's influential study interprets the successful campaign to outlaw abortion in the nineteenth century as part of the American Medical Association's (AMA) effort to eliminate lay medical practitioners and to raise the status of the medical profession. Mohr argues that between 1840 and 1860 efforts to legislate against abortion were ambiguous and tentative. *Id.* at 145-46; see also *id.* at 147-70 (discussing "physician's crusade"). Church leaders never got deeply involved in the issue, despite AMA efforts to recruit them. To the extent that public opinion crystalized against abortion, concern often focused not on the fetus, but the future of the race. See *id.* at 187-96. The undesirability of native-born Protestant women having abortions, while "foreigners" (immigrants) continued to reproduce at faster rates, was a major concern.

⁷⁷ See R. Petchesky, *supra* note 70, at 248, 262-76 (discussing abortion and patriarchy); see also *id.* at 247-52 (linking anti-abortion movement with anti-feminist backlash and anti-social welfare backlash).

linked the abortion debate with male efforts to impose patriarchal authority. Increasingly, however, commentators have come to realize that abortion is also a fight among women. Women dominate the pro-choice movement from top to bottom; below the leadership level, a majority of right-to-life activists are also women.⁸⁰ This Part analyzes the abortion controversy as a gender war over the issue of whether women are—or should be—citizens of the republic of choice. Part A examines how demands for access to abortion come to be framed in the language of choice. Part B explores how choice rhetoric fuels the right-to-life backlash, by signaling that mothers—like other adults—should act as autonomous, self-interested actors. Choice rhetoric therefore splits women in a war over gender roles; specifically, over whether women should act with the selflessness traditionally allocated to mothers or whether they should pursue autonomy in ways traditionally associated with men. Part C explores how to redesign abortion rhetoric to make domesticity work for, rather than against, the pro-choice position.

A. The Early History of Abortion Rhetoric: From Reproductive Freedom to “Choice”

Abortion was a central issue in the second wave of American feminism,⁸¹ but feminists did not agree on what access to abortion should entail.⁸² To many radical feminists, abortion on demand had at least two crucial components. First, abortion on demand was seen as a way to establish that women were competent as moral agents. Women should be free of the need to justify their reproduction decisions to hospital com-

⁷⁸ See Catharine A. MacKinnon, *Privacy v. Equality: Beyond Roe v. Wade*, in *Feminism Unmodified* 93, 97 (1987) (arguing that “[r]eproduction is sexual, men control sexuality, and the state supports the interest of men as a group”); *id.* at 99 (access to abortion is in men’s interest because “[g]etting laid was at stake,” (quoting Andrea Dworkin, *Right Wing Women* (1983))); Catharine A. MacKinnon, *Rethinking Sex Equality Under Law*, 100 *Yale L.J.* 1281, 1298-1324 (1991) (proposing new theory supporting abortion rights); Catharine A. MacKinnon, *Roe v. Wade: A Study in Male Ideology*, in *Abortion* 45 (Jay L. Garfield & Patricia Hennessey eds., 1984) (critique of privacy framework).

⁷⁹ M. Glendon, *supra* note 66, at 50-52 (suggesting that strongest advocacy of abortion comes from men: abortion as “wall” to screen men’s domination of women).

⁸⁰ See Kristin Luker, *Abortion and the Politics of Motherhood* 126-57 (1984) (studying abortion activists in California, and finding shifting profile of right-to-life activists—from Catholic male professionals between 1959 and 1967 to high-school educated, married women with children after 1973); see also Faye D. Ginsburg, *Contested Lives* 134 (1989) (membership of both pro-choice and right-to-life groups is predominantly female). See generally Susan Harding, *Family Reform Movements: Recent Feminism and Its Opposition*, 7 *Feminist Stud.* 57 (1981).

⁸¹ See Alice Echols, *Daring to Be Bad: Radical Feminism in America, 1967-1975*, at 174-75 (1989) (history of second-wave radical feminism).

⁸² For a detailed discussion of what Petchesky calls the split between “feminists and libertarians,” see R. Petchesky, *supra* note 70, at 125-32.

mittees who “[sit] around splitting hairs over how sick or poor or multiparous a pregnant woman ha[s] to be to deserve exemption from reproductive duty.”⁸³

Second, the cry for abortion on demand was based on the notion that all women should have access to abortion regardless of income. Many radical feminists linked their commitment to abortion with hostility to a medical establishment they viewed as elitist, overly scientific, and patriarchal.⁸⁴ Activists in the women’s health movement worked towards transformation of the American medical system by opening clinics that offered low-cost abortions, often run in a nonhierarchical way by people without medical credentials. These clinics emphasized self-help and sisterly support,⁸⁵ somewhat in the manner of birthing centers run by midwives today. Abortion on demand was linked with a vision of society that looked towards liberation through a deep and sweeping reconstruction of the framework of women’s lives. Dierdre English articulated this vision in 1981:

A complete feminist reproductive politics must be a social and moral blueprint. It cannot end with the guarantee of the right to terminate a pregnancy: it must go on to include the right to have children, without supporting each child’s existence at the sole expense of his or her mother. And that right cannot be separated from the rest of the feminist program of total equality. Reproductive rights must mean financial equality, so that women can raise children without being impoverished. There must be practical child-care support for working mothers and a complete turnabout in male responsibility for parenthood. Yet the individual right to have an abortion must remain at the heart of the feminist position.⁸⁶

Liberal abortion advocates had no such sweeping vision. Moreover, most often they were content to leave abortion to the medical establishment—to the “private” decision of the woman and her doctor.⁸⁷ This framework also appealed to the family planning establishment and to the AMA, which played an activist role in getting abortion restrictions abolished,⁸⁸ much as it had been influential a century earlier in getting them

⁸³ Id. at 125 (quoting Ellen Willis, *Village Voice*, Mar. 3, 1980, at 8).

⁸⁴ Id. at 126-29.

⁸⁵ Id. at 128-29.

⁸⁶ Dierdre English, *The War Against Choice: Inside the Anti-abortion Movement*, Mother Jones, Feb./Mar. 1981, at 16, 32.

⁸⁷ Id. at 291-92.

⁸⁸ See R. Petchesky, *supra* note 70, at 123-32 (arguing that at particular moment in history, social need, feminist activism, and populist ideology came together to change state policy).

passed.⁸⁹

Both radical and liberal abortion activists used liberal rhetoric to express their quite different goals. The radical feminist slogan of "Get the State's law off our bodies"⁹⁰ mobilized libertarian language to stress women's demands for freedom from governmental control, not their preference for a more communal, nonhierarchical, nonscientistic society. The liberals' language of choice also emphasized the theme of freedom from governmental control, harking back to the notion that society will be better off if individuals are free to make choices in their own self-interest.⁹¹

As abortion rights entered the judicial sphere, the radical rhetoric of abortion on demand was submerged into the liberal rhetoric of choice. The district court in *Roe v. Wade*⁹² spoke of the "fundamental right . . . to choose;"⁹³ Justice Stewart's concurrence formulated the issue as involving the "freedom of personal choice;"⁹⁴ the majority opinion noted: "The detriment that the state would impose upon the pregnant woman by denying this choice altogether is apparent."⁹⁵ *Roe* also stressed the relationship between the woman and her doctor,⁹⁶ thereby placing the abortion decision safely within a hierarchical, patriarchal context.⁹⁷ Gone was the radical feminist challenge to the medical system. Finally, *Roe*'s privacy rhetoric opened the door to the subsequent decisions upholding the government's right to deny abortion funding for poor women.⁹⁸

The language of *Roe* resonates with Friedman's republic of choice. Justice Douglas, in a concurring opinion, even used the rhetoric of lifestyle, which Friedman correctly identifies as central to notions of self-development in the twentieth-century:

⁸⁹ See J. Mohr, *supra* note 73, at 147-70.

⁹⁰ See R. Petchesky, *supra* note 70, at 131.

⁹¹ See A. Echols, *supra* note 81, at 285 (emphasizing difference between radical and liberal abortion rights advocates).

⁹² 314 F. Supp. 1217 (N.D. Tex. 1970).

⁹³ *Id.* at 1225.

⁹⁴ *Roe*, 410 U.S. at 169 (Stewart, J., concurring).

⁹⁵ *Id.* at 153.

⁹⁶ *Id.* (emphasis added) (stating that "right to privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy and that "the women and her responsible physician necessarily will consider in consultation" factors that go into decision).

⁹⁷ See Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 U. Pa. L. Rev. 995, 1020 (1984) (arguing that *Roe* gives doctors undue power over abortion decisions).

⁹⁸ See, e.g., *Harris v. McRae*, 448 U.S. 297, 311 (1980) (states not required to pay for medically necessary abortions for which Hyde Amendment blocks federal funding); *Maher v. Roe*, 432 U.S. 464, 479 (1976) (states not required to provide Medicaid funding for non-therapeutic abortions, even if they finance expenses incident to childbirth); see also Colker, *Feminist Litigation*, *supra* note 66, at 177 (discussing how *Roe*'s privacy argument was embedded in individualistic framework that resulted in *Harris* decision).

The clear message of these cases—[is] that a woman is free to make the basic decision whether to bear an unwanted child. Elaborate argument is hardly necessary to demonstrate that childbirth may deprive a woman of her preferred lifestyle and force upon her a radically different and undesired future.⁹⁹

The majority opinion did not use the language of lifestyle, but its listing of reasons why women might want to abort clearly embraces what pro-life advocates would consider lifestyle concerns.¹⁰⁰ The central message of *Roe* is that women should be free to choose abortion because unwanted pregnancy violates their autonomy and their freedom to control their own lives.¹⁰¹ Liberty, autonomy, choice: underlying this rhetoric is the image of autonomous actors creating the greatest good by pursuing their own self-interest.

When viewed from the perspective of the split in the women's movement over abortion, *Roe* tends not only to confirm Friedman's thesis that contemporary American law gravitates towards the rhetoric of choice, but also to show how that legal rhetoric serves to siphon off deeper challenges to our scientific, capitalist society as part of the process of making political demands into legal ones. This same process encourages women to frame issues in terminology that leads to gender wars. The image of mothers aborting to pursue their autonomy is deeply alienating to women who accept the traditional gendered allocation of selflessness and self-interest.

B. How the Rhetoric of Choice Fuels the Right-to-Life Backlash

Recent feminist commentary stresses that the woman is absent from right-to-life rhetoric: the fetus is considered alone, an autonomous actor suspended in amniotic fluid.¹⁰² This blindness to the woman is part of a larger pattern of blindness that stems from the standard imagery of individuals with rights making choices. Viewing the fetus as an autonomous individual dramatizes with extraordinary vividness how this imagery can erase individuals' dependence upon those who sustain their social and physical life. The right-to-life images of aborting women that follow provide a better understanding of the role this imagery plays in the abortion

⁹⁹ *Roe*, 410 U.S. at 214 (Douglas, J., concurring); see L. Friedman, *supra* note 6, at 162-87 ("The Life-Style Society"); see also K. Luker, *supra* note 80, at 189-90 (pro-choice activists often speak in terms of "quality of life," thereby evoking "a pleasing vista of the human intellect directed to resolving the complicated problems of life").

¹⁰⁰ *Roe*, 410 U.S. at 153 ("a distressful life and future," "psychological harm," and "distress.").

¹⁰¹ See *id.*

¹⁰² See, e.g., Rosalind P. Petchesky, *Fetal Images: The Power of Visual Culture in the Politics of Reproduction*, 13 *Feminist Stud.* 263, 271 (1987) (fetus as "autonomous, atomized mini-space hero").

debate.

1. *Right-to-Life Images of Aborting Women*

The classic right-to-life imagery of the aborting woman appears in Justice White's dissent in *Doe v. Bolton*.¹⁰³ "At the heart of the controversy," the dissent begins, are those pregnancies that do not threaten the health of the mother but nonetheless are unwanted for a variety of reasons: "convenience, family planning, economics, dislike of children, the embarrassment of illegitimacy, etc."¹⁰⁴ The *Roe* majority, the dissent charges, holds that "the Constitution of the United States values the convenience, whim, or caprice of the [pregnant woman] more than the life or potential life of the fetus."¹⁰⁵ This convenience rhetoric—the classic charge of the right-to-life movement¹⁰⁶—proves central as the first list of possible motivations is collapsed one paragraph later into the notion that fetal life needs protection against the convenience, whim, or caprice of its mother.

At their most aggressive, right-to-life narratives paint two images of aborting women.¹⁰⁷ One is the apocryphal yuppie who aborts to avoid missing her upcoming vacation. The other is the "feckless, promiscuous ghetto teenager who couldn't bring herself to just say no to sex."¹⁰⁸ The *Roe* dissent is clear about why abortions of pregnant teenagers¹⁰⁹ are the products of "mere convenience." In that instance, the dissent implies, fetal life is destroyed to avoid the embarrassment of illegitimacy.¹¹⁰

Contemporary right-to-life rhetoric most often limits the charge of "convenience" to abortions of healthy fetuses by married women for reasons of self-development: to pursue educational or career goals or a life of one's own. A vivid example emerged when Maude, the married hero-

¹⁰³ 410 U.S. 179, 221 (White, J., dissenting; joined by Rehnquist, J.) (companion case to *Roe*).

¹⁰⁴ *Id.* (White, J. dissenting).

¹⁰⁵ *Id.* (White, J. dissenting).

¹⁰⁶ This charge infuriates the pro-choice proponents. See Ellen Willis, *Village Voice*, Mar. 3, 1980, at 8 "as if unwanted pregnancy were an annoyance comparable to . . . standing in a long line at the supermarket," quoted in Petchesky, *supra* note 102, at 126.

¹⁰⁷ See Mary Gordon, *A Moral Choice*, *Atlantic Monthly*, Apr. 1990, at 78. A third stereotype is that of the woman who aborts because she is "the dupe of her husband or boyfriend, who tricks her into having an abortion because a child will be a drag on his life-style." *Id.* at 80.

¹⁰⁸ *Id.* at 78.

¹⁰⁹ One out of every ten teenagers in this country becomes pregnant. See S. Rep. No. 161, 97th Cong., 1st Sess. 5 (1981), quoted in Cohen, *supra* note 67, at 1237 n.8.

¹¹⁰ This argument, while clever, is unusual in contemporary right-to-life rhetoric. More standard approaches argue that teenagers should place their blameless babies up for adoption or that permitting abortions just encourages teenagers to have irresponsible sex. The dissent's convenience argument deftly avoids the need to admit its disapproval of sex outside of marriage.

ine of the television series by that name, obtained an abortion in 1973 on the grounds that at age fifty she was too old to devote her life to a baby. Right-to-life groups decried her decision as a "convenience abortion" and said the program "preached individual selfishness."¹¹¹

A study of prime-time television by Celeste Condit suggests that American television represents a "consensus narrative" on abortion.¹¹² Condit argues that prime-time television consistently depicts as immoral the abortion of a healthy fetus by a woman who is married or otherwise has a man to support her.¹¹³ For example, in an episode of *Spenser for Hire*, Spenser's girlfriend vividly demonstrates the fate of the radical feminist demand for access to abortion to control one's life.

Susan: Saying it out loud makes it sound so *selfish*, but dammit, this is just the worst time for this to have happened.

Spenser: Worst time? Do you think there'd ever be a perfect time, Suse? . . . *Convenience*, is that what we are talking about here? I love you, and I know you too well to think that your motives would ever be *selfish*. . . . [He goes on to interpret her reluctance as a fear that he would not be able to be a good father. She denies that and continues.]

Susan: What I'm really talking about is *independence*. All my life I've depended on someone. First my parents, then Frank. I'm finally at a point where I can stand on my own and feel some *control over my own life*—make decisions based on what I *want*. If I have a baby now I'll lose that. So maybe it is *selfish*.

Spenser: Susan, I understand about independence. About people making decisions. About being controlled or forced. But this decision is not yours alone. It's mine, too. I've got a responsibility here. . . . I want it. I'm prepared for it. . . . *This baby has a right to live*.

Susan: *What if I don't think it's a baby yet? What if I think there is still a choice?*¹¹⁴

This program was unusual in that the woman eventually aborted. More often, Condit found, pregnant women whose pregnancies conflicted with their careers or other plans for self-development chose not to abort, only to miscarry with becoming grief.¹¹⁵

Condit's study suggests the linkage between abortion and the debate

¹¹¹ See Celeste Michelle Condit, *Decoding Abortion Rhetoric* 124 (1990).

¹¹² *Id.* at 123.

¹¹³ *Id.* at 125-41.

¹¹⁴ *Id.* at 137.

¹¹⁵ "I didn't want it," said Vanessa Sarnouk in *Call to Glory*, "It must have known." *Id.* at 135-36. Particularly since Vanessa was an electronics major, this episode seems designed to dramatize the tension between motherhood and the demands of nontraditional careers.

over “working mothers”: both involve controversies over the extent to which mothers are entitled to self-development if it competes with the demands of motherhood as conventionally defined. Condit’s analysis shows why the abortion debate ends up pitting women more invested in motherhood against women more invested in careers or other types of self-development unrelated to domesticity. The remainder of this section explores how this occurs, focusing on two recent studies that examine the abortion controversy as a gender war among women.

In the earlier study, sociologist Kristin Luker¹¹⁶ examined abortion activists in California, finding very different profiles of pro-choice and right-to-life proponents. The typical pro-choice activist, Luker found, is a woman with a serious career commitment. Luker traces the activism of these pro-choice advocates to their belief that their professional success depended in part on their ability to control their fertility. “Once [pro-choice activists] had choices about life roles,” she writes, “they came to feel that they had *a right to use abortion in order to control their own lives*.”¹¹⁷ Highlighting the connection between pro-choice activism and the awareness of the “opportunity cost” of pregnancy, Luker’s study suggests that pro-choice activists demand a right to abort if a pregnancy interferes with their right to self-development, in contexts in which self-development most often is associated with career success.¹¹⁸

According to Luker’s study, right-to-life advocates are predominantly women.¹¹⁹ In contrast to their opponents, they tend to be working class women with high school educations who identify primarily with motherhood. They also tend to hold “traditional” views that “men are best suited to the public world of work, and women are best suited to rear children, manage homes, and love and care for husbands.”¹²⁰

The more recent work of anthropologist Faye Ginsburg partly criticizes and partly confirms Luker’s study.¹²¹ Ginsburg challenges Luker’s class-based categories, concluding that middle and working class women are represented on both sides of the abortion debate.¹²² Ginsburg found that age was a key difference between the pro-choice and right-to-life

¹¹⁶ See K. Luker, *supra* note 80. For an insightful interpretation of the abortion debate that relies heavily on Luker, see Jean Braucher, *Tribal Conflict Over Abortion*, 25 Ga. L. Rev. 595 (1991) (book review).

¹¹⁷ K. Luker, *supra* note 80, at 118 (emphasis in original).

¹¹⁸ *Id.* at 118-21.

¹¹⁹ *Id.* at 94.

¹²⁰ *Id.* at 160.

¹²¹ See F. Ginsburg, *supra* note 80.

¹²² *Id.* at 139, 150, 174. Ginsburg considered the activists’ natal and current households. Conducted in Fargo, North Dakota, Ginsburg’s study analyzed data from 21 right-to-life activists and 14 pro-choice activists. Each activist reflected the range of diversity found in the active membership of each group with respect to age, socioeconomic status, religious affiliation, household and marriage arrangements, and style of activism. *Id.* at 134-35.

activists she studied.¹²³ The pro-choice activists came of age in the sixties and seventies and defined their lives in terms of the feminist rebellion against the traditional pattern of women's lives. Right-to-life advocates tended to be younger; their life-defining step often was their decision to drop out of the workforce.¹²⁴

Although Ginsburg presents her study as a challenge to Luker,¹²⁵ their conclusions in fact are reconcilable. In both studies, pro-choice activists and their opponents differ in their orientation towards domesticity. Although, as Ginsburg correctly notes, both pro-choice and right-to-life women identify with domesticity,¹²⁶ a split occurs between American women who unambivalently adopt the ideology of domesticity and those who—to use Gilligan's terminology—remain torn between a femininity that rests on the ideology of domesticity and a definition of adulthood that adopts the imagery of autonomous actors pursuing self-development.¹²⁷ In short, the abortion debate is a second gender war precipitated by the clash between femininity and adulthood.¹²⁸

The remainder of this section explores how the right-to-life movement embeds domesticity's critique of the pursuit of self-interest. Section C then describes two avenues that hold promise for helping abortion rights activists reclaim control of the abortion debate, and evaluates their potential for success.

2. *Domesticity's Critique of Self-Interest*

The analysis of domesticity developed in Part I offers insight into the logic of right-to-life advocates. Many women, Ginsburg's study suggests, are attracted by domesticity's critique of self-interest. Said one right-to-life advocate:

I think we've accepted abortion because we're a very materialistic society and there is less time for caring. To me it's all related. Housewives don't mean much because we do the caring and the mothering kinds of things which are not as important as a nice house or a new car.¹²⁹

¹²³ Id. at 140.

¹²⁴ Id. at 140-45.

¹²⁵ Id. at 150, 173 (focusing particularly on Luker's finding of class differential among pro-choice and right-to-life advocates).

¹²⁶ See id. at 152-97; text accompanying notes 49-63 *supra*. The ideology of domesticity is so closely tied with gender-training in femininity that many women identify with its norms to some extent. See text accompanying notes 50-65 *supra*.

¹²⁷ This formulation postulates two groups of women. In fact, as I will argue in the context of work/family conflict, American women probably fall more along a continuum ranging from least to most ambivalent about domesticity. See text accompanying notes 371-72 *infra*.

¹²⁸ See text accompanying notes 55-56 *infra*.

¹²⁹ F. Ginsburg, *supra* note 80, at 185.

Right-to-life advocates are the modern day “moral mothers.”¹³⁰ They use the language of traditional femininity to critique the liberal premise that society is better off if adults pursue their own self-interest. Ginsburg found many right-to-life mothers articulating “an embedded critique” in which nurturance challenges the negative social forces of materialism and competitive individualism.¹³¹ The women she interviewed see their right-to-life stance as part of a system of values that chooses nurturance over “success.”¹³² The man’s world of self-interest is belittled as selfish and materialistic, in contrast to the maternal world of “unconditional nurturance.”¹³³

Right-to-life advocates, vague and often ambivalent about whether the pursuit of self-interest is acceptable for men, are united by the theme that self-interest is unacceptable for mothers and destructive for society at large.¹³⁴ Linda Gordon aptly summarized their feelings:

[Abortion opponents] fear a completely individualized society with all services based on cash nexus relationships, without the influence of nurturing women counteracting the completely egoistic principles of the economy, and without any forms in which children can learn about lasting human commitments to other people.¹³⁵

Women in Ginsburg’s right-to-life narratives often depict their decisions to eschew employment as a sacrifice—usually because the loss of a second income makes money tight—that is worth making for the good of their children: “Kids are what it boils down to. My husband and I really prize them; they are our future and that is what we feel is the root of the whole pro-life thing.”¹³⁶

¹³⁰ See text accompanying notes 31-33 *infra*.

¹³¹ F. Ginsberg, *supra* note 80, at 196.

¹³² See *id.* at 188.

¹³³ *Id.* at 190.

¹³⁴ *Id.* at 195-96.

¹³⁵ Linda Gordon, *Why Nineteenth-Century Feminists Did Not Support “Birth Control” and Twentieth-Century Feminists Do: Feminism, Reproduction, and the Family*, in *Rethinking the Family: Some Feminist Questions* 40, 51 (Barrie Thorne & Marilyn Yalom eds., 1982), quoted in F. Ginsburg, *supra* note 80, at 196.

¹³⁶ F. Ginsburg, *supra* note 80, at 193. These right-to-life women depict the mother’s decision as a *family*, not an individual, sacrifice. See text accompanying notes 380-81 *infra*. Domesticity’s critique of possessive individualism emerges as well among academic feminists who have challenged *Roe v. Wade* as excessively “atomistic.” See, e.g., Elizabeth Fox-Genovese, *Feminism Without Illusions* 7-9, 199-241 (1991) (criticizing feminist acceptance of individualism); M. Glendon, *supra* note 66, at 35-39, 112-25 (criticizing excessive individualism in abortion cases and in American life); R. Petchesky, *supra* note 70, at 3-8 (criticizing “bourgeois individualism”); Colker, *Feminist Litigation*, *supra* note 66, at 165-67, 181-82 (criticizing privacy abortion decisions as too atomistic); Robin West, *Foreword: Taking Freedom Seriously*, 104 *Harv. L. Rev.* 43 (1990) (proposing responsibility as opposed to rights theory). For a critical response, see Linda C. McClain, *The Poverty of Privacy* (1991) (unpublished manu-

Many Americans share right-to-life advocates' uneasiness about a trade-off between the needs of children and adults' pursuit of self-development. Although work or schooling aspirations often contribute to decisions in favor of abortion,¹³⁷ large numbers of Americans disapprove of abortion for these reasons. For example, only one-third of Americans think abortion should be legal if the decision is based on a woman's desire to pursue career opportunities,¹³⁸ a figure that appears to confirm the disapproval of "selfish mothers" documented by Condit's study of media imagery.¹³⁹ The covert norm of selflessness for mothers emerges again in data documenting widespread disapproval of abortion to allow teenagers to finish school.¹⁴⁰ This, too, can be viewed as a trade-off between self-development and caregiving—if one ignores the fact that it often is not a high-profile job pregnant teenagers seek, but avoidance of the grinding poverty characteristic of teenage motherhood.¹⁴¹ Most dramatically, only forty-nine percent of Americans think abortion should be legal for mothers in low-income families that cannot afford more children.¹⁴² Here lurks the image of a mother choosing a pair of expensive sneakers

script on file with author).

¹³⁷ See Torres & Forrest, *supra* note 2, at 179 (discussing reasons underlying abortion decision).

¹³⁸ R.W. Apple, Jr., *Limits on Abortion Seem Less Likely*, N.Y. Times, Sept. 29, 1989, at A1. This low percentage may be attributable in part to the wording of the question, which projected the image of an affluent career woman aborting to preserve her next promotion. These results are based on a New York Times/CBS News Poll taken from September 17-20, 1989, having a margin of sampling error of 3%. *Id.* at A1, A13. An earlier poll reported that 56% of respondents said that abortion should be illegal in these circumstances. E.J. Dionne, Jr., *Poll Finds Ambivalence on Abortion Persists in U.S.*, N.Y. Times, Aug. 3, 1989, at A18.

¹³⁹ See C. Condit, *supra* note 111, at 137-38 (documenting use of word "selfish"); *id.* at 133 (documenting cultural message that abortions not justifiable for married women absent financial destitution). For a nineteenth-century variation on this theme, see R. Petchesky, *supra* note 70, at 75-76; see also Katrina Maxtone-Graham, *Pregnant By Mistake* 31 (1973) (quoting aborting woman: "They tell you you're so selfish when you don't want a child.").

¹⁴⁰ See Dionne, *supra* note 138, at A18 (discussing results of poll in which only 44% of those surveyed said abortion should be legal if sought to enable teenager to finish school). This New York Times/CBS News poll was based on telephone interviews conducted July 25-30, 1989. *Id.* Nationwide, 978 adults were surveyed and the sampling error was 3%. *Id.* In these statistics, the norm of selflessness may be only part of the dynamic since the relationship between domestic ideology and women of color and working class women is very complex. See Letter from Angela Harris to Joan Williams, Jan. 19, 1992 (on file with author).

¹⁴¹ Nancy M. Rudd, Patrick C. McKenry, & Myungkyun Nah, *Welfare Receipt Among Black and White Adolescent Mothers*, 11 *Fam. Issues* 334, 337 (1990) (30% of youth-headed families had incomes below poverty line in 1985, compared to 11% of general population); see Greg J. Duncan & Saul D. Hoffman, *Welfare Benefits, Economic Opportunities, and Out-of-Wedlock Births Among Black Teenage Girls*, 27 *Demography* 519 (1990) (children born to unmarried teenage mothers likely to spend childhoods in poverty; mothers lose career and marriage opportunities, and their own childhoods).

¹⁴² See Apple, *supra* note 138, at A13. About two-thirds of the women surveyed by Torres & Forrest indicated that one reason for their abortion was that they could not afford another child at that time. See Torres & Forrest, *supra* note 2, at 169.

for her teenager over the sanctity of fetal life—the pervasive theme of short-sighted and materialistic women.

Abortion has such a hold on the American psyche in part because it enables Americans to express their uneasiness over our national celebration of self-interest and materialism without confronting unpleasant facts about our national priorities; instead, the abortion controversy allocates the blame to mothers who refuse to abide by norms of selflessness. Pro-choice advocates exacerbate this dynamic when they express their goal as support for “abortion on demand and without apology.”¹⁴³ To many Americans, this conjures up an image of selfish women and unnurtured children in a harsh, uncaring society.¹⁴⁴

C. *Reframing Abortion Rhetoric*

This analysis suggests that current abortion rights rhetoric carries significant costs. The need to reassess that rhetoric seems particularly pressing today. Most rural women no longer have access to abortion, and fewer and fewer doctors are trained to perform abortions so that even urban clinics have trouble finding such doctors.¹⁴⁵ These patterns have emerged despite the continued validity of *Roe v. Wade*.¹⁴⁶ If, as is widely expected, the Supreme Court overrules *Roe* or continues to erode its guarantee,¹⁴⁷ the abortion debate will leave the courtroom and reenter the legislative arena.

In this context, abortion rights advocates need to reassess the effectiveness of current abortion rhetoric. When the defense of access to abortion was based on constitutional arguments, the rhetoric of choice made sense: indeed, as we have seen, advocates for reproductive freedom became “pro-choice” advocates in part because of the demands of legal discourse.¹⁴⁸ Yet choice rhetoric is not the simple, unadulterated truth of women’s lives: many aborting women feel they have no choice but to abort.¹⁴⁹ The rhetoric has been strategic from the beginning, not expressive of pristine, unchanging truths.¹⁵⁰

¹⁴³ “Abortion on demand and without apology” is a common pro-choice slogan.

¹⁴⁴ While this is not the only fear underlying the abortion debate, it is both important and often unrecognized.

¹⁴⁵ Recent research is summarized in National Abortion Federation, *Who Will Provide Abortions?, Recommendations from a National Symposium*, Santa Barbara, Cal. (Oct. 25-26, 1990).

¹⁴⁶ 410 U.S. 113 (1973).

¹⁴⁷ See *Greenhouse*, supra note 5, at A1.

¹⁴⁸ See text accompanying notes 81-101 supra.

¹⁴⁹ See Kathleen McDonnell, *Not an Easy Choice* 71 (1984) (many women feel they have “no choice” but to abort); see also Meridel Le Suer, *The Girl* 76-81 (1978) (story stressing role of male power in abortion decision); Gloria Naylor, *The Women of Brewster Place* 91-98 (1980) (same).

¹⁵⁰ Cf. Richard Rorty, *Philosophy and the Mirror of Nature* (1979) (arguing that knowl-

The remainder of this section explores how to reframe the abortion debate to help diffuse the gender war over abortion. Section 1 explores the scope of the problem and concludes that the abortion controversy is not an auspicious context in which to press feminist claims for autonomy.¹⁵¹ Section 2 focuses on abortion rhetoric. It separates two strains of pro-choice rhetoric, and argues that pro-choice advocates need to regain control of the subtext of the abortion debate: the narratives of aborting women.

1. *Abortion as a No-Win Issue*

Second-wave feminists made a conscious choice to use abortion as a vehicle for pressing women's claim to self-possession and autonomy.¹⁵² Yet the course of the abortion debate in the past twenty-five years suggests that abortion may not be a promising context in which to press such arguments for several reasons.

First, the American public has bonded with the fetus. Through sustained and often brilliant (if at times unprincipled) techniques,¹⁵³ the right-to-life movement has convinced a significant portion of the American public that the fetus is a child. This phenomenon is now a fact of life. It means that, to many Americans, pro-choice arguments based on the theme that women are entitled to autonomy and self-possession appear to pit women's claims for self-possession against the sanctity of life itself. This is hardly an auspicious context in which to press for core feminist goals.

Second, the abortion debate is an unpromising context in which to challenge the norm of selfless motherhood because of its linkage of women's equality with fears of sexual irresponsibility. As Rosalind Petchesky has argued persuasively, the fear of female sexuality unleashed from the constraints of the patriarchal family is a strong theme in the right-to-life movement.¹⁵⁴

edge not an objective picture of outside world); Joan Williams, *Virtue and Oppression*, NOMOS XXXIII: Yearbook of the American Society for Political and Legal Philosophy (forthcoming) (discussing rhetorics that persuade) [hereinafter, Williams, *Virtue and Oppression*]. This perspective is particularly apt in the abortion context, where the American public's notoriously inconsistent answers to questions about abortion highlight the importance of rhetoric in channeling people's reaction to aborting women. See Donald Granberg and Beth Wellman Granberg, *Abortion Attitudes, 1965-1970: Trends and Determinants*, 12 *Fam. Plan. Persp.* 250, 251 (1980) ("Answers to survey questions are notoriously sensitive to the wording of the questions.").

¹⁵¹ For a powerfully argued defense of privacy/autonomy in the abortion context, see L. McClain, *supra* note 136.

¹⁵² See R. Petchesky, *supra* note 70, at 3-8.

¹⁵³ See Petchesky, *supra* note 102, at 267 (documenting inaccuracies in film *The Silent Scream*).

¹⁵⁴ These fears focus in particular on teenage sexuality. See R. Petchesky, *supra* note 70, at

A less noted dynamic is the process by which claims for women's equality, particularly in contexts involving sexuality, trigger fears of chaos, filth, and defilement. A recent study of the ERA ratification debate noted how some women perceive the disruption of gender verities as a threat to the very meaning of their lives.¹⁵⁵ The study, by Donald G. Mathews and Jane S. De Hart, reports that women who opposed the ERA were self-identified "family-oriented women" who felt that the ERA endangered and devalued the gendered norms upon which they had built their identities and their lives.¹⁵⁶ One such woman explained her position:

He works for me, takes care of me and our three children, doesn't make me do things that are hard for me (drive in town), loves me and doesn't smoke, drink, gamble, run around or do anything that would upset me. I do what he tells me to do. I like this arrangement, *it's the only way I know how to live.*¹⁵⁷

This analysis both explains that anti-feminists are rational actors motivated by what they perceive as their own self-interest¹⁵⁸ and identifies the deeper dynamics at work.

The ERA seemed to some women a mechanism to subvert behavior that expressed the very sources of their selfhood.¹⁵⁹ One mother wrote Sam Ervin, a key ERA opponent, after the ERA passed the Senate:

Today I am ashamed and terrified at what the future holds for my three little girls. Will my shy, sweet Tommy be drafted in six years? So modest I can't even see her undress. Oh God! . . . I just can't stand it. I can't bear it.¹⁶⁰

To deny the relevance of sex to this mother, noted Mathews and De Hart, "was to deny life and hope. 'Sex' meant the intimate privacy of shy little girls and equality meant ravaging them, stripping away the protection of innocence and thrusting them into battle."¹⁶¹ Just as the ERA

263 ("More than anything else, the subject that excites 'prolifers' is premarital sex among teenagers."); see also *id.* at 205-38 (discussing abortion and teenagers); *id.* at 262-85 (opposition to abortion reflects fears surrounding sexuality).

¹⁵⁵ See Donald G. Mathews & Jane S. De Hart, *Sex, Gender and the Politics of ERA* (1990) (analyzing ratification process of ERA to explain conflict among participants and its psychological ramifications).

¹⁵⁶ See *id.* at 155-60 (discussing fears of some family-oriented women who believed ERA represented "total assault on the role of American women as wife and mother").

¹⁵⁷ *Id.* at 160 (emphasis added) (citation omitted).

¹⁵⁸ See English, *supra* note 86, at 16.

¹⁵⁹ See D. Mathews & J. De Hart, *supra* note 155, at 158. Some anti-ERA women believed that feminists were "trying to create new selves under the mistaken belief that they could achieve goals that would fulfill them in ways impossible through the bearing and raising of children." *Id.*

¹⁶⁰ *Id.* at 162.

¹⁶¹ *Id.* at 162-63.

would destroy the mature life of the homemaker, it also would destroy the innocence of little girls. It would leave women open to the rawness of male power even in their most private moments in the bathroom: they would be opened up, quite literally, to rape and violation.¹⁶² Another letter read:

I am enclosing a petition against ERA. Please vote against this terrible law. It is the most immoral mess I ever heard of to be called a law. It is filthy!¹⁶³

The Mathews and De Hart study shows how gender equality awakens fears of defilement even in a context that involved no explicit sexual component. When the issue is abortion, of course, the fears associated with unregulated sexuality emerge in full force. Many ERA opponents explicitly linked abortion with the ERA, viewing both as endorsing hedonistic sex outside the bounds of family responsibility. One woman explained in 1977:

I've sat here at home and I've read the magazines, and read the newspaper, and I've watched the television news, and I never did anything And all of a sudden, this was it. I could just see ERA was going to deepen the mire, to do much more if I didn't stop it. . . . There's a freedom and permissiveness that I think is wrong. But these young people who are living together, having abortions, wandering aimlessly without purpose, someday they will have to answer. There are no boundaries¹⁶⁴

Is this the pursuit of self-interest deteriorated into hedonism?¹⁶⁵ Perhaps the connection is not precise, but the deeper message concerning the dangers of the abortion debate is clear: what feminists associate with equality, particularly in contexts linked to sexuality, others associate with defilement and the descent of life into tawdry meaninglessness. The abiding power of gender, in part, rests with the ability to link traditional gender roles with the orderliness of the universe, so that equality (to some) threatens the universe with chaos.¹⁶⁶

The American public's sympathy for the fetus and the fears of chaos, filth and sexuality that blanket the abortion debate, all suggest it is

¹⁶² See *id.* at 164-67 (discussing some women's assumption that ERA would repeal all laws relating to women, including those that protected women. Antifeminists said "You mean to make us like you, that is, like men. You have defiled us!").

¹⁶³ *Id.* at 166.

¹⁶⁴ *Id.* at 159-60.

¹⁶⁵ See R. Petchesky, *supra* note 70, at 264 (in right-to-life view, women who get abortions are "the ultimate hedonists, the paradigm of 'selfishness'").

¹⁶⁶ See D. Mathews & J. De Hart, *supra* note 155, at 160 (documenting fear of antifeminist women); see also *id.* at 159 (abortion represents values that are "linked with uncontrolled sexuality . . . symbolic of a society on the verge of disintegration").

not a fruitful context in which to press women's claims for autonomy and self-possession. The abortion controversy is, however, here to stay. Moreover, access to abortion is now severely threatened. The question remains whether feminists can reframe their rhetoric to calm the fears the debate awakens. The remainder of this section reassesses pro-choice rhetoric from this perspective.

2. *Choice, Autonomy, and Caring*

The manifold fears at work in the abortion debate suggest that pro-choice advocates need to supplement their message with reassurance. On the issues of sexuality and gender equality feminists can offer little. Obviously, we are not going to disclaim the demand for equality with men. Moreover, since eighty-two percent of all abortions are performed on divorced or single women,¹⁶⁷ feminists cannot claim that abortion is not linked with sex outside of marriage. Feminists, however, can seek to control the gender eddies that swirl around the rhetoric of choice. By doing so, they can hope to reassure many Americans apprehensive about abortion.

One way to avoid the fear aroused by the rhetoric of choice is to abandon the rhetoric altogether. This seems undesirable for two reasons. First, the anti-government spin of the "who decides" formulation is very persuasive. Two-thirds of Americans agree that even in cases where I might think abortion is the wrong thing to do, the government has no business preventing a woman from having an abortion.¹⁶⁸ The libertarian spin of this question, which focuses on the undesirability of governmental intrusion in the sex and family lives of its citizens, subtly divorces abortion and equality for women, instead creating an individual-versus-government dynamic.

This libertarian strain of choice rhetoric, however, should be distinguished from the use of women's choice as a vehicle to preserve their self-possession and autonomy. The strong appeal of the anti-government, libertarian theme does not imply to all its supporters that women should be able to abort for reasons of autonomy and self-development. As noted above, most Americans do not believe abortions should be legal where the woman's motivation is career success, and many do not endorse abortions to allow completion of schooling or for economic need. The question is how to reframe abortion rhetoric to persuade as many of these people as possible.

Let me state clearly the audiences I seek to reach. Many right-to-

¹⁶⁷ David E. Anderson, *Abortion Rate Declined in the '80s But Rose Among Young, Blacks*, *United Press Int'l*, *Wash. News*, Apr. 25, 1991.

¹⁶⁸ Apple, *supra* note 138, at A18.

life activists never will be persuaded of the legitimacy of access to abortion: Luker documents that many have profound religious and other commitments that make abortion unthinkable;¹⁶⁹ Mathews and De Hart's analysis reinforces the point. Yet polling data suggests that many Americans are confused about abortion and apprehensive about government's role, even while they also are apprehensive about women who abort for cavalier or "selfish" reasons. This "ambivalent" majority is one major target for pro-choice abortion rhetoric.¹⁷⁰

Another (overlapping) audience is aborting women themselves. Thirty percent of all American pregnancies end in abortion, and twenty-one percent of American women have had abortions.¹⁷¹ My sense is that current pro-choice rhetoric lets down many of these women. Said one pro-choice feminist:

I was completely unprepared for my reaction to my abortion. It was presented to me as a clinical process, so I was unprepared for the emotional sense of loss I felt. That was a complete surprise.¹⁷²

Younger pregnant women are a key audience. In a recent public forum on abortion, one woman spoke movingly about counselling her pregnant daughter about abortion. Her daughter would not consider abortion, she said, until she was convinced that it was a moral choice. Whenever women confront the tragic dimension of abortion,¹⁷³ current pro-choice rhetoric does not provide what they need: vivid imagery of abortion as a *moral* choice.¹⁷⁴ The pro-choice movement needs to work harder to represent aborting women as moral actors making hard choices

¹⁶⁹ See K. Luker, *supra* note 80, at 186-91, 196-97.

¹⁷⁰ See Dionne, *supra* note 138, at A18; see also E.J. Dionne, Jr., *Abortion's Two Sides Crowd the Center*, N.Y. Times, Aug. 13, 1989, at A23 (much of American public thinks both sides of abortion debate too extreme).

¹⁷¹ See Torres & Forest, *supra* note 2, at 169; Stanley K. Henshaw et al., *Characteristics of U.S. Women Having Abortions, 1987*, 23 *Fam. Plan. Persp.* 75, 77 (1991).

¹⁷² See note 1 *supra*.

¹⁷³ Unlike some thoughtful feminists, I am less troubled by the frightened sixteen-year-old who aborts numbly—or even cavalierly—because she senses a choice between her future and that of her fetus, and I have no desire to insist that every aborting woman confront the tragic dimensions of the decision to end fetal life. My instinct is that few women remain unreflective about their abortions throughout their entire lives. Right-to-life literature suggests that many women confront the pain and the tragedy of their abortions years later, when they find themselves infertile, or pregnant, or otherwise involved in the drama of fetal life.

¹⁷⁴ Cf. Mensch & Freeman, *supra* note 66, at 1120-1131 (indicating that pro-life view, but not pro-choice view, is defended as moral position; discussing morality in religious terms); West, *supra* note 136, at 81-85 (defending morality of pro-choice position in language of responsibility as opposed to rights). West's intriguing suggestion that abortion rights can be defended in terms of responsibility runs the risk of reinforcing the societal tendency to allocate rights to men and responsibilities to women.

in no-win situations.¹⁷⁵ If we cede this argument to the other side, we leave to them the idealism of the young.

This approach not only makes for persuasive rhetoric; it may well provide a more accurate reflection of most women's abortion decisions. My sense is that, in the context of most women's lives, the decision to abort is made thoughtfully, carefully, with quiet sorrow and moral courage.¹⁷⁶ Moreover, Carol Gilligan's study suggests that women often justify their abortion decision to themselves on the grounds that it reflects selfless dedication to the fulfillment of responsibilities to their children and spouses, and not on the grounds that no fetus will stand in the way of their self-development.¹⁷⁷

The need to justify what is right on grounds of gender-allocated selflessness need not be dignified as "women's voice" in order to recognize that women under stress require reassurance that they are not abandoning their own ideals, rather than a sermon on the need to revolt against gender proprieties. Moreover, the rhetoric of selflessness contains a kernel of truth: an adult ethic of self-interest is fundamentally irresponsible in *both* mothers *and* others. At best, mothers' use of the rhetoric of selflessness signals their rejection of the ideology that enshrines self-interest as the proper motivation for adults.¹⁷⁸

One doubts that all these messages can be conveyed simultaneously in pro-choice abortion rhetoric. Nonetheless, the considerations highlight a need to be wary of autonomy rhetoric in the abortion context and

¹⁷⁵ This process has begun. See Carole Joffe, *The Moral Vision of the Pro-Choice Movement: A Response to Ruth Anna Putnam*, 4 *Tikkun* 82 (Sept./Oct. 1989) (arguing abortion involves morality decision); West, *supra* note 136, at 81 (defending "moral quality of most abortion decisions"); Peter Steinfelds, *Lutherans Vote Abortion Stance, Seeking New Language in Debate*, N.Y. Times, Sept. 4, 1991, at A20 (arguing abortion can be moral choice). A number of thoughtful feminists have suggested trying to communicate the texture of women's lives in which abortions seem the only choice. See, e.g., K. McDonnell, *supra* note 149, at 68-80. Notable in this context are the forceful and moving "voices briefs" submitted by women's groups in recent abortion cases. See Brief for the Amici Curiae Women Who Have Had Abortions and Friends of Amici Curiae in Support of Appellees, *Webster v. Reproductive Health Servs.*, 492 U.S. 490 (1989) (No. 88-605) [hereinafter *Webster* Brief]; Lynn Paltrow and Lynn Miller, *Amicus Brief: Richard Thornburg v. American College of Obstetricians and Gynecologists*, 9 *Women's Rts. L. Rep.* 3 (1986); see also Sarah Burns, *Notes From the Field: A Reply to Professor Colker*, 13 *Harv. Women's L.J.* 189, 197 (1990) (discussing three "women's voices" briefs). These forceful and moving briefs represent a dramatic widening of pro-choice rhetoric. The text attempts to analyze what might be the most persuasive themes to develop through narratives.

¹⁷⁶ See National Abortion Rights Action League, *The Voices of Women* (1989) [hereinafter *Voices*].

¹⁷⁷ See C. Gilligan, *supra* note 27, at 76-79, 86-87.

¹⁷⁸ This is the junction of feminism and what is often called communitarianism. For examples of communitarianism, see, e.g., Habits, *supra* note 14; William A. Galston, *Liberal Purposes: Goods, Virtues and Diversity in the Liberal State* (1971); Christopher Lasch, *The True and Only Heaven: Progress and Its Critics* (1991); A. MacIntyre, *supra* note 71.

the need for a sustained effort by pro-choice forces to control the cultural imagery of why women abort. Pro-choice rhetoric could break the traditional linkage of the libertarian and autonomy arguments, and instead seek to link libertarian arguments with reassuring messages that pro-choice forces, and aborting mothers, share abortion opponents' apprehensions about society's materialism and its canonization of self-interest. To accomplish this, pro-choice forces need to reassert control of the single most crucial subtext of the abortion debate: the narratives of aborting women.

Up to now, the imagery of why women abort largely has been controlled by right-to-life advocates, who have painted images of "selfish" women pursuing "convenience" abortions. Pro-choice advocates' conviction that women should not have to justify their abortion decisions to anyone has made them reluctant to enter discussions about abortion as a moral decision.¹⁷⁹ One need not abandon a no-restrictions position on abortion to seek to communicate that position with reassuring images of abortion as a moral choice. Indeed, this strategy merely seeks to communicate confidence in women's responsibility as moral decisionmakers.

The subtext of pro-choice stories needs to be that pro-choice forces share with their opponents a reverence for human life. That is why, in some cases, pro-choice advocates respect the decision to abort. An example of this strategy might use the slogan "Choice: because we care about the children we have,"¹⁸⁰ or "Abortion: sometimes it's the loving choice,"¹⁸¹ linked with stories designed to paint an image of aborting women as mothers in pain. Pro-choice forces have made some steps in this direction. One example is the slogan "Pro-child, pro-family, pro-choice." But it is not always clear that pro-choice advocates fully understand the dynamics at work.¹⁸²

One way of reinforcing the symbolic link between access to abortion and caring motherhood would be to have abortion providers also offer prenatal services.¹⁸³ But the most direct way to regain control of the

¹⁷⁹ See, e.g., text accompanying note 83 supra.

¹⁸⁰ My thanks to Judy Rosman, University of Virginia Law School, Class of 1994, for this suggestion.

¹⁸¹ For reference to this theme in a "voices brief," see Paltrow & Miller, supra note 175, at 17 n.8, 22.

¹⁸² For example, shortly before *Webster v. Reproductive Health Services*, a moving piece in the *New York Times* described a mother whose husband left her pregnant. The only way she could support her child was with a job that would be precluded if she carried the second pregnancy to term. So she aborted . . . and we find out she is Mary Travers, of Peter, Paul and Mary. Mary Travers, *My Abortion, Then and Now*, N.Y. Times, Aug. 10, 1980, at A23. Good beginning, bad end. This story is well-designed to confirm pro-life fears of women aborting in favor of vaulting ambition. Again, the underlying messages should be reassuring ones of motherhood revered, not rejected in favor of career.

¹⁸³ This arrangement also would help diffuse the common right-to-life argument that abor-

subtext of the abortion debate is to contest the right-to-life imagery of selfish women seeking convenience abortions. An obvious story that might demonstrate how domesticity sometimes drives the abortion decision would depict a woman who simultaneously loses her husband, finds out that she is pregnant, and realizes that she must go to work to support her existing children.¹⁸⁴ In that context, it is easy to communicate the message that many women who abort are mothers who abort out of a desire to be good mothers. The same message could be conveyed by a narrative of a mother who aborts to meet the needs of a disabled child,¹⁸⁵ a story that would address directly the claim that pro-choice advocates devalue the lives of the disabled. These types of narratives convey the message that abortions result in part from society's refusal to help mothers in need. That message may well be heard better when linked with an argument that society must respect mothers' decisions to abort given the privatization of so many costs onto individual women.¹⁸⁶

Some readers have responded with shock at the suggested use of the imagery of domesticity. While domesticity in the context of work/family conflict redounds to the detriment of women,¹⁸⁷ the imagery of domesticity is less perilous in the abortion context for several reasons. First, the core pro-choice goal is to defend an area of freedom, rather than to challenge the constraints within which "choice" occurs. Second, the language of domesticity is the chief rhetoric of cultural authority in which to assert claims on behalf of children. It can be used fruitfully in the abortion context because a central message of pro-choice rhetoric should be that—the claims of right-to-life advocates notwithstanding—*both* sides value nurtured children. Of course, the language of nurture is *processed* as gendered language: the statement that *adults* should nurture is processed as the claim that *mothers* should nurture. But again, abortion is not the place to challenge domesticity's gendered allocation of selflessness. The core pro-choice message should be that both defenders and opponents of abortion seek conditions of effective nurture. They just disagree about which position on abortion best achieves that goal.

A pro-choice position that focuses on children's entitlement to nurture offers a return to radical feminists' original linking of abortion rights to larger issues of reproductive freedom and equity.¹⁸⁸ In St. Louis, pro-

tion providers are just "in it for the money."

¹⁸⁴ See, e.g., *Voices*, supra note 176, at 14. The National Abortion Rights Action League's moving pamphlet, *The Voices of Women*, has a wealth of stories that support the imagery of women choosing abortion to protect existing and future children.

¹⁸⁵ *Id.* at 26-28.

¹⁸⁶ See text accompanying notes 203-77 *infra*.

¹⁸⁷ See Joan Williams, *Deconstructing Gender*, 87 *Mich. L. Rev.* 797, 813-21 (1989).

¹⁸⁸ See text accompanying notes 82-86 *supra*.

choice activists (including the directors of clinics) have joined right-to-life activists to explore the possibility of working together on issues concerning reproductive health.¹⁸⁹ “We were convinced that women were being chewed up by the pro-life, pro-choice debate,” said one member of this “common ground” movement.¹⁹⁰ “It was shockingly easy to identify issues we agree on,” said another, “like the need for aid to pregnant women who are addicted to drugs, the need for better prenatal care, and the need to reduce unwanted pregnancy. Neither side wants women to need abortions because they don’t have the money to raise a child.”¹⁹¹ Faye Ginsburg reports a similar detente in her small North Dakota town between activists on both sides of the abortion issue.¹⁹² The minutes of their meeting revealed:

Some *very* important common ground. We wished that women would not be faced with pregnancies that they couldn’t afford, that at times they weren’t ready for, by people they didn’t love, or for any of the many reasons women have abortions.¹⁹³

They resolved to direct their energies to reducing “as much as possible” the need for abortion.

The National Abortion Rights Action League (NARAL) used a similar approach in an advertising campaign. A New York Times advertisement noted:

to us, being pro-choice means having real choices. It means working to improve our nation’s reproductive health care policies. It means working to reduce the *need* for abortion . . . better sex education, more effective birth control, improved methods of contraception and better pre- and post-natal care.¹⁹⁴

¹⁸⁹ See Tamar Lewin, In Bitter Abortion Debate, Opponents Learn to Reach for Common Ground, N.Y. Times, Feb. 17, 1992, at 10. For a summary of other recent developments, see Ellen Goodman, Concerns Across the Abortion Chasm, Wash. Post, May 30, 1992, at A21.

¹⁹⁰ Lewin, *supra* note 189.

¹⁹¹ *Id.* For examples of right-to-life feminists who link their opposition to abortion to the need for increased support for parental leave, child-care allowances, day care provisions, health care, increased housing and educational and employment opportunities, see Sidney Callahan, A Moral Obligation, Sojourners, Nov. 1989, at 18 (advocating restrictions on abortion be met with new aid and alternatives, like parental leave, nutritional programs, counseling, child-care centers, educational and employment opportunities); Kathleen Hayes, Fully Pro-Life, Sojourners, Nov. 1989, at 22 (discussing need to provide adequate support for those not aborting).

¹⁹² Members of the local Women’s Political Caucus organized a dialogue (“Pro-Dialogue”) between right-to-life and pro-choice activists in 1984 to try to create a compromise position on abortion for the state Democratic platform. See F. Ginsberg, *supra* note 80, at 223-24.

¹⁹³ *Id.* at 224 (emphasis in original).

¹⁹⁴ America: Our Goal Should Be to Make Abortion Less Necessary—Not More Dangerous, Not More Difficult, N.Y. Times, July 7, 1991, at A12. Note that the advertisement contains language similar to traditional abortion rights rhetoric. Its overall focus clearly is on providing a “full range of reproductive health options,” rather than on “reduc[ing] the need

A positive step, this advertisement attempts detente by reclaiming the approach of the radical feminists:¹⁹⁵ placing abortion in the larger context of women's reproductive lives. Instead of using the radical language of oppression, however, this strategy could project a very different image: one of women whose understandable desire to have their babies is thwarted by society's failure to invest in mothers and children.

In short, this strategy could use the rhetoric of domesticity, of women yearning to be good mothers, to mobilize domesticity's embedded critique against social and governmental decisions to invest in men and missiles rather than in children. While this strategy holds some potential, it is likely that Americans' reluctance to commit public resources to families will win out. After all, our society has the highest infant mortality rate in the industrialized world;¹⁹⁶ a quarter of American children,¹⁹⁷ and fifty percent of African-American children,¹⁹⁸ live in poverty. Can fetuses accomplish what live children cannot, in terms of making Americans recognize the implications of these statistics? Perhaps not. But, at the very least, a pro-choice message undergirded with reassuring images of aborting women would contest the right-to-life movement's current monopoly on the power of the rhetoric of domesticity. In my view, the pro-choice movement should take a hint from Gilligan's abortion study and help women justify access to abortion—for themselves and others—on the only (selfless) grounds to which many Americans feel women are truly entitled.

III

A MOTHER'S CHOICE¹⁹⁹

As most people understand it, the mommy track implies

for abortion." *Id.*

¹⁹⁵ NARAL itself rejected this approach in the 1970s. See R. Petchesky, *supra* note 70, at 130-31 (contrasting radical feminists' advocacy of "concrete access to abortion for all women" and practical need for "substantive changes in the quality and conditions of reproductive health care," with NARAL's advocacy of legal "right to choose" and exclusion of state from abortion decisions altogether).

¹⁹⁶ Geoffrey Cowley, *Children in Peril*, *Newsweek*, Special Issue, Summer 1991, at 18.

¹⁹⁷ Ruth Sidel, *Women and Children Last 3* (1986) (poverty rate for children 24% in 1984).

¹⁹⁸ See Delores Kong, *Political Will Crucial to Saving Babies' Lives*, *Boston Globe*, Sept. 13, 1990, at 1 (describing how United States ranks last among all industrialized nations concerning infant mortality rate in 1988 and comparing our health care system with that of other nations). Critics blame this poverty rate and the expected increase in the infant mortality rate on the failure to invest in prenatal care and broader access to health insurance and family services. *Id.* In New York City, approximately 40% of all children are raised in poverty. See David R. Francis, *World's Children Need Peace Dividend*, *Christian Sci. Monitor*, May 18, 1990, at 7 (discussing failure of United States to heed direct relationship between improvements in child health and education and economic gain).

¹⁹⁹ See Barbara Kantrowitz, *A Mother's Choice*, *Newsweek*, Mar. 31, 1986, at 46

that mothers are sacrificing their careers—being shifted into less important jobs—because they're raising children. There are three things wrong with this notion. The first is that it involves "sacrifice." The second is that only mothers are affected. And the third is that decisions made in the early years of parenthood permanently doom careers.

My wife fits the stereotype of someone on the mommy track. Since our daughter's birth four years ago, she's been in and out of part-time jobs. She now has a job three days a week. But she doesn't think she's made a "sacrifice." My wife got off whatever "track" she was on because she wanted to. When my daughter arrived, I didn't suddenly lose all ambition. But I started getting home earlier at night, working less on weekends and deferring (forever?) some bigger and enticing writing projects. . . .

Before I'm labeled a complete hypocrite, let me acknowledge the obvious; my wife has had to change more than I have. Despite my many admirable exertions (making the bed, doing the dishes, helping with the children at night), she still has most of the responsibility for the children. When not being thoroughly self-centered, I worry that she'll feel frustrated by the strains between home and job. But she doesn't worry—and neither do I—that once she returns to a full-time paid job, she'll have trouble finding something rewarding and challenging.²⁰⁰

Part II argued that the abortion context is the wrong place to challenge the norm of selflessness for mothers. Part III argues that the "working mother" debate is the right place. Whereas in the abortion context challenging the norm of selfless motherhood pits women against the sanctity of life itself, in the context of work/family conflict such a challenge can be framed in two more promising ways: as a matter of equity between men and women and as a matter of protecting society's investment in children.

The inequity of the current distribution of work and family responsibilities is best dramatized by the phenomenon of the second shift: married women work dramatically longer hours than do their husbands because of their double burden of domestic and paid work.²⁰¹ The second shift is only one of the many ways in which the current gendered structure of wage labor disempowers women. The current system defines childrearing and the accepted paths of adult advancement as inconsis-

(describing demands of motherhood and career on working women).

²⁰⁰ Robert J. Samuelson, *The Daddy Track*, Wash. Post, Mar. 29, 1989, at A25.

²⁰¹ See Arlie Hochschild, *The Second Shift* 3-4 (1989).

tent; it then privatizes the consequent costs of childrearing onto women. The system not only leaves most women with different—and much less attractive—options than men have; it also links children to the fate of their marginalized mothers, leaving both groups disproportionately impoverished.²⁰²

Feminists need to challenge this gendered system by contesting the marginalization of caregivers and reopening the issues of what care children need and the extent to which parental caregiving is delegable. While Part II sought to *adjust* choice rhetoric in the context of the abortion debate, this Part seeks to alienate women from that rhetoric. In part this entails gathering sociological data to document how social patterns reflect a gender system that privileges men. My sense, though, is that many women acknowledge these data even while they continue to use the rhetoric of choice in their own lives. Choice rhetoric is so deeply reflexive that we need narratives to loosen its grip. Therefore, after an introduction to the rhetoric of choice in the “working mothers” debate and a discussion of the relationship of choice to false consciousness, this section uses narratives to examine several related issues: the power dynamics underlying “choice,” how choice rhetoric pits women against each other, and why women formulate their sacrifices in choice terminology.

A. Selfless Mothers and Ideal Workers: Work/Family Conflict Reflects a System of Gender Privilege

In the work/family context, the rhetoric of choice masks a gender system that defines childrearing and the accepted avenues of adult advancement as inconsistent and then allocates the resulting costs of childrearing to mothers.²⁰³ At the core of the system is a notion of an ideal

²⁰² See text accompanying notes 252-65 *infra*.

²⁰³ The rich law review literature on the work/family conflict includes Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 *Vand. L. Rev.* 1183 (1989) (examining both sexual harassment and work/family conflict); Nancy E. Dowd, *Work and Family: Restructuring the Workplace*, 32 *Ariz. L. Rev.* 431 (1990) [hereinafter Dowd, *Restructuring the Workplace*] (presenting picture of contemporary families, workforce, and workplace; analyzing work/family issues; and envisioning transformed workplace); Nancy E. Dowd, *Envisioning Work and Family: A Critical Perspective on International Models*, 26 *Harv. J. on Legis.* 311 (1989) (critical look at work/family policies of Sweden and France) [hereinafter Dowd, *Envisioning Work and Family*]; Nancy E. Dowd, *Work and Family: The Gender Paradox and the Limitations of Discrimination Analysis in Restructuring the Workplace*, 24 *Harv. C.R.-C.L. L. Rev.* 79 (1989) [hereinafter Dowd, *Gender Paradox*] (arguing that while gender and women are inseparable from discrimination analysis, we must, paradoxically, go beyond gender discussion in order to resolve work/family issues); Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 *Colum. L. Rev.* 1118 (1986) (using special treatment/equal treatment to critique usefulness of equality analysis as device for challenging social and economic subordination of women); Mary Joe Frug, *Securing Job Equality for Women: Labor Market Hostility to Working Mothers*, 59 *B.U. L. Rev.* 55 (1979) (arguing that while some labor market barriers may be challenged

worker without primary responsibility for children: a worker absent from home a minimum of nine hours a day, five or six days a week, often with overtime at short notice and at the employer's discretion.²⁰⁴ Underlying the expectations for the "ideal" worker is the rarely challenged assumption that the accepted avenues of adult power and responsibility inevitably are incompatible with caregiving. Of course they are not: their incompatibility results from a societal choice to marginalize caregivers. This becomes a gender issue because the marginalized caregivers—virtually without exception—are women. A mother's only real choice is to provide the flow of services herself or to delegate "her" responsibilities to other marginalized women.²⁰⁵

This gender system of ideal-worker fathers and marginalized women creates a systematic power differential between men and women that manifests itself in different ways.²⁰⁶ For women who insist on performing as ideal workers, the price is often childlessness. The typical corporate woman is married and childless: roughly sixty-five percent of managerial women have no children by the age of forty.²⁰⁷ Women lawyers also are much more likely to be childless than male lawyers.²⁰⁸ "I have no doubt that had I had the wonderful husband and two adorable children I thought I wanted years ago, I would not be a partner today," said one.²⁰⁹ Sociological studies show that women with firm career commitments often sacrifice childrearing with ambivalent feelings of loss and

successfully under present law, new legislation rather than litigation is only likely way to achieve dramatic labor market restructuring necessary to eliminate present disparity between men and women in workforce); Rhode, *Occupational Inequality*, supra note 20; Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 *Yale L. J.* 1731 (1991) [hereinafter Rhode, *No-Problem Problem*] (exploring denial, discounting, or deflecting gender inequity notions within our present legal norms and readdressing feminist challenge); see also Williams, supra note 187, at 822-45.

²⁰⁴ Bureau of Census reports show that in the most recent survey available, the average one-way commute to work was 20.5 minutes. U.S. Dep't of Commerce, Bureau of the Census Supp. to Annual Housing Survey for the United States in 1985, *Current Housing Rep. H-151-85-1*, at 417. Women tend to work closer to home travelling an average distance of 8.8 miles to men's 12.1. Conversation of author with Gloria Swieczkowski, *Journey-To-Work and Migration Statistics Branch, Population Division, U.S. Bureau of the Census*, April 17, 1992.

²⁰⁵ See text accompanying note 264 infra.

²⁰⁶ For a discussion of how the marginalization of caregivers affects women's "choice" in favor of domesticity, see Susan M. Okin, *Justice, Gender, and the Family* 142-46 (1989).

²⁰⁷ Felice N. Schwartz, *Management Women and the New Facts of Life*, *Harv. Bus. Rev.*, Jan.-Feb. 1989, at 65, 69. Another survey reported that 95% of male corporate leaders and 39% of women at equivalent levels of management have children. See Felice M. Schwartz, *Breaking with Tradition* 106 (1992) [hereinafter F. Schwartz, *Breaking With Tradition*].

²⁰⁸ See American Bar Association, *Commission on Women in the Profession, Lawyers and Balanced Lives* 4 (1990) [hereinafter ABA Study].

²⁰⁹ Ruth Sidel, *On Her Own* 174 (1990) (quoting Jill Abramson, *For Women Lawyers, An Uphill Struggle*, *N.Y. Times*, Mar. 6, 1988, (Magazine), at 36-37, 73-75).

sadness.²¹⁰ Their “choice” to remain childless reflects their knowledge that marriage generally hurts women’s careers.²¹¹ In sharp contrast, men need not remain childless to protect their ability to perform as ideal workers. In fact, marriage enhances their ability to do so, as is evidenced by the fact that ambitious young men are pressured to marry,²¹² that ninety-five percent of men in management do marry,²¹³ and that marriage generally enhances men’s careers.²¹⁴ That ambitious women often are forced to choose between work and family, while ambitious men are not, is a dramatic illustration that men and women face profoundly different “choices.”

If women who insist on careers often give up children, mothers pay the price of work/family conflict in different coin. The average American mother spends seventeen years caring for her children and eighteen years caring for elderly parents—both her own and her husband’s.²¹⁵ She spends eleven and one-half years of her working life on caregiving; the average man spends six months.²¹⁶ Many caregivers pay a steep price in terms of their ability to support themselves and their children. One study found that eleven percent of caregivers quit or were fired from their outside jobs because of their caregiving responsibilities.²¹⁷ Another study of the impact of elder care on women’s careers found, in addition to the 10% of those involved who quit, 20% had to rearrange work schedules, 21% reduced hours worked, and 19% took time off without pay.²¹⁸

²¹⁰ See, e.g., Kathleen Gerson, *Hard Choices: How Women Decide About Work, Career, and Motherhood* 133, 149, 153-57 (1985).

²¹¹ *Id.* at 3; see also Dowd, *Restructuring the Workplace*, *supra* note 203, at 443-44 (“Marriage decreases the likelihood that women are in the workforce and weakens their labor market position.”).

²¹² Keith Bradsher, *Young Men Pressed to Wed For Success*, *N.Y. Times*, Dec. 13, 1989, at C1.

²¹³ Liz Sly, *Firms Look for Ways to Keep Moms on the Job*, *Chi. Trib.*, Mar. 19, 1989, at 1.

²¹⁴ See Lenore Weitzman, *The Divorce Revolution* 36 (1985); Bradsher, *supra* note 212, at 1.

²¹⁵ See Marilyn Gardner, *Derailed on the “Daughter Track,”* *Christian Sci. Monitor*, June 20, 1989, at 14. For further analysis that extends caregiving beyond childcare, see Nadine Taub, *From Parental Leaves to Nurturing Leaves*, 13 *N.Y.U. Rev. L. & Soc. Change* 381, 381-84 (1984-85) (addressing need for comprehensive, nationally-funded system of “compassionate” work leave to support needed caregiving services). Although this Article focuses primarily on child-care, the conjunction of child- and elder-care exacerbates the disunity between women’s responsibilities and ideal worker status. For a general survey of the “daughter track,” see Melinda Beck, *Trading Places*, *Newsweek*, July 16, 1990, at 48.

²¹⁶ See Tamar Lewin, *Aging Parents: Women’s Burden Grows*, *N.Y. Times*, Nov. 14, 1989, at A1, B12; see also Cindy Skrzycki, *Family Blessings, and Burden; Employees Struggle to Balance Work With Care of Aging Relatives as Well as Children*, *Wash. Post*, Dec. 24, 1989, at H1 (75% of people caring for elderly are women).

²¹⁷ See Gardner, *supra* note 215, at 14 (quoting survey by “9 to 5,” a national organization of office workers).

²¹⁸ See Women’s Bureau, *Facts on U.S. Working Women*, Fact Sheet No. 86-4 (1986), quoted in Dowd, *Envisioning Work and Family*, *supra* note 203, at 315.

These statistics do not even include the impact of children on women's employment.²¹⁹ The societal norm that women perform the large bulk of child and elder care contributes substantially to women's economic marginalization.²²⁰

This inequitable allocation of caregiving responsibilities means that employed women shoulder disproportionate burdens once wage and domestic labor are combined. Wives who work outside the home still do the majority of work inside it.²²¹ As a result, employed wives sleep less,²²² enjoy less leisure,²²³ and work much longer hours than their husbands.²²⁴ One study found that wives do seventy-nine percent of the housework.²²⁵ "Under optimal conditions," concluded another, employed wives do five times the domestic work their spouses do.²²⁶ A third concluded that husbands of employed wives barely contribute enough domestic labor to make up for the additional work their presence in the household creates.²²⁷ The end result is that employed wives work an average of 144% of the total time of a traditional homemaker.²²⁸

Wives thus pay a steep price for their attempt to combine employment with their "second shift" of domestic work: half of all employed mothers reported "a lot" or "extreme" stress.²²⁹ Many women ulti-

²¹⁹ For an example in the professional context, see Margaret M. Poloma et al., *Reconsidering the Dual-Career Marriage: A Longitudinal Approach*, in *Two Paychecks: Life in Dual-Earner Families* 173 (Joan Aldous ed., 1982) [hereinafter *Two Paychecks*] (married professional mothers tend to slow or sacrifice career development whereas fathers do not).

²²⁰ See text accompanying notes 252-66 *infra*.

²²¹ See Catharine E. Ross, *The Division of Labor at Home*, 65 *Soc. Forces* 816, 830 (1987) (examining division of labor between husband and wife to find that 76% of wives employed full-time still do majority of housework).

²²² A. Hochschild, *supra* note 201, at 3, 279, quoting Shelley Coverman, *Gender, Domestic Labor Time, and Wage Inequality*, 48 *Am. Soc. Rev.* 623 (1983). A man is likely to get more sleep the higher his social class, while a woman is likely to get less sleep the higher her social class. *Id.* at 279.

²²³ Hochschild reports that some studies find a "leisure gap" of from 11 to 19 hours a week between employed fathers and mothers. See *id.* at 271-73. Another study reported that husbands watched television one hour longer. See *The Use of Time: Daily Activities of Urban and Suburban Populations in Twelve Countries* 668 (Table B)(Alexander Szalai ed., 1972), cited in *id.* at 3 (collected cross-national social research studies in twelve countries). Husbands also spend more time over meals than their wives. See A. Hochschild, *supra* note 201, at 279.

²²⁴ A. Hochschild, *supra* note 201, at 3 (employed mothers work roughly 15 hours longer than employed fathers each week).

²²⁵ See Donna H. Berardo et al., *A Residue of Tradition: Jobs, Careers, and Spouses' Time in Housework*, 49 *J. Marriage & Fam.* 381, 388 (1987) (discussing statistical study showing wives contributed 79% of total housework each week.)

²²⁶ See Suzanne Model, *Housework by Husbands: Determinant and Implications*, in *Two Paychecks*, *supra* note 219, at 193-205.

²²⁷ See Judith A. Heath & David H. Cicel, *Patriarchy, Family Structure, and the Exploitation of Women's Labor*, 22 *J. Econ. Issues* 781, 788 (1988).

²²⁸ *Id.* at 787.

²²⁹ See Juliet B. Schor, *The Overworked American* 11 (1991). Some studies reveal that a job, especially a high-powered one, may be the least stressful element in a woman's life and, in

mately refuse to pay the price, particularly when their "double burden" is combined with sex discrimination,²³⁰ including sexual harassment,²³¹ and their relegation to low-paying women's work.²³² Statistics reporting that most mothers work outside the home mask the fact that forty percent of married women with children under six do not²³³ and that roughly one-third of those who do usually work part-time.²³⁴ Given that part-time workers are often paid at lower rates than full-time workers, and often receive fewer benefits,²³⁵ these statistics are a vivid illustration of the pattern of ideal-worker fathers and marginalized mothers. This pattern may be reinforced by the increase in fathers' working hours since 1969.²³⁶ Thirty percent of fathers with children under fourteen report working fifty hours or more a week.²³⁷ The same percentage report weekend work at their regular job, while many more work a second job on weekends.²³⁸

The speed-up among American workers is particularly marked among professionals,²³⁹ and accompanies the oft-noted disempowerment

fact, enhances her psychological well-being. See Nina Darnton, *Women and Stress on Job and at Home*, N.Y. Times, Aug. 8, 1985, at C1. A 25-year study of college educated women found that housewives had the lowest self-esteem and considered themselves the least competent at almost every task, including child care. Susan Faludi, *Don't Be Happy-Worry!* Wash. Post (Magazine), Oct. 20, 1991, at W12.

²³⁰ For a recent historical study, see Claudia Goldin, *Understanding the Gender Gap* 83-118 (1990).

²³¹ For a classic study, see Catharine MacKinnon, *The Sexual Harassment of Working Women* (1979).

²³² See C. Goldin, *supra* note 230, at 71-82 (historical study of occupational segregation); R. Sidel, *supra* note 209, at 187-88 (documenting both inter- and intra-occupational sex segregation).

²³³ See U.S. Dept. of Labor, Bureau of Labor Statistics, 1991 Annual Averages (unpublished data); Conversation with John Stinson, BLS Labor Economist, Apr. 15, 1992. As of 1988, about 63% of nonemployed women were "keeping house." U.S. Dept. of Labor, Bureau of Labor Statistics, January 1989, Table A-54. African-American mothers traditionally have had much higher rates of labor force participation than whites. See U.S. Dep't of Commerce, Bureau of Census, *Lifetime Work Experience and Its Effects on Earnings* (1984).

²³⁴ U.S. Dept. of Labor, Bureau of Labor Statistics, *Work Experience of the Population in 1990*, Table 1, USDL 91-447, Sept. 11, 1991; Telephone Interview with John Stinson, BLS Labor Economist, May 26, 1992.

²³⁵ See Martha Chamallas, *Women and Part-Time Work*, 64 N.C. L. Rev. 709, 715-16 (although part-time workers work 46% of hours full-time workers do, they are paid only 28% of full-time workers' wages); Betty Holcomb, *Is the Mommy Track a Trap?*, *Working Women*, July 1988, at 88 (asserting that even most skilled professionals, when working part-time, average 78% less an hour than full-time workers; 80% have no pension coverage, 20% have no health insurance (quoting Kathleen Christensen, associate professor of City University of New York)).

²³⁶ See J. Schor, *supra* note 229, at 29 (men now work 98 more hours per year than in 1969).

²³⁷ See *id.* at 2.

²³⁸ *Id.*

²³⁹ For an anthropologist's studies on the great American speed-up in elite circles, see Con-

of women in elite work environments.²⁴⁰ One recent study estimated that, although women comprise 50 percent of managers at entry-level positions, thereafter the percentage of women drops precipitously,²⁴¹ so that top levels of management are 95 percent male.²⁴² In the law as well,

stance Perin, *The Moral Economy of the Workplace and Careers*, Panel on "Political Correctness" and Cultural Studies, Ninth Annual Interdisciplinary Forum of The Western Humanities Conference, University of California, Berkeley, Oct. 21, 1990 ("It is quite easy to recruit young professional women, especially right out of college . . . but retention is a big problem. More women are leaving jobs than men . . . Many go to small companies; others start businesses." (quoting officer of large company)). For a discussion of work/family conflict among lawyers, see Judith S. Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 *Fordham L. Rev.* 111, 119-22 (1988) (affirming gender imbalance and inequity among women lawyers while noting some progress in rectifying inequality with respect to big law firms); Deborah L. Rhode, *Perspectives on Professional Women*, 40 *Stan. L. Rev.* 1163 (1988) (exploring departure from traditional challenges to professional women—i.e., how well women can accommodate demands of male-dominated professions—to question of how professions may change to accommodate women); Joan Williams, *Sameness Feminism and the Work/Family Conflict*, 35 *N.Y.L. Sch. L. Rev.* 347 (1990) (discussing how sameness feminists and difference feminists view (or fail to view) "choice" rhetoric in context of lawyer/professional careers); Project, *Law Firms and Lawyers with Children: An Empirical Analysis of Family/Work Conflict*, 34 *Stan. L. Rev.* 1209, 1222-24, 1256-59 (1982) [hereinafter Project, *Lawyers with Children*] (discussing results of employer and student survey that inquired as to attitudes and expectations regarding maternity, paternity, and child-care options); Richard Connelly, *Ten Years Later: Class of '81*, *Tex. Law.*, Apr. 29, 1991, at S-1 (considering University of Texas class roster showing that most of women lawyers from class of 1981 not on partnership track). For an interesting survey of work/family conflict in academic life, see *Personal Lives and Professional Careers: The Uneasy Balance*, Report of the Women's Committee of the American Studies Association (1988). My thanks to Regina Morantz-Sanchez for bringing the study to my attention.

²⁴⁰ See, e.g., Ann M. Morrison et. al., *Breaking the Glass Ceiling* (1987); R. Sidel, *supra* note 209, at 170-79 (documenting glass ceiling in medicine, law, management, and politics).

²⁴¹ F. Schwartz, *Breaking With Tradition*, *supra* note 207, at 170.

²⁴² *Id.* Felice Schwartz ignited the mommy track debate when she attempted to respond to this pattern by suggesting that there are two kinds of women—those who are "career-primary" and those who are "career-and-family" women. See Schwartz, *supra* note 207, at 65. "Career-primary" women are young, childless, and willing to put their careers first. She sets guidelines for identifying these women and separating them from the "career-and-family" types who are best kept in middle management positions because they are less productive, and "[un]willing to give their all to the company." *Id.* at 71. Schwartz's article proved to be highly controversial, since it appeared to sanction the marginalization of many managerial women. See, e.g., Stephanie Brush, *Women Betwixt and Between*, *Wash. Post*, March 26, 1929, at F4; Meredith Chen, *Women at Work: A New Debate Is Born*, *L.A. Times*, Mar. 19, 1989, Part IV, at 3; Brian Couturier, *Coalition Warns Against Supporting Idea with Legislation*, 44 *Women's Groups Blast Concept of 'Mommy Track'*, *L.A. Times*, Mar. 23, 1989, Part IV, at 1; Elizabeth Ehrlich, *Is The Mommy Track A Blessing - Or A Betrayal?*, *Bus. Week*, May 15, 1989, at 98; Audrey Freedman, *Those Costly 'Good Old Boys'*, *N.Y. Times*, July 12, 1989, at A23; Ellen Goodman, *Mommy Track - Or Trough?*, *Wash. Post*, Mar. 18, 1989, at A27; Tamar Lewin, *Mommy Career Track Sets Off Furor*, *N.Y. Times*, Mar. 8, 1989, at A18; Carol M. Lewis, *U.S. Business Suffers When Mothers Can't Get Back On the Fast Track*, *L.A. Times*, Apr. 21, 1989, Part IV, at 3; Letters To Editor, *Mommy Track's an Idea Whose Time Has Gone*, *N.Y. Times*, Apr. 2, 1989, § 4, at 30 (six letters to editor responding to Schwartz's article); Judy Mann, *The Demeaning 'Mommy Track': Separate and Unequal*, *Wash. Post*, Mar. 15, 1989, at C3; Abigail Trafford, *Mommy Track - Right to The Top*, *Wash. Post*, Mar. 19, 1989, at C1.

statistics on the relative absence of women at the top of the profession led one commentator to note the "frightening possibility" that law firms will evolve into institutions "top-heavy with men and childless women, supported by a pink-collar ghetto of mommy-lawyers," often with permanent associate status.²⁴³ Although 40 percent of law students and 20 percent of lawyers were women as of 1988, only 8 percent of the partners in the 250 largest law firms are women; the median income of women 10 years out of law school is 40 percent lower than men's.²⁴⁴

Women's disempowerment in elite work environments reflects both discrimination²⁴⁵ and elite men's privileged access to domestic services. One study reports that most wives of high-income husbands do not have careers, or even noncareer employment, despite their high levels of education.²⁴⁶ This suggests that many elite males tap a flow of domestic

For articles explaining Schwartz's position and responding to her critics, see Beverly Beyette, *A New Career Flap, What's a Mommy Track and Why Are So Many Women Upset About It?*, L.A. Times, Mar. 17, 1989, Part IV, at 1; Marian Christy, *Boosting Women - and Paying the Price*, Boston Globe, Sept. 17, 1989, at B15; Ellen Hopkins, *Who is Felice Schwartz and Why is She Saying Those Terrible Things About Us?*, Working Women, Oct. 1990, at 117; Felice N. Schwartz, *The 'Mommy Track' Isn't Anti-Woman*, N.Y. Times, Mar. 22, 1989, at A27; Cindy Skrzycki, *'Mommy Track' Author Answers Her Many Critics*, Wash. Post, Mar. 19, 1989, at A1; Beverly Beyette, *A New Career Flap: What's a Mommy Track and Why Are So Many Women Upset About It?*, L.A. Times, Mar. 17, 1989, Part IV, at 1. The mommy track debate is a good example of a gender war in which women end up pitted against each other rather than against the ideal worker template that disempowers all women in different ways. Schwartz's book is more successful than her article in maintaining the focus on the corporate world's unacceptable marginalization of managerial women. See F. Schwartz, *Breaking With Tradition*, supra note 207, at 125-91.

Articles appear occasionally on the "daddy track," but a close reading of them is necessary. Most fathers do not accept permanent career marginalization. The articles suggest that men commonly cut back on work responsibilities for a year or so after the birth of their first child, only to have the wife quit work or cut back on a semi-permanent basis when a second child is born. See, e.g., Keith H. Hammonds, *Taking Baby Steps Toward a Daddy Track*, Bus. Week, Apr. 15, 1991, at 90, 91 ("[T]he news that my wife was expecting a second child . . . made it clear we couldn't keep up our balancing act. Within a month my wife had quit her job, and I was back working full-time.") "Daddy track" men therefore rarely seem to follow those "mommy track" mothers who accept long-term career marginalization in order to provide care for the couple's children. See Geneva Overholster, *So Where's the Daddy Track?*, N.Y. Times, Aug. 23, 1988, at A26.

²⁴³ Mary C. Hickey, *The Dilemma of Having it All*, Wash. Law., May-June 1986, at 59.

²⁴⁴ Patricia M. Wald, *Women in the Law*, Trial, Nov. 1988, at 75 (also noting that women comprise only 6% of law-school deans and 10% of tenured law school professors).

²⁴⁵ For discussion of hostile work cultures in traditionally male jobs, see Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising Lack of Interest Argument*, 103 Harv. L. Rev. 1749, 1832-39 (1990). For an example of discrimination against a qualified woman, see *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (accounting firm discriminated against female partnership candidate).

²⁴⁶ See Harold Benenson, *Women's Occupational and Family Achievement in the U.S. Class System: A Critique of the Dual-Career Family Analysis*, 35 Brit. J. Soc. 19, 28 (1984) (wives of high-income husbands half as likely to work outside home than wives of median-

services that reinforces their ability to conform to workaholic norms, a pattern that places mothers at a severe disadvantage.²⁴⁷

The open, formal marginalization of mothers from the accepted avenues of adult authority disempowers women in two important ways. First, marginalized mothers are disempowered within the heterosexual household. Studies confirm that economic independence correlates with power inside the household.²⁴⁸ Wives who work tend to have more power than those who do not;²⁴⁹ husbands' power tends to increase with their income and occupational prestige.²⁵⁰ Husbands' power also is linked with physical abuse: battered women are less likely to leave their husbands if they are not employed and feel economically dependent.²⁵¹

The power differential within intact marriages transmutes upon divorce into a dramatic disparity between men's and women's post-divorce incomes, when the negative economic impact of marriage on women emerges clearly. Researchers consistently have documented a sharp fall in mothers' economic position, and a sharp rise in fathers', after divorce.²⁵² Only about half of fathers continue to play any role in support-

income men with (on average) a high school education; even most highly trained wives of privileged men less likely to be working than were high school educated wives of median-income husbands). This Article attempts to respond to Benenson's concern that the interests of elite and other women diverge. *Id.* at 35. Both groups suffer because of the economic and social marginalization of caregiving. Compare Ross, *supra* note 221, at 802 (quoting findings from study showing that the higher the wife's education, the more likely the husband is to share housework.).

²⁴⁷ See Poloma et. al., *supra* note 219, at 173 (married professional mothers tend to sacrifice career development; fathers do not).

²⁴⁸ See, e.g., Ellen I. Rosen, *Bitter Choices: Blue-Collar Women In and Out of Work* 96-101 (1987); Dair L. Gillespie, *Who Has the Power? The Marital Struggle*, 33 *J. Mar. & Fam.* 445 (1971) (finding that the greater the husband's income and status, the greater is his decision-making power in family); Glenna Spitze, *Women's Employment and Family Relations: A Review*, 50 *J. Mar. & Fam.* 595, 601-03 (1988) (employed wives wield more power relative to their husbands, at least in decisions about money). Rosen points out that outside employment does not itself necessarily give wives more power within the household, but that wives do garner more power relative to their husbands as their salaries approach those of their husbands. E. Rosen, *supra*, at 97 (citing prior studies). This suggests that the emerging pattern of wives as secondary earners in marginalized jobs leaves wives with the worst of both worlds: in frustrating jobs, overburdened by the second shift at home, and without significant increase in authority either at home or at work. See also Polatnick, *supra* note 30, at 24-25 ("The more a man earns, the more family power he wields; and the greater the discrepancy between the status of the husband's and wife's work, the greater the husband's power."). Wives' power ordinarily declines with the birth of children. *Id.* at 31. In addition, an inverse relationship exists between the number of children and the wife's power in relation to her husband. *Id.* Wives' power ordinarily is at its lowest point when her children are in preschool. *Id.* at 32.

²⁴⁹ See Gillespie, *supra* note 248, at 452. Wives' relative power tends to increase with the number of years they have worked. *Id.*

²⁵⁰ *Id.* at 451-52.

²⁵¹ See Spitze, *supra* note 248, at 597.

²⁵² Lenore Weitzman calculated that divorced men's standard of living rises an average of 42% in the first year after divorce, while divorced women's falls 73%. See L. Weitzman, *supra*

ing their children after four months of separation from their wives²⁵³ and many marginalized mothers raise their children largely alone.²⁵⁴

The system of ideal workers and marginalized mothers links the fate of women and children, leaving both disproportionately impoverished. The feminization of poverty has been documented extensively.²⁵⁵ The most dramatic statistics concern female-headed families, which are three times more likely than other families to have incomes below the poverty line.²⁵⁶ The median income for such families is one-half to one-third of that of two-parent families.²⁵⁷ Moreover, female-headed families are ten times more likely to stay poor than are families with no male present.²⁵⁸

The economic marginalization of caregivers links the fate of mothers and children, leaving children the poorest age group in contemporary America.²⁵⁹ Over two-thirds of all children living in female-headed families are poor:²⁶⁰ seventy-three percent of children from one-parent families will experience poverty at some point during their childhood.²⁶¹

note 214, at 323. Although Weitzman's figures have been challenged, with the controversy focusing on the size of the income disparity between divorced husbands and wives, the existence of the disparity is generally conceded. The Census Bureau followed 20,000 households for 32 months and reported a 37% income drop for mothers which, when adjusted for the drop in family size, reflects a 26% loss overall. See Jason DeParle, *Child Poverty Twice as Likely After Families Split, Study Says*, N.Y. Times, Mar. 2, 1991, § 1, at 8. Other researchers, relying on independent data, find a 30% drop in wives' post-divorce standard of living while men experience a 10-15% improvement. Greg Duncan & Saul Hoffman, *Economic Consequences of Marital Instability, Horizontal Equity, Uncertainty and Economic Well Being* 467 (M. David and T. Smeedings eds., 1985). For a list of other studies on the economic impact of divorce on women, see Jana B. Singer, *Divorce Reform and Gender Justice*, 67 N.C. L. Rev. 1103, 1104 (1989) ("Virtually all . . . studies have found that no-fault divorce is financially devastating for women and the minor children of the households."). For examples of critiques, see Susan Faludi, *Backlash* 21-22 (1991); Jed H. Abraham, "The Divorce Revolution" Revisited: A Counter Revolutionary Critique, 9 N. Ill. U. L. Rev. 251 (1989).

²⁵³ See Spenser Rich, *Children Feel Financial Pinch when Families Split*, Wash. Post, March 7, 1991, at A21 (when parents split, children suffer financially); De Parle, *supra* note 252, § 1 at 8; see also L. Weitzman, *supra* note 214, at 262-322.

²⁵⁴ Only one-sixth of children see their fathers as often as once a week in the period relatively soon after divorce; after 10 years, almost two-thirds have no contact at all with their fathers. See William A. Galston, *When the Bough Breaks: The Costs of Neglecting Our Children*, New Republic, Dec. 2, 1991, at 6.

²⁵⁵ See Renee Feinberg & Kathleen E. Knox, *The Feminization of Poverty in the United States: A Selected, Annotated Bibliography of the Issues, 1978-1989* (1990); see also Richard Levy & Richard C. Michel, *The Economic Future of American Families* 38 (1991) (noting that female-headed families represent profile of American poverty today).

²⁵⁶ Sara E. Rix, *The American Woman 1990-91*, at 12 (1990).

²⁵⁷ *Id.* The median income of female-headed families is about one-third that of two-earner families and about one-half that of male-headed families where the wife is not employed.

²⁵⁸ Diana M. Pearce, *Welfare is Not For Women: Toward a Model of Advocacy to Meet the Needs of Women in Poverty*, 19 *Clearinghouse Rev.* 412, 413-14 (1985).

²⁵⁹ *Id.* at 2.

²⁶⁰ S. Rix, *supra* note 256, at 12.

²⁶¹ *Id.* at 5.

Nearly one-quarter of all children,²⁶² and one-half of all African-American children are poor.²⁶³

The impact of marginalized motherhood on the welfare of children is also dramatic when we move from childless career women and married mothers to other groups of women. Child care workers also suffer from society's devaluation of caregiving, which is reflected in their dramatically low salaries. Surely the devaluation of caregiving hurts not only the caregivers, who are consigned to low-wage work²⁶⁴ in high-stress, high-turnover jobs, but also the children.²⁶⁵

Single mothers are more acutely disadvantaged than any other group of women by the assumption that the ideal worker will be supported by a marginalized wife. Not only are single mothers disproportionately impoverished; often they are caught in impossible positions because they have no choice but to perform both as ideal workers and as caregivers. For example:

Milagros Reyes took her baby boy to the hospital for a hernia operation, but had to rush away a few hours after surgery to get back to work. Her 6-month-old son, bandaged and scared, was crying as she left, but she feared that a missed day might get her fired from her \$7.79-an-hour factory job.²⁶⁶

This story dramatizes the steep price children pay for the societal assumption that mothers are supported by an ideal worker. The impact on children is dramatized further by statistics indicating that up to one-third of the school-age population are "latchkey children,"²⁶⁷ and that parents now spend forty percent less time with their children than they did twenty-five years ago.²⁶⁸

The analysis of work/family conflict as the problem of marginalized caregiving holds the potential to create alliances among a broad range of women: childless career women,²⁶⁹ employed mothers overburdened by

²⁶² See R. Sidel, *supra* note 209, at 3.

²⁶³ See Kong, *supra* note 197, at 1.

²⁶⁴ R. Sidel, *supra* note 209, at 117 (two-thirds of center-based caregivers earn below poverty-level wages; 87% of family day-care workers earn below minimum wage).

²⁶⁵ See Heidi I. Hartmann & Diana M. Pearce, *High Skill and Low Pay: The Economics of Child Care Work* 2, 19-20 (1989) (turnover in child-care work is twice national average).

²⁶⁶ Celia Duggen, *Tiny Incomes, Little Help for Single Mothers*, *N.Y. Times*, Mar. 31, 1992, at A1.

²⁶⁷ See J. Schor, *supra* note 229, at 12 (quoting Diane S. Burden & Bradley Googins, Boston University, *Balancing Job and Homelife Study* 21 (Table 12) (unpublished manuscript on file with author)).

²⁶⁸ See Galston, *supra* note 254, at 40.

²⁶⁹ I recognize that not all women want children, and thus many women are not childless but child-free. However, many career women feel their childlessness is a sacrifice they would rather not have made to protect their ideal-worker status. See text accompanying notes 209-10 *supra*.

the second shift, homemakers, single mothers, and child care workers. This contrasts sharply with the career-woman-versus-housewife dynamic vividly illustrated in the current presidential campaign. Hillary Clinton's defense of her decision to pursue her career rather than "stay home, bake cookies and have teas" dramatized how the various forms of disempowerment experienced by different groups of women serve to divide them. Professional women are disempowered when one of the country's hundred top lawyers²⁷⁰ has to defend and justify her career in a context where a man would be required only to avoid too obvious a strut. Homemakers are disempowered when Clinton's defense seems to endorse societal devaluation of housewives.²⁷¹ A rhetoric is needed that allows women to unite in opposition to the current disempowered social construction of caregiving, rather than turning on each other to defend against their particular type of disempowerment.

A strong protest against the marginalization of caregivers also provides a forceful response to a growing number of social commentators, alarmed by the plight of American children, who argue that feminists' insistence on workplace equality is misguided because children end up paying too high a price.²⁷² These commentators perpetuate the old story that the only way to protect children, in a system where child nurture is achieved by privatizing childrearing costs onto mothers, is through strict enforcement of selfless motherhood.²⁷³ The alternative, of course, is to rearrange things so that the pursuit of self-interest by others does not depend on sacrifices made by mothers. This would require redesigning the expectations of those "others" to include as part of their adult goals the meeting of children's legitimate needs. It would, in short, involve a challenge to the notion that caregivers should "naturally" be marginalized from the (other) accepted forms of adult self-development. As the childhood poverty statistics show, mothers have no choice but to insist

²⁷⁰ See Hillary Clinton Said Equal Partner Presidential Race, Reuter Libr. Rep., Mar. 18, 1992.

²⁷¹ See The Half-Baked Response to Hillary Clinton, Wash. Post, Apr. 4, 1992, at A21; Deciding to Stay Home—No Piece of Cake, Wash. Post, Mar. 28, 1992, at A19; Gwen Ifill, The 1992 Campaign: Hillary Clinton Defends Her Conduct in Law Firm, N.Y. Times, Mar. 17, 1992, at A20. Clinton quickly adjusted her rhetoric to signal respect for homemaking. See Christopher B. Daly, Hillary Clinton Faults Washington's Values, Wash. Post, May 30, 1992, at A10.

²⁷² See, e.g., Christopher Lasch, *Haven in a Heartless World* xvi (1975); William Raspberry, *Doing What's Best for Children*, Wash. Post, July 26, 1991, at A23 (arguing that child-care fosters gender equality in workplace but fails to provide best environment for child development).

²⁷³ Alice Kessler-Harris explores historical examples in which "the male's historical prerogatives were sustained by the moral claims of the family." Alice Kessler-Harris, *A Woman's Wage* 103 (1990).

on this alternative. Given the rate of single motherhood,²⁷⁴ the divorce rate,²⁷⁵ and the fact that many divorced mothers have to support their children largely alone,²⁷⁶ millions of children are going to be relegated to poverty if mothers continue to marginalize themselves economically in order to meet their children's needs. Truly responsible motherhood today means resisting economic marginalization.

My sense of the potential power of this argument crystallized when I heard a relative counselling her daughter. "Even if you are going to get married," she said, "you'd better have a career. Look at your cousin." She married at twenty and was left at the age of twenty-four with two children under three and a child support payment of thirty-five dollars a week. The hardships that ensued left everyone shaken in her working-class circle in rustbelt New England.

The impoverishment of women upon divorce, and in particular its impact upon children, is a potentially revolutionary force for gender equality. It is powerful because it aligns demands for gender equality with the mandates of domesticity: women must demand equality to protect their children. This alignment could help diffuse the long-standing divide between feminist and nonfeminist women. For middle-class feminists whose demands have focused on access to traditionally male jobs, the key demand has been equality both within the home and outside it. This position appeals to some working class women, but not to many others, who might well be persuaded that the marginalization of mothers is unconscionable because of its impact on children.²⁷⁷

The alignment of demands for gender equality and domesticity holds tremendous potential, but this potential easily could be wasted. A chief threat is the ideology of choice. Women consigned to careers subservient to those of their husbands are under tremendous pressure to agree with the generally accepted interpretation that they end up economically marginalized because of "choices" that reflect their personal priorities. This insistent focus on the "choices" of individual actors deflects attention from the truly stunning consistency with which it "hap-

²⁷⁴ The U.S. Bureau of Census, Marriage and Family Division, reports that as of 1991, 28.9% of all families were single parent families. Of the 28.9% one parent families, 86.5% are headed by women. Steve Rawlings, Bureau of Census, Marriage and Family Division, Household and Family Characteristics No. 458, at 3 (1991); Telephone Interview with Kathy O'Brien, Statistician, U.S. Bureau of Census, Marriage and Family Division (May 27, 1992).

²⁷⁵ Close to 50% of marriages now end in divorce. See Singer, *supra* note 252, at 1103. Since 1960, the total number of children affected by divorce has more than tripled—over half of all children will experience marital disruption by the time they are eighteen. L. Weitzman, *supra* note 214, at 215.

²⁷⁶ See text accompanying notes 253-54 *supra*.

²⁷⁷ For a discussion of the reasons why feminism has limited appeal to many blue-collar women, see E. Rosen, *supra* note 248, at 169-92.

pens" to be wives who "choose" careers that "accommodate their children's needs," while husbands continue (as they always have) to perform as ideal workers. Thus the first step in challenging the current system, in which children's and mothers' needs are subsumed to men's ambitions, is to destabilize the rhetoric of choice. The remainder of this Part begins this process.

B. *The Rhetoric of Choice in the Context of Work/Family Conflict*

1. *Choice Rhetoric Inside and Outside the Law*

Perhaps the best-known example of the "choice" argument inside the law is *Equal Employment Opportunity Commission (EEOC) v. Sears Roebuck & Co.*²⁷⁸ In that case, Sears successfully countered statistical evidence of discrimination with the argument that women's relative absence from commission sales jobs, which paid roughly twice as much as the noncommission sales jobs in which women predominated,²⁷⁹ was due to their lack of interest in commission sales work.²⁸⁰ Women's focus on relationships at home and at work made them choose to sacrifice worldly advancement in favor of a supportive and friendly work environment and limited hours that accommodated their family responsibilities.²⁸¹ Sears's argument, that women's marginalized economic position resulted from choices that reflected their personal priorities, is the core of the "choice" argument in the context of women and work. This argument pervades Title VII litigation and is accepted widely by liberal as well as conservative courts.²⁸²

Justice Antonin Scalia, in his dissenting opinion in the affirmative action case of *Johnson v. Transportation Agency*,²⁸³ adopted the "lack of interest" analysis in a somewhat different context. The low percentage of female roadworkers, Scalia argued, reflected the fact that "because of longstanding social attitudes, [such work] has not been regarded by women themselves as desirable work."²⁸⁴ He intimated that women's

²⁷⁸ 628 F. Supp. 1264 (N.D. Ill. 1986), aff'd, 839 F.2d 302 (7th Cir. 1988).

²⁷⁹ Schultz, supra note 245, at 1752 n.5.

²⁸⁰ See *Sears*, 628 F. Supp. at 1305-15; 839 F.2d at 324-30, 334-38.

²⁸¹ This point emerged clearly in historian Rosalind Rosenberg's testimony on behalf of Sears. See *Sears*, 628 F. Supp. at 1308; Offer of Proof Concerning the Testimony of Dr. Rosalind Rosenberg at paras. 11, 16-22, *EEOC v. Sears, Roebuck & Co.*, 628 F. Supp. 1264 (N.D. Ill. 1986) (No. 79-C-4373); Schultz, supra note 245, at 1803-04 (describing Rosenberg testimony).

²⁸² See generally Schultz, supra note 245, at 1758-99 (analyzing 54 federal sex discrimination cases from 1972 to 1989 in which "lack of interest" argument was raised).

²⁸³ 480 U.S. 616, 657-77 (1987) (Scalia, J., dissenting).

²⁸⁴ *Id.* at 668 (Scalia, J., dissenting) (emphasis in original) (county transportation agency sued by male employee alleging Title VII violation after agency promoted female employee over him for road dispatcher position).

lack of representation in roadwork crews stemmed from “the qualifications and desires of women.”²⁸⁵

“Choice” rhetoric appears in the law on the family as well as the work side of work/family conflict. For example, the choice argument is implicit in refusals of divorce courts to reimburse the wife for “family decisions” to subordinate her career for the husband’s benefit.²⁸⁶ As a result, courts often deny adequate compensation to wives who sidelined careers to support their husbands’ education²⁸⁷ or mothers who assumed childcare responsibilities so that their husbands could perform as ideal workers.²⁸⁸ 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.”

The rhetoric of choice is widespread among commentators as well. For example, in her now famous article which generated the “mommy track” debate, Felice Schwartz noted, “The career-and-family woman is willing to trade off the pressures and demands that go with promotion for the freedom to spend more time with her children.”²⁸⁹ Schwartz’s detractors share her choice rhetoric. Betty Friedan, attacking Schwartz’s analysis as “retrofeminism,” asserted “there are not two types of women. All women must have the real choices. . . . How they put it together, their priorities at different times, is a matter of individual choice.”²⁹⁰ Both sameness²⁹¹ feminists and difference²⁹² feminists use the rhetoric of

²⁸⁵ Id. at 660 (“qualifications and desires of women may fail to match the Agency’s platonic ideal of a work force”).

²⁸⁶ See, e.g., Singer, *supra* note 252, at 1115 (“Because courts generally do not recognize career assets as marital property, current property division rules . . . do not result in anywhere near an equal sharing of the fruits of most marriages.”).

²⁸⁷ See L. Weitzman, *supra* note 214, at 124-29 (describing courts’ treatment of “new property” such as degrees).

²⁸⁸ For a sampling of recent scholarship on the subject, see, e.g., Martha L. Fineman, *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* (1991); Twila L. Perry, *No-Fault Divorce and Liability Without Fault: Can Family Law Learn from Torts?*, 52 *Ohio St. L.J.* 55 (1991); Bea Ann Smith, *The Partnership Theory of Marriage: A Borrowed Solution Fails*, 68 *Texas L.R.* 689 (1990); June Carbone, *Economics, Feminism, and the Reinvention of Alimony*, 43 *Vand. L. Rev.* 1463 (1990); June Carbone & Margaret F. Brinig, *Rethinking Marriage: Feminist Ideology, Economic Change, and Divorce Reform*, 65 *Tul. L. Rev.* 953 (1991); Singer, *supra* note 252; Ira Mark Ellman, *The Theory of Alimony*, 77 *Cal. L. Rev.* 1 (1989); Suzanne Reynolds, *The Relationship of Property Division and Alimony: The Division of Property to Address Need*, 56 *Fordham L. Rev.* 827 (1988).

²⁸⁹ Schwartz, *supra* note 207, at 71.

²⁹⁰ See Beyette, *supra* note 242, at 1.

²⁹¹ See, e.g., Herma H. Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, 56 *U. Cin. L. Rev.* 1, 79-87 (1987) (discussing whether social differences, such as traditional “assignment” of caregiving role to mothers, should be taken into account in affording women equality in divorce); Herma H. Kay, *An Appraisal of California’s No-Fault Divorce Law*, 75 *Cal. L. Rev.* 291, 316 (1987); see also David L. Kirp, *Gender Justice* 181-83

choice when discussing whether alimony should be restructured in response to wives' traditional marginalization, as do economics scholars who have little affinity for feminist analysis.²⁹³ Indeed, the rhetoric of choice is hard to avoid, and even critics of the rhetoric find themselves using it.²⁹⁴

The mommy track debate highlights an important dynamic in the rhetoric of choice. Choice rhetoric clearly privileges the life patterns of the relatively affluent, predominantly white "essential women" who can "choose" against employment.²⁹⁵ After all, the two-thirds of American women who are single, divorced, or married to men who earn less than \$15,000 a year²⁹⁶ clearly cannot "choose" not to work; these women are not at the center of society's vision of women and work. The notion that women "choose" economic marginalization begins with relatively affluent women and then is generalized to include all women, even those who must work. At the extreme, as in *Equal Employment Opportunity Commission v. Sears, Roebuck & Co.*,²⁹⁷ choice rhetoric can be used to justify outright discrimination by calling up vivid images of selfless mothers choosing family over career in a context that involved working class women, who often view going out to work as part of their obligations as mothers.²⁹⁸

An examination of media coverage of work/family conflict reflects patterns of reporting. In articles about women's double burden of do-

(1986) (laying framework for equal liberty argument for gender policy and analyzing Supreme Court decisions in that light).

²⁹² See, e.g., Mary E. O'Connell, *Alimony After No-Fault: A Practice in Search of a Theory*, 23 *New Eng. L. Rev.* 437, 503-05 (1988) (exploring and advocating revitalization of alimony as step toward solving gender-based equality).

²⁹³ See, e.g., Cynthia B. Lloyd & Beth T. Niemi, *The Economics of Sex Differentials* 88-150 (1979) (describing relative economic status of men and women and how this status has changed over time); Solomon W. Polacheck, *Discontinuous Labor Force Participation and Its Effect on Women's Market Earnings in Sex, Discrimination, and the Division of Labor* 90 (Cynthia B. Lloyd ed., 1975) (comparing wage differentials between women and men with similar labor market attributes); see also Victor Fuchs, *Women's Quest for Economic Equality* 68 (1988) (presenting analysis of statistics on gender-based wage differentials and using language of "preferences"). But see Barbara R. Bergmann, *The Economic Emergence of Women* (1986) (statistical analysis of gender-based economic study).

²⁹⁴ See, e.g., Carbone & Brinig, *supra* note 288, at 984, 1001, 1004; Dowd, *Gender Paradox*, *supra* note 203, at 90, 102, 149 (consistently putting choice in quotes); Rhode, *supra* note 20, at 1214; Williams, *Deconstructing Gender*, *supra* note 187, at 819, 823, 830-31.

²⁹⁵ For an influential discussion of essentialism, see Elizabeth Spelman, *Inessential Woman* (1988).

²⁹⁶ Anne Machung, *Talking Career, Thinking Job: Gender Differences in Career and Family Expectations of Berkeley Seniors*, 15 *Feminist Stud.* 35 (1989).

²⁹⁷ 628 F. Supp. 1264 (N.D. Ill. 1986), *aff'd*, 839 F.2d 302 (7th Cir. 1988).

²⁹⁸ For feminist analysis of *Sears*, see Schultz, *supra* note 245, at 1753-54, 1796, 1803-04, 1809-10; Williams, *Deconstructing Gender*, *supra* note 187, at 813-21; Joan W. Scott, *Deconstructing Equality-Versus-Difference: Or, The Use of Post-Structuralist Theory for Feminism*, 14 *Feminist Stud.* 33, 39-45 (1988).

mestic and wage labor, women's position is depicted as both undesirable and unfair.²⁹⁹ One article, for example, described as "the martyr syndrome" a female executive rising at five in the morning so that her twelve-hour work days would end in time for evenings with her children.³⁰⁰ The imagery changes abruptly, however, once the overburdened woman quits: then the realm of martyrdom becomes the republic of choice.³⁰¹ An article by Patricia Wald of the District of Columbia Circuit Court of Appeals admonishes younger women: "It may be that the conscientious parent of a young child cannot simultaneously be in high-powered litigation. There are trade-offs in life and in practice; women need to accept that."³⁰²

When women themselves adopt the imagery of choice to describe their decisions to quit, they express two different moods. The first is upbeat, captured in an article celebrating career women's decisions to "go home again." "It's not anti-feminist. . . . It's a way of living life to the fullest," said one studier of such trends.³⁰³ This quotation aptly captures a basic premise: that women's decisions to leave the workforce are an expression, not a debarment, from their membership in the republic of choice—they quit to pursue the free unfolding of their personalities.

The second strain of choice rhetoric is more regretful and conflicted. Said Deborah Lenz, a mother who gave up a career to work part-time in an unrelated field in order to spend more time with her two toddler sons:

There are so many hard questions. When there was no choice, maybe it was easier. Now there's a choice, which is good, but it's hard to make that choice. There are times when I'd really like to be out there in the career I more or less gave up. But I couldn't stand losing the time with my children.³⁰⁴

²⁹⁹ See, e.g., Kantrowitz, *supra* note 199, at 48; Claudia Wallis, Scott Brown, Mellisa Ludtke & Martha Smilgis, *Onward, Women!*, *Time*, Dec. 4, 1989, at 80.

³⁰⁰ Elizabeth Ehrlich, *The Mommy Track*, *Bus. Week*, Mar. 20, 1989, at 126 (quoting business executive Linda E. Chinn). Another article quoted a researcher and concluded that working mothers were "the martyrs of the household." Philip Shenon, *What's New With Dual-Career Couples*, *N.Y. Times*, Mar. 6, 1983, at § 3, at 29.

³⁰¹ See, e.g., Mary C. Hickey, *The Part-Time Professionals*, *Wash. Post*, Oct. 11, 1988, at D5 ("The choice of part-time work for professionals has become popular in recent years as one way to balance family and work and career.").

³⁰² Wald, *supra* note 244, at 78. Note how Wald's initial gender-neutral formulation veils the message that *mothers*, not all parents, should make realistic choices and drop out of the professional career path.

³⁰³ Brenda L. Richardson, *Professional Women Do Go Home Again*, *N.Y. Times*, Apr. 20, 1988, at C1, C10 (quoting Faith Popcorn, chairperson of firm specializing in trends). The commentator continued that wives' quitting gives couples "time to strategize, time to get things done and time for sex."

³⁰⁴ Lisa Belkin, *Bars to Equality of Sexes Seen as Eroding, Slowly*, *N.Y. Times*, Aug. 29, 1989, § 1, at 1.

Again, the rhetoric of choice identifies the problem of work/family conflict as a matter of the priorities of the ungendered actor in the republic of choice. Compare with this attitude the statement made by an associate working in a large law firm:

The biggest problem as I see it for both men and women is how to balance children in a large-firm environment. I plan to go part-time when I have a child, and I *hate* the idea. If the firm had a 24-hour day care or nursery, I would not work part-time—I would stay full-time. Obviously, even this is no solution: kids can't grow up in a day care center.³⁰⁵

By avoiding the rhetoric of choice, the associate places the blame *outside* herself and onto the constraints that frame her realm of choice. Here lies the core of my objection to the rhetoric of choice: if a rapist puts a knife to your throat and offers you a choice of rape or sodomy, you do not celebrate your "choice"—you protest the range of choices offered as fundamentally unacceptable. This is all I am asking women to do.³⁰⁶

2. *Choice and False Consciousness*

In a 1986 article entitled *Deconstructing Gender*, I argued that the ideology of domesticity "encourages women to 'choose' economic marginalization and celebrate that choice as a badge of virtue."³⁰⁷ Domesticity, I argued, is "designed to enlist women in their own oppression," and succeeds "every time a woman 'chooses' to subordinate her career 'for the good of the family,' and congratulates herself on that choice as a mature assessment of her own 'priorities.'"³⁰⁸ Kathryn Abrams criticizes both myself and Catharine MacKinnon for depicting women as contributing "to their own subordination. . . with only limited understanding of the constraints on their choices and little sense of these choices as systematically self-destructive."³⁰⁹ Her sense is that by challenging the ideology of choice I am being dismissive of women's struggles and presumptuous in judging them.³¹⁰

³⁰⁵ Emily Couric, *Women in the Large Firms: A Higher Price of Admission?*, Nat'l L.J., Dec. 11, 1989, at S2, S12.

³⁰⁶ I do not mean to imply that rapists ordinarily consult their victims about anything. This hypothetical is based on advice I received in a rape workshop in the 1970s, in which women were advised that they might suggest that a rapist sodomize them instead of having sexual intercourse if they were concerned about pregnancy. It struck me as odd advice, although no doubt it was meant to be helpful.

³⁰⁷ Williams, *supra* note 187, at 819.

³⁰⁸ *Id.* at 830.

³⁰⁹ Abrams, *supra* note 20, at 767-68.

³¹⁰ *Id.* at 780-83. I should note that the article quoted is part of an ongoing process in which Kathryn Abrams consistently has challenged and helped me to think through and articulate my ideas more thoroughly. I thank her.

I hope I am not. This charge is an important one because it reveals a risk inherent in challenging the liberal ideology of choice. Given the ideology's premise that people are free actors rationally pursuing their own self-interest, any claim that the much-vaunted "choices" reflect deep patterns of inequality seems to deny women of agency and to reduce them to the status of prisoners of false consciousness mindlessly working against their own best interests.

This is a false dichotomy, for every decision is a situated one, reflecting both constraints and the exercise of personal control.³¹¹ The brilliant work of Natalie Zemon Davis³¹² reveals the complex interaction between agency and constraint.³¹³ In an essay on women's sense of self in sixteenth-century France, she explores the ways in which "a patriarchal family unit could stimulate people within its borders towards self-discovery and self-presentation."³¹⁴ Even in the context of the formal subjection of women to their husbands' power, women managed to find strategies for self-discovery and self-presentation.³¹⁵ Davis reveals how women's memoirs simultaneously perpetuate the image of patriarchal power "while maneuvering for some sense of self within it,"³¹⁶ focusing on Jeanne du Laurens's "The Genealogy of Messieurs du Laurens." Although the work's very title bows to patriarchal convention by omitting mention of the family's wives and daughters, the story is really about how the author's widowed mother Louise used "limited means and re-

³¹¹ For a subtle and sophisticated exploration of this point, see Martha Minow, *Identities*, 3 Yale J. L. & Human. 97, 127-30 (1991).

³¹² Natalie Zemon Davis, *Boundaries and Sense of Self in Sixteenth-Century France*, in *Reconstructing Individualism* 53 (Thomas Heller et al. eds., 1986).

³¹³ My thanks to Milton Regan for encouraging me to speak in the abstract about constraint and choice as socially constructed and strategic categories. A crucial challenge is to avoid falling into the trap of assuming that women *either* conform to the liberal model of free-standing individuals making choices *or* are imprisoned by false consciousness. The work of Antonio Gramsci provides needed subtlety by focusing on the complexities surrounding consent. Two articles that provide an excellent introduction to Gramsci are T.J. Jackson Lears, *The Concept of Cultural Hegemony: Problems and Possibilities*, 90 Am. Hist. Rev. 507 (1985), and Joseph Femia, *Hegemony and Consciousness in the Thought of Antonio Gramsci*, 23 Pol. Stud. 29 (1975). I have suggested that American women have a "contradictory consciousness" that mixes approbation with apathy, resistance and resignation. Williams, *Deconstructing Gender*, supra note 187, at 829. This Article attempts to describe more concretely American women's "contradictory consciousness." I do not condemn consciousness as "false" from a perspective where my own view constitutes absolute truth as some have claimed. See Dennis Patterson, *Postmodernism/Feminism/Law*, 77 Cornell L. Rev. 254, 294 (1992). My own perspective is, nonetheless, to me a (situated not an absolute) moral certainty. See Joan Williams, *Abortion, Incommensurability and Jurisprudence*, 63 Tul. L. Rev. 1651 (1989) (reconciling existence of ethical certainties with absence of absolutes); Joan Williams, *Rorty, Radicalism, Romanticism: The Politics of the Gaze*, 1992 Wis. L. Rev. 131 (same).

³¹⁴ Davis, supra note 312, at 59.

³¹⁵ Id.

³¹⁶ Id.

markable ingenuity” to arrange eight sons’ careers and two daughters’ marriages. Louise and her daughter both stress that she acted as her husband’s agent, inspired by his life; she discusses herself only late in the story, after first a discussion of *les enfants* (the children), followed by a discussion of *les filles* (the daughters). “Readers may think they are hearing little about Jeanne’s values and feelings—until they realize this seventy-one-year-old woman, the survivor, has put words in everyone’s mouth: her father’s deathbed speech, her mother’s scolding and exhortations.”³¹⁷

Was Jeanne a victim of false consciousness? Or was she, like the rest of us, struggling to maneuver for some sense of self within a social context replete with constraints, many of which are disabling, some of which are enabling, and most of which are both, either at different times or simultaneously? The “choice versus false consciousness” dichotomy ignores the complexity of these issues in a way that intimates that any sustained focus on the constraints within which choices occur signals a disrespect for the actor so constrained. This sets up a powerful dynamic of social control. The “free choice versus false consciousness” model makes it seem as though any attempt to challenge patriarchal constraints signals disrespect for women who work within them. However, one can appreciate women’s ingenuity and dignity without failing to note how their lives could be improved if those constraints were changed.

A challenge to choice rhetoric in the particular context of work/family conflict signals a belief that the constraints that frame women’s choices about work and family are both unacceptable *and* susceptible to challenge *in that context*. This does not mean that choice rhetoric is always the wrong approach to public discussion of a problem. In the abortion context, choice rhetoric retains significant strengths, for although it focuses attention away from the constraints within which abortion decisions occur,³¹⁸ the key issue remains the defense of an existing realm of choice.³¹⁹ In the context of work/family conflict, by con-

³¹⁷ *Id.*

³¹⁸ Both right-to-life and pro-choice advocates acknowledge that abortion decisions often reflect male power and/or society’s refusal to support caregivers. See, e.g., K. McDonnell, *supra* note 149, at 68-80 (discussing economic and other forms of coercion behind abortion choices); G. Naylor, *supra* note 149, at 91; Abrams, *supra* note 20, at 786-88 (pro-choice argument that abortion decisions often reflect male power over women); Callahan, *supra* note 191 (pro-life demand that society support caregivers); MacKinnon, *supra* note 78 (pro-choice argument that abortion decisions often reflect male power over women).

³¹⁹ The key methodological assumption here is that language does not simply reflect the “glassy essence” of reality. See R. Rorty, *supra* note 150, at 15, 129-212. Instead, all rhetorics focus attention away from some issues and onto others. The key inquiry is how to design a rhetoric that channels attention in a way best suited to accomplish one’s political and ethical goals. See Williams, *Virtue and Oppression*, *supra* note 150 (discussing rhetorics that persuade).

trast, women's relegation to no-win alternatives should be challenged through an attack on the rhetoric of choice.

In summary, although liberal thought patterns encourage us towards a dichotomy of absolute agency or absolute victimization, neither of these poles is an accurate description of anybody. The point is not that women are passive victims of ideology, but that calling their painful resolutions of work/family conflicts their "choices" deflects our attention away from the constraints within which they operate.³²⁰ The following section seeks to help remedy that phenomenon.

3. *Telling Stories About Women, Work, and Family*³²¹

The rhetoric of choice is so deeply reflexive in the work/family context that we need narratives to help break its grip. Luckily, ample sources exist. Sociologists Arlie Hochschild³²² and Kathleen Gerson have written vivid narrative studies of the work/family conflict.³²³ In addition, the media has provided extensive coverage of work/family conflict, replete with stories from the lives of individual women. Finally, as this is a pre-eminent issue of my generation of professional women, I rely on my own stories as well.

a. *The Power Dynamics Underlying "Choice."* Gerson's most crucial findings indicate that women's commitment to work normally diminishes in the face of boring, dead-end, devalued work and that gender privilege within the household often relegates women to such work.³²⁴ The stories of two of her interviewees illustrate the pattern of initial career orientation followed by falling work aspirations.

One woman is Vicki.³²⁵ From early on Vicki wanted to join the police, a career she saw as a mental and physical challenge and a way of escaping her parents' poverty. After high school she took and passed the

³²⁰ For an influential formulation of this point, see Alice Kessler-Harris, *Written Testimony of Alice Kessler-Harris, in Women's History Goes to Trial: EEOC v. Sears, Roebuck and Company, 11 Signs: J. Women in Culture & Soc'y* 751, 767 (1986) ("choice can be understood only within the framework of available opportunity").

³²¹ With apologies to Vicki Schultz. See Schultz, *supra* note 245 (subtitled *Telling Stories about Women and Work*).

³²² See A. Hochschild, *supra* note 201, at 33-58, 75-94, 95-109, 110-127, 142-58, 173-81.

³²³ See K. Gerson, *supra* note 210, at 11-20 (1985); see also E. Rosen, *supra* note 248, at 92-119 (sociological study of work and family commitments of blue-collar women).

³²⁴ K. Gerson, *supra* note 210, at 93-122. For extensive documentation of the phenomenon of diminishing commitment, see Schultz, *supra* note 245, at 1824-39 and sources cited therein. Schultz also provides extensive documentation that many women ultimately reject domesticity if attractive work opportunities become available. See *id.* at 1815-32; see also K. Gerson, *supra* note 210, at 69-91. This pattern does not demonstrate the power dynamic that leads women to cut back on work commitments, but it reinforces the message that women's "choices" are very much a function of their work opportunities. See Schultz, *supra* note 245, at 1815-32.

³²⁵ See K. Gerson, *supra* note 210, at 18-20.

police exam, but was forced to find the best job she could, in the “pink collar” ghetto of secretarial work. Meanwhile, she met and married Joe, a construction worker, whose job “required that they move a lot.”³²⁶ Consequently, Vicki changed jobs often and turned down a chance to advance. As Gerson tells the rest of the story:

She ultimately grew to hate working, for it usually involved taking orders from bosses she did not respect.

Joe also began to pressure her to have children. Children were very important to Joe, for he had been orphaned and wanted to give his children the love he never received. Vicki viewed children as a burden she could do without, but Joe even threatened to leave her if they did not start a family soon. She decided that losing Joe was too heavy a price to pay for her fears and became pregnant in her late twenties.

After the birth of her first child, Vicki discovered that staying home to rear a child was more rewarding than her succession of boring, dead-end jobs. By her mid-thirties, she was a full-time mother of two.

Today she has given up hope of becoming a policewoman, but in return for this sacrifice she feels she has gained the secure home life she never knew as a child. She occasionally considers taking a part-time job, but she hopes she will never have to return to the full-time work she grew to abhor. She worries that, if something ever happened to Joe or the marriage, she would be forced out of the home again.³²⁷

An important theme emerges from a close examination of Vicki’s “hard choice.” Because her husband’s career was given priority over hers, Vicki was cut off from a career she viewed as potentially exciting and tied to dead-end, subservient work. Thus, Joe was allowed to live out his childhood aspirations both to be successful at work and to redeem his orphaned childhood. Vicki sacrificed her childhood dream so Joe could attain his. Calling Vicki’s estrangement from wage labor her “choice” veils the fact that her husband’s gender privilege within the household so thoroughly disrupted her career that she was relegated to subservient “women’s work” that did not contribute to the “free unfolding” of her personality.³²⁸ Even before she ultimately quit, she had to choose between her family and her career aspirations, a choice her husband never faced.

³²⁶ *Id.* at 18. Note the non-blaming passive voice: Joe did not require her to move; his job did.

³²⁷ *Id.* at 18-19.

³²⁸ See L. Friedman, *supra* note 6, at 35.

Following her usual pattern, Gerson matches Vicki's story with one of a middle-class woman named Susan whose life followed a similar trajectory.³²⁹ Susan's mother worked part-time to help her family through financial difficulties and had high aspirations for her two children. Inspired by her mother, Susan decided to have a career. In college, she married John, whose education "required her economic support as well as her attention to the household tasks."³³⁰ So Susan dropped her plans to pursue a business degree and received a teaching credential, which could be earned quickly. She did this despite being unenthusiastic about working with children. Unable to find a primary school teaching job, Susan eventually settled for preschool teaching, where, Gerson reports she has "grown steadily weary of the demanding work and lack of chances for advancement."³³¹ Meanwhile, her husband is making progress as an architect, and "has begun to complain that he wants more of her attention directed to their life together."³³² Susan plans to get pregnant and resign since, ironically, motherhood now represents "her best chance to escape from the world of children that defines her job."³³³

Despite the class differential, Susan also abandoned a career as a cost of her marriage; her husband was the only one who could "have it all." Like Vicki, Susan's rejection of the gendered, subservient work in a sex-segregated marketplace led her to quit.³³⁴ It is inaccurate to refer to the confluence in Vicki and Susan's lives of gender privilege within the household and sex segregation outside it as their "free choice." This does not mean that Vicki and Susan did not know their own minds. It simply means that using choice rhetoric to describe their decisions deflects attention from the framework of gender privilege that relegated them to choices far less attractive than those their husbands enjoyed.

The rhetoric of choice veils the extent to which entitlement to self-development is gendered in contemporary American life. Men feel entitled to simultaneous self-development in both work and family life as an element of their manhood, even if their wives have to sacrifice their own career aspirations. Men's self-development becomes parasitic on the selflessness of women. Hochschild confirms that these norms carry on even when women, unlike Vicki and Susan, are not deflected from pursuing

³²⁹ See K. Gerson, *supra* note 210, at 17-20.

³³⁰ *Id.* at 17. Note again the non-blaming passive voice: John did not require her; his education did.

³³¹ *Id.* at 18.

³³² *Id.*

³³³ *Id.*

³³⁴ The disillusionment of the Vickis and the Susans with a workplace they find acutely alienating may well result in their articulating their decisions to quit in terminology reminiscent of domesticity's "*cri de coeur* against modern work relations." See N. Cott, *supra* note 25, at 70; see also text accompanying notes 58-60 *infra*.

traditionally male careers. Most vivid is her story of Seth and Jessica Stein.³³⁵

Seth is a litigation lawyer, married to Jessica, who specializes in family law. They married intending to honor their degrees equally. But “after many reasonable discussions,” notes Hochschild, they agreed that his career would come first because “litigation law was more demanding.”³³⁶ Seth, reports Hochschild, was happy about this outcome but at the same time was somewhat unhappy about his marriage. His wife was unhappy about both. Despite having made her own “choice,” which eventually led her to cut down to part-time, Jessica never really forgave Seth. Her disappointment led her to withdraw to a substantial extent from both her children and her marriage.

Hochschild is extraordinarily acute in assessing Seth’s motivations. Like many elite men, he had no articulated aversion to “women’s work.” “If he’d had the time,” Hochschild notes, “he could have done the laundry or sewing without a bit of shame.”³³⁷ But in fact he did little at home because his eleven-hour workdays meant he was rarely there.

How could a man with a commitment to equality end up dumping such a heavy burden on his wife? The key, Hochschild notes, lies with Seth’s “sense of self and manhood,”³³⁸ which is entirely dependent on reaffirmation from the world of work.³³⁹ That interpretation does not seem quite accurate, however, as Seth seems hurt and confused by the failure of his family life.³⁴⁰ Hochschild captures Seth’s feeling that he lacks the choice about whether or not to work so hard.³⁴¹ She paints Jessica as bitter because she designed her career to balance work and

³³⁵ See A. Hochschild, *supra* note 201, at 110-27.

³³⁶ *Id.* at 111.

³³⁷ *Id.* at 112. This is a common formulation in a high-status couple, see Model, *supra* note 226, at 201, but one that begs the question. One of my law school classmates, an associate at a large law firm known for long hours, expressed his interest in adjunct teaching. Slightly earlier in the conversation he had noted how great it was that his wife had found a job that, while not truly exciting, allowed her to work part-time and close to home in order to spend more time with their two-year old. My classmate clearly felt entitled to pursue all available avenues of adult self-development—not only his career, but extra responsibilities as well—while he assumed his wife was entitled neither to extra opportunities nor to her career itself. One assumes he did little child-care or housework because he “did not have the time.”

³³⁸ A. Hochschild, *supra* note 201, at 112.

³³⁹ *Id.* at 112-14. Studies suggest that men in general view their ability to fulfill the “provider role” as the index of their achievement. See Lucia A. Gilbert & Vicki Rachlin, *Mental Health and Psychological Functioning of Dual-Career Families*, 15 *Counselling Psychologist* 7, 15-16 (1987).

³⁴⁰ See A. Hochschild, *supra* note 201, at 115, 118-19. Studies show that men become dependent on women’s unconditional acceptance and nurturance as they become more independent in their lives outside the home. See Gilbert & Rachlin, *supra* note 340, at 17.

³⁴¹ See A. Hochschild, *supra* note 201, at 113-14. For an insightful discussion of how males need to “revise their sense of self” if dual-career couples are to achieve equality, see Gilbert & Rachlin, *supra* note 339, at 15-19.

family life and expected her husband to do so too.³⁴² When he did not, she was left with little choice but to go part-time.

Hochschild concludes that the heart of the problem is men's unwillingness to share the second shift. This analysis may well be apt in many contexts, but it is only part of the story, as many women lawyers know. A recent American Bar Association survey reports that eleven percent of all lawyers work more than 240 hours a month (an average of sixty hours a week) and forty-four percent work more than 200 hours a month.³⁴³ At some of the largest and most elite law firms in New York, Washington, Los Angeles, and other major American cities, part-time hours are nine to five, five days a week, while full-time work may require being on call around the clock.³⁴⁴ Fully sixty-five percent of all surveyed lawyers in large firms reported a lack of time for themselves as a negative factor in their jobs.³⁴⁵ Women, who are twice as likely as men to be dissatisfied with legal work,³⁴⁶ report dissatisfaction with "lack of time for oneself" in higher percentages than men.³⁴⁷

Jobs whose work cultures require long hours create a dynamic Hochschild does not capture. In order for Jessica to realize her ideal of work and family life, *both* she *and* Seth would have to eschew the "fast track." The problem, then, is not so much with Seth, as with a work culture that requires ideal workers either to remain childless or to tap a flow of domestic services and be willing to delegate virtually all childrearing tasks.³⁴⁸

³⁴² See A. Hochschild, *supra* note 201, at 116.

³⁴³ Ronald L. Hirsch, *Are You On Target?*, 12 *Barrister* 17, 20 (1985). The average number of hours billed has risen to between 2300 and 2500 annually, up from about 1700 several years ago. See Jennifer A. Kingson, *Women in the Law Say Path is Limited by "Mommy Track,"* N.Y. Times, Aug. 8, 1988, at A1.

³⁴⁴ See Kingson, *supra* note 343, at A15.

³⁴⁵ See Hirsch, *supra* note 343, at 20.

³⁴⁶ Wald, *supra* note 244, at 75.

³⁴⁷ Ronald L. Hirsch, *Will Women Leave The Law?*, 16 *Barrister* 22, 25 (1989) (57% of women, 45% of men). Contributing to women lawyers' dissatisfaction is the lack of intellectual challenge in their jobs (18% of women, 12% of men), a cold and impersonal work environment (23% of women, 7% of men), little chance of advancement (25% of women, 20% of men), and the fact that advancement is not determined by work quality (21% of women, 16% of men). *Id.* at 24-25.

³⁴⁸ Constance Perin has made crucial contributions to the study of the cultural construction of careers today, in particular to pervasive workaholic norms. See Perin, *supra* note 239; Constance Perin, *The Moral Fabric of the Office: Panopticon Discourse and Schedule Flexibilities*, 8 *Res. Soc. Organizations* 241, 252 (1991); Constance Perin, *Some Cultural Properties of Careers*, Invited Session of The American Anthropological Association Annual Conference, New Orleans, Nov. 1990; Constance Perin, *Temporal Snares and Personal Delusions in Career Discourse: Toward a New Rhetoric for Employment Relationships*, Panel of the Property Law Section, Association of American Law Schools Annual Conference, San Francisco, Jan. 1990.

b. The Domestic Delegation Doctrine. The workaholic work cultures common among American elites highlight an issue at the center of the current controversies over working parents: the extent to which child care is delegable. Let me begin with a story that, I am assured, happens all the time. A mother, overwhelmed as her career heated up, confronted her husband with a detailed calculation of the hours she, he, and their live-in nanny devoted to household tasks. She devoted thirty hours, he thirteen, and the nanny over sixty. Something has got to give, she told him; I just cannot do any more and get done what I have to do at work. His solution: hire another nanny. He is not an uncaring father: he just has a work ethic similar to Seth's. The end result was that the woman cut down on work and started talking about the inherent differences between men and women. She looked back at her life and decided that sex differences are "real" after all. She ignored her daughter's aggressiveness and focused on her love of dresses; she ignored her son's timidity and focused on his love of climbing. In both cases, by carefully blocking the character traits that contradict gender stereotypes and highlighting those that confirm stereotypes, she reassured herself of the "natural" gender differences between men and women.

I interpret the incident quite differently, although I agree that it involved a gender show-down in which true gender differences emerged.³⁴⁹ The key gender difference is that most mothers are much less willing than fathers to view children's needs as completely delegable. Traditional fatherhood rests on the assumption that virtually all of parenting is delegable; traditional motherhood does not.

The issue of delegation is central to work/family conflict, although it rarely is discussed. Instead, women tend to internalize the conflict they feel between their sense of what is delegable and their sense of what constitutes performing as a responsible worker. If they feel it is inappropriate to delegate as much as their occupation requires, they assume the mature course of action is to "choose" marginalization. For example, Caren Camp decided to quit work when, calling home from a business trip, she heard that her son just had taken his first step. "I realized that his first year had gone by so quickly, I had been like a visitor in his life."³⁵⁰ "I can always go back to work," Caren said. "I can't always

³⁴⁹ To my astonishment, some people read my Article *Deconstructing Gender*, supra note 187, to claim that no gender differences exist. These individuals make such claims despite the fact that the Article says explicitly that I am denying the accuracy of Gilligan's description of gender, not the existence of patterned differences between men and women. See Williams, *Deconstructing Gender*, supra note 187, at 799, 801. Evidently the "if you believe men and women are different, you must agree that the traditional descriptions of those differences are accurate" syndrome is so strong even an explicit disclaimer cannot shake it.

³⁵⁰ Richardson, supra note 304, at C10.

raise my child.”³⁵¹ Marti Jacobs, age forty-one, expressed the same sentiment when she quit her job at the Department of Education after putting herself through law school at night.³⁵²

Quitting is one solution. The alternative, of course, is to build a system in which the ideal worker is not premised on norms of delegability built around fatherhood as traditionally practiced. It is not *inevitable* that adults who refuse to delegate most childrearing tasks to other adults must be barred from accepted patterns of adult achievement. Women should act to break the link between caregiving and marginalization. As I talk to women who complain of missing their children’s childhoods, my sense is that most would not necessarily insist on being present twenty-four hours every day. According to one national poll, seventy-one percent of at-home mothers want to work.³⁵³ Presumably these women object to the requirement that they work away from their homes for ten to twelve hours a day or take part-time jobs that offer fewer rewards than full-time work. Yet as our work lives are structured, jobs that require less of a time commitment are marginalized.³⁵⁴ Law firms have been refreshingly explicit; some have formal policies that part-time work takes associates off the partnership track.³⁵⁵ At a certain point, the discouraged worker syndrome that Vicki and Susan demonstrate emerges, and the marginalized workers may retreat into domestic life.

To refer to the decision to drop out of the paid labor force as a mother’s “choice” diffuses demands for changes in the workaholic work culture with its exploitation of “part-time” workers. By encouraging women to think of work/family conflict as a matter of their own priorities, the rhetoric discourages women from challenging a definition of “ideal worker” that reinforces a system in which caregivers are “naturally” marginalized—often to the ultimate detriment of children.

³⁵¹ Id. at C1.

³⁵² Liz Spayd, *More Women Trading Paychecks for Payoffs of Full-Time Parenting*, Wash. Post, July 8, 1991, at A1, A4 (“I only get one chance to watch Matthew grow up”).

³⁵³ See Kantrowitz, *supra* note 199, at 47. The same poll showed that more than half of women working part-time or in jobs with flexible schedules said they had cut back or changed jobs to spend more time with their children.

³⁵⁴ See Chamallas, *supra* note 235, at 715-21. Note that the term “part-time” carries a message of partiality and incompleteness that makes it an aspect of the problem rather than the solution. Significantly, men of my acquaintance who do not conform to an ideal worker pattern reject the “part-time” label, while women are more likely to accept it.

³⁵⁵ See Kingson, *supra* note 343, at A15. A 1989 survey of women lawyers found that 90 percent said they “believed that even if their firm offered part-time or flexible work schedules, women who used those arrangements would be slowed or blocked in their quest for partnership.” Tamar Lewin, *Women Say They Face Obstacles as Lawyers*, N.Y. Times, Dec. 4, 1989, at A21. For an attempt to redress the marginalization of part-time lawyers, see ABA Study, *supra* note 208.

c. *Children's Needs.* When the issue of delegation is not encoded as a matter of a mother's personal priorities, it often is formulated as a matter of children's needs. To examine this process of translation, let us begin with the story of Carolyn Brown, a high-ranking manager for American Telephone and Telegraph (AT&T).³⁵⁶ Ms. Brown worked twelve-hour days, travelled a lot, and worried about the impact of her pressured schedule on her children's lives, describing life for her children in the following way:

They were in as big a rush as I was . . . I was up at 6:30! Eat your breakfast! Grab your school bag! Slam! Bang! The teacher asked me why Brentt rushed through his schoolwork.³⁵⁷

Her son, Brentt, was calling her at the office up to five times every day "just to chat." Then, one day, she forgot to pick him up from school. "Something in me said, 'These children need me. . . . I can't hire a replacement.'" ³⁵⁸ So she quit.

Ms. Brown, torn by an internalized work/family conflict, resolved the conflict by conforming to the norms of selfless motherhood—she sacrificed her career so that her children's needs could be met. Like Carol Gilligan's Ruth,³⁵⁹ she never considered challenging her employer's expectations or her husband's entitlement to perform as an ideal worker. Formulating the issue as her "choice" to quit "because" of her "children's needs" leaves out *both* the issue of whether her husband's work life should remain immune *and* the issue of whether the workaholic culture of many elite jobs in this country is fair to children. This formulation virtually guaranteed that the end result would be for her to quit: by deciding not to challenge the structures within heterosexual marriage and the workplace, no other path was open to ensure that her children's needs were met.

Ms. Brown's story dramatizes the role of children in enforcing domesticity. Brentt's phone calls to his mother's office sent a clear message: her career should be subservient to his needs. The major role children play in policing women back into domesticity is further demonstrated by the following story.

One Tuesday, when Carol was teaching an evening class in a business school . . . Daryl [her son] came into the kitchen and the two [Daryl and his father Greg] went to watch TV. Once "Mouseterpiece Theatre" was over and an absorbing documen-

³⁵⁶ Richardson, *supra* note 303, at C1, C10. Brown quit when her son was nine and her daughter four.

³⁵⁷ *Id.* at C10.

³⁵⁸ *Id.*

³⁵⁹ See text accompanying notes 52-63 *supra*.

tary about an expeditionary team climbing Mount Everest had caught Greg's attention, Daryl moved to imaginative play with a car. He began to tell a long tale about a frog going "fribbit, fribbit" in the car. . . . Greg was listening to "fribbit fribbit" with half an ear. He tried to draw his son's attention to the program with fatherly explanations about Yaks, and snow caves, but no dice. Daryl brought out some cards and said, "Dad, let's play cards." "I don't know how," Greg replied. "You can read the directions," Daryl suggested. "No," Greg said. "Wait for your mom. She knows how."³⁶⁰

Greg, like Brentt, received the message that if anyone would fulfill his needs it would be his mother. In a society in which children's needs often come last,³⁶¹ children cannot be faulted for trying to see that *someone* takes care of them. Brentt's phone calls are significant not only for highlighting how workaholic cultures are unfair to children, but also for showing how fathers', mothers' and children's expectations align to encourage mothers to define the work/family conflict as an internal one to be solved by career "sacrifice." Brentt's mother is vulnerable to the message that her career should be subservient to his needs. In contrast, all the parties involved assume his father's immunity.³⁶²

Greg's story serves a double purpose. Hochschild uses it to show how fathers deflect their children's needs onto their wives; it also highlights the dynamic by which that process serves to reinforce its own legitimacy. Mothers tell stories like Greg's and conclude that fathers simply lack the mothering instinct. My experience is different. Women learn to mother, and so can men.³⁶³ When our first child was an infant, and I invariably got up with her in the middle of the night, my husband literally did not hear her cries. When our second child came along, I, severely overloaded, insisted that my husband bring the baby into our bed so I could nurse him there. After a time, I literally did not hear our son's cries, but my husband did. To the extent that mothers (as I did) help their husbands train their children to look exclusively, or predominantly,

³⁶⁰ See A. Hochschild, *supra* note 201, at 149.

³⁶¹ See R. Sidel, *supra* note 209.

³⁶² If Brentt had called his *father* five times a day, I have little doubt but that his father would have set him straight. More to the point, Brentt appears never to have called him. At age eleven, Brentt had received the message that his father was entitled to immunity from his needs, but his mother was not, even at the cost of interrupting her day at work and of inciting her to quit a job she liked. See text accompanying note 397 *infra*. "What's the matter," asked a six-year old whose mother was accompanying her and her eight-year old brother to the park. "Why do you always bring a book? Aren't we enough?" See note 1 *supra*.

³⁶³ See Barbara J. Risman, *Intimate Relationships from a Microstructural Perspective: Men Who Mother*, 1 *Gender & Soc.* 6, 25 ("parental role responsibility was as good a predictor of self-reported feminine personality characteristics as biological sex").

to their mothers to fulfill their needs, we are helping men and children form gendered expectations that contribute to making our lives unworkable.

4. *How Choice Rhetoric Pits "Mommies Versus Mommys"*³⁶⁴

"How *nice* that you can walk little Bobby to school every morning," gushes a stay-at-home mother to a harried working mom as she arrives at her son's school. "Otherwise, you'd never *see* him." (Opening salvo.)

"Listen, Sophie *really needs* some fake fur for her princess costume," wheedles a working mom talking to her next-door neighbor. "Since you're home with so *much time*, would you mind picking some up at the store for me?" (Direct hit.)

"Oh, you're a lawyer. How *exciting*. It must be so *much fun* to get dressed up and go to an office all day. And I'm sure that Joey does *just fine* at the day-care center." (Heavy artillery.)³⁶⁵

The war of "mommy versus mommy" came to recent attention with Hillary Clinton's "cookies and teas" remark, which alienated many homemakers.³⁶⁶ Nina Darnton documented the sniping between employed women and women who do not work outside the home, a battle which stems, in part, from the vulnerabilities of both groups.³⁶⁷ Employed women, most of them raised by mothers at home, worry that they are cheating their kids; stay-at-home mothers feel they are missing out of the status and recognition wage labor brings. Both groups, in other words, feel the sting of gender disadvantage, but instead of focusing their dissatisfaction on a system that pits their aspirations against their children's needs, they criticize each other.

Stay-at-home mothers send the message loud and clear that working mothers fail to meet their children's needs. A Minneapolis video producer reported to Darnton that a disapproving at-home mother counted up the number of times she went to her son's soccer practice and "made sure she let me know she couldn't *imagine* not being there when her child came home from school."³⁶⁸ At-home mothers also expressed resentment over having to give out their phone numbers for emergencies and to accept everyone else's packages.³⁶⁹ Women who do not question their husbands' right to domestic services become resentful when other women ask them to provide such services. "For the latchkey kids who

³⁶⁴ See Nina Darnton, *Mommy v. Mommy*, Newsweek, June 4, 1990, at 64.

³⁶⁵ *Id.*

³⁶⁶ See text accompanying note 271 *supra*.

³⁶⁷ See Darnton, *supra* note 364.

³⁶⁸ *Id.* at 65.

³⁶⁹ *Id.*

are all over this neighborhood, where do they come when they're lonely or scared?" one at-home mother asked. "To us."³⁷⁰

The war of mommies-versus-mommies is not limited to a conflict between employed and nonemployed mothers. For contemporary American women are not divided into two dichotomous groups; instead, they are on a continuum. Some are as work-primary as "high-powered" men in elite corporate jobs; others have little work-identification and no career or job commitment. But most American women lie somewhere in between.³⁷¹ The infinite gradations of work commitments are divisive, as each woman judges women more work-primary than herself as "self-centered" and those less work-primary as having "copped out."

But the very differences that now divide women could help bind them together, as each of us recognizes that we all are on the same continuum and that no one point on that continuum holds "the" answer, because every point requires mothers to make trade-offs few fathers face. This recognition is important to foster mutual respect and to counteract the tendency among some feminists and career women to assume that life is lived to the fullest by a very work-centered existence. Feminists should be able to join others in critiquing the excessive work-centeredness of contemporary professional work cultures while continuing to insist on equal access for men and women to the accepted avenues of adult achievement.³⁷² This approach holds promise to unite women against the marginalization that traditionally has accompanied their care-giving responsibilities. It also holds promise for men, by promising to deliver them from the excessively work-primary existence that often has deprived them of key aspects of the job of parenting. Again, the core argument is that caregiving should be respected as an integral part of the adult lives of both men and women, and that nurturing should not preclude access to the accepted avenues of adult advancement.

In the gender war among women in the work/family context, an important theme emerges that we first examined in the abortion context: the linkage between mothers' "choice" of domesticity and domesticity's critique of self-interest in favor of nurturance. Darnton notes that at-home mothers often think of career-and-family mothers as selfish yuppies who never believe they have enough money.³⁷³ These mothers sound like Ginsburg's right-to-life activists³⁷⁴ because they are the same group of

³⁷⁰ *Id.* at 66.

³⁷¹ For documentation that many American women shift to different points along the continuum at different points in their lives, see Schultz, *supra* note 245, at 1815-43.

³⁷² For an example of a feminist critique of professional work cultures, see the work of Constance Perin, *supra* note 348.

³⁷³ Darnton, *supra* note 364, at 66.

³⁷⁴ See F. Ginsburg, *supra* note 80, at 186-93.

people: Ginsburg's right-to-life activists tended to be women whose major self-defining adult decision was to drop out of the work force after the birth of a child.³⁷⁵ These mothers often see their lives as articulating the internal critique of "that bank note world" that always has been an integral part of domesticity. At-home mothers (whether right-to-life advocates or not) sometimes translate their choice of "children over success" into an argument that women who insist on pursuing the accepted paths of adult achievement are obsessed with money, out of touch with the needs of their children, and out of touch with humane, nurturing, non-competitive values in general.³⁷⁶ At best, at-home mothers realize humane and nurturing values in their own lives both within their households and within the larger community. Take the example of a forceful and intelligent woman of my acquaintance who cares for her three children and plays a prominent role in the La Leche League, which offers badly needed support to nursing mothers. It's ironic, her husband said one day, she's "home with the kids" but she was out three evenings last week. It didn't strike me as ironic at all. Like generations of women before her,³⁷⁷ she had restructured her work life not only to accommodate her children's needs, but to express her ideals of nurture in the larger community.

The point is not that domesticity's critique is hollow, but that it leaves most of its adherents in less enviable positions. As noted above, power within the household often correlates with the amount of money each spouse earns. The power of money works in a thousand small ways.³⁷⁸ "I told her she could stay home, but that then there was no way I was getting up with the baby in the middle of the night." For the mother who also has older children who do not nap, this means consignment to permanent exhaustion—and some shaky mothering as a result.³⁷⁹

The official ideology of at-home mothering is silent on these issues. In Ginsburg's and Luker's books, this ideology emerges in snippets. A more systematic defense was published by William R. Mattox of the Family Research Council.³⁸⁰ Mattox argues that "traditional" families sacrifice income to ensure their children a parent's care: the median income for two-earner families is \$45,266; for single-earner married couples it is \$28,747. He notes "the guilt that some Yuppie couples feel

³⁷⁵ *Id.* at 140.

³⁷⁶ Compare the experience of Ruth. See text accompanying notes 56-60 *supra*.

³⁷⁷ For a review of the literature on the history of women "volunteer" reformers, see F. Ginsburg, *supra* note 80, at 227-47.

³⁷⁸ See text accompanying notes 50-52, 129-35, 337-42 *supra*.

³⁷⁹ This is my surmise, based on experience with exhausted motherhood.

³⁸⁰ William R. Mattox, Jr., *The Mothers of All Myths*, Wash. Post, Aug. 3, 1991, at A19.

for putting careers ahead of children."³⁸¹

Mattox is very open in adopting the societal strategy of using children's needs to blackmail women out of their aspirations to the standard paths of adult achievement. This strategy combines the message that children will suffer unless one parent quits working full-time with the ideology of gender equality. Mattox links these two elements in several ways. One method is familiar: using the language of gender equality, he implies that the issue is whether *one parent* will quit, whereas his real message is that *mothers* should quit. A second mechanism achieves the same result: by framing the issue as one of *family* sacrifice, he need not mention that the family member who retains and develops his full value as a wage earner is the husband. The wife's disadvantage—in the divorce courts, in her reduced power within the household, in terms of her blockage from the standard avenues of adult self-development—all recede conveniently into the background. The issue becomes whether one wants secure, well-cared-for children on \$28,000 a year or poor little rich kids. This formula again demonstrates the ineffectuality of domesticity's internal critique of capitalism and wage labor, which condemns materialism and self-interest only when the employment or self-development of *women* is at issue.

Mothers' inability—or their refusal—to be a sole-source supplier for their children's needs does not involve ignoring those needs. Bringing fathers and other adults into the daily work of childrearing promises benefits for everyone. Adults can achieve more balanced lives, oriented towards other people and the future of the community rather than solely towards a career. Children receive the attention of at least two committed adults with different strengths and weaknesses as "primary" caretakers.³⁸² It is the rare couple who does not think that the father quite simply handles some situations better—the child should benefit from the strengths of *both* parents.³⁸³

Children benefit not only from the increased involvement of fathers, but also from quality child-care—not, of course, for twelve hours a day,

³⁸¹ Id.

³⁸² Active involvement of the father and other adults is particularly important when a personality conflict exists between mother and child, as when a very "active" mother has a very "quiet" child. See T. Berry Brazelton, *Mothers and Children* 17-22, 55-69, 86-95, 112-16, 162-66, 222-24, 255, 270-71, 274 (1983) (story of personality clash between mother and her "quiet" baby, with consequent tension between mother and child and closer bonding of baby to father). Brazelton's dramatic example shows the price some children pay for the one-sided allocation of responsibilities to their mothers.

³⁸³ Researchers almost universally view more parenting by fathers as beneficial for parents as well as children. See Nancy Chodorow, *Gender, Relation, and Difference in Psychoanalytic Perspective*, in *The Future of Difference* 15-16 (Hester Eisenstein & Alice Jardine eds. 1980); Michael E. Lamb et al., *Summary and Recommendations for Public Policy*, in *Fatherhood and Family Policy* 247 (Michael E. Lamb & Abraham Sagi eds. 1983).

but for part of their waking hours. The contemporary American conviction that children are best raised by one isolated woman is mystifying. Even in western society, the family did not conform until very recently to this pattern. Before the Industrial Revolution, mothers had a key economic role. Their child-care tasks had to fit in around their household production, or everyone literally would starve in the dark.³⁸⁴ Moreover, fathers took a large part in childrearing.³⁸⁵ Childrearing literature offered its advice largely to *fathers* or ungendered *parents*:³⁸⁶ the assumption of mother as sole-source supplier came later.³⁸⁷ Moreover, much of the actual minute-to-minute child care was performed by older siblings (usually sisters) or servant "girls."³⁸⁸ The notion that children will wither without the full-time attention of a mother whose adult role is defined as child-care is not "traditional" in the sense of reflecting timeless biological or psychological necessity.

An anti-essentialist analysis suggests room for some increased perspective on "children's needs." While white upper-middle-class families (like Ms. Brown's) tend to think of mother's employment as diverting attention from children's needs, among African-American and working-class families the assumption often differs. They, too, assume that work for mothers must be justified as meeting children's needs, but they more often assume it meets this test: one blue-collar mother asked, "what could I do for my kids and husband just sitting around all day?"³⁸⁹ She saw her work as increasing opportunities for her children to enable them to achieve a "better life" than that of their parents. A child in such a family presumably would not feel the entitlement Brentt felt to his mother's work time. Children's sense of entitlement also may differ in the African-American community where mothers traditionally have not been able—or expected—to stop working outside the home.³⁹⁰ Finally, a subtler message is that, as in the abortion context, the ideology of female self-sacrifice produces not a single set of women's "choices," but consistent patterns of justification—whatever women do they do for the good of their children.

³⁸⁴ See N. Cott, *supra* note 25, at 40-41.

³⁸⁵ Ruth N. Bloch, *Untangling the Roots of Modern Sex Roles: A Survey of Four Centuries of Change*, 4 *Signs: J. Women in Culture and Soc'y* 237, 241 (1978).

³⁸⁶ *Id.* at 242.

³⁸⁷ *Id.* at 243; Bloch, *supra* note 32, at 113.

³⁸⁸ Cf. Laurel Thatcher Ulrich, *Good Wives* 157 (1983) (indicating that children also worked as servants in own and other households); John Demos, *A Little Commonwealth* 64-70 (1970) (describing colonial households as including servants).

³⁸⁹ See Schultz, *supra* note 245, at 1820 (quoting Mary Lindenstein Wedshok, *Blue-Collar Women: Pioneers on the Male Frontier* 252 (1981); see also E. Rosen, *supra* note 248, at 110.

³⁹⁰ See Jacqueline Jones, *Labor of Love, Labor of Sorrow* 63-64, 184-90, 228, 268-70 (1985) (documenting African-American women's history of combining motherhood with wage labor).

Yet, when children are taught a sense of entitlement that their mother's adult life will be subservient to her duty to be a sole-source supplier for their needs, their subsequent demands provide a very powerful force in policing women back into traditional gender roles. Children clearly should not be charged with the mandate of challenging the constraints within which their parents' choices are framed. But women should. Note the difference between this assertion and a false consciousness argument. I am not arguing that others are blind to the constraints that frame their choices, while I see those constraints with supercilious clarity. Instead, I am as much a product of the ideology of domesticity as any mother. Consequently I have formulated my entreaty to women not (solely) to protect their claims to self-development, but by arguing that challenging the marginalization of caregivers will meet children's needs better than will following the traditional mandate to selflessness. I do this in part to convince others, and in part to convince myself, in an attempt to diffuse the tension felt between femininity and adulthood.³⁹¹

5. *How "Choice" Rhetoric Pits the Ideology of Gender Equality Against Women*

The analysis thus far has stressed the arrangements by which society requires selflessness from mothers in order to provide for children's needs without interfering with other adults' pursuit of self-interest in the republic of choice. This section examines the forces that make women resist formulating their sacrifices as sacrifices and that encourage them to encode those sacrifices as their own free choice.

Stories of women who bonded with careers and then gave them up because of the work/family conflict speak forcefully to their sense of sacrifice and loss. "We've been married all this time, and you *still* don't get it," said one of Hochschild's subjects when her husband suggested that she work part-time.³⁹² "Work is important to me. I worked *hard* to get my [advanced degree.] Why *should* I give it up?"³⁹³ Even media stories celebrating the "choices" of women who quit acknowledge the pain involved. The article highlighting Carmen Camp and Carolyn Brown provides a vivid example.³⁹⁴ Both women described their pain at leaving their careers: "Quitting was the most difficult decision of my life," said Ms. Camp,³⁹⁵ who so dreaded having to identify herself as a homemaker that she avoided filling out forms for several months. "It was like turning a light switch off in the only room I had known," said Ms. Brown,

³⁹¹ See text accompanying notes 45, 55 *supra*.

³⁹² See A. Hochschild, *supra* note 201, at 41 (emphasis in original).

³⁹³ *Id.* (emphasis in original).

³⁹⁴ See Richardson, *supra* note 303, at C1, C10.

³⁹⁵ *Id.* at C1.

the woman who had worked with AT&T for sixteen years.³⁹⁶

Given this level of pain, why are these women's decisions characterized as "choice" and not as sacrifice? This phenomenon is a relatively recent one. In the Victorian era, men and women alike agreed that selflessness was the mark of an admirable woman.³⁹⁷ Today, of course, the ideology of separate spheres for men and women no longer is part of the self-image of mainstream America. One of the key accomplishments of the second wave of feminism was the idea of gender equality.

Yet Hochschild suggests the idea of gender equality has not been wholly beneficial in the context of the work/family conflict. She highlights its role in encoding sacrifice as choice in her discussion of Evan and Nancy Holt.³⁹⁸ Nancy had a strong belief in gender equality but a husband who emphatically resisted doing domestic work. Nancy eventually realized that her marriage would break up if she persisted in her demands that her husband share the second shift. So she agreed to work part-time, with a sense of resentment and regret; her feelings largely unacknowledged in the "family myth" that she and Evan shared equally in domestic tasks because he took care of the garage and the dog, while she took care of the house and their son.

Nancy might well have described her solution as her choice to go part- rather than full-time. Her only alternative, given that she had decided to preserve her marriage, was to admit she had made a sacrifice her husband had not made: she had sidelined a career that both she and her husband agreed was more important to her than his career was to him.³⁹⁹ To a Victorian woman, this acknowledgement of self-sacrifice would have sounded like a compliment. Given Nancy's belief in gender equality, it would sound like an insult.

Nancy's example offers substantial insight into the mechanism by which the female norm of "selfless sacrifice" has been transformed into the rhetoric of "choice." Because women live in the "republic of choice," where normal adults pursue the free development and unfolding of their personality, they tend to describe their sacrifices as the result of free choice. To admit sacrifice—as did Pat Nixon, who said that she had "sacrificed everything in [her] life that [she] considered precious in order to advance [her] husband's political career"—conveys the image not of a moral exemplar but of a loser.⁴⁰⁰

³⁹⁶ *Id.*

³⁹⁷ See Ann Douglas, *The Feminization of American Culture* 44 (1977) (a woman should be "above all . . . unselfish").

³⁹⁸ See A. Hochschild, *supra* note 201, at 33-58.

³⁹⁹ *Id.* at 41-42, 55-58.

⁴⁰⁰ See, e.g., Dan Balz, *Careers, Families Obscure the Lure of Campaign Trail*, *Wash. Post*, July 7, 1991, at A1, A6 (discussing public statements of wives of political candidates about

The tendency in our “republic of choice” is to make discussion of the constraints within which choices occur reduce the actors to pathetic victims or to depict them as mere victims of false consciousness, mindlessly playing out prescribed roles. Shortcircuiting the link between discussion of constraints and insult to those subjected to them is a task for intellectuals, not for overburdened women coping with everyday existence. Women abruptly estranged from a central portion of their identity, as when they quit careers that have defined them almost as thoroughly as Seth’s defined him,⁴⁰¹ do not need further dislocation. Their claim of free agency is part of their path to self-respect.

The irony, as the Holt family myth so vividly depicts, is that the ideal of gender equality often is preserved not by changing the distribution of power between men and women, but by denying the existence of gender inequality. Couples decide it is “only rational” for the wives, not the husbands, to quit. Very often, couples can point to the fact that husbands earn more (itself often a product of gender inequality).⁴⁰² But even without this convenient mechanism for turning gender discrimination outside the house into a mechanism for reenforcing men’s gender privilege inside it, couples tend to assume that the husband, not the wife, will maintain ideal worker status.⁴⁰³

Is it plausible that somehow, with sparse, isolated exceptions, the unfettered choice of ungendered adults results in fathers maintaining their privileged access to the full, simultaneous flowering of their personalities in work and family life, while their wives invariably make spontaneous, ungendered choices in order to enable them to do so? It is not. Yet to deny that mothers magically “choose” to subsume their careers, to claim that these results stem from a systematic gender privilege—certainly to argue to the wife of a workaholic professional that her husband’s career is built upon a flow of domestic services—is to affront the integrity of her husband and their love, and her self-image as a self-respecting actor pursuing her own self-development in the republic of choice.

This is how the ideology of gender equality works against women in the context of the work/family conflict. The claim that a power differential exists within the household often serves not to mobilize women to

extent to which they are expected to subsume their lives to their husbands’ candidacies and to play role of uncritical, ever-supporting wife).

⁴⁰¹ See text accompanying notes 395-96 *supra*.

⁴⁰² Female full-time, year-round workers make 71.1% of the annual median earnings of men. See U.S. Dep’t of Commerce, Census Bureau, Current Pop. Rep., Consumer Income Series, P-60, No. 174, at 106-07 (Table 24).

⁴⁰³ See, e.g., The Diane Rehm Show (WAMU radio broadcast, Aug. 1, 1991) (interviewing tax lawyer who left significant salary as partner in D.C. firm although her husband was without a job).

confiscate the gender advantage,⁴⁰⁴ but to translate the conflict into a fight among women.

My sense is that young professional women are most receptive to the analysis that husbands' careers are supported by a flow of domestic services while wives are not. "What gets me," said a first-year law student in my Property class, with obvious pain, "is that I'm going through all this, I'm going to law school to avoid dependency, and once I have children I'm still going to end up dependent." Older women who already have made the "choice" to subsume their careers are more receptive to the notion that people who work part-time should not be punished for doing so. This leaves their husbands out of it and focuses blame outside the household. One woman found after four years of sporadic, part-time work that her children's nursery school wanted her husband, not herself, on the board. Formerly satisfied with her "choice," she began to protest that committed parents should not be punished for meeting their children's needs.

We need both rhetorics because they will appeal to women in different life situations. The language of husbands parasitic on flows of domestic services from their wives is useful in divorce courts and to encourage younger women to begin early to negotiate with their companions over work and family issues. Once women in existing heterosexual marriages have made the "choice" to privilege their husband's careers, this rhetoric often becomes unappealing so long as they remain married. Yet they can relate to the notion that they should not be punished outside the home for meeting their children's needs within it. Together these two rhetorics hold considerable promise to help women externalize the work/family conflict that now pits them against one another.

In conclusion, Part III argues that feminists must translate the gender war within and among women into a sustained challenge to the structures outside of women. Through narratives, it looks past the rhetoric of choice to the pervasive power differential between men and women with respect to simultaneous self-development inside the household and outside it. The context of "working mothers" is an appropriate place to challenge the covert premise of selfless motherhood embedded in the republic of choice because, unlike in the abortion context, women's refusal to be blackmailed out of their ambitions can be framed as an expression of their commitment to children and their entitlement to equality with men, rather than as a selfish decision to throw children to the wind.

⁴⁰⁴ This phrase is from Judy Roseman, *Confiscate the Gender Advantage*, L.A. Times, Apr. 1, 1989, at 8.

CONCLUSION:

THE RADICAL FUTURE OF LIBERAL FEMINISM

If all of the mommies and daddies could play by the same rules, what a difference that would make. Now the rules are unfair. Those willing to abandon children and spouse get a different track [Those who don't] pay in the coin of money and status and advances.⁴⁰⁵

This Article attempts to reframe the basic imagery of family life. It questions the traditional image of a housewife supported by her husband, showing instead how the traditional husband is supported by a flow of domestic services from his wife. Shifting this basic paradigm is a way to address the systematic economic disadvantage marriage imposes upon mothers.⁴⁰⁶ Once women are freed from the ideology of choice, they can band together to imagine new worlds in which individual women do not feel trapped, in which children's needs are not pitted against adults' plans for self-development, but rather are viewed as central to our mission as a society.⁴⁰⁷

Underlying this approach is the premise that the term "choice" does not merely identify some preexisting inner psychological state, but rather states a conclusion about social responsibility. Choice rhetoric entails a strategic decision to focus attention on a realm of "free" choice rather than on the constraints within which those choices occur. Choice rhetoric is not appropriate where patterns of individual behavior follow largely unacknowledged gender norms that operate to disempower women.

This attitude towards rhetoric reflects the belief that language does not merely reflect preexisting truths, but rather encapsulates particular, situated perspectives, each of which brings some elements of the visual field into sharp focus at the expense of blurring others. Often the selection of rhetoric is unconscious; I have explored the reasons why feminists should be more conscious of their use of rhetoric in the context of abortion and work/family conflict. If, as I have argued, the liberal language of autonomy has a tendency to divide women, feminists may need to

⁴⁰⁵ Donna Schaper & Warren Goldstein, Consequences of the "Daddy Track," *Christian Sci. Monitor*, June 16, 1989, at 18.

⁴⁰⁶ See text accompanying notes 217-20, 252-58 *supra*.

⁴⁰⁷ As able scholars have noted, the role of litigation in this transformation will be severely limited by the fact that Title VII in effect offers equality only for women who conform to the male model of ideal worker with no child-care responsibilities. See Abrams, *supra* note 203, at 1226-33; Patricia A. Cain, *Feminism and the Limits of Equality*, 24 *Ga. L. Rev.* 824-25 (1990); Dowd, *Gender Paradox*, *supra* note 203, at 81, 135-71, and sources therein; Mary Ann Mason, *Motherhood v. Equal Treatment*, 29 *J. Fam. Law* 1, 31 (1990-91). For an innovative argument that employers should be held liable under Title VII because they contribute to the formation of worker's preferences, see Schultz, *supra* note 245, at 1815-43.

increase their sense of the strategic in the context of other issues as well. Because of the predominance of the liberal language within the law, this is a particularly pressing problem for feminist jurisprudence.

Also pressing is the central problem underlying both the abortion debate and the continuing controversies over “working mothers.” We are involved in a national showdown over parenting, and the male voice is winning out.⁴⁰⁸ This is expressed in the common assumption that child care is the solution to work/family conflict. Child care must play a vital role, but it is not the full solution. Rather, the solution lies in our ability to pretend—just for a moment—that a responsible parent, *male or female*, is one whose work life enables him or her to meet nondelegable children’s needs without demanding that the child’s other parent carry a disproportionate burden of the child’s parenting, at the cost of his or her access to the conventional paths to societal recognition, accomplishment, and self-development.

This recognition truly would be a gender revolution, for it would require men to structure their identities less in terms of work and women to disaggregate the “traditional” mothering role into its various components. These facets include daily care as well as emotional work, the maintenance of social relationships, volunteer work designed to benefit the children at school—the list is long and complex. Rethinking motherhood will require us not only to rethink who we are as women, but also to challenge the gendered structure of wage labor. Such a project would mobilize the “danger” in the dangerous supplement of domesticity, since the only way to eliminate the need for selflessness from mothers is to change the definition of self-interest for others, so that self-interest (should we keep the word) includes much more attention to affiliative and communal needs than the traditional liberal model suggests.

This, as Zillah Eisenstein said long ago, is the radical future of liberal feminism.⁴⁰⁹ The beauty of using the work/family conflict as a deep challenge to self-interest is that it allows women to launch the challenge by championing the needs of children. It offers the opportunity to turn what is valuable about domesticity—its critique of self-interest—against its destructive insistence of the selflessness of women.

⁴⁰⁸ By the male voice I mean norms framed around traditionally male life patterns.

⁴⁰⁹ See Zillah R. Eisenstein, *The Radical Future of Liberal Feminism* 201-48 (1981).