

Can a woman really be “free” if she’s putting family first? Should the government “free” her?

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Briefs

I have noticed a critical mass of scholars and policymakers suggesting lately that if mothers of minority- aged children (under 18) *really* felt free to choose their work/home “balance,” they would choose to work outside the home for more hours than they are presently working. Consequently, this argument continues, the government might have to step in to give them what they really want by means of some combination of laws and policies pushing and pulling them out of the kitchen and into the office, factory, etc.

This position tends to include the point that it’s bad for a society to fail to include women in important policy making positions and institutions. Thus, corporate boards, political bodies, and other large social institutions must be opened up to women, perhaps even with a goal of 50/50 representation. One country, Norway, has even mandated by law that large companies’ corporate boards contain at least 40% female membership. (See, Pilita Clark, *Europe's Top 25: The Accidental Feminist*, *Fin. Times Weekend Mag.*, Oct. 15, 2005, at 38; Although this proved very difficult or impossible for Norwegian companies to meet, even after years of trying. See Kristina Geraghty, *Taming the Paper Tiger: A Comparative Approach to Reforming Japanese Gender Equality Laws*, 41 *Cornell Int’l L. J.* 503, 536 (2008)). The argument for affirmative action toward inclusion hold that if women are not part of the leadership of all important social institutions, these will only fail to incorporate women’s particular insights, to the detriment of society.

It is further suggested that certain unfair prejudices and outcomes will not be quashed for good, unless women move into traditionally male occupations. First, the household labor that women disproportionately do (as compared with men) is unpaid. It is not even recognized for purposes of earning her social welfare payments (in the U.S., this would be social security). Only work outside the home earns social security credits, not to mention a higher level of public respect. It has also been suggested that it is possible that precisely because women are seen to be suited for caregiving-type work (e.g. nurses, teachers, childcare providers), this type of work is underpaid relative to jobs typically held by men. By this reasoning, were more men to perform caregiving-type jobs, this work would attract better remuneration.

One Australian Sex Discrimination Commissioner even suggested to the government that society needs to move more mothers into the paid labor force in order to justify the social “investment” being made into providing women higher education. (See Elizabeth Broderick, *Paid Maternity Leave: A Vital Economic Asset to Australia* at www.hreoc.gov.au/about/media/media_release/20008/119_08.html)



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How do those who perceive this problem propose to solve it? Clearly, they do not believe that legally mandating “equal opportunity” (also known as gender-neutral opportunity) is sufficient, for two primary reasons. First, because the laws providing such opportunity are too stingy. A primary example often used is the Family and Medical Leave Act. This federal law provides employees of certain-size companies the opportunity to take unpaid leave to help assist certain family members with medical and other needs. Critics charge that this law is insufficiently attractive and generous; it fails to assure workers that if they return to work full-time, they will be able adequately to care for their family needs. The leave is unpaid, the total leave-time is too short, and the conditions are too stringent.

A second complaint about the insufficiency of “equal opportunity” laws is that these leave untouched prevailing cultural messages that expect that women (not men) have the primary responsibility to bend their work lives to meet family demands.

If equal opportunity laws and policies are insufficient, what would work? For a long time, it has been proposed that men should simply pick up more domestic and childcare work. This is not a call for men to quit their jobs and stay home (though some do) in lieu of the mother. It is rather a call for men to increase the relatively low number of hours and minutes per week they devote to cleaning, cooking, etc. While the impact of this argument could be seen in statistics showing men’s increased domestic work from the 1970s through the 1990s, since that time, their contributions at home appear to have “plateaued” or even reversed a bit.

Another proposal involves luring women out of the home with the promise of more child care, courtesy of the federal and state governments. One scholar, Debbie Kaminer, believes that this is not only practically necessary, but necessary for “norm-changing.” That is, once it is seen that the government is willing to supply child care on a massive scale, women will feel less guilty about using it, and will be able to work outside the home for more hours. (Debbie Kaminer, *The Child Care Crisis and the Work-Family Conflict: A Policy Rationale for Federal*, 28 *Berkeley J. Emp. & Lab. L.* 495 (2007)). Apparently, such a strategy works. In Norway, which has very generous state-provided child care, 75 % of mothers with very young children are in the workforce (though many still work part-time) (Deborah J. Anthony, *The Hidden Harms of the Family and Medical Leave Act: Gender Neutral Versus Gender Equal*, 16 *Am. U.J. Gender Soc. Pol’y & L.* 459 (2007)).

One final proposal, often “veiled” and “nonspecific” for reasons you will immediately grasp, is to make laws which reach inside the home directly, to enforce a more equal distribution of housework and childcare as between the man and the woman. Susan Mueller Okin in her book *Justice, Gender and Family* was already making this proposal in 1989. Its intrusiveness acknowledged, but also deemed absolutely necessary in order to bring about real change in the extra-domestic, e.g. public, sphere. This reasoning is apparent in the language of a law review article urging that, “[A] revamping of gendered family life and the division of labor at home is necessary to afford women the full autonomy in the public sphere that men have enjoyed.” (Kristina Geraghty, *Taming the Paper Tiger: A Comparative Approach to Reforming Japanese Gender Equality Laws*, 41 *Cornell Int’l L. J.* at



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A willingness to enforce an egalitarian view in the home is also quite evident in the proposals emerging from March 2009 meeting of the United Nations' Commission on the Status of Women, which recommended: "measures to achieve equal sharing of work and parental responsibilities between women and men"; "policies and programmes (sic) to address stereotypical attitudes and behaviors"; and "measures to increase the participation of men in care-giving both within households and in care professions." (CSW Agreed Conclusions, 53rd Session, 2-13, March 2009). An example of what such policies might look like is Norway's 2007 law which shortens parents' legally provided post-birth leaves if the father does not share in the childcare. Specifically, if the father does not leave work to care for the newborn, the parents' leave is one month shorter. (Working Environment Act, § 12-5(1)).

How does one respond to this argument, which is itself a mixture of the good and the downright frightening. First, it is fair to observe that its proponents are correct that women's absence from important social and political institutions probably produces policies which fail adequately to reflect the values and insights with which women are gifted. In a document issued during then-Cardinal Ratzinger's time as prefect of the Congregation for the Doctrine of the Faith, the Church offered that women are "more immediately attuned" to certain values respecting human relationships and caring for the vulnerable." (On the Collaboration Between Men and Women in the Church and in the World, 14) Going further, John Paul II's Letter to Women used language such as "necessary," and "indispensable," to refer to women's representation in every social and political institution. (Letter to Women, 4) and argued that they should be compensated for their work in the home. Proponents are also undoubtedly correct that "caregiving" work is not sufficiently recognized as valuable, socially or financially.

It is also good to recognize discrimination when we see it, and to combat it. And to promote the greater involvement of fathers in family life. One sees in Japan today, for example, the very disturbing outcome of women refusing to marry and have children on the grounds that their husbands are culturally conditioned to work all-hours and to leave childcare nearly completely to their wives. Government policies seek to entice men to reverse this practice. (Blaine Harden, Japanese Women Shy from Dual Mommy Role, New York Times, Aug 28, 2008, A 8). These are policies easily endorsed on their face; they assist the family with a minimum of intrusion. The Holy See has also "call[ed] husbands and fathers to their family responsibilities." (See, e.g. Statement by head of Holy See Delegation to World Conference on Women (Beijing), Sept 5, 1995).

But there are serious problems with other aspects of the argument that women need a "push" into the work place. The evidence doesn't seem to support the conclusion that women are suffering from "false consciousness" regarding their decisions to take more responsibility at home. Reliable studies have shown, in fact, even significant percentages of women who work full-time would prefer to work part-time, but feel they cannot. The 2000 Survey of Marriage and Family Life reported that 18 % of married mothers would like to work full-time, 46% part-time



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and 36% to stay at home. Other surveys generally confirm these figures.

Furthermore, there is a good deal of evidence that women and men who conduct their relationships in the nature of balance sheets or exchange calculations, can expect less marital happiness, not more. (See W. Bradford Wilcox, *What's Love Got to Do With It? Equality, Equity, Commitment, and Women's Marital Quality*, 84 *Social Forces* 1321 (2006)). It appears rather that couples who pair commitment-mindedness with a disinclination to keep accounts, are the happiest and least likely to part. Some sociologists have surmised that this finding could help account for the greater tendency of cohabiting households (versus married) to fall apart. Cohabitants do not often live interdependently or with a long-horizon in mind. (See, e.g. Steven L. Nock, *Turn-Taking as Rational Behavior*, 27 *Soc. Sci. Res.* 235 (1998); Gary L. Hansen, *Moral Reasoning and the Marital Exchange Relationship*, 131 *The J. of Soc. Psych.* 71 (1990)).

Finally, it is noteworthy, that despite their observation that society gives too little value to caretaking, proponents of the "let's get women to work," mindset, don't regularly offer the solution of social policies which put a greater financial value upon caretaking. The Catholic Church explicitly and regularly proposes this strategy, in papal documents, and in the Holy See's interventions at the United Nations. One finds it in John Paul II's *Laborem Exercens*, and in *On the Collaboration of Men and Women* (paragraph 13: "Indeed, a just valuing of the work of women within the family is required. In this way, women who freely desire will be able to devote the totality of their time to the work of the household without being stigmatized by society or penalized financially"). It is regularly raised by Holy See representatives speaking at United Nations' events. (See, e.g. Statement by head of Holy See Delegation to World Conference on Women, (Beijing), Sept 5, 1995, supporting social assistance to women rearing children, and for recognition of the economic and social value of women's unremunerated work. See also Statement by H. E. Archbishop Celestino Migliore, Apostolic Nuncio, Perm Observer of the Holy See to the Economic and Social Council, 52d session of the Commission on the Status of Women, March 3, 2008, urging: "greater resources and more courageous policies to reward the socio-economic contributions of women within the home.") One proponent of moving more mothers toward the workplace has even argued against providing cash grants to stay-at-home mothers on the ground that such a policy would "rather show governmental support for a return to traditional gender roles," even if cash grants were also made available for out-of-home childcare (See, Debbie Kaminer, *The Child Care Crisis and the Work-Family Conflict: A Policy Rationale for Federal Legislation*, 28 *Berkeley J. Emp. & Lab. L.* 495 (2007)).

In the United States, historically, there have been two occasions on which legislation has been proposed to move women into the workplace. The first was during World War II when the men went overseas. The second is welfare legislation designed to ensure that single mothers have the means to support their children. There is no legislation on the immediate horizon today, which appears designed to move women more aggressively into the workforce as a matter of principle. But it is wise to remember that we often trail European style family law by several years,



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and that Europe is more advanced along this path. It is also wise to remember that a still-vocal strand of feminism believes that work at home, done often by women, is of intrinsically lesser value than paid labor. Yet on its face, this message – which is still loudly communicated to mothers in the United States -- contradicts an essential truth at the heart of Christianity: that the work of loving another human being, particularly “those we are given,” our very nearest neighbors, is the most important work performed by human persons during their lives.

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