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BOOK REVIEW

Susan B. Boyd, Dorothy E. Chunn, Fiona Kelly and Wanda Wieggers, *Autonomous Motherhood? A Socio-Legal Study of Choice and Constraint* (Toronto: University of Toronto Press, 2015).

Brenda Cossman*

Autonomous Motherhood? A Socio-legal Study of Choice and Constraint,¹ by Susan Boyd, Dorothy Chunn, Fiona Kelly, and Wanda Wieggers, explores the evolving social and legal context of women who have made the decision to parent without a partner. The authors argue that although these single mothers now have more economic and social freedom to parent alone, they still confront a socio-legal context that challenges their choices. *Autonomous Motherhood* is an important contribution to feminist and socio-legal literature. As the authors note, although there is a scholarly tradition of studying women who became single mothers by separation, divorce, or death of an intimate partner, there is a dearth of scholarship on women who have become single mothers by choice. The book investigates the social and legal changes in the ways in which these single mothers have been treated. Deploying a range of disciplinary methodologies—legal, historical, and sociological—the authors gather empirical evidence through legislative histories, case-law analysis, and interviews. The result is a rich interdisciplinary socio-legal study of the choices and constraints that have faced

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¹ Susan B. Boyd, Dorothy E. Chunn, Fiona Kelly and Wanda Wieggers *Autonomous Motherhood? A Socio-legal Study of Choice and Constraint* (Toronto: University of Toronto Press, 2015).

women who choose to parent alone.

Interestingly, the authors choose to present their work as a co-authored book, rather than an edited collection, even though each of the authors takes a lead role in specific chapters. It works; the book is beautifully cohesive. Each chapter builds on the ones before, with themes seamlessly integrated, telling a theoretically complex and nuanced story of choice and constraints. Each of the four authors—leading feminist socio-legal scholars in Canada and beyond—bring their unique perspectives and strengths to *Autonomous Motherhood*, which combines theoretical sophistication, rigorous legal analysis, rich historical detail, and compelling sociological interviews. The book reads as a paragon of feminist collaboration, where the whole is more than the sum of its parts.

The first chapter on “Motherhood, Autonomy, Choice, and Constraint,” for which Susan Boyd was the primary author, provides the introduction to the study, setting out the key theoretical and methodological objectives and approaches of the book. The authors situate their study within the tradition of feminist critical socio-legal studies. Their goal in tracing the transformations in the treatment of single mothers is twofold: to demonstrate both women’s increased choices since the 1970s and the constraints on those choices. The authors situate the constraints squarely within the rise of the neo-liberal state, emphasizing the themes of individual choice, private responsibility for social reproduction, and formal equality. They situate their approach to the concepts of “choice” and “autonomy” within feminist relational theory, which rejects liberal individualism in favour of an understanding of autonomy as constrained and constructed.² The chapter provides a brief review of the changing

² The authors rely here on feminist relational scholarship such as Jennifer Nedelsky, *Law’s Relations: A Relational Theory of Self, Autonomy and Law* (Oxford: Oxford University Press, 2011); Sumi Madhok, Anne Phillips & Kalpana Wilson, eds, *Gender, Agency, and Coercion* (Houndmills, Basingstoke, Hampshire: Palgrave MacMillan UK, 2013);

legal and demographic landscape of women who choose to be parents without a partner, setting the stage for the chapters that follow.

The next three chapters explore various historical transformations in the legal regulation of single women who choose to parent without a partner. The second chapter, “Autonomous Mothers and the Emergence of Unmarried Fathers’ Rights to Access and Custody,” of which Wanda Wiegers was the primary author, traces the history of custody and access disputes over children born to single mothers. It first examines the status of unmarried fathers and mothers to apply for custody and access, beginning with the common law, through the legislative reforms in the nineteenth and twentieth century, up to the 1970s. The second part explores how the courts assessed the applications in relation to prevailing concepts of the child’s best interests. The chapter shows the shifts in the legal treatment of unmarried fathers, from virtually invisible in the 1950s towards “almost a presumption of equal parenting” beginning in the 1990s.

The third chapter, “A Person is the Child of his Natural Parents: Illegitimacy, Law Reform, and Maternal Autonomy,” with Susan Boyd again as the primary author, focuses more specifically on the legislative history of illegitimacy and its abolition. It begins with a focus on the history of financial support obligations and then shifts to analyze the discourses of law reform abolishing or minimizing the impact of illegitimacy. The chapter does an exemplary job of demonstrating the contradictory effects of law: while removing the stigma of illegitimacy from the children and its moralistic regulation of women, the reforms also witnessed a greater focus on biological fathers and facilitated their claims to custody and access. The

and Catriona Mackenzie & Natalie Stoljar, eds, *Relational Autonomy: Feminist Perspectives on Autonomy, Agency and the Social Self* (New York: Oxford University Press, 2000).

growing emphasis on formal equality between biological mothers and fathers would create new constraints on women's abilities to parent autonomously.

Chapter Four, entitled "Custody and Access Disputes between Unmarried, Non-Cohabiting Biological Parents 1945 – 2009," with Wanda Wiegers as the primary author, picks up on the trajectory of the previous chapters and focuses attention on the case law. The chapter studied 154 cases from four provinces: British Columbia, Saskatchewan, Ontario, and Nova Scotia. It finds that in all provinces except Nova Scotia, mothers received sole custody more often than men, consistent with the trends for married parents. However, the number of successful custody and access claims by unmarried fathers increased over time, particularly in the 1990s and 2000s. The chapter then highlights the factors that seemed to be particularly significant in the judicial assessment of a child's best interests in the context of unmarried and non-cohabiting parents, including the importance of a relationship with the biological father. Increasingly, the courts have enhanced fathers' claims, emphasizing a child's right to know his or her father and develop a relationship with him. As the authors argue, this has come at a cost to women who wish to parent autonomously; their choices are constrained as they must now often accommodate, negotiate, and facilitate the ongoing involvement of fathers.

The next two chapters change methodological direction, presenting results from interviews with single mothers. Chapter Five, "Women's Experiences Of Autonomous Motherhood, 1965 – 2010: An Historical Snapshot," with Dorothy Chunn as the lead author, focuses on women who chose to become single mothers between 1960 and 1980. As the authors note, there has been little research on this cohort of autonomous mothers, and this chapter seeks to begin to fill this knowledge gap. The interviews sought to elicit the women's views on the social, economic, and legal impact of their choice to parent alone and their own ideas on the meaning of

choice. The chapter organizes the results of the interviews along three axes: reproductive autonomy, social reproduction, and formal equality, each against the backdrop of the emergent neo-liberal state. The authors argue that although the women saw themselves as exercising autonomy in their choice to become single mothers, they faced significant challenges in terms of the on-going privatization of the costs of social reproduction as well as the internalization of some more traditional norms of familial ideology. The argument is one that is weaved throughout the book—that although women may now face fewer challenges than in earlier periods, obstacles remain: “we should not automatically conflate historical differences with either progress or regression. Women who choose autonomous motherhood today may confront fewer overt obstacles and discrimination than their predecessors, but in some way, they face both old and new roadblocks to making this choice.”³

Chapter Six, “Autonomous from the Start: The Narratives of Single Mothers by Choice,” with Fiona Kelly as the primary author, then presents the results of interviews with women who identify as Single Mothers by Choice (“SMCs”). The sample was small—only ten women were interviewed. Yet the qualitative results were rich and an important contribution to a largely under-researched area. The interviews focused on how the women made the decision to parent alone, their experiences of social or legal barriers to doing so, and their experience of autonomous parenting more generally. The chapter is structured around a number of themes that emerged in the interviews: their entitlement to parent alone, their sense of personal responsibility for the costs of social reproduction, their experiences of the fertility industry, their views on the importance of biological family, and the challenges presented by the legal system. The overarching theme of the book is again woven through the chapter: although women have more choices to become single mothers, they continue to face constraints and obstacles to their autonomy.

³ Boyd et al, *supra* note 1 at 140.

The book concludes with “Whither Autonomous Motherhood? Choice and Constraint,” with Susan Boyd once again as the main author, who skillfully pulls together the findings and themes, while offering some speculations on recent law reform and directions for future research. The authors persuasively rearticulate their basic argument: that single motherhood has been both enabled and constrained over the past decades. On one hand:

The ability of women to exercise choice in motherhood has been significantly enhanced over recent decades as illegitimacy was largely abolished, women gained increased opportunities in the labour force, alternative family forms garnered greater social and legal acceptance, reproductive technologies became more available, and social networks emerged for single mothers by choice.⁴

Yet on the other hand, these choices remain constrained by a range of factors, including the increasing emphasis on the importance of biological fathers, dominant conceptions of family, and privatized social responsibility. In comparing the two cohorts of interviewees from Chapters Five and Six, who chose to become single mothers in very different contexts and time periods, the authors conclude that “the change has not been as radical as might be expected.”⁵ From the internalization of the strong sense of personal financial responsibility to the challenges of reproductive technologies, “the commonalities between our two interview cohorts may be greater than their differences.”⁶

⁴ *Ibid* at 215–216.

⁵ *Ibid* at 217.

⁶ *Ibid* at 218.

The authors then further tease out the contradictory nature of law reform demonstrated by their study. While women obtained more legal and social autonomy over their reproductive decisions, over time “fathers have gained more cultural and legal capital, based increasingly on their bio-genetic status rather than a relational connection with the child.”⁷ The advent of formal equality in parenting has presented new and formidable challenges to the ability of women to parent autonomously.

Autonomy, Neo-liberalism, and Self-Governance

Autonomous Motherhood raises provocative questions not only about the legal and social terrain in which single women negotiate parenthood but also broader theoretical questions. In this section, I engage with three concepts that emerge from the study: autonomy, neo-liberalism, and self-governance. The first two are central to the book; the third is a lens that I bring to reading the book.

First, autonomy—which is a central organizing principle of the book. The idea of “autonomous motherhood” is intended to capture the phenomenon of women who choose to have children—biologically or by adoption—with no partner. The authors engage in a nuanced analysis, framing the question of autonomous motherhood in the ambivalent space between choice and coercion. They locate their conception of autonomy within the feminist literature on relational autonomy. While recognizing the agency of these women—and the choices that they make to parent alone—these choices are contextualized within the broader context of unequal power relationships, institutions, ideologies, and structures. The authors maintain a productive tension between choice and constraint, with the idea of autonomy vacillating between the poles of choice and constraint.

⁷ *Ibid* at 219.

As a feminist and queer scholar long concerned with principles of liberty and freedom, I welcomed the affirmation of women's autonomy with which the book opened and is centrally concerned. Yet autonomy—"Autonomous Motherhood?"—remains framed as a question. The authors maintain an ambivalent relationship with autonomy and choice throughout the book. Often "choice" or "autonomy" appear in quotation marks. The language of choice used and indeed emphasized by the women in their interviews is problematized against the backdrop of the many constraints and obstacles that they confronted. It is of course an academic imperative to probe beneath the surface; yet the extent to which the authors do so seems to depend on what the subjects were expressing. Choice was problematized. Constraints, rather less so. The authors conclude that women now have more autonomy, yet they also downplay the progress, arguing that the commonalities of the constraints may outweigh the differences in the degree to which the women are able to exercise autonomy. The final chapter is interestingly entitled "Whither Autonomy?"—once again, framed as a question. It struck me as interesting that the lead would be about withering, rather than say, flourishing. While the book certainly demonstrates the continuation of structural inequalities within which women exercise choices to become single parents, the findings equally support a conclusion that these constraints are less than in the past—a conclusion that the authors indeed acknowledge and affirm. It is perhaps simply a question of emphasis. And my inclination would be to weight the enhanced a little more and the constrained a little less.

Having said that, *Autonomous Motherhood* provides a fascinating case study for feminist and other critical scholars interested in reconceptualizing autonomy. While the authors emphasize the relational dimensions of autonomy, further scholarship could delve deeper into more particular conceptualizations of relational autonomy revealed in and through their study. For example, Mackenzie and Stoljar, whom the authors

cite, have meticulously mapped out the field of the multiple feminist critiques of autonomy.⁸ As they write,

The term "relational autonomy," as we understand it, does not refer to a single unified conception of autonomy but is rather an umbrella term, designating a range of related perspectives. These perspectives are premised on a shared conviction, the conviction that persons are socially embedded and that agents' identities are formed within the context of social relationships and shaped by a complex of intersecting social determinants, such as race, class, gender, and ethnicity.⁹

Autonomous Motherhood certainly shares these basic convictions of autonomy as embedded in social relationships: autonomy is constituted in and through social relationships. Yet, as Mackenzie and Stoljar demonstrate, there are in fact many divergent critiques and conceptions of relational autonomy united under this basic claim. Several appear to be at play in *Autonomous Motherhood*. There are echoes of the metaphysical relational critique that rejects the individualism on which traditional autonomy is based, insisting instead on the multiple ways in which individuals are "constituted by the social relations in which they stand."¹⁰ There is an explicit gesture towards care critiques, such as Jennifer Nedelsky's work: a care critique of traditional autonomy that gives normative primacy to relationships of care and focuses on

⁸ Mackenzie & Stoljar, *supra* note 2.

⁹ *Ibid* at 4.

¹⁰ *Ibid* at 7–8. Mackenzie and Stoljar break down various versions of this critique, ultimately arguing that "the concept of individual autonomy should be distinguished from individualistic conceptions of individual autonomy."

interpersonal relationships.¹¹ The authors repeatedly emphasize the idea that “relationships are key to women’s choices about being single mothers,” and “constructive supportive relationships are key to successful parenting.”¹² There is also a heavy reliance on what Mackenzie and Stoljar refer to loosely (and somewhat awkwardly) as “postmodern critiques,” which focus on the ways in which agency is implicated in relations of power and oppression. *Autonomous Motherhood* is very explicitly engaged with the ways in which “socio-economic structures . . . can seriously inhibit women’s ability to make autonomous choices.”¹³

Mackenzie and Stoljar go on to highlight the major themes of feminist efforts to reconceptualize relational autonomy. First, there is a question of the implications for autonomy of a “richer conception of agency:”

For example, conceptualizing agents as emotional, embodied, desiring, creative, and feeling, as well as rational, creatures highlights the importance to autonomy of features of agents that have received little discussion in the literature, such as memory, imagination, and emotional dispositions and attitudes.¹⁴

A second concern is the analysis of the “specific ways in which oppressive socialization and oppressive social relationships can impede autonomous agency”—a question of central concern to *Autonomous Motherhood*.¹⁵ But they further break this concern into

¹¹ Nedelsky, *supra* note 2.

¹² Boyd et al, *supra* note 1 at 213.

¹³ *Ibid* at 21.

¹⁴ Mackenzie & Stoljar, *supra* note 2 at 21.

¹⁵ *Ibid* at 22.

three interrelated levels:

...the processes of formation of an agent's desires, beliefs, and emotional attitudes, including beliefs and attitudes about herself. . . . The second level is that of the development of the competencies and capacities necessary for autonomy, including capacities for self-reflection, self-direction, and self-knowledge. . . . The third level is that of an agent's ability to act on autonomous desires or to make autonomous choices. Autonomy can be impeded at this level not just by overt restrictions on agents' freedom but also by social norms, institutions, practices, and relationships that effectively limit the range of significant options available to them."¹⁶

Autonomous Motherhood is clearly, if not always explicitly, situated within these various levels of reconceptualizing autonomy. It might be analytically productive to further tease out the different currents of the critique of autonomy and the reconceptualization of relational autonomy along the lines suggested by MacKenzie and Stoljar. While *Autonomous Motherhood* is strong on many of the oppressive social relationships that might impede autonomy, the formation of autonomous desires and capacities for self-direction seem under-developed in the book.

MacKenzie and Stoljar's mapping also helps to highlight another noticeable absence from *Autonomous Motherhood*, namely the question of affect: emotions and subjectively experienced feelings. The absence is ironic perhaps in a study of motherhood, saturated as it is in emotionalism. There is no sense of affect of the mothers interviewed, yet affect no doubt plays a crucial role in decisions related to having, keeping, parenting, and reflecting on

¹⁶ *Ibid.*

children. And the question of the formation of affect, the capacity for self-reflection on affect, and the ability to act on that affect are three levels for further consideration of the relational autonomy of women who choose to parent alone. *Autonomous Motherhood* provides a rich legal and sociological case study through which future scholarship might delve more deeply into these distinct questions of relational autonomy.

The concept of neo-liberalism is also a central theme running through *Autonomous Motherhood*. “Neo-liberalism” has become a capacious term, with multiple, even contradictory, meanings, deployed across a broad range of political, economic, sociological, and legal literatures. The authors deploy the term without much contextualization. It appears in the opening chapter and then throughout the book to refer to privatizing financial responsibility, individual responsibility for the cost of reproduction, formal equality, and gender-neutral family law. While the idea of privatizing the costs of social reproduction and individual fiscal responsibility are well-established features of the rise of the neo-liberal state, some other features could have used a bit more elaboration. For example, the authors describe father’s rights arguments about parity in parenting as “essentially neo-liberal.” It may well be—but the claim is asserted rather than elaborated.

There is also an interesting tension in the arguments about the privatization of fiscal responsibility since the 1970s—an argument I acknowledge has been directed towards my own scholarship on privatization in family law.¹⁷ Shelley Gavigan, for example, has

¹⁷ For this critique of my work on privatization: Brenda Cossman and Judy Fudge, eds, *Privatization, Law and the Challenge of Feminism* (Toronto: University of Toronto Press, 2002), in particular my chapter “Family Feuds: Neo-Liberal and Neo-Conservative Visions of the Reprivatization Project”; see also Shelley Gavigan “Something Old, Something New? Rethorising Patriarch Relations and Privatization from the Outskirts of Family Law” (2012) 13 *Theor Inq L* 271.

argued that the claims of privatization radically overstate the extent to which the welfare state ever took responsibility for financial support: “The Keynesian approach to social policy and the family neither attempted nor sought to dislodge, or render public, the most significant source of women's poverty and inequality in the labor force: their primary responsibility for the care and wellbeing of their children. . . . Primary responsibility for "private" family relations has *never not* been located within the family—discursively or otherwise.”¹⁸ While I do not entirely agree with Gavigan’s dismissal of the analytic purchase of reprivatization, her critique does suggest that those of us deploying the concept need to be more cautious in not overstating our claims.

While *Autonomous Motherhood* is very much within the tradition of scholarship claiming that the rise of the neo-liberal state involved a marked shift in the discourses of self-sufficiency and fiscal responsibility, there is also a way in which its arguments actually endorse a more modest claim. Some of the analysis in the early chapters downgrades the claim about privatization, in so far as it demonstrates the extent to which these costs of social reproduction have always been privatized. The authors note that before the advent of the welfare state, the state sought to privatize these costs and the social welfare state never fully socialized these costs. For example, the discussion of the Children of Unmarried Parents Acts in the 1920s, in Chapter Three, illustrates the privatizing impulse of the legislation:

The three provinces other than Nova Scotia focused on enabling individuals to bring suits against putative fathers to compensate for expenses that these individuals incurred in providing necessities to illegitimate children. Nova Scotia’s legislation was initially geared towards compensating the public

¹⁸ Gavigan, *supra* note 16 at 298.

authorities that bore the costs of illegitimacy by providing local governments a remedy against the father.¹⁹

With the rise of the welfare state, the ideologies of motherhood did allow for some limited “legitimate” forms of dependency for some women,²⁰ but the costs of social reproduction were never fully socialized.²¹ In the post-welfare neo-liberal state, there has certainly been a marked shift again, with the rise of new ideology of responsabilization and a rejection of the once-limited legitimate dependency. But, the recognition of the privatizing impulses of the state in earlier eras surveyed in *Autonomous Motherhood* is a reminder that those of us working on questions of privatization and family law in the neo-liberal era might be well advised to make our claims with more nuance and precision.

Neo-liberalism as a concept risks becoming both under- and over-explanatory. This is not to say that it is not or should not be a relevant analytic, but simply that we ought to take somewhat greater care in the deployment of a term that is at risk of becoming overly capacious. Indeed, in my reading of *Autonomous Motherhood*, I was struck by the potential relevance of a slightly different feature of neo-liberal governance—namely, its reliance on self-governance. Foucault’s work on governmentality described the technologies of the self as a form of governance “which permit the individual to

¹⁹ Boyd et al, *supra* note 1 at 64.

²⁰ See e.g. Nancy Fraser & Linda Gordon, "A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State" (Winter 1994) 19:2 *Signs* 309.

²¹ Gavigan, *supra* note 16. See also Shelley A.M. Gavigan & Dorothy E. Chunn, “From Mother’s Allowance to Mothers Need Not Apply: Canadian Welfare Law as Liberal and Neo-Liberal Reform” (2007) 45 *Osgoode Hall LJ* 733.

effect by their own means or with the help of others a number of operations on their own bodies and souls, thoughts, conducts and way of being, so as to transform themselves in order to attain a certain happiness, purity, wisdom, perfection, or immortality.”²² Building on this concept of self-governance, governmentality scholars such as Nickolas Rose have argued that neo-liberalism deploys a distinctive form of governance that presupposes the freedom of the governed; indeed, according to Rose, freedom becomes the very terrain of the governance.²³

Admittedly, my own scholarship has taken a marked turn towards this concept of self-governance, and no doubt, like a hammer, I see everything as a self-governing nail.²⁴ Yet the insights of *Autonomous Motherhood* seem to be consistent with and supplemented by the idea that choice has become a central terrain of neo-liberal self-governance. Returning to the question of autonomy—so central to *Autonomous Motherhood*—I would place a slightly different emphasis on its role. The authors emphasize the extent to which these women do not question the assumptions of self-sufficiency, but internalize them. It is not that the single women in the study have simply been “absorbing” or “internalizing” the

²² Michel Foucault, “Technologies of the Self” in Luther H Martin, Huck Gutman & Patrick H Hutton, eds, *Technologies of the Self* (Amherst: University of Massachusetts Press, 1988) at 18.

²³ Nikolas Rose, *The Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999).

²⁴ See e.g. Brenda Cossman, *Sexual Citizens: The Legal and Cultural Regulation of Sex and Belonging* (Stanford, California: Stanford University Press, 2007); Brenda Cossman, “The ‘Opt Out Revolution’ and the Changing Narratives of Motherhood: Self Governing the Work/Family Conflict” (2009) Utah L Rev 455; Brenda Cossman “Anxiety Governance” (Fall 2013) 38 Law and Soc Inquiry 892.

discourse or ideologies of self-sufficiency; there is a passivity to the language that gestures towards an older feminist notion of false consciousness. Rather, I would cast their articulation of their experiences through the lens of neo-liberal self-governance, where agency, freedom, and choice have become the very terrain of governance itself. The women are making choices—as they strongly expressed. It may seem like I am quibbling with words—not so much constraints that are internalized—but rather actual agency that is being exercised, through the normativity of neo-liberal governance that demands responsibilization. Yet, for me, this self-governance lens allows us to take choice and agency seriously—these women are really making choices—yet also recognizing the extent to which choice has become a mechanism of governance. This is not so much a criticism of *Autonomous Motherhood* as a suggestion of some of the ways in which the book provides a rich basis for further scholarship on feminist agency, choice, and self-governance generally and on intimate, familial, and parenting relationships in particular.

None of my comments should be taken as detracting from my view that *Autonomous Motherhood* is a wonderful and welcome contribution to feminist socio-legal literature. It will be of broad interest to scholars of socio-legal feminism, feminist legal history, diversifying family and kinship forms, and critical legal studies. It is a model of collaborative scholarship, nuanced legal analysis complemented by empirical sociological research, and rich theoretical inquiry. As one of the first major studies of women who choose to parent alone, it raises provocative, timely, and important questions, and will provide the basis for future scholarship on single motherhood, relational autonomy, and legal regulation.