

THE AUTONOMY MYTH: A Theory of Dependency....Martha Albertson Fineman

Introduction

This book examines some of the core myths of American society as they are interwoven through political rhetoric and popular ideology at the beginning of the Twenty-first Century. One of its major premises is that our particular way of thinking about the desirability and attainability of autonomy for individuals and families has seriously limited the ways in which we think about equality. Ideas about individual autonomy and self-sufficiency create this limitation, as do corresponding institutional arrangements that support privatization and the market as an absolute good and governmental action and regulation as presumptively bad. One consequence of this has been the conceptual separation of the family from other societal institutions and the assignment to it of primary responsibility for the dependency of those who are not autonomous and independent.

Contrary to this trend, I argue for the adoption of an intergenerational and cross-institutional notion of collective responsibility for dependency. In doing so, I examine the rhetorical and ideological underpinnings of dominant American societal constructs, including how these concepts are played out in existing institutional relationships. My focus is primarily, though not exclusively, on the law and on legal constructions of society and its institutions. Law is one important manifestation of the state. In this book I conceive of the state as a complex of legal and institutional relationships that situate individuals, as well as complex societal organizations such as the family, in a coercive manner. In this regard, I look at theories that delineate the relationship between state and individual, as well as those that posit (or assume) an appropriate role for the state in regard to the regulation of concurrent societal institutions and arrangements, such as the market and the family.

Rejection of the idea that there is some collective responsibility for dependency is not surprising in a society such as ours. American political ideology offers, as icon, a construct of the autonomous individual and trusts the abstraction of an efficiency-seeking market as an ordering mechanism.¹ We have an historic and highly romanticized affair with the ideal of the private and the individual, as contrasted with the public and the collective, as the appropriate units of focus in determining social good.

After all, the very concept of the private defines the domain of the individual—an unregulated space where individual freedom reigns and in which each would-be-king can construct *his* castle. If a child is part of that private landscape, it is deemed a private matter, not the occasion for public subsidy or support.² Children are considered to be like any other item of consumption, a matter of individual preference and individual responsibility.

The idea that the private is generally preferable as a means of responding to need and dependency has become more and more firmly enmeshed with our sense of social justice during the past few decades—informing the unwritten “social contract” that guides and gauges the relationship among individuals, societal institutions and the state. As it evolves, what may be referred to as a distinctively American version of the social contract seems to be expanding along the private axis.

Privatization is increasingly seen as the solution to complicated social problems

1. This attack is epitomized by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which limited aid to families in poverty in order to “end the dependence of needy parents.” Pub. L. No. 104-193, §401(a)(2), 110 Stat. 2105 (1996). *See also* ELINOR BURKETT, *THE BABY BOON* (Free Press 2000) (arguing that childless workers are stigmatized and exploited, in order to accommodate parents in the workplace). For a discussion of Burkett’s book, *see* Andrew Hacker, *The Case Against Kids*, *THE NEW YORK REVIEW OF BOOKS*, Nov. 30, 2000, at 12.

² Not all children are viewed as presumptively private. As documented in *The Neutered Mother*, children are a matter of public concern when they are located in public (as contrasted with private) families – families that are poor, thus not self-sufficient or defective in form, such as headed by a single mother. These families are subjected to regulation and control because of the public interest in the children within them who are deemed endangered by their family’s non-conformity to societal norms in regard to marriage and financial stability.

reflecting persistent inequality and poverty.³ The rhetoric surrounding many current policy debates urges previously public concerns to be transferred to the magic realm of the private solution. From welfare reform to the construction of ideal educational or prison systems, the assertion is that the private market can better address historic public issues than can the public government.

My argument in this book is a mirror image of such arguments about the perceived advantages of the private sector taking over tasks historically located within the public sphere. I am arguing for the assertion of collective or public responsibility for dependency—a status or condition that has historically been deemed appropriately assigned to the private sphere.

The theory of dependency I set forth develops a claim of “right” or entitlement to support and accommodation from the state and its institutions on the part of caretakers – those who care for dependents. Their labor should be treated as equally productive even if unwaged, measured by its societal value, not by economic or market indicators. The fact that dependency work has been un- or under-valued in the market is an argument *for* governmental intervention and restructuring to mandate adjustment and market accommodation, as well as more direct reparations.

SECTION I: FOUNDATIONAL MYTHS AND DEPENDENCY AND SOCIAL DEBT

Chapter One develops the idea of foundational American myths, particularly political myths. It looks at the myth of autonomy in the United States with its attendant ideals of independence and self-sufficiency. I am particularly interested in the role the autonomy myth plays in political and popular rhetoric, as well as in national ideology. In these discourses,

³.See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §408(a)(5), 110 Stat. 2105 (seeking to “solve” teenage parenting concerns by requiring denial of public assistance to teenage parents unless they live with their parents -- in other words, sending them back to their families).

autonomy is understood in very narrow terms, linked to economic self-sufficiency and a sense of separation from others in society. I discuss how this conception of autonomy places it in conflict with a full substantive sense of equality – equality that would guarantee more than mere sameness of treatment or opportunity and access.

A discussion of autonomy as being in opposition to a fuller sense of equality is important. The rhetorical and ideological rigidity with which contemporary policy debates have been conducted makes it particularly difficult to assert the claim of any collective responsibility to assure at least a minimal standard of economic and material equality for all citizens. This difficulty is illustrated most clearly in the struggle over welfare payments to poor mothers and children. In those debates, the core components of America's founding myths, such as the sacredness of autonomy and individual responsibility, were reflected in simplistic notions of individual independence and self-sufficiency. These notions have become mantras for many, ossified and used as substitutes for analysis, eclipsing rather than illuminating debate.

Chapter Two proceeds from the assumption that we must complicate the way we think about some of the basic concepts that have been effectively employed in recent political maneuvers to undermine the comparatively minimal guarantee of a social safety net for the poor and dependent in the United States. In this regard, I challenge the rhetoric that creates dichotomous pairs of desirable versus stigmatized positions, such as independence/dependence and self-sufficiency/subsidy.

In place of such simplistic and inaccurate characterizations, Chapter Two presents a theory that understand dependency as both universal and inevitable – all of us were dependent as children and many of us will become dependent as we age. These characteristics of universality and inevitability support an argument for the reallocation of responsibility for dependency across

societal institutions, away from primary reliance on the family. Such a reallocation is essential if equality is to be realized. In this theory, dependency is not appropriately conceived of as in competition and incompatible with the ideal of equality – dependency is merely one of the human and societal circumstances that must be addressed as part of achieving equality.

This theory of universal dependence encapsulates the notion that subsidy is also universal -- we all live subsidized lives – as well as the idea that subsidies come in many different forms. Yet, not all subsidies are labeled as such. Specifically, I argue that in addition to more traditional subsidies, such as those supplied by the tax code, caretakers provide a subsidy to the larger society and its institutions. Far from being independent, the state and the market institutions that it protects and fosters, are dependent on the caretaking labor that reproduces society and populates its institutions.

Caretaking thus creates a “social debt,” a debt that must be paid according to principles of equality that demand those receiving social benefits also share the costs when they are able. Far from exemplifying equal responsibility for dependency, however, our market institutions are “free-riders,” appropriating the labor of the caretaker for their own purposes.

SECTION II: INSTITUTIONALIZING AUTONOMY – THE MARITAL FAMILY AS SOCIAL POLICY AND POLITICAL IDEOLOGY

The Introduction to Section II sets out the traditional “separate spheres” understanding of society within legal discourse in which the family is positioned as a unique and private arena. I argue that this is an incorrect and unsustainable conception. The family is contained within the larger society and its contours are defined as an institution by law. Far from being separate and private, the family interacts with and is acted upon by other societal institutions. I suggest the relationship is not one of separation, but symbiosis. It is very important to understand the roles

assigned to the family in society – roles that otherwise might have to be played by other institutions, such as the market or the state.

Chapter Three examines the family in the rhetoric of those policy proponents who are concerned with the future of civil society in the United States. This Chapter presents a case study in the treatment of family matters. Marriage is considered central to the concept of family and family is perceived of as the foundation of society. Civil societarians argue for policies that promote marriage, a position that is increasingly popular among diverse sets of groups. I examine these arguments and their bases, concluding that the most telling aspect of these theories is what is left out – the growing inequality in access to resources that has increasingly characterized American society over the past several decades. Blaming the plight of children on their parents' marital status without seriously considering how governmental and employer actions (or lack thereof) contribute to and compound that plight is just bad policy analysis.

Chapter Four looks at marriage as a societal institution, asking what it means to individuals as well as to society. There are many reasons that individuals may marry, and historically the state has also had a catalogue of justifications for its regulation and for the privileging of the institution. I argue that in a diverse and secular society, it is impermissible for the state to privilege one form of sexual affiliation over others, thus making marriage the core connection in the institution of the family.

This Chapter also considers the significance of the fact that the state imposes responsibility for dependency on the family, as developed in Chapter Two. If we want our families to shoulder responsibility for dependency then we must directly look at that task and build policy to foster and facilitate caretaking. Certainly, we should not be creating policy directed to and organized around marriage. Census figures and other statistics clearly indicate

that both sex and reproduction are no longer confined to marriage. People are forming all sorts of intimate entities. Why create policies based on a seriously weakened family affiliation – the marital couple, when it is really caretaking we as a society should want to ensure? Society has a responsibility to adjust to these changing patterns of behavior by guaranteeing that the emerging family forms are supported in performing the tasks we would have them assume.

SECTION III: FEMINIST CRITIQUE – AUTONOMY WITHIN THE FAMILY AND THE ASPIRATION TOWARD EQUALITY

Chapters Five and Six present feminist critiques of the family, as well as a critique of feminists who either ignore or minimize the role of the family in their theorizing. Feminists have paid particular attention to the institution of marriage and the roles of husband and wife, but they typically assume that the family can easily be transformed so as to achieve equality within it. Family issues tend to be analyzed as oppressive and in need of reform, so that women are able to act as equals in the workplace and other public aspects of life. The family reforms have been successful, at least on a rhetorical level, with law now gender-neutral and old assumptions, such as a maternal preference for custody of small children at divorce, impermissible.

The problem with many feminist analyses is that they have failed to realize the degree to which the possibility for the transformation of the family is dependant on corresponding radical and massive transformations of the workplace and accompanying ideological shifts that validate assumption of responsibility by the state in an unstigmatized manner. Women's aspirations for themselves have indeed been transformed, but these aspirations cannot be realized in the context of institutions that continue to assume that all workers are unencumbered individuals with no caretaking responsibilities and that the state is not responsible for regulation and amelioration of the excesses of the market and its institutions.

These Chapters argue that one problem with the privatization of dependency is the continuing unequal and gendered division of family labor, which burdens women more than men. Within the family there is a delegation of responsibility for dependency; caretaking has traditionally been and largely remains gendered work, assigned to those in the family roles of wife, mother, grandmother, sister, daughter, and daughter-in-law.

Of particular relevance to the debates about dependency are feminist attempts to show how the dichotomous concepts of public and private, which are reflected in the division of society into separate spheres, have significant political implications. These concepts represent more than mere labels; they have tremendous political and practical implications. They interact as ideological channels for the allocation of societal resources, including the resources of power and authority.

SECTION IV: SOCIAL CONTRACT AND SOCIETAL CHANGE

Designation of some institutions in legal discourse as “public,” while others are considered “private” has implications for the manner and method of state regulation and the perceived legitimacy of collective subsidy. These classifications also shape the contrasting norms of interaction and expectation within and between societal institutions that we designate as being part of either sphere. I discuss this interaction in Chapter Seven through the lens of social contract theory.

The social “contract” is a metaphor for consent of the governed – the idea that people have consented to the current arrangement of the government and its regulation of and relationship to other societal institutions. This fiction of a social contract implies that the current situation is fair, because autonomous individual members of society implicitly agree to it through their participation in that society.

Using the concept of social contract allows me to introduce the idea of social change and the importance of background conditions to our assumptions about the status quo. I argue that the basic institutions of society – family, market, and state -- have changed to such a degree that we can no longer believe in either the fairness or the successfulness of existing arrangements in which the family is designated as the primary repository for dependency.

Chapter Eight links the changes already discussed in regard to the family to the transformations in the workplace that have taken place over the past several decades. This Chapter describes the much more tenuous employment relationship that now exists in the United States. The degree of change in family and work calls into question the historic terms of the social contract and mandates that it be revised, with the state and the market assigned some share of responsibility for dependency and caretaking.

REVITALIZING THE STATE: AGAINST PRIVATIZATION; FOR PRIVACY

Chapter Nine turns to the need for a responsive state to address the dilemmas presented by the changes in other institutions in regard to dependency. In this Chapter, I address the state in its relation to societal institutions as well as the individual. Defining the appropriate relationship among the State, societal institutions, and individual citizens is important for several reasons.

In the first instance, American foundational documents, such as the Constitution are understood as conferring limits on State authority, serving to establish a space for citizen freedom and autonomy. This dimension of the relationship of the state to the individual is of particular relevance in today's political climate in which many are suspicious of governmental intervention into private matters.

The rhetoric of economics, which is increasingly the language of government and policymaking, warns us that society and its market institutions operate efficiently only when unregulated individuals are free to act to maximize their interests. Competition produces the best results for all, as the inefficient and, therefore, “inferior” are swept away in a free market free-for-all.

But there are also affirmative aspects to the historic relationship between state and individual – protections offered by the state against arbitrary actions on the part of governments and fellow citizens in some contexts. Theories about law and justice compete with “scientific” economic concepts in an effort to establish guidelines for assessing which formal governmental actions affecting individual behavior, may be condemned as inappropriate intervention, as contrasted with necessary regulation, which may be tolerated as providing a necessary corrective to a sometimes harsh, unfettered free market.

Unfortunately, the political and governmental institutions that should be facilitating and encouraging debate and reconsideration have been stalled in partisan and polarizing rhetoric. The methods and tactics they employ are actually impeding understanding and exploration. A new understanding of autonomy would enable us appropriately and fairly to assign responsibility for dependency in a way that promotes substantive equality.

However, it is not enough for the responsiveness of the state to come only in the form of policy directives and regulatory measures. The state must also assume responsibility for the creation of structures where truly democratic debate and deliberation can occur. An important concern articulating the idea of a collective responsibility for dependency, is the fear that the government may become too far reaching in its ability to impose the collective will over the rights of individuals – the prospect of collective control. Collective responsibility for

dependency should not concede to the collective the right of control over intimate decisions, such as whether and when to reproduce or how to form one's family. Chapter Ten of this book develops the idea of entity or family privacy. Family privacy currently works to shield individuals within the marital family from governmental supervision and regulation absent abusive or neglectful conduct. I argue for a "new" version of family privacy that would attach to the caretaker/dependent unit, freed from any dictates as to family form and based instead on caretaking function.

Pursuant to the goal of more equitably distributing the responsibility for dependency across societal institutions, the conclusion to the book presents a revisioning the individual family would no longer be viewed as the primary repository for dependency. The family would be joined by other societal institutions, which would also assume some of the responsibility for shouldering the burdens dependency entails. The critical question for policy makers and politicians then would center not on the goal of eliminating dependency (a futile objective), but on how to order society so that dependency needs are met and satisfied in a manner that is both "efficient," offering, in the economist's sense of that term, the greatest benefit and the least detriment to the largest group of persons, and "just," meaning that social costs and benefits are distributed with reference to individual and institutional actions and capabilities.

CHAPTER I – EXPLORING FOUNDATIONAL MYTHS

A DYSTOPIAN FANTASY

Imagine for a moment what changes to our society would have to be made in order to really foster our self-proclaimed national ideals of autonomy, independence, and self-sufficiency. This exercise is intended to focus attention, not on the subsidies received by “the other” -- the welfare mother or the homeless addict -- but on those, perhaps more subtle, advantages conferred on the rest of us. I contend that if we seriously want a world in which each individual is assumed to stand alone, to rise or fall on her or his individual merit, and be beholden to no one for her or his success, we must shape our policies so as to facilitate that model of society. As it stands now, we give lip service to these ideals in a world where policy and law protect and perpetuate existing and historic inequality, a world where some individuals are subsidized and supported in their “independence,” while others are left mired in poverty or burdened by responsibilities not equitably shared.

For example, a society that truly sought independence as an ideal for individuals should institute a 100 percent inheritance tax.¹ It seems obvious that inherited wealth carries with it the potential to corrupt individual initiative. Not only do we risk removing incentive with inheritance, we also distort the meritocracy. People should not be deprived of the opportunity to rise above the mediocre masses, demonstrating their own inherent merit and worth, simply because they are burdened by the wealth of their

¹ Looking at inheritance practice from a comparative perspective can be useful. In the United Kingdom, the inheritance is taxed to the recipient and the estate is, therefore, “tax-free.” This would remove the kind of objections based on the idea that inheritance tax is a “death tax” that accompanied the recent reforms in the United States. Also of interest is the fact that the United States is virtually alone in not requiring a testator to leave a certain percentage to his or her children. We allow parents to disinherit their children, a practice considered “unnatural” (or at least bad social policy) in other industrialized democracies where there is a strong sense of intergenerational obligation and responsibility and less attention to individual autonomy and testamentary freedom.

fathers. We should provide an equal opportunity for everybody to live the American Dream, pulling themselves up by their own bootstraps. To do this, we must ensure that the laces are relatively equal in length and strength.

Of course, inherited wealth is not the only distorting factor that interferes with individual independence and the realization of a true meritocracy. There are also existing unequal economic and social advantages and it is unlikely that they will ever be totally eradicated within our capitalist system. I struggled with how to address this fact and concluded that a lottery system would be the most appropriate and just way to distribute social goods. This is not the same thing as imagining a society from behind a “veil of ignorance,” as does philosopher John Rawls, whose work is discussed in the Introduction to Section IV. Rawl’s veil is supposed to prevent the searcher for justice from knowing what characteristics he or she as a single rights claiming individual would possess, thus facilitating the creation and acceptance of a system in which justice is done abstractly for all individuals without regard to background and status. I think it is important, however, to directly confront the reality of privilege conferred by social contexts and mandate rotation of individuals into existing, known, and accepted inequalities in our society.

A lottery would not eliminate differences in social conditions, but advantages and disadvantages would be distributed by chance. Although this might eventually ensure a much more level playing field, I am willing, for purposes of this exercise, to concede that social equality is not attainable. If that is so, and we believe that each individual can demonstrate merit and ability independent of the burdens presented by social and economic contexts, we can at least democratize or randomize the process whereby

benefits and burdens are distributed. For example, if we wanted to put each individual to the test, we might at birth assign each child a social security number, along with a list of professions they might legitimately pursue, appropriately grouped into categories such as “service worker” or “professional.” We could also assign the schools the child would be permitted to attend – if there were too many assigned to an institution, admission would also be by lottery. If an individual were not inclined to be satisfied with her or his educational or job allotment later in life, she or he would have to find a willing person with whom to bargain or trade in order to alter the luck of the draw, perhaps leading to a “free market” for careers and educational advantages. To further equalize contexts, perhaps each child (and his or her parents should they want to stay with the child) should be compelled to spend some significant amount of time in a number of different neighborhoods while growing up — two or three years in wealthy Marlin County, California would be balanced by equivalent time in a poverty-stricken neighborhood in New York City or rural Alabama.

The point of this exercise is not to suggest seriously that this is what we should do, but to have us think about how much context does matter for all of us. We do not begin our lives in equal circumstances. We begin in unequal ones. Society’s winners and losers become so in large part because of benefits and privileges or disadvantages and burdens conferred by family position and unequal distribution of social and economic goods. The approach to a resolution to this type of inequality is not found in simplistic and hypothetical prescriptions or ideological placebos of independence, autonomy, and self-sufficiency.

Autonomy: 1. Independence or freedom, as of the will or one's actions. 2. the condition of being autonomous; self-government or the right of self-government: independence.

Independence: 1. not influenced or controlled by other; thinking or acting for oneself. 2. not depending or contingent upon something else. 3. not relying on another for aid or support. 4. refusing to be under obligation to others. 5. possessing a competence: *financially independent* ...

Self-sufficiency: 1. able to supply one's ... own needs without external assistance. 2. having extreme confidence in one's own resources or powers.

These terms are not synonymous, but represent complimentary ways to think about the position or power of individuals and institutions. They are often struck together in an attempt to present a picture of someone or something that has autonomy (freedom), which is demonstrated by independence (self-determination or reliance) and results in self-sufficiency (financial or material sufficiency). The antonyms – controlled, dependence, and subsidized are highly stigmatized terms as applied to individuals and institutions in American society.

I. Introduction

At the beginning of the twenty-first century we find an American society, which, at least in its political rhetoric and imagination, is seriously incapacitated in dealing with some of the most important social welfare problems facing its citizens today. We live in the richest country in the history of the world, yet at least one out of every five children lives in poverty.² The elderly and disabled fare little better. Over ten percent of

² Jeanne Brooks-Gunn & Greg J. Duncan, *The Effects of Poverty on Children*, THE FUTURE OF CHILDREN: CHILDRN AND POVERY, Summer/Fall 1997, at 55 (reporting that in recent years about on

Americans aged sixty-five and older are classified as poor, as are one third of adults with disabilities.³ Most working-age adults with serious disabilities face a dilemma, in that if they find an employer who will provide accommodation for their disability they will lose the necessary health benefits they receive under Social Security. Over thirty million Americans lack health insurance.⁴ The list of relative and absolute deprivation could go on and on, but rather than setting out a catalogue of existing inequities, I want to explore the ways in which we have become incapacitated conceptually and politically by looking at the rhetoric and ideology of contemporary American politics. An understanding of equality as a substantive promise to our least advantaged citizens has been sacrificed to a shallow sense of autonomy. Our incapacity to fashion solutions leading to a more just and equal society is reflected in our political discourse. The very language of our politics and politicians is mired in a simplistic rhetoric of *individual responsibility* and an ideology of *individual autonomy*.

Taking responsibility is understood narrowly, as being accountable for oneself and one's dependants only. This sense of responsibility is also primarily economic in nature. The autonomous individual is anchored in a world of paid labor either directly as a worker, or indirectly, through marriage to a wage earner. Autonomy is the absence of

in five American children (12 to 14 million) have lived in families with income below the poverty line). The 2000 census reports that the number of people under the age of 18 living in poverty is 16.2%. United States Census 2002, available at <http://www.census.gov> (last visited June 3, 2002). Which ever figure is used, the number is appalling in such a wealthy country, particularly one that aspires to democratic and equalitarian principles.

³ The 2000 census reports that the number of people age 65 and older living in poverty is 10.2%. United States Census 2000, available at <http://www.census.gov> (last visited June 3, 2002). See also Beth Haller, *Disability Rights – and Wrongs*, at <http://www.horizonmag.com/poverty/disability-rights.asp> (last visited June 3, 2002); Madeline S. Bergstrom, ed. *The Disability Equation: Does Disability = Poverty?* at <http://www.horizonmag.com/poverty/disabilitytnt.asp> (last visited June 3, 2002).

⁴ The 2000 census estimates the number of Americans without health insurance is 38.7 million. United States Census 2000, available at <http://www.census.gov> (last visited June 3, 2002).

economic dependence on outsiders, particularly on the government. At the same time, autonomy is also seen as the reward conferred by the government for economic self-sufficiency.

Autonomy thus connotes on an ideological level that an individual who conforms to the dominant notions of independence and self-sufficiency is both freed *from* the prospect of regulatory governmental action and freed *through* governmental structures from interference by other private actors. The freedom through the government is the nonintervention point stated in positive terms – the right to be let alone is also the guarantee of privacy. The state in establishing and adhering to a norm of non-intervention and regulation for those deemed self-sufficient individuals grants them autonomy.

I argue that this sense of autonomy is on a conflict course with another important aspiration in the American constellation of political ideals – the promise of equality of opportunity and access to societal goods and services. It does so because it posits that state delivery of subsidy creates dependency and evidences a loss of autonomy in the recipient, notwithstanding that for the poor and many of the struggling middle class, some infusion of economic and other resources is essential if they are to be able to take advantage of the access and opportunity society provides formally.

Equality is not understood in America as it is in some other societies as a state or quality of being – participation in the “good life” of the community and sharing in society’s benefits, at least in terms of entitlement to basic social goods. Equality in this substantive sense means that there is some floor beneath which individual citizens may not sink, a floor constructed by the state because the status of being human demands a

degree of resources and dignity. This type of equality is viewed in other societies as a necessary precondition for the exercise of self-governance or autonomy for which the government is at least partly responsible to secure.

Instead, in America, equality seems a secondary concern. In our political discourse it is cast as though it is understood to be a subset or outgrowth of autonomy. Equality is manifested in mere formal or legal guarantees of sameness of treatment for individuals. Inherent in sameness of treatment is the absence of affirmative governmental measures designed to raise the unequal to a more equal position. Thus, equality is not an aspiration about achieving a state of being for all citizens, but the obligation to neutrally provide opportunity or access. In a society like American where there is existing inequality the guarantee of access and opportunity means little for many. In this way, our ideas about autonomy interfere with the development of a concept of equality as a substantive goal or objective with positive material and social implications.

II. Foundational Myths

In the pages that follow, I look at some of the core concepts of American mythology, focusing on autonomy with its attendant notions of independence and self-sufficiency. I insist that we have an obligation to reexamine these concepts in the contexts presented by our contemporary society and the needs and aspirations of people today. We must view these historic ideals with the complexity that passage of time and resulting changes in societal structures and aspirations have added; perhaps redefining them in the process. A commitment to a process of ongoing reexamination of core concepts would be a recognition that even if we were absolutely confident (which we are not) that we know the *historic* meanings of those concepts, the demands of justice, as

well as concerns about the legitimacy of government, require that our implementation of foundational principles resonate in the *current* realities of our lives.

Every society has well-developed foundational myths associated with its origin and the nature of its national character.⁵ By “myth,” I mean “a legendary story that invokes gods and heroes and explains a cultural practice or phenomenon.”⁶ The mythical stories of a nation -- its dreams and the heroes who populate them -- both reflect and incorporate the historic values and visions a society hopes to embody at home.⁷ They also represent an assertion of the place of the nation within the larger context of the world of nations by articulating what are self-reflectively viewed as its asserted distinct, important, or powerful contributions.⁸

One such myth, which will be discussed in more detail in Chapter Seven, is the idea of the “social contract” – the theory that modern states exist because individuals, who are free by nature, joined together and decided to create an agency - the State - to act on their mutual behalf.⁹ The idea of the social contract is particularly relevant to the constellation of American foundational myths, because the stories of the American Revolution, Declaration of Independence, and establishment of the Constitution emphasize the very same concepts. The language of the Preamble of the Constitution is a classic expression of a social contract:

⁵ WILLIAM W. COBB, *THE AMERICAN FOUNDATION MYTH IN VIETNAM* passim (University Press of America, Inc. 1984); GILBERT MORRIS CUTHBERTSON, *POLITICAL MYTH AND EPIC* 173 (Michigan State University Press 1975); TOM GARVIN, *MYTHICAL THINKING IN POLITICAL LIFE: REFLECTIONS ON NATIONALISM AND SOCIAL SCIENCE* 12, 22-23 (Academia Press 2001).

⁶ *THE NEW WEBSTER’S ENCYCLOPEDIA OF THE ENGLISH LANGUAGE* (Random House 1997).

⁷ Cobb, *supra* note 5, at 2, 12, 157; Garvin, *supra* note 5, at 16.

⁸ Cobb, *supra* note 5, at 3.

⁹ This theory has been developed by John Locke [ADD A CITATION]

“We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

In fact, at the time of the establishment of the American Constitution, many Americans were indifferent or strongly opposed to the document and the ideas it embodied. Rhode Island only ratified the Constitution after being threatened with blockades and invasions.¹⁰ The famous words of the Preamble, however, are a classic example of a foundational myth because they embody the principle that American society is based on a democratic political system that was voluntarily created by “We the People” through the Founding Fathers.

A. Myth and Purpose

In his classic book, *Myth and Reality*, Mircea Eliade argued that there are many varieties of myth. Religious myths, for example, deal with gods and worship, and natural myths deal with the stories of natural phenomena. Eliade’s research focused on primitive and archaic societies, but the principles also apply to modern myths. However, unlike the primitive societies, advanced societies also develop political myths, which are based on the same principles and differ from other types of myth only in subject matter.¹¹ Like the myths described by Eliade, political myths are not merely stories, but promote practical purposes.¹² They are based on the story of a society’s beginnings, but they also explain the present and provide a vision of the future.¹³ Political myths “[tell] the story of how a

¹⁰ GET A CITATION FOR THIS INFORMATION

¹¹ HENRY TUDOR, POLITICAL MYTH 14, 17 (Praeger Publishers 1972),.

¹² *Id.* at 16-17.

¹³ *Id.* at 15.

political society was founded, and [express] the values and aspirations of those who benefit... from the continued existence of that society.”¹⁴

In addition to their historic aspect, foundational stories are also epic in nature, relating in poetic terms a series of majestic achievements over time. This epic characteristic enhances the stories’ mythic quality, as well as the perception that the values and personal attributes represented are stable and legitimate aspirations irrespective of the passage of time or changing societal circumstances.¹⁵

Foundational stories are about people. Eliade said that myths tell the story of “the fabled time of the ‘beginnings’...[and] the actors in it are Supernatural Beings and mythical Ancestors.” A myth is more than just a story about our origins; it also “supplies models for human behavior... it expresses, enhances, and codifies belief; it safeguards and enforces morality... and contains practical rules for the guidance of man.”¹⁶ The Preamble of the Constitution reminds us of the “time of beginnings” of the United States. The Founding Fathers are the mythical Ancestors who provide an exemplary model for independent and democratic behavior, and classic “American values” – justice and liberty – are given as reasons for establishing the new State.

As a myth, the story may not present a strictly accurate historical account of the past, but it preserves the *significance* of the event.¹⁷ There is no historical evidence that George Washington ever cut down a cherry tree or subsequently uttered the words “I

¹⁴ *Id.* at 97.

¹⁵ Cobb, *supra* note 5, at 188.

¹⁶ MIRCEA ELIADE, MYTH AND REALITY 2, 5-6 (Harper & Row 1975) (1963).

Tudor *supra* note 11, at 23-24.

cannot tell a lie” but the story is a mythical expression of the value of honesty, modeled by a mythical Ancestor. Other societies also have their own foundational stories: the Norman invasion of England, the Great Trek of the Afrikaaners, and the Russian Myth of the October Revolution are all examples of political foundational myths.¹⁸

The traits of the Fathers and ancestors are often presented in mythic terms, as though they were unwavering and unchanging over time.¹⁹ These characteristics become cultural and ideological absolutes, cast as not only desirable, but also as essential to instill in the current generation within individual citizens in order to preserve the very identity of the nation.²⁰ One aspect of the classic Roman Foundation myth was that as descendents of the Trojans, the Romans had also inherited the mythical qualities they perceived as most valuable.

In his study of political myths, Henry Tudor explains that “the foundation had established the character of the Romans as a people, and it was in terms of their character

¹⁸ Tudor, *supra* note 11, at 16-17, 91. One of the most famous political myths in the ancient world was the Roman Foundation myth. This was a story, based on the legend of Aeneas, that the Romans were actually the descendants of the Trojans. Since the Trojans had been enemies of the Greeks, this political myth was used to justify the Roman wars against and triumph over Greece, since the Romans could believe they were avenging ancient wrongs. As time passed, and the myth was handed down through generations, it evolved to meet the changing political needs of Roman society. The story of Trojan descent could be interpreted in numerous ways, and could be used for many purposes, even if they were contradictory. By the time of the Punic Wars, the Romans had assimilated a significant amount of Greek culture, and considered Rome to be a center of Hellenic civilization. As a result, they used the story of their Trojan origins to invoke the Homeric past, and declare themselves an integral part of the Greek world. Thus, the Roman Foundation myth could be used to support anti-Greek, and later pro-Greek politics, depending on the evolving needs of Roman society.

Foundation myths are complex and multi-dimensional. The Roman claim to Trojan decent was a major component of the Roman Foundational story, but there were other facets to the myth as well. One part of the myth was that it was Rome’s geographic location that had allowed it to rise to pre-eminence in the ancient world. Like the American Founding Fathers, who established their nation on a large piece of rich and fertile land, protected from hostile enemies by the surrounding oceans, the founders and mythical Ancestors of the Romans had wisely chosen to situate the city on the banks of a navigable river, essential for commerce and travel, yet far enough inland to be safe from foreign attack.

¹⁹ Cobb, *supra* note 5, at 18; Cuthbertson, *supra* note 5, at 174; COLIN GRANT, MYTHS WE LIVE BY ix (University of Ottawa Press 1998). .

²⁰ Cuthbertson, *supra* note 5, at 16.

that they explained their rise to greatness.”(72) Romans looked to their own “mythical Ancestors” as examples to follow, just as Americans uphold the model of the Founding Fathers. The Roman author Ennius wrote: “On men and on manners of olden times stands firm the Roman state.”²¹ These characteristics provide the imagery of the language of politics and exemplify the aspirations of the nation for its citizens.²² In this way, characteristics and myths manifest their status as foundational.

Because foundational political myths are typically complex and multi-dimensional, they can be made relevant to shifting patterns, incorporating or accommodating changes within societies. A foundational myth evokes the same theme over time – that the current greatness is the result of a specific deeds by the mythical Ancestors – but the historically particularized versions of each story may be used for different, even contradictory political purposes as time passes and the political needs of the State evolve.

In fact, the circumstances of a nation and its people are always evolving and fluid. Nevertheless, to the present generation of politicians using political foundational myths this is ignored or, if recognized, not seen as undermining adherence to the core values the stories reflect.²³ It seems that the nature and form in which the values are manifested is deemed to be independent of any societal context. On the Roman Foundation myth, Tudor has observed “as the myth was transmitted from one generation to the next, its meaning and content changed giving us a series of individually distinct versions. A

²¹ Ennius, *Ann.* 467.

²² Cuthbertson, *supra* note 5, at 197.

²³ Cobb, *supra* note 5, at 188.

political myth is not a world-view which somehow persists unchanged through all its particular manifestations”.²⁴

However, politicians often present these stories as if they persist unchanged. The myths’ status as foundational means that certain values escape an explicit and self-conscious examination by the society that holds them out as the conceptual structures defining their national “character.”²⁵ Tudor has commented that “[b]ecause a myth has nothing specific to propose and gives no reasons for what it asserts, it eludes the critical efforts of ‘intellectualist philosophy.’ Unlike a program or a prediction, a myth cannot be refuted.”²⁶ Thus, there is little impetus to consider the appropriateness of the values for our contemporary citizen and society.²⁷

Ironically, at the time of the Declaration of Independence, the term “independence” meant freedom from the need to work for wages paid by another. Not relying on a wage constituted independence, those members of society who had to work for their living were considered “wage slaves.”²⁸ Wage earners were actually considered to have forfeited their economic independence: “however voluntary the transaction, to work for wages was to be dependent, to lose the autonomy requisite to citizenship – the

²⁴ Tudor, *supra* note 11, at 91.

²⁵ Cuthbertson, *supra* note 5, at 8.

²⁶ Tudor, *supra* note 11, at 15-16.

²⁷ We see this in American constitutional law with the doctrine of strict construction of the Constitutional intent of the Framers. Justice Scalia and others would have us use only the original intent (as if that could be determined) as a guide, not the individual perceptions of contemporary judges of what should be considered fair or just.

²⁸ SUSAN STERETT, *SERVICE AND CHARITY: SOCIAL WELFARE IN THE STATES* (forthcoming, introduction, on file with the author).

autonomy associated with title to property.²⁹” The abolitionist movement, the Civil War, the Industrial Revolution, and the rise of charity reform all converged to change the prevailing understanding of dependency. Eventually wage work was considered a manifestation of independence along with property ownership enjoyed by the “independently wealthy.”³⁰

B. Mythical Politics

The tendency of political myths to evade self-conscious reconsideration by each new generation is unfortunate. Times and circumstances change and evolve, sometimes dramatically. When societal change is sweeping and profound it affects aspirations and expectations as well as behavior. In the wake of change it may be that certain foundational myths need adjustment in order to be made compatible with contemporary circumstances and situations. Altered social realities may require the explication of a more nuanced understanding of a cherished national characteristic or value. It is also sometimes the case that changing contexts and circumstances will cast historically compatible foundational aspirations in tension with one another.³¹ In such a case, there is also a need for realignment to regain a sense of consistency among cherished objectives.

Such a project would require express consideration of the nature and function of the current versions of our foundational myths because they do not stand alone and are not easily identifiable. Political myths operate in extremely complex cultural contexts and are usually embedded and interwoven into “the framework of a general ideology,”

²⁹ AMY DRU STANLEY, *FROM BONDAGE TO CONTRACT* 9 (Cambridge University Press 1998).

³⁰ *Id.* at 9, 105, *passim*.

³¹ Cobb, *supra* note 5, at 11, 18-19, *passim*.

combined with philosophy, history, and science.³² As a result, they are difficult to examine critically, as they are only one element of a series of mutually supporting points of view.³³ The identification and re-evaluation of the current versions of our political myths is a crucial project, however, because such myths may be used to rhetorically support positions that are fundamentally incompatible with healthy social programs. Reconsideration is important, particularly since although myths can be used for many, even contradictory purposes, they tend to operate in a conservative manner. They are most often invoked in arguments to preserve the *status quo*, rather than to inspire change.³⁴

Stating that foundational myths support conservative policies does not mean that they are not used actively. Political myths can be used as powerful tools to argue for curtailment of emerging institutions and policies perceived to be undesirable according to the versions of the foundational values espoused by those currently in power. Evoking the language of foundational myths – words such as “autonomy,” “independence,” “justice,” and “liberty” – political players may shield a very radical agenda from societal scrutiny. When discussing the application of political myths, Tudor observes that “emotive words such as ‘equality’, dictatorship’, ‘elite’ or even ‘power’ can often, by the very passions which they raise, obscure a proper understanding of the sense in which they are, or should be, or should not be, or have been used.”³⁵

³² Tudor, *supra* note 11, at 121.

³³ Tudor, *supra* note 11, at 126-127.

³⁴ Tudor, *supra* note 11, at 91.

³⁵ Tudor, *supra* note 11, at 9.

Of course, foundational myths are not conveyed only in political contexts. They must be part of the day-to-day ideological context of life in order to become embedded in the sense of national character. Our values are thought to be transmitted within our society's basic institutions, such as the family, handed down from generation to generation. The values are typically assumed to be coherent in nature, as well as both perfectly clear to and perfectly attainable by the successful citizen growing up within the appropriately functioning family. Correctly transmitted, values become intuitive or second nature.³⁶ This explains why there is such concern when institutions such as the family begin to change their historic (or mythical) nature and form – we fear that the values will not be properly instilled or will be distorted or destroyed within deviant family configurations.³⁷

II.. The Relationship between the “Rule of Law” and Foundational Myths

In the United States, our foundational beliefs and aspirations historically were and continue to be profoundly shaped by the fact that the nation was created through a process of democratic liberation from an oppressive monarchy. The heroes of our story of national origin were the “Founding Fathers” who set up a system of government based on the consent of the governed – a democracy. The foundational principles in this story were not only the ideal of democracy, but also concepts such as equality, liberty, and due

³⁶ Jack Zipes has conducted extensive research on myths and fairy tales and concludes that they play a significant role in educating, socializing and civilizing both children and adults. JACK ZIPES, FAIRY TALE AS MYTH: MYTH AS FAIRY TALE 8, 17, passim (University Press of Kentucky 1994); JACK ZIPES, HAPPILY EVER AFTER: FAIRY TALES, CHILDREN, AND THE CULTURE INDUSTRY (Routledge 1997). See also Cuthbertson, *supra* note 7, at 197.

³⁷ Values are also viewed as exceptional or unique characteristics of a society – used to favorably distinguish us from others. Thus, we see values associated with certain political stances expressed as “American” (or “un-American”). Values language can also be used to obliterate different or competing values such as when a certain form of family is asserted to express “American Family Values.”

process of law. Law in this context is essential to democracy, equality, and liberty -- it provides the assurance that a free people will be treated equally, not arbitrarily and that their liberty and freedom are guaranteed against governmental encroachment and violation by others. We are proud to proclaim that we have a system based on “the rule of law, not on the rule of men.”

This idea that the law is objective and universally applied means that it can serve as a “neutral” mediator in controversies, whether they occur between state and citizen or among citizens. This perception of law as the framework for the expression and protection of our individual rights also complements the perception of core values as timeless and unchanging foundational aspirations, susceptible to monitoring and worthy of governmental attention. Law protects us and is an important part of the story that ours is a legitimate and just system of government to which it would be only natural to consent.

A. Autonomy, Independence and the Individual

The importance of the idea of independence to the construction of an autonomous and equal individual may be traced to the fact that the very existence of the United States begins with the gauntlet of a document entitled The Declaration of *Independence*. While it is a declaration of freedom for a fledging nation, it nonetheless sets forth as a “natural” principle that every *individual* is endowed with *inalienable rights*, such as the right to life, liberty, and the pursuit of happiness. The Constitution of the United States and the Bill of Rights more fully develop the understanding that the concept that individual rights defines the relationship between government and citizen. Self-government (autonomy) is the idea and defines the subject of liberal political discourse.

The specific provisions of the Bill of Rights restrain the government in regard to the individual, whose liberty and equality are guaranteed. Government may not implement its will or even the will of the majority so as to interfere with the protected spheres of action, such as speech or assembly. When the government does act, it must do so with restraint and according to principles of due process. Individual liberty interests are what are protected – autonomy is being left alone to satisfy our needs and provide for our families without undue restraint.

Through the concept of states' rights, our Constitution also incorporates the idea of a limited sphere for the national, as contrasted with the local or state government. This concept is embodied in the idea of federalism. Our foundational documents set up a federation of individual states, which have joined together and ceded power to the national government. But the national is a limited sovereign.

States' rights are in part a continuation of individual rights against governmental intrusion. The least offensive government is assumed to be the one closest to home. The states are closest to the citizen and thus presumptively more within the democratic individualistic ideal. The Constitution, therefore, structures the relationship between these individual States and the national government. The Bill of Rights restrains the government in regard to the individual.

Consistent with eighteenth-century liberal theory, the foundational concepts of our society, as well as the documents enshrining them, conceptualize the individual as a rights holder; separate from, but potentially in competition with, other rights holders. Rights holders are autonomous human beings, protected in their individuality from encroachment by other individuals on their rights. But our particular constitutional

ordering also implies that freedom from external rules and regulations generated by government is inherent in individual autonomy. Autonomy is synonymous with a concept of self-governance, and is characterized by self-sufficiency and independence, individual qualities that are seen as prerequisites for individual freedom of will and action.

Our all-American hero therefore is the autonomous individual; protected by law from unwarranted interference with his rights by other individuals and by government on any level, free to conquer the frontier, be it westward or upward into space. The rhetoric of individual freedom and rights incorporating an ideally restrained and limited government permeates our society. We believe that this is the natural order of things, guaranteed to us as citizens of the United States.

Our entrepreneurial spirit cannot and should not be contained and restrained -- freedom for the individual requires freedom from governmental regulation and control. This belief creates a complicated set of hurdles for reformers to overcome when they seek to argue that there is a need for governmental action in order to remedy inequity and equalize existing unequal conditions.

B. Autonomy

Autonomy is indisputably important in our constellation of foundational myths, perhaps more centrally so today than ever. The particular form the myth of American autonomy has taken in recent years seems opaque and illusive, however. Part of the reason for this is that the myth does not encompass only one situation or circumstance where we set up autonomy as a paramount objective, but confuses several different aspects of the concept. Autonomy is the term we use when describing the relationship

between the individual and the state. Autonomy in this regard is individual freedom from state intervention and regulation, the ability to order ones activities independent of state dictates. In particular, we think of an economically self-sufficient individual as autonomous in relation to society and its institutions.

But families also have the expectation of autonomy placed on them in today's political culture. An autonomous family is a family perceived to be self-sufficient, providing for the needs of its members. The autonomy of the family in relation to society is expressed in the idea that it occupies a "separate sphere," and is a "private" institution governed by distinct rules. This type of autonomy, along with the individual variety, are the concepts that underlie our current political culture.

There is a third type of autonomy that is also relevant. This is the autonomy of individuals *within* the family for which feminists have fought by exposing domestic violence and child abuse. This way of thinking about autonomy separates out individuals from the family unit and asks that their interests be considered separately and protected even against other members of that family unit. This version of autonomy undermines the other two, in that the individual who is encroaching on the welfare or safety of another family member can find his autonomy compromised by the state intervening on her behalf (on the side of her autonomy from the patriarchal family). In such contexts, the family is not treated as autonomous and separate, but merely another societal institution subject to regulation and the imposition of norms generated from the outside.

It is important for us to examine foundational concepts such as autonomy in all their manifestations and permutations and see how they are being used rhetorically and ideologically in society. What do they mask? Whose interests are served when they are

invoked? Indeed, what do they mean to those who invoke them, as well as to those against whom they are invoked? In considering these questions, it is important to note that not all three versions of autonomy are considered equally desirable in our current political climate. Individual autonomy is the type most brandished about by politicians. Family autonomy is still assumed to be the natural order of things. The idea of the state intervening to protect the autonomous interests of a member of the family against another member is deeply contested.

Notions of individual autonomy have been powerfully employed in shaping policy. In recent years, the myth of individual autonomy been spun out in very individualistic terms by those invoking such phrases as “independence” and “self-sufficiency” to describe the ideal citizen. Independence and self-sufficiency are terms that refer to characteristics that are perceived as attainable and as complementary in our political and civic discourses. Even the targets of the imposition of independence are convinced of its appropriateness, as evidenced by the “testimony” of mothers on welfare who mimic the rhetoric that condemns them as pathologically dependent. They accept the assertion that independence and self-sufficiency are inexorably tied to paid work.

In a very simplistic sense in contemporary America, individual autonomy is linked with notions of the economic. Independence and self-sufficiency are characteristics of an idealized economic status. Attainment of that economic status, in turn, is a necessary precondition for the conferral or recognition of any other type of independence or autonomy by the system. Only if we are economically self-reliant can we be considered independent. Because we are able to supply the economic resources necessary to meet our needs, we are self-sufficient. In this way, independence and self-

sufficiency “buy” for us the right to self-governance and “control” over will and actions. They earn for us our autonomy.

C. Manifesting Equality

Equality guarantees that the same rules will apply to us all, uninfluenced by our station or status in life. Of course, a contemporary common sense notion of equality might be offended by the fact that the “us” who populated the original story were white, male, and propertied, belying the universality of equality in regard to the exercise of political and civil rights. However, the epic of American law and equality progressed as more and more people eventually assimilated to the original ideal. The Civil War addendum to our story added the 13th and 14th Amendments, abolishing slavery and adding black males to those entitled to political equality. The Suffragette struggles led to the 19th Amendment, adding women to the ranks of voters. Political equality was manifested in a very direct manner – equivalent treatment. The idea was “one person – one vote” -- people were to be treated the same.

Even beyond the political situation, our conceptualization of the ideal of equality has been based on an anti-discrimination or sameness of treatment principle. This is certainly apparent in the juridical or civil sense of equality (equality before the law). Different treatment is suspect, unless there is some legitimate basis for distinguishing among individuals or groups. The history of law in the twentieth century was the expansion of legal rules to extend equal treatment, access, and opportunity to more and more individuals. Currently, gay men and lesbians seek protection within this anti-discrimination paradigm, arguing for access to institutions such as marriage and protection in employment and public accommodations.

The American march toward greater and greater equality has resulted primarily in an increase in the numbers of persons considered to be entitled to equality in treatment or access to existing categories of social goods, not in an expansion of our understanding of its substantive nature. We gain the right to be treated the same as the historic figure of our foundational myths – the white, free, propertied, educated, heterosexual (at least married) and autonomous male. We do not gain the right to have some of his property and privilege redistributed so as to achieve more material and economic parity. We have not altered our understanding of the concept of equality beyond mandating sameness of treatment, equality in access and opportunity with the mythic male. We have merely expanded the group to whom this version of equality is to be applied.

Of course, political equality and the idea of equality under law are significant aspects of the protection and guarantees owed to the citizen by the state. But it is important for us to ask whether these forms of equality (freedom from discrimination and a guarantee of sameness of treatment by the government) are sufficient to actually ensure an appropriate level of substantive equality in today's world. Retelling our foundational story for an audience confronting the problems and contexts of the twenty-first century might posit a world in which we were promised more in terms of securing equality than just sameness of treatment in the political and juridical relationship between the government and the governed.

One could argue that concepts such as equality require constant mediation between articulated values and current realities. In trying to understand the current contexts that shape our expectations for equality, we might also want to consider changes wrought by advances in technology and knowledge that have influenced the structures of

society. So too, we may want to take into account pressures and opportunities, reflecting on challenges to our concept of equality generated externally through our interactions with other nations. We must be attentive to evolutions in our concepts and understandings of what we consider “just” and “fair.” Our views on justice should be evolving as societal knowledge, realizations, aspirations, and circumstances change.

A second line of inquiry would place equality in the context of other societal aspirations and ideals. How do our contemporary aspirations for equality relate to our pursuit of other values, such as autonomy? How does our definition of terms such as dependency and self-sufficiency shape our sense of what constitutes equality? Equality rests side-by-side with other foundational concepts that set out further expectations for the citizen in regard to the state, as well as ordering the relationships among diverse societal institutions, such as the family and the market. In fact, these other foundational concepts have had a profound effect on the way in which equality has been understood historically, actually shaping the course and direction of its legal history and limiting the potential scope of the concept. Paramount among the limiting values in this regard are contemporary ideas about individual freedom, which is reduced to the idea of autonomy with its complementary components of individual independence and self-sufficiency.

III. Equality or Autonomy – Shifting Foundations

Foundational myths, while rhetorically constant over time, may actually convey very different aspirations, values, and concepts from one generation to the next or across different groups within society at any one time. This presents a dilemma to the idea of equality, which is typically stated in abstract phrases and encapsulated in ringing terms such as “justice for all” or “equality under the law.” There is yet another equality

dilemma lurking – when foundational concepts are in fact little more than unrealizable myths, they can have real and negative societal consequences. The idea of individual autonomy is used as a measure against which to judge the appropriateness of both individual and governmental actions. It also sets standards for the functioning of societal institutions, such as the family, the market, and the state.³⁸

A. Meaning and Myth

Foundational myths and the concepts they promote are in fact abstractions. Terms like autonomy or equality have no independent meaning or definition and can be understood in conflicting and incompatible ways. These concepts often become battle cries for diverse political movements.³⁹ Their amorphous, overarching, and imprecise nature means that they can be used simultaneously by those holding disparate positions in regard to any proposal.⁴⁰

The foundational myth of individual autonomy can be understood to mandate that there be “equality of opportunity” so that each individual can succeed or fail according to her or his own merits and initiative. But it is not clear exactly what equality of opportunity might entail in the way of either individual or regulatory effort and action. For example, equal opportunity can be used to justify the institutional creation of an affirmative action program to “equalize” the possibilities for people who are members of historically excluded groups, as well as simultaneously serving as a rallying cry for those

³⁸ Cobb, *supra* note 5, at 17; Cuthbertson, *supra* note 7, at 2, 14.

³⁹ Cuthbertson, *supra* note 7, at xx; Garvin, *supra* note 5, at 15.

⁴⁰ Cobb, *supra* note 5, at 33; Garvin, *supra* note 5, at 26.

resisting such schemes because they give members of certain groups an “unequal advantage.”

The first group would be arguing that their individual aspiration for autonomy is frustrated and the whole ideal twisted if existing systems of privilege and power mean they are not positioned so as to be able to compete on equal footing with those who have not been historically excluded. Those resisting affirmative action would argue, in contrast, that “special” treatment for some in society compromises the autonomy of others and is a “perversion” of the principles of independence and self-sufficiency, signaling the very end of meritocracy.

Likewise, one may assume that a modern marriage is a “partnership” and that both parties should be treated equally if the marriage should end in divorce. However, there are many different interpretations of “equal” treatment in such contexts. One could argue that equal treatment means the family assets should be divided in half, which would constitute a version of equal treatment at the moment of divorce and that there should be no ongoing entitlement to the future wages of the primary wage-earner.

On the other hand, particularly if there are children, one could argue that the assets should be divided so that the party who is assuming caretaking responsibilities – usually the mother – is able to maintain a living standard close to equal of that of the other spouse. In addition, one could argue that periodic payments should continue for a substantial period of time to supplement the reduced amount the caretaker will be able to provide by also working for pay. It could be said that this would be the only way to treat the caretaker-child unit equally and ensure their future autonomy.

Both approaches to this problem would be based on the principle of equality and a desire for autonomy. However, the focuses of the approaches are different. Husband and wife in this situation have conflicting and incompatible equality and autonomy interests. Equality for caretaker and child, allowing them to achieve autonomy, comes at the expense of equal treatment of the non-caretaker and some compromise of his autonomous ability to decide the nature and extent of his obligations. Depending on which perspective we take, we would get very different divisions of marital assets and imposition of ongoing financial responsibility after divorce.

We do resist the idea that equalizing results may require unequal treatment in some circumstances. Paradoxically, we also resist the imposition of sameness of treatment in other circumstances. Considering equality across families, the point should be made that at a minimum there is no equality for individuals possible so long as only some bear the burdens of family and reproduction in society. Nor can there be equality for families so long as the foundational relationship continues to be marriage, which is limited to heterosexuals and excludes a lot of other intimate relationships that are not based on sexual affiliation.

This latter point is important. The status of marriage and the institution of the marital family is the way that many social goods are delivered to individuals in American political culture. The state subsidizes certain entities. Social goods, such as insurance and old age pensions, are structured though the workplace and the family, rather than directly from the state as is typical in social welfare democracies, such as exist in Western Europe. The family is a mediating institution and access to it is critical for claiming social benefits.

This doesn't mean that we recognize the marital family as a subsidized institution, dependant on state largess. In fact, our very particularized and superficial type of autonomy has become the standard applied in judging societal institutions, such as families, as well as individuals. Economic independence and self-sufficiency are set up as transcendent values, attainable for all social units and for all members of society. Offered in negative comparison to independence and self-sufficiency are the ideas of dependence and subsidy. As discussed more fully in Chapter 2, dependence is negatively compared with the desirable status of independence and subsidy is vilified as failing to meet with the meritorious goal of self-sufficiency.

B. Rethinking Autonomy

The very terms of autonomy – as exemplified by economic independence and a detached notion of self-sufficiency, might well be redefined or re-imagined in the public mind. Independence is not the same as being unattached. Independence from subsidy and support is not attainable, nor is it desirable — we want and need contexts that sustain us.⁴¹ A different understanding of autonomy and what it entails is needed. It is not beyond our current ability to imagine a new concept of autonomy.

Certainly popular culture seems open to the idea, at least if one looks at the popularity of books and educational programs by Stephen Covey, author of *The Seven Habits of Highly Effective People*.⁴² Covey's work is based on the theory that all of nature, human life, and society are *inter*dependent. He suggests that there is a continuum

⁴¹ Zipes, *Fairy Tale as Myth*, *supra note 36*, at 4, 5.

⁴² More than 10 million copies of *The Seven Habits of Highly Effective People* have been sold since its publication in 1990. The Franklin-Covey organization markets books, cassette tapes, electronic and paper planners, classes, seminars and other training opportunities, and "accessories." Available at <http://www.franklincovey.com>.

of maturity, from dependence, to independence, to the eventual realization that we are all interdependent.⁴³ He observes: “[T]he current social paradigm enthrones independence. It is the avowed goal of many individuals and social movements. Most of the self-improvement material puts independence on a pedestal, as though communication, teamwork, and cooperation were lesser values... But much of our current emphasis on independence is a reaction to dependence – to having others control us, define us, use us, and manipulate us.”⁴⁴ Covey thus implies that there is a connection between the emphasis on independence and the stereotypes and social stigma attached to dependence.

Aside from the inroads into the national psyche that might be provided by pop psychology, there are important arguments and debates that must occur in political and policy circles about the interrelationship between autonomy and equality. Specifically, we should not define our aspiration for equality in the shadow of autonomy. Rather, we should think of autonomy as an outgrowth of the attainment of equality. Some degree of equality of resources is a prerequisite before one can achieve autonomy and share in society’s benefits and burdens.

Autonomy can only be achieved when individuals have the basic resources that enable them to act consistent with the tasks and expectations imposed upon them by the society in which they live. This form of autonomy should be every citizen’s birthright, but autonomy in this sense concedes a degree of dependency on the part of the individual. In addition, this form of autonomy can only be achieved when individual choices are relatively unconstrained by inequalities, particularly those inequalities that arise from poverty. This is essentially a claim that individual autonomy must be the product of

⁴³ STEPHEN R. COVEY, *THE SEVEN HABITS OF HIGHLY EFFECTIVE PEOPLE* (Simon & Schuster 1989).

⁴⁴ *Id.* at 50.

collective responsibility, at least when individuals are undertaking important societal tasks.

CHAPTER 2 – DEPENDENCY AND SOCIAL DEBT -- Cracking the Foundational Myths

I. Introduction

Ideals of independence and self-sufficiency historically have been complementary themes in our political discourse about autonomy. Both of these core concepts seem subsumed within the contemporary manifestation of the ideal of autonomy, giving it its current content. Invoking autonomy, we create and perpetuate cultural and political practices that stigmatize and punish the dependent among us. However, only some interrelationships among individuals and institutions are seen as constituting dependency. In recent years much of the content of dependency has been provided by debates in the welfare context.

Specifically, we stigmatize with the label “dependency” the welfare mother, who unemployed and trapped within poverty, needs subsidies from the government in order to undertake her caretaking responsibilities. Her circumstances are considered of her own making, she is unworthy of a bailout and must become self-sufficient -- assume responsibility for herself by leaving her children behind and taking up low-waged work.

Other recent political decisions also reflect a trend towards the adoption of policies rely on the individual and remove responsibility from government, thereby increasing the possibility of income inequities. Instead of relying on Social Security and employer-funded pension plans, people are being encouraged to arrange their own retirement through 401(K) savings plans and private investments free from governmental oversight and protection.

The illusion that independence is attainable for some means increased resistance to responding to the obvious dependency of others, as the better off taxpayer detaches himself from the poor and struggling in society. Economist Frank Levy, of the Massachusetts Institute of Technology, says that prosperous Americans “have caught on to the fact that they can do better if

there is no redistribution of income, and since power correlates with income, they are in a position to push the argument.”¹

This may not be considered selfish and greedy if those same Americans can convince themselves that we are all capable of becoming economically “self-sufficient” and “independent,” regardless of the socioeconomic circumstances of our lives. Those who need the government subsidy of welfare payments or other programs simply are not “taking responsibility” for themselves, a premise exemplified by the current political rhetoric about the poor.

However, American politicians apply differing standards of self-sufficiency across different situations. At the same time that we stigmatize mothers on welfare, we commiserate with industries that experience other forms of “disaster” that we define as outside of individual control. Hence we “bail out” some who run amok economically, such as farmers, airlines, saving and loan associations, and highway construction firms. Sometimes the cash transfers such entities receive are justified as being in the national interest – an investment to secure jobs, ensure national defense, or otherwise promote the “American way.”ⁱ At other times, the government is seen as playing the role of an insurer, such as when it responds to disasters that occur when houses built on flood plains or over fault lines are destroyed through predictable natural occurrences. We rationalize disaster assistance for “acts of nature,” but bristle at providing relief for the disasters that have resulted from decades of neglect and discrimination. Governmental response in the former cases is seen as a matter of investment or preservation, an

¹ Quoted in Louis Uchitelle, “A Shift to Self-Reliance: Proposals to Revamp Social Security Reflect the Larger National Trend,” *New York Times*, N.Y. TIMES, Jan. 13, 1997. ~~Monday, January 13, 1997.~~

entitlement, not a grudging response to dependency, as it would be if the subsidy were going to impoverished urban ghetto mothers and children.

In an ultimately disastrous manner for our families, we valorize activities associated with work for wages and the accumulation of wealth, while we take for granted dependency work and the production of human beings. Yet raising the future generation is certainly of at least equal value and significance to society as the economic activities we subsidize and facilitate. As the argument in this Chapter indicates, not only is dependency inevitable, but also reliance on governmental largess and subsidy is universal. We delude ourselves when we think that many (perhaps any) endeavors in our complex modern society can be undertaken in an autonomous and independent manner.

II. The Rhetoric of Dependence and Independence

One of the most important tasks for those concerned with the welfare of vulnerable members of society, particularly poor mothers and their children, is the articulation of a compelling and complex theory of dependency. I do not underestimate the difficulty of this task. Dependency is a particularly unappealing and stigmatized term in American political and popular consciousness. The specter of dependency is incompatible with our beliefs and myths. We venerate the autonomous, independent, and self-sufficient individual as our ideal. We assume that anyone can cultivate these characteristics, consistent with our belief in the inherent equality of all members of our society, and stigmatize those who do not.

Politicians, social conservatives, and advocates of small government use the labels of “dependency,” which signifies the condition of being dependent, and “subsidy,” which denotes a governmental handout, in an accusatory, simplistic and divisive manner. The mere invocation of the term dependency prompts and justifies mean spirited and ill-conceived political responses,

such as the 1996 welfare “reform” designed to “wean” women and their children from the “cycle of dependency” and free them for the world of work. These “reforms” were compounded in the reauthorization process begun in 2002.

The force of the rhetorical assault has served to derail, or limit, contemporary policy discussions about important issues of public welfare. Condemnation or pity is considered the appropriate responses for those unable to live up to ideals of autonomy by acting in an independent and self-sufficient manner. However, the very idea of an independent individual is fashioned upon unrealistic and unattainable (dare I even say, “undesirable”) premises.

A. “Inevitable” Dependency

It is puzzling, as well as paradoxical, that the term dependency should have such negative connotations. Far from being pathological, avoidable, and the result of individual failings, a state of dependency is a natural part of the human condition and developmental in nature. Understood from this perspective, developmental dependency should at least be regarded as both universal and “inevitable” and, for these reasons, certainly not deserving of generalized stigma.² All of us were dependent as children and many of us will be dependent as we age, become ill, or suffer disabilities. Surely this form of unavoidable and inescapable dependency cannot be condemned. Historically such dependants were referred to as the category of the “deserving poor” and, thus, deemed worthy of society’s largess.

Even women on welfare themselves perpetuate a feeling of shame and stigmatize their condition. The general statement of women who have worked their way off welfare is “the success of it is my children see me go to work every day. And that makes them go to school

² See Peter Edelman, *Prepared Testimony of Peter Edelman Professor of Law, Georgetown University Law Center Before the Senate Health, Education, Labor and Pensions Committee*, ~~(February 14, 2002)~~ Feb. 14, 2002, available at (LEXIS, Federal News Service).

every day, because they see mama isn't staying at home." President Bush applauded this particular mother by stating that: "The ability for somebody to realize kind of an independent life, less dependent upon government not only affects that person but also affects a lot of other people, starting with the children—starting with the children."³

Note that the examples of dependency discussed so far are biological or physical in their manifestations. Of course, these dependencies do not exhaust the potential range of situations of dependence. There are other forms of reliance on others that might also be characterized as "dependency," such as economic, psychological or emotional dependence. In fact, these other categories of dependence may accompany the physical or biological form that I am labeling "inevitable." One lesson, therefore, is that dependency is a term that encompasses more than one set of relationships or circumstances. Dependency is far from simplistic – it must be understood to be a complex and multi-faceted concept, potentially taking many different forms.

A. Dependency and Responsibility

In considering how to shape our social policy in a more focused and sophisticated manner, we must begin to distinguish among various forms of dependency. For example, unlike biological dependency, economic, psychological, and emotional dependencies are not generally understood to be universally experienced. This distinction suggests that these forms of dependency may appropriately be treated differently than forms that are considered inevitable or developmental. The characteristic of universality, which indisputably accompanies inevitable dependence, forms a theoretical basis upon which to construct a claim that society as a whole must respond to the situation of the inevitable dependent.

³ George W. Bush, *Remarks to the North Carolina Chamber of Commerce*, [Feb. 27, 2002, available \(February 27, 2002\)](#) (LEXIS, Federal News Service).

The universal nature of inevitable dependency is central to the argument for the imposition of societal or collective responsibility.⁴ The realization that this form of dependency is inherent in the human condition is the conceptual foundation upon which can be built a claim to societal resources on the part of the caretakers of inevitable dependents in order to facilitate their care. Justice demands that society recognize that the dependency labor caretakers perform produces a good for the larger society. Equality demands that the labor must not only be counted, but also must also be valued, compensated, and accommodated by society and its institutions.

Society has not, however, responded to the caretaker by counting, valuing, compensating or accommodating her caretaking. Instead of a societal response, inevitable dependency has been assigned to the quintessentially private institution -- the traditional, marital family. As discussed more fully in Section II, the marital family is an institution that has been considered to occupy a “separate sphere.” It is conceptualized as placed beyond and protected from intervention by the state. Dependency, through its assignment to the private, marital family, is hidden -- privatized within that family, its public and inevitable nature concealed.

Our attitude toward family follows scripts rooted in historic and, therefore, contingent ideologies, particularly those of patriarchy and capitalism. It is naturally assumed that the family is the repository for dependency and that collective societal responsibility is therefore unwarranted and inappropriate. The family assigned this essential societal task is also believed to have a “natural” form. It is organized as though the reproductive imperative necessarily determines the social organization of the family unit around the sexual affiliation necessary for

⁴ See Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, n.62 (2000).

biological reproduction. The core of the family is the heterosexual couple, formally united in marriage.

In our current understanding, dependency is considered to be a private matter. It is the family, not the state or the market, that assumes responsibility for inevitable dependency. In this regard, the institution of the family frees the market to act without consideration or accommodation for dependency. The state is cast as a default institution providing minimal, grudging assistance should families fail. Each individual family is ideally responsible for its own members' dependency, and resort to collective resources is considered a failure and deserving of condemnation and stigma. In fact, the failure to adequately provide for its members can move a family from the private to the public sphere, where it may be regulated and disciplined.⁵

In addition and consistent with the policy of privatizing dependency, provision of the economic resources necessary for undertaking caretaking tasks are to come from the family. Historically, the breadwinner (the spousal complement to the caretaker) provided these resources. Through such complementary gendered arrangements, each individual private family was ideally and ideologically perceived as able to assume responsibility for its own members and their dependency. A need to call on collective resources, such as welfare assistance, therefore, has been considered a family as well as an individual failure.

Consider how this plays out in the debates about childcare for working parents. The current childcare system is not designed to provide affordable childcare for all working families,

⁵ See MARTHA ALBERTSON FINEMAN, *Limits of Privacy—The Public Family*, in THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES, 177 (Routledge 1995).

but simply to promote the self-sufficiency of poor families.⁶ The language of the recent reforms is consistent with maintaining the myths of self-sufficiency and autonomy by requiring that families, in order to continue receiving aid, be engaged in activities that will lead to their self-sufficiency.⁷ Even President Bush's support for maintaining the funding for Temporary Aid to Needy Families (TANF) is driven by the ideal of "the great soul of America".⁸ He feels that TANF will be the tool that will help needy families get into, and stay in the workforce. He consequently aims to have over 70 percent of welfare recipients be self-sufficient within five years.⁹

Even those who agree that the societal role of families is evolving with the current capitalistic market insist that there is no childcare crisis and that government intervention will only lead to an institutionalized form of childcare.¹⁰ Their solution is to let the market evolve to suit the needs of society.¹¹ These commentators are very instrumental in their approach and hold onto myths of independence and self-sufficiency, which create a stigma regarding welfare and welfare recipients. Essentially, the libertarian argument against child care subsidies is that the

⁶ See THOMAS GABE ET AL., CHILD CARE SUBSIDIES: FEDERAL GRANTS AND TAX BENEFITS FOR WORKING FAMILIES, IN THE CHILD CARE DISASTER IN AMERICA: DISDAIN OR DISGRACE? 25, 58 (Nova Science 2001).

⁷ See id.

⁸ See *supra* note 3 George W. Bush, Remarks to the North Carolina Chamber of Commerce (February 27, 2002)(LEXIS, Federal News Service)(referring to ideals of hard work and self-sufficiency).

⁹ See id.

¹⁰ See Nick Gillespie, *The Kids are Alright: The White House Invents a Child Care Crisis*, Reason Magazine, Dec.ember 1997, available at <http://reason.com/9801/ed/nick/shtml> (last visited June 1, 2002); Dearborn, *Press Release: Libertarians Give Mixed Reviews to day Care Reform Proposals*, Libertarian Party of Michigan, at <http://www.mi.lp.org/press/112299.htm> (last updated May 29, 2000).

¹¹ See Nick Gillespie, *The Kids are Alright: The White House Invents a Child Care Crisis*, Reason Magazine, Dec.ember 1997, available at <http://reason.com/9801/ed/nick/shtml> (last visited June 1, 2002). However, i It seems as though Gillespie-type arguments are not

current situation is what the market is willing to bear, and people are willing to accept these conditions. Even commentators who feel that there should be no stigma surrounding dependency, feel that the goal of programs such as TANF should be to help recipients achieve self-sufficiency.¹²

What is never mentioned is the racial and class implications of this system. In thinking about the privatization of dependency and the role of the family, our history of racism is also relevant. This is apparent when we consider caretaking situations in the paid labor force where women of color are substituted for the unpaid family laborer at low wages with few, if any, benefits.¹³ Since the resources for childcare come from the family, wages are depressed, as family resources are needed for provision of other basic goods and services. Ironically, a good deal of the training for work that is occurring in the wake of welfare reform is for positions in childcare.

B. “Derivative” Dependency – Social Assignment and Individual Choice

I argue that one result of this privatization of inevitable dependency is the frustration of our aspirations toward gender equality. It has proven difficult, if not impossible, to break unequal historic patterns of gendered division of labor within the family when the family is also

challenging the mythological role of the family, but still envisioning the individual ideal since it depends on the individual choice of parents to result in a satisfactory solution.

¹² See Peter Edelman, *supra* note 2. Prepared Testimony of Peter Edelman Professor of Law, Georgetown University Law Center Before the Senate Health, Education, Labor and Pensions Committee (February 14, 2002)(LEXIS, Federal News Service).

¹³ See KIMBERLY PORRAZZO, THE NANNY KIT 12 (updated ed., Penguin Books; updated ed., 1999)(1992)(“Nannies’ salaries vary greatly from region to region. In the northeast, nannies are often paid \$400-\$500 or more per week. In California, however, the average nanny’s weekly salary is closer to \$300-\$350 per week. Within Southern California, wages are higher in Los Angeles County than in Orange County or San Diego County, probably because Orange and San Diego counties are close to the Mexican border and a large number of illegal immigrants are seeking domestic work and will accept a lower salary.”)

saddled with almost exclusive responsibility for dependency. Within the family, dependency work continues to typically burden women more than men. In the pattern of long-standing tradition, caretaking continues to be delegated to women -- assigned as the responsibility of the person occupying the gendered role of wife, or mother, or grandmother, or daughter, or daughter-in-law, or sister.¹⁴

The assignment of responsibility for dependency to the family in the first instance, and within the family (ultimately to women) in the second, operates in an unjust manner. Meeting the needs of dependents has significant material implications for the caretaker. Paradoxically, undertaking dependency -- caring for an inevitable dependant -- generates a different form of dependency in the caretaker. I label this form of dependency, often overlooked in policy discussions or collapsed into stigma, “derivative dependency.” Derivative dependency arises when a person assumes (or is assigned) responsibility for the care of an inevitably dependent person. I refer to this form of dependency as “derivative” to capture the very simple point that those who care for others are themselves dependent on resources in order to undertake that care. Derivative dependents, as a result of the dependency work they are doing, have a need for monetary or material resources. They also need recourse to institutional supports and accommodation, and have a need for structural arrangements that facilitate their caretaking. Dependency work is demanding. The norms of sacrifice and selflessness are clear – and costly.

It is important to emphasize that, unlike inevitable dependency, derivative dependency is *not* a universal experience. Derivative dependency is inherent in the status of caretaker, but not all of us perform that role. In fact, many people in our society totally escape the burdens and

| [See id.](#)

costs that arise from assuming the role of a caretaker, perhaps are even freed for other pursuits by the caretaking labor of others. We assume that people who are derivative dependents (caretakers or mothers) voluntarily assume that status – they “consent.” But why and how is it that only some in our society are asked to undertake the sacrifices that caretaking entails?

C. Dependency and Choice

People operate in society, expressing preferences as structured by and through existing societal institutions. Choices are made in social relations that reflect long standing cultural and social arrangements and dominant ideologies about gender and gender roles.ⁱⁱ The beliefs about the appropriateness of arrangements function at an unconscious (and therefore, unexamined) level. Our notions of what are “natural” behaviors channel our beliefs and feelings about what are considered appropriate institutional arrangements. We know what constitutes the good mother, the ideal husband and the perfect marriage. When individuals act according to the scripts culturally crafted for these roles, consistent with prevailing ideology and institutional arrangements, we may say that they have chosen their own path. Choice is problematic in this regard. Ideology and beliefs limit and shape what are perceived as available and viable options for all individuals in a society.

The notion that it is an individual choice to assume responsibility for dependency work and the burdens it entails allows us to ignore arguments about our general responsibilities. Choice trumps any perceived inequity and justifies maintenance of the status quo. We ignore the fact that choice occurs within the constraints of social conditions, including history and tradition. Such conditions funnel individual decision making into prescribed channels, often operating along practical and symbolic lines to limit and close down options.

¹⁴ See LINDA J. WAITE & MAGGIE GALLAGHER, *THE CASE FOR MARRIAGE: WHY MARRIED*

Women have been historically identified with the role of mothering, and presumed to have the responsibility for children.¹⁵ Women who choose not to have children are seen as having made a non-traditional, even unnatural choice.¹⁶ Even when women choose to have children they are assumed to care for their children at home.¹⁷ Negative media attention to alternative mode of childcare, such as placement with nannies or day care facilities, has instilled a fear in many people that only parents can properly, safely and conscientiously raise a child. In the cultural context that places caretaking primarily on mothers, this creates further pressure for women to stay at home and raise their children.¹⁸ Even the public school system is structured in a way that is not consistent with families in which women work. The structures remain even though the historic assumption that most mothers remain at home to take care of their children after school and during holidays is no longer valid.¹⁹

PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY 107 ([Doubleday](#) 2000).

¹⁵ See Katherine M. Frank, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 Colum. L. Rev. 181, 183-187 (2001).

¹⁶ See *id.*, at 185.

¹⁷ See SUZANNE LAMOREY ET AL., LATCHKEY KIDS: UNLOCKING DOORS FOR CHILDREN AND THEIR FAMILIES 19 ([Sage Publications](#) 2nd. ed., 1999)(~~citing Zucker 1994 and Tuttle, 1994~~)(~~arguing that~~ the major myth that expects mothers to stay at home and be the primary caretaker of children arises from society's negative attitude towards maternal employment, divorce, day care, single parenting, and latchkey children).

¹⁸ PORRAZZO, ~~supra note 13. KIMBERLY, THE NANNY KIT 72 (updated ed., Penguin Books, 1999)(1992)~~ (approximately 60-70% of those who videotape their nannies end up firing them. One parent found their nanny to be taking wonderful care of the child, but was also overheard saying: "I take much better care of you than your mother.")

¹⁹ DEBORAH BELLE, THE AFTER-SCHOOL LIVES OF CHILDREN: ALONE AND WITH OTHERS WHILE PARENTS WORK 7 ([Lawrence Erlbaum Associates](#) 1999)("The U.S. public school day is substantially shorter than the full-time work day and shorter than the school day in many other nations of the world. The school year is also interrupted by frequent holidays, early release days, and closings for inclement weather, and then concluded with a lengthy summer vacation, all of which vastly exceeds the vacation allotments of most employed parents. Nor are extended day or after-school programs available in many communities or to many children who need them.").

Whenever we use individual choice as a justification for ignoring the inequities in existing social conditions concerning dependency, we also fail to recognize that quite often, choice of one status or position carries with it consequences not anticipated or imagined at the time of the initial decision. For example, we may say that a woman “chose” to become a mother (societal and family pressures aside), but does this choice mean she also has consented to the societal conditions accompanying that role and the many ways in which that status will negatively affect her and her children’s economic prospects?

Further, individual choice should not be the end of the matter if what we are seeking is social justice or fairness. Even if someone does “consent” in that she knew she was taking risks or foregoing opportunities to rise to the challenges dependency work provides, should that let society off the hook? Should society tolerate the situation of dependency within the family and the mandated personal sacrifices a caretaker typically encounters under current societal arrangements? In other words, are some conditions just too oppressive or unfair to be imposed by society even if and when an individual openly agrees to or chooses them?

In response to the argument that caretakers should be compensated for their labor, I have been struck by two contemporary and quasi-economic retorts based on the idea of choice. I refer to one as the “Porsche Preference.” This argument states that if someone prefers to have a child, this preference should not be treated differently than any other choice (like the choice to own a Porsche). Society should not be responsible for subsidizing either preference – if you can afford to own a Porsche or have a child, fine, but you can’t expect the rest of us to chip in.

I do not accept the basic premise that children are merely another commodity, of course. The nature of children hopefully distinguishes the choice to reproduce from the whims of the auto fan. Further, it seems to me that a decision to have a child sets up a qualitatively different

relationship between the decision maker and the collective or state. As I argue in the next section of this Chapter, having and caring for dependency is a society-preserving task – care of children in particular is essential to the future of the society and all of its institutions. It is a different sort of “preference,” providing a social good as well as individual satisfaction.

Responding to this type of reasoning, some have argued that the consumption of Porsches is also essential to society.ⁱⁱⁱ Consumption leads to jobs and the creation of stockholder wealth, just like a preference for children.²⁰ Accepting only for arguments’ sake the troublesome premises of this kind of argument through analogy, it seems clear that the appropriate comparison is not between the *consumers* of children and of Porsches, but the *producers* of children and those of Porsches. If we make that kind of comparison, my arguments for subsidy for caretakers are supported by the analogy. The producers of Porsches are subsidized (heavily) through regulatory measures such as tariff and tax policy and labor regulations, as well as directly, such as when communities bid for location of plants or lawmakers slash taxes and make investments in services to entice businesses with roaming eyes.

Further, when we think of just who are the consumers and who are the producers for purposes of comparison, it is important to remember that the government and the market are the consumers for the products of caretaking labor. And they are not paying a fair price; in fact, they are paying very little.²¹ Not subsidizing the caretaker in this kind of comparison is the equivalent of the consumer stealing the Porsche its manufacturer so lovingly created and skillfully constructed.

²⁰ See Katherine M. Frank, *supra* note 15, at 190-191. *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 Colum. L. Rev. 181, 190-191 (2001).

²¹ See SUZANNE W. HELBURN & BARBARA R. BERGMAN, AMERICA’S CHILD CARE PROBLEM, 98 (St. Martin’s Press 2002). ; *See also* DEBORAH BELLE, *supra* note 19, at 12. *THE AFTER-SCHOOL LIVES OF CHILDREN: ALONE AND WITH OTHERS WHILE PARENTS WORK* 12 (1999).

The second argument about choice is also framed in economic terms. I label this the “efficiency as exploitation” model of excuse for not requiring society to pay a fair share for the necessary care work that must occur. This argument is really nothing more than the assertion that if caretakers allow themselves to be exploited -- unpaid or underpaid -- then this must be the most “efficient” solution. Voluntary assumption of the costs of caretaking and dependency should not be disturbed.

Sometimes this is expressed as simply the result of the fact that women have more of a “preference” for children and as such, are willing to make other sacrifices – that is simply what the market will bear. Aside from the fact that this type of arrangement creates situations that negatively effects society far beyond the individual caretaker and her charges, a free market in care work is not working. It has resulted in poverty, which generates other social ills. I think the implications of this type of laissez-faire approach to important issues of social policy also demonstrates how little economics has to offer to considerations of justice.

III. The Dependency Deficit – A Society in Default

As it now stands in this society, derivative dependents are expected to get both economic and structural resources within the family. The market is unresponsive and uninvolved, and the state is perceived as a last resort for financial resources, the refuge of the failed family. A caretaker who must resort to governmental assistance may do so only if she can demonstrate, through a highly stigmatized process, that she is needy.

A. Deficit

Unfortunately, in many situations, neither the economic nor the structural supports for caretaking are adequate. Within families, caretaking work is unpaid, expected to be gratuitously and uncomplainingly supplied. Even when non-family members, such as nannies or nurses,

supply caretaking labor, the family remains primarily responsible for the care. And, furthering the assumption that this type of work is not valuable, the wages are supplied from family funds, not through social subsidies, ensuring that they are low.²²

In some atypical instances, employers offer a more communal approach to caretaking or the state may assume some responsibility, such as a company-sponsored childcare or home health aids provided by public funds. However, such non-family assistance with caretaking is not compelled (and in fact is contradicted) by our understanding of who is responsible for dependency. This sort of assistance is viewed as “generous,” an unexpected benefit supplementing the primary responsibility of the family.

If we measure success by poverty statistics, it seems clear that many families are failing in their socially assigned task as the repository for dependency. Many caretakers and their dependents find themselves impoverished or severely economically compromised even if they are operating within the context of a marital family. Helburn and Bergman illustrate that even with both parents working full-time at minimum wage, taking into consideration the required poverty-line expenditures, they are unable to pay the cost of licensed childcare.²³ . As can be

²² See [SUZANNE W. HELBURN AND BARBARA R. BERGMANN, AMERICA'S CHILD CARE PROBLEM at 28 \(St. Martin's Press 2002\)](#) (when a family at or near the poverty level is looking for child care, they will obviously look for the cheapest available, which is most likely to be unlicensed care; furthermore, if there are any questions as to the quality, many families in this situation would resolve them in favor of cheapness).

²³ See [id. HELBURN AND BERGMANN, AMERICA'S CHILD CARE PROBLEM at 27 \(2002\)](#) (two parents working at minimum wage, for 52 forty hour weeks, with two preschool children earns \$27,962 in disposable income-after taxes. With the Official U.S. poverty-line living expenses set at \$17,493 the family only has \$10,496 to spend on child care estimated to cost between \$9,980 and \$11, 870.)

expected, single mothers have an even more difficult time making ends meet and providing for childcare as they are also engaged in the workforce.²⁴

For others, the death of a primary wage earner or divorce can prompt an economic freefall into poverty. Some women in these situations are in worse positions than women who remain single, since these newly single women have cut back on their career commitments as a result of the partnership, to raise children or to allow the partner to advance his career.²⁵

Even families that “conform,” in that they are both intact and economically self-sufficient, are often suffering a crisis, either in caretaking or from work demands, or both. Most two-parent households must send both parents into the workforce in order to make ends meet, all at the cost of quality time spent with their children.²⁶ In some two-parent households the childcare or after-school care is designated to one parent, and the other parent spends less time with the child(ren).²⁷

B. Assessing the Costs of Care

Direct costs associated with caretaking burden the person doing the dependency work. Caretaking labor interferes with the pursuit and development of wage labor options. Caretaking labor saps energy and efforts from investment in career or market activities, those things that produce economic rewards. There are foregone opportunities and costs associated with

²⁴ See *id.* (one parent, with two preschool children, working at minimum wage for 52 forty-hour weeks, with government benefits earns \$15,736 in disposable income. With Official U.S. poverty-line living expenses set at \$13,898 the mother has only \$1,838 to spend on care estimated to cost between \$9,980 and \$11, 870.)

²⁵ See ~~LINDA J. WAITE *supra* note 14, at 99. & MAGGIE GALLAGHER, THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY 99 (2000).~~

²⁶ See ~~Peter Edelman, *supra* note 2. Prepared Testimony of Peter Edelman Professor of Law, Georgetown University Law Center Before the Senate Health, Education, Labor and Pensions Committee (February 14, 2002)(LEXIS, Federal News Service).~~

caretaking. Even caretakers who work in the paid labor force typically have more tenuous ties to the public sphere because they must also accommodate caretaking demands in the private.²⁸

Also, there are psychological or spiritual costs resulting from the attenuated and compromised relationships a caretaker is forced to have with both the market and family (if she works in both), or from the need to choose, thus sacrificing one to gain the other.²⁹ The caretaker is caught within social configurations and institutional arrangements that are unjust.

Further, most institutions in society remain relatively unresponsive to innovations that would lessen the costs of caretaking. Caretaking occurs in a larger context, and caretakers often need accommodation in order to fulfill multiple responsibilities. For example, many caretakers also engage in market work.³⁰ Far from structurally accommodating or facilitating caretaking, however, workplaces operate in modes incompatible with the idea that workers also have obligations for dependency. Workplace expectations displace the demands of caretaking — we assume that workers are those that are free to work long and regimented hours.

These costs are not distributed among all beneficiaries of caretaking (be they institutional or individual). Unjustly, the major economic and career costs associated with caretaking are

²⁷ See ~~DEBORAH BELLE, *supra* note 19, at 7. THE AFTER-SCHOOL LIVES OF CHILDREN: ALONE AND WITH OTHERS WHILE PARENTS WORK 7 (1999).~~

²⁸ See ~~LINDA J. WAITE, *supra* note 14, at 99. - & MAGGIE GALLAGHER, THE CASE FOR MARRIAGE: WHY MARRIED PEOPLE ARE HAPPIER, HEALTHIER, AND BETTER OFF FINANCIALLY 99 (2000).~~

²⁹ See VICTOR R. FUCHS, WOMEN'S QUEST FOR ECONOMIC EQUALITY 60-64 ([Harvard University Press](#) 1998) [~~hereinafter FUCHS, WOMEN'S QUEST~~](discussing the hidden costs of children for women in the workplace). Cf. Vicki Shultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1894 (~~date?Nov. 2000~~) (arguing that women do not choose lower-paying, lower-status jobs because of their heavier family obligations, but rather that the segregation of women into these jobs forces women into household labor).

³⁰ See Julie Novkov, *A Deconstruction of Motherhood and a Reconstruction of Parenthood*, 19 N.Y. U. REV. L. & SOC. CHANGE 155, 165-66 (1991) (discussing the role of working mothers).

typically borne by the caretaker alone.³¹ If she is lucky, the caretaker is able to persuade her partner in the private family to share the costs with her, spreading them out a bit. But the costs remain confined to the family in a world where market institutions assume workers are unencumbered by family and dependency and the government assumes that (functioning) families provide for basic needs.

There are penalties that dually responsible workers currently suffer while market institutions are relieved of responsibility for dependency. It is important to note here, that while caretaking remains gendered in practice, it is the caretaking itself, not the gender of the caretaker that is inherently disadvantageous in our system. When men do care work, they also suffer costs. It is the caretaking itself that institutions are free to punish. These penalties must be removed and there must be a more equitable distribution of responsibility for dependency among the primary societal institutions of family, market, and state.

B. Default – Accruing a Social Debt for Social Goods

I argue that caretaking work creates a collective or social debt and that each and every member of society is obligated by this debt. Furthermore, this debt transcends individual circumstances. In other words, we need not be elderly, ill, or children any longer to be held individually responsible. Nor can we satisfy or discharge our collective responsibility within our individual, private families. Merely being financially generous with our own mothers or duly supporting our own wives will not suffice to satisfy the share of the societal debt we generally owe to all caretakers.³²

³¹ See ~~Deborah Belle, *supra* note 19, at 75-78. *The After-School Lives of Children: Alone and with Others While Parents Work* 75-78 (1999).~~

³² See Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency* 8 ~~A.M.U.J. AM. U. J.~~ GENDER, SOC. POL'Y & L. 18 (2000).

My argument that the caretaking debt is necessarily a collective one is based on the fact that biological dependency is a universal and inevitable phase in the human condition, and therefore, of necessity, of a collective or societal concern. Individual dependency needs must be met if we, as individuals, are to survive, and our aggregate or collective dependency needs must be met if our society is to survive and perpetuate itself. The mandate that the state (collective society) respond to dependency, therefore, is not a matter of altruism or empathy (which are individual responses often resulting in charity),^{iv} but one that is primary and essential because such a response is fundamentally society-preserving.

If infants or ill persons are not cared for, nurtured, nourished, and perhaps loved, they will perish. We can say, therefore, that they owe an individual debt to their individual caretakers. But the obligation is not theirs alone—nor is their obligation confined only to their own caretakers. Social justice demands a broader sense of obligation. Without aggregate caretaking there could be no society, so we might say that it is caretaking labor that produces and reproduces society. Caretaking labor provides the citizens, the workers, the voters, the consumers, the students, and others who populate society and its institutions. There are essential tasks to be performed in every society that are legitimate state concerns. One of these is the response to dependency.³³ The fact that biological dependency is inherent in the human condition means that it is of collective or societal concern.

Society-preserving tasks, like dependency work, are commonly delegated. The delegation is accomplished through the establishment and maintenance of social institutions. For example, the armed services are established to attend to the collective need for national defense. But delegation is not the same thing as abandonment. The armed services are structured

simultaneously as both the responsibility of only some designated members (volunteers or draftees) and of all members of society (taxpayers and voters).³⁴

This dual and complementary responsibility is consistent with our deeply held beliefs about how rights and obligations are accrued and imposed in a just society: societal obligations have both an individual and a collective dimension. Certain members of society may volunteer, be recruited, or even drafted for service, but they have a right to be compensated for their services from collective resources. They also have a right to the necessary tools to perform their assigned tasks and to guarantees that they will be protected by rules and policies that facilitate their performance. Caretakers should have the same right to have their society-preserving labor supported and facilitated. Provision of the means for their task should be considered the responsibility of the collective society.

IV.. The Rhetoric of Subsidy and Self-Sufficiency

In popular and political discourse, the idea of “subsidy” is the equally stigmatized companion to dependence, the opposite of the ideal of self-sufficiency. In fact, dependency is assumed if an individual is the recipient of certain governmental subsidies, such as welfare. The specter of dependency serves as an argument against subsidies in the form of governmental social welfare transfers. Policy makers, who argue for the goal of independence, favor the termination of subsidy so the individual can learn to be self-sufficient.

But a subsidy is nothing more than a process of allocating collective resources to some persons or endeavors rather than other persons or endeavors because a social judgment is made

³³ See [Martha Albertson Fineman](#), *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency* [A.M. AM. U.J. GENDER, SOC. POL'Y & L.](#) 13, 21, n.15 (1999).

³⁴ See [Martha Albertson Fineman](#), *supra note 32*, at 19. *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency* 8 [A.M. U.J. GENDER, SOC. POL'Y & L.](#) 19 (2000).

that they are in some way “entitled” or that the subsidy is justified.³⁵ Entitlement to subsidy is asserted through a variety of considerations, such as the status of the person receiving the subsidy, their past contribution to the social good, or their need. Often, a subsidy is justified because of the position the subsidized group holds or the potential value their endeavors, have for to the larger society. Sometimes the benefits we receive are public and financial, such as direct governmental transfer programs to certain individuals or business entities, such as farmers or sugar growers.³⁶ Public subsidies can also be indirect, such as the benefits given in tax policy.³⁷ Private economic subsidy systems work in the forms of foundations, religions, and charities.

A. Types of Subsidy

Typically, a subsidy is thought of as the provision of monetary or economic assistance. However, a subsidy can also be delivered through the organization of social structures and norms that create and enforce expectations. A subsidy can also be non-monetary, such as the subsidy provided by the uncompensated labor of others in caring for us and our dependency needs as individuals, as well as members of a larger dependent society. Taking this observation into account, along with the ideas of inevitable and derivative dependency, it seems obvious that we must conclude that subsidy is also universal. We all exist in contexts and relationships, in social

³⁵ See generally Christine N. Cimini, *Welfare e Entitlements in the Era of Devolution*, [GEORGETOWN JOURNAL ON POVERTY LAW AND POL'Y](#) [GEO. J. ON POVERTY L. & POL'Y](#) (Winter 2002).

³⁶ See ~~Martha Albertson-Fineman~~, [supra note 32](#), at n17. *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency* 8 [A.M. U.J. GENDER, SOC. POL'Y & L.](#) 23, n.17 (2000).

³⁷ See ~~Martha Albertson-Fineman~~, [supra note 32](#), at n18. *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency* 8 [A.M. U.J. GENDER, SOC. POL'Y & L.](#) 23, n.18 (2000); [s](#) See also Martha McCluskey, *Subsidized Lives and the Ideology of Efficiency*, 8 [A.M. U.J. GENDER, SOC. POL'Y & L.](#) (2000).

and cultural institutions, such as families, which facilitate, support, and subsidize us and our endeavors.

In complex modern societies no one is self-sufficient, either economically or socially. Whether the subsidies we receive are financial (such as in governmental transfer programs or favorable tax policy) or non-monetary (such as those provided by the uncompensated labor of others in caring for us and our needs), we all live subsidized lives.

In fact, all of us receive both forms of subsidy during our lives. In particular, for those who adhere to the myths of autonomy and independence, it is important to confront the fact that the uncompensated labor of caretakers is an unrecognized subsidy, not only to the individuals who directly receive it, but more significantly, to the entire society.

The interesting question is why some subsidies are differentiated and stigmatized while others are hidden. Subsidies to market institutions and middle-class families are called “investments,” “incentives,” or “earned,” when government supplies them, but deemed “gifts,” “charity,” or the product of “familial love” when they are contributions of caretaking labor. The actions of our government thus far, reflect the inconsistent and hypocritical stance taken with regard to subsidy. The family is to be self-sufficient, but the situation of others is viewed sympathetically.

B. Subsidy and Politics – a Contemporary Comparison

The same politicians, who seem to be out of touch with the actual situation of welfare recipients by insisting on their self-sufficiency,³⁸ choose to disregard these myths when it comes

³⁸ See Douglas MacKinnon, *The Welfare Washington Doesn't Know*, [The N.Y. TIMES, Tuesday May 21, 2002, at A21](#) (discussing how most congressmen cannot comprehend the amount of shame and pain and comes with the experience of being in poverty, the frustration of trying to help yourself out of it).

to matters such as the farm subsidy.³⁹ These conflicting concepts of autonomy and subsidy were highlighted recently, when, on the very same day that certain Democratic senators joined with republicans and proposing stricter requirements for welfare recipients, the House of Representatives passed a bill that would provide large subsidies to America's farms.⁴⁰

The language used in each case is revealing: the agricultural bill is named the Farm Security and Rural Investment Act, and was described by President Bush, ironically, as establishing a "reliable *safety net* for our Nations' Farmers and ranchers."⁴¹ The President emphasized that the Act would provide the "support" that "[h]ardworking... farm and ranch families" deserve. Obscenely, because the House voted down a motion that would cap payments at \$275,000 a year per farmer, the result is that three-quarters of the subsidy payments will go to the largest and richest 10 percent of farmers – in other words, to agribusinesses, not to the "hardworking farm and ranch families" who deserve support.⁴²

³⁹ See "Making Hay" ~~the~~ NEW REPUBLIC, May 20, 2002, at 9 (pointing out that President Bush is not keeping with his market-driven approach to agriculture).

⁴⁰ See Dick Lugar, "The Farm Bill Charade", N.Y. TIMES Jan. ~~uary~~ 21, 2002, at A15. (The majority of payments in most states go to the top tenth of farmers. Farms in just six states will take almost half of the federal payments "Ineffective agricultural policy has, over the years, led to a ritual of overproduction in many crops and most certainly in the heavily supported crops of corn, wheat, cotton, rice and soybeans and the protected specialty products like milk, sugar and peanuts"); ~~Elizabeth Becker, Farmers Market Program Wins Support but Loses Subsidy, N.Y. TIMES, Mar. 17, 2002, at 32.~~

~~Congress is putting an end to programs that supply needy elderly with coupons to shop at local farmers markets. These programs helped provide the elderly with nutritious food as well as keep struggling small-scale farmers in business. However, all the concern for small acreage farmers making a reasonable living is secondary as congress discusses how to spend \$171 billion on the new 10-year farm bill.~~

~~See Elizabeth Becker, "farmers Market Program Wins Support but Loses Subsidy", N.Y. Times, march 17, 2002 at 32.~~

⁴¹ See Statement by the President, Office of the Press Secretary, May 2, 2002 (~~this can be found~~ at <http://www.whitehouse.gov/news/releases/2002/05/20020502.html>) (~~last visited June 2002~~).

⁴² Laura D'Andrea Tyson, "The Farm Bill is a \$200 Billion Disaster" BUSINESSWEEK, ~~Monday,~~ June 3, 2002, (~~Economic Viewpoint~~).

On the same day, a dozen Democratic Senators “declared that Congress must adopt ‘tougher work requirements’” so that by 2007, 70 percent of welfare recipients must be engaged in work and other supervised activities, an increase from the current requirement of 50 percent.⁴³ Unlike the Farm Bill, earlier undertaken welfare reform *does* allow states to cap their payments, so that if a child is born to a mother already receiving welfare payments, she will not receive any additional funds to support and feed that child.⁴⁴ For example, New Jersey has implemented a system whereby a woman on welfare receives a basic \$488 per month with an additional \$64 for each child. But if a woman on welfare gets pregnant and has a child while receiving assistance, she receives no additional cash allotment for the new baby.⁴⁵ It was argued that to provide the funds would create an incentive for reproduction.

VI. Conclusion

The societal arrangement whereby dependency was the responsibility of the private family may have made some sense when marriage provided (and assumed) a certain population for the family. If we have both a caretaker and a wage earner who make differentiated but complementary contributions— one providing the caretaking and emotional resources, the other

⁴³ See [Bush, supra note 3](#) [George W. Bush, Remarks to the North Carolina Chamber of Commerce \(February 27, 2002\)](#) (LEXIS, Federal News Service) (referring to ideals of hard work and self-sufficiency).

⁴⁴ See [Center for Law and Social Policy](#) at <http://www.clasp.org/pubs/TANF/finalregs.html> (last visited June 18, 2002). The proposed bill would also require welfare recipients to work forty hours a week, up from the current requirement of thirty hours per week. See Personal Responsibility, Work, and Family Promotion Act of 2002, H.R. 4737, 107th Cong. (2002).

See Sarah Lueck, “House Passes Bill Lengthening Workdays of Welfare Recipients,” WALL STREET JOURNAL, [Friday](#), May 17, 2002 (quoting Health and Human Services Secretary Tommy Thompson, who was a key player in the overhaul of the state welfare system when he was governor of Wisconsin).

⁴⁵ This family cap is being challenged in [court](#). See Leslie Brody, “Welfare Reform in Spotlight as Milestone Nears,” [NEW JERSEY NEWS](#) Mar. ~~ch~~ 24, 2002 (one of five of the families no longer on welfare in New Jersey are living in poverty. .

the material necessities – then perhaps dependency can be handled within this family. But what about the situation of millions of families that do not conform to that [some would say antiquated] ideal? And what about the costs to individuals within families that do conform – the losses of opportunity and access because of the burdens of caretaking. Further, what about the responsibility of the rest of us – society and its institutions. How is it just that we appropriate the labor of caretakers and refuse to contribute a fair share of the burdens associated with that care.

The myths about autonomy, independence, and self-sufficiency both for individuals and for families have only been able to flourish and perpetuate themselves because dependency has been hidden within the family. When certain families reveal the fallacy of assumption that they can adequately manage their members needs, we do not reexamine the premises, but demonized those families as failures. Therefore, those in need of economic assistance are viewed as deviating from the stated norm of independence and self-sufficiency. It is time to rethink “subsidy” as well as “autonomy” and “dependency.”

If caretaking is society-preserving (therefore productive) work, the political and policy questions should focus on an optimal reallocation of responsibility for dependency across societal institutions. Reallocation in this scheme may be provided through economic transfers to caretaking units, as well as by the provision of structural supports that accommodate caretaking responsibilities within workplaces so that those who both work for wages and work for love or duty do not have to compromise one to do the other.

In Chapter Nine I build upon these suggestions. In the Section that follows, I first want to explore the rhetoric of marriage in policy discourse using adherents to the Civil Society movement. I also look at the marital family and ask what functions it actually performs and which of those is essential and appropriate for our diverse and secular society.

ⁱ ~~Resistance to the label of corporate welfare during the welfare debates — yet there continues to be a lot of resources pumped into industry.~~

ⁱⁱ ~~Perhaps flush out specific societal structures you refer to here.~~

ⁱⁱⁱ ~~Katherine Franke in Columbia L.Rev—2001~~

^{iv} ~~This is not to argue that individual charitable impulses are not to be encouraged, just that they are inherently unreliable. Provision of necessary resources in order to allow the accomplishment of important societal tasks cannot be left to the whim or conscience of individuals. Collective societal responsibility must include coercive measures to ensure contributions from those who have benefited.~~