

CRACKING THE FOUNDATIONAL MYTHS: INDEPENDENCE, AUTONOMY, AND SELF-SUFFICIENCY

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I. INTRODUCTION¹

Feminist legal theorists can legitimately complain that most mainstream work fails to take into account institutions of intimacy, such as the family. Discussions that focus on the market, for example, typically treat the family as separate, governed by an independent set of expectations and rules. The family may be viewed as a unit of consumption, even as a unit of production, but it is analytically detachable from the essential structure and functioning of the

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1. This Article is based on a book in progress in which I argue that there is a compelling need for us to reconsider the basic distribution of responsibility for dependency among societal institutions, specifically the family, the state and the market. This Article sets forth my ideas about dependency and suggests a mechanism for increasing public discussion about the vision of society we are collectively creating in and outside of our political institutions.

market.

Similarly, when theoretical focus is turned to the nature and actions of the state, the family (if it is considered at all) is cast as a separate autonomous institution. Of course, the state may explicitly address the family as a site of regulation or policy, but in non-family contexts, the extent of societal reliance on the family is un- or under-theorized. There is little recognition that policy discussions about economic and social issues implicitly incorporate a certain image of the family, assuming its structure and functioning.

Likewise, theorists who focus on the individual seem to deny the family any potential relevance or theoretical significance in their work. Jurisprudential constructions of justice or liberty, for example, consider the individual as the relevant unit of analysis.² The implications of the fact that individuals exist in family or relational contexts are largely ignored. It is no surprise, therefore, that little attention has been paid to how assumptions about the family affect the theories expounded in regard to market and state or the nature of the individual. Few theorists recognize just how reliant their particular visions of the world—as “just,” “efficient,” “natural,” or “empirically based”—are on the consensus that the family is the institution primarily responsible for dependency.

This reliance on what I have termed the “assumed family” distorts analysis and policy. The assumed family is a specific ideological construct with a particular population and a gendered form that allows us to privatize individual dependency and pretend that it is not a public problem. Furthermore, the gendered nature of this assumed family is essential to the maintenance and continuance of our foundational myths of individual independence, autonomy, and self-sufficiency.³ This assumed family also masks the dependency of society and all its public institutions on the uncompensated and unrecognized dependency work assigned to caretakers within the private family.

In economic and other important public policy discussions, we focus on the appropriate relationship between market and state, with the family relegated to the “private” sphere. Discussions proceed as though the policies that are designed to affect these institutions in the public sphere have only few implications for the unexamined

2. See Randall P. Bezanson, *Self-Reliance*, 71 N.D. L. REV. 29, 30 (1995) (asserting that the choice of exercising liberty rests only with the individual).

3. Expressed as ideals, these abstract characteristics are theoretically attainable by individuals only because we assume that families exist and perform their functions—producing, nurturing, and providing for their members.

private family. Even more fundamental, the discussions fail to grasp the fact that the actual (as contrasted with the assumed) family might profoundly affect the possibilities of success and failure of policies created for the market and the state.

II. PUBLIC AND PRIVATE CONCEPTS

To point out the neglect of the family in legal and policy theory differs from concluding that the family has been considered an unimportant institution. In fact, the importance of the family is asserted in its very segregation from other areas of human endeavor. This separation is exemplified in the often repeated characterization of family law as one of three *separate* pillars of civil society—the other two being property and contract.⁴ The division of the world (and law) into “public” and “private” realms also manifests the dual conceptualization of the family as both separate and as essential.⁵

Not only is the family perceived as occupying the private sphere, it is also conceptualized as embodying values and norms that are very different from the institutions occupying the public sphere, particularly those of the market. Family relationships are cast as different in function and form than relationships existing in the public world. Families are altruistic institutions held together by bonds of affection. Of course, any serious consideration of the family reveals that it is a very public institution, assigned an essential public role within society.⁶ The family is delegated primary responsibility for dependency.

In this Article, I will bring into view the family, or more explicitly, the dependency hidden within the assumed family. Policy development and social theory considerations should center on assessing the appropriateness of the aspirations and expectations we have for the family. This assessment is crucial to one of the most

4. See Joseph William Singer, *Legal Realism Now*, 76 CAL. L. REV. 465, 479-81 (1988) (discussing the reconceptualization of contract, property, and family law).

5. The characterization of the market in this public/private scheme is interesting. It is cast as public *vis-à-vis* the family, but private *vis-à-vis* the state, seeming to gain the advantage of each category. In this regard, it is interesting to note that when the comparison is of market versus family, the “private” sphere of the family is subject to heavy public regulation, mostly because it retains aspects of “status” and is not governed by contract. In contrast, the “public” arena of the marketplace is governed by bodies of designated “private” law, such as contract. These contrary characterizations have ideological nuances.

6. See Nancy F. Cott, *Giving Character to Our Whole Civil Polity: Marriage and the Public Order in Late Nineteenth Century*, in U.S. HISTORY AS WOMEN'S HISTORY 107 (L. K. Kerber, A. Kessler-Harris & K.K. Sklar eds., 1995) (giving a historian's perspective on the family as an institution). Professor Cott states that “one might go so far as to say the institution of marriage and the modern state have been mutually constitutive . . . one of the principal means that the state can use to prove its existence . . . is its authority over marriage.” *Id.* at 109.

compelling problems facing society at the end of the Twentieth Century—the increasing inequitable and unequal distribution of societal resources and the corresponding poverty of women and children.

III. COLLECTIVE RESPONSIBILITY

Perhaps the most important task for those concerned with the welfare of poor mothers and their children, as well as other vulnerable members of society, is the articulation of a theory of collective responsibility for dependency. The idea of collective responsibility must be developed as a claim of “right” or entitlement to support and accommodation on the part of caretakers. It must be grounded on an appreciation of the value of caretaking labor.⁷ A further important concern is to ensure that any theory of collective responsibility not concede the right of collective control over individual intimate decisions, such as whether and when to reproduce or how to form one’s family.⁸

The rhetorical and ideological rigidity with which contemporary policy debates have been conducted makes the claim of collective responsibility a particularly difficult task at the end of the Twentieth Century. Core components of America’s founding myths, such as the sacredness of individual independence, autonomy, and self-sufficiency have been ossified, used as substitutes for analysis, and eclipsed rather than illuminated debate.⁹

I do not reject these core concepts. I do, however, insist that we have a responsibility to reexamine them in the context of our present society and the needs and aspirations of people today. We must view these ideals with the complexity they deserve, perhaps redefining them in the process. A commitment to a process of ongoing reexamination of core concepts recognizes that, even if we are absolutely confident (which we are not) that we know the historical meaning, the demands of justice, as well as perceptions of legitimacy,

7. I mean to expand this notion of value beyond the labor theory of value to consider as labor things not previously considered as such. The value is measured in and by social policy, not market indicators and demands accommodation, as well as monetary subsidy.

8. This last point is an important one, but this paper deals mostly with the articulation of the claim for collective responsibility. In the larger work, I use the model of Social Security to address how subsidy can be made without supervising the use of the subsidy by the recipients. See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 161-64, 230-36 (1995) (arguing that dependency is an inevitable part of life, and that we should offer financial support for caregivers).

9. In addition, when the subject under consideration is caretaking, it is necessary to develop a rhetoric to counter the pervasiveness of market ideology that privileges the economic and confines assessments of success, progress and worth largely in monetary terms.

require that our implementation of foundational principles resonate in the current realities of our lives.

Justice requires constant mediation between articulated historic values and current realities. It is not found in abstract pronouncements. Our understanding of independence, autonomy, and self-sufficiency, therefore, should be evolving as societal knowledge, realizations, aspirations and circumstances change. Unfortunately, the political and governmental institutions that should be facilitating and encouraging debate and reconsideration are currently partisan and polarizing in the methods they use, and thus, are actually impeding understanding and exploration.

IV. DEPENDENCY AND SOCIAL DEBT

Historic ideals of independence and self-sufficiency are complementary themes in our political discourse.¹⁰ These aspirational ideals are applied to individuals as well as to families. Their dichotomous terms, dependence and subsidy, are also complementary, viewed as occurring in tandem. Both dependence and subsidy have been successfully used in a simplistic and divisive manner by politicians, social conservatives, and advocates of small government to control and limit contemporary policy discussions.¹¹

Dependence is negatively compared with the desirable status of independence—subsidy with the meritorious self-sufficiency. Independence and self-sufficiency are set up as transcendent values, attainable aspirations for all members of society. Simplified pejorative notions of dependence and subsidy are joined, and condemnation or pity are considered appropriate responses for those unable to live up to the ideals, particularly those who are dependent and in need of subsidy.

In fact, dependency is assumed if an individual is the recipient of certain governmental subsidies. Furthermore, the mere label of dependency serves as an argument against governmental social welfare transfers. Policy makers argue that the goal should be independence, and favor the termination of subsidy so the individual can learn to be self-sufficient.¹²

10. Autonomy is related to both these core concepts, and therefore, attention to this ideal will be a by-product of the more extended consideration of independence and self-sufficiency.

11. Liberal commentators have also used the terms in this way, falling into the dominant conceptions. See generally GWENDOLYN MINK, *WELFARE'S END* (1998).

12. But see generally Kathryn R. Lang, *Fair Work, Not "Workfare": Examining the Role of Subsidized Jobs in Fulfilling States' Work Requirements Under the Personal Responsibility and Work Reconciliation Act of 1996*, 29 *FORDHAM URB. L.J.* 959, 972-76 (1998) (discussing possible factors that may prohibit an individual from becoming self-sufficient and independent).

It is puzzling, as well as paradoxical, that the term dependency has such negative connotations. Its very existence prompts and justifies mean spirited and ill-conceived political responses, such as the recent welfare “reform.” Far from being pathological, avoidable, and the result of individual failings, dependency is a universal and inevitable part of the human development. It is inherent in the human condition.

All of us were dependent as children, and many of us will be dependent as we age, become ill, or suffer disabilities. In this sense, dependency is “inevitable” and not deserving of condemnation or stigma. Note that the examples I have chosen to illustrate this category of inevitable dependency are biological or physical in nature. Biological dependencies, however, do not exhaust the potential range of situations of dependence. For example, in addition to biological dependence, one may be psychologically or emotionally dependent on others. In fact, these other forms of dependence may even accompany the physiological or biological dependence, which I have labeled inevitable. But economic, psychological, and emotional dependency are not generally understood to be universally experienced. As a result, assertions about their inevitability in each individual’s life would be controversial. It is the characteristic of universality (which indisputably accompanies inevitable dependence) that is central to my argument for societal or collective responsibility. In other words, the realization that biological dependency is both inevitable and universal is theoretically important. Upon this foundational realization is built my claim for justice—the demand that society value and accommodate the labor done by the caretakers of inevitable dependants.

I argue that the caretaking work creates a collective or societal debt. 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 our share of the societal debt generally owed to all caretakers.

My argument that the caretaking debt is a collective one is based on the fact that biological dependency is inherent to the human condition, and therefore, of necessity of collective or societal concern. Just as individual dependency needs must be met if an individual is to survive, collective dependency needs must be met if a 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), 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. A sense of 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. 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.

V. INSTITUTIONS AND DEPENDENCY

Society preserving tasks, like dependency work, are commonly delegated. The delegation is accomplished through the establishment and maintenance of societal 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).

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—collective obligations have both an individual and a collective dimension. Certain members of society may be recruited, volunteer, or even be 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.

Society has not, however, responded this way to caretaking. The most common form of social accommodation for dependency has been its assignment to the institution of the private family. Within that family, dependency has been further delegated as the individual

responsibility of the family equivalent of volunteer or draftee—the person in the gendered role of mother (or grandmother or daughter or daughter-in-law or wife or sister). But the resources necessary for caretaking have not been considered to be the responsibility of the collective society. Instead, each individual private family is ideally and ideologically perceived as responsible for its own members and their dependency. A need to call on collective resources, such as welfare assistance, is considered a family as well as an individual failure, deserving of condemnation and stigma.

VI. DERIVATIVE DEPENDENCY

The assignment of responsibility for the burdens of dependency to the family in the first instance, and within the family to women, operates in an unjust manner because this arrangement has significant negative material consequences for the caretaker. This obvious observation allows me to introduce an additional, but often overlooked, form of dependency into the argument—“derivative dependency.” Derivative dependency arises on the part of the person who assumes responsibility for the care of the inevitable 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. Caretakers have a need for monetary or material resources. They also need recourse to institutional supports and accommodation, a need for structural arrangements that facilitate caretaking.

Currently, neither the economic nor the structural supports for caretaking are adequate. Many caretakers and their dependents find themselves impoverished or severely economically compromised. Some of their economic problems stem from the fact that within families, caretaking work is unpaid and not considered worthy of social subsidies.¹³ There are also, however, direct costs associated with caretaking. 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 caretaking, and 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. These costs are not distributed among all beneficiaries of caretaking (institutional or

13. Caretaking can be provided by hired help, in which case it is underpaid. In this section, I am focusing here on caretaking responsibilities within family roles.

individual). Unjustly, the major economic and career costs associated with caretaking are typically borne by the caretaker alone.

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.¹⁴ 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 compete with the demands of caretaking—we assume that workers are those independent and autonomous individuals who are free to work long and regimented hours.

In discussing the costs and impediments associated with undertaking the tasks of caretaking, it is important to emphasize that, unlike inevitable dependency, derivative dependency is not a universal experience. In fact, many people in our society totally escape the burdens and costs that arise from assuming a caretaking role, perhaps even freed for other pursuits by the caretaking labor of others. The status of derivative dependency is structured by and through existing societal institutions, culturally and socially assigned according to a script rooted in ideologies, particularly those of capitalism and patriarchy. These scripts function at an unconscious (and therefore, unexamined) level, and channel our beliefs and feelings about what is considered natural and what are appropriate institutional arrangements. When individuals act according to these scripts, consistent with prevailing ideology and institutional arrangements, we say they have chosen their path from the available options. The construction of this notion of individual choice allows us to avoid general responsibility for the inequity and justify the maintenance of the status quo.¹⁵ We ignore the fact that individual

14. 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 roles of working mothers).

15. In particular, I have been struck by two quasi-economic responses to the point that caretakers should be compensated. I refer to one as the "Porsche Preference." This argument states that if someone prefers a child, this preference should not be treated differently than any other choice (like the choice to own a Porsche). Society should not subsidize either preference. I hope the society-preserving nature of children helps to distinguish that preference from the whim of the auto fan. The other argument I label the "efficiency and exploitation" model. This argument is really nothing more than the assertion that if women allow themselves to be exploited as unpaid or underpaid caretakers, that is then the most efficient resolution for the problem of caretaking and dependency and should not be disturbed. Aside from the fact that this arrangement is not working and that it results in massive poverty and other social ills, this type of argument also demonstrates how little economics has to offer to considerations of justice.

choice occurs within the constraints of social conditions. These constraints include ideology, history, and tradition, all of which funnel decisions into prescribed channels and often operate in a practical and symbolic manner to limit options.¹⁶

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 that she is needy in a highly stigmatized process.

VII. SUBSIDY

In popular and political discourse, the idea of "subsidy" is viewed as an equally negative companion to dependence, the opposite of the ideal of self-sufficiency. But a subsidy is nothing more than the process of allocating collective resources to some persons or endeavors rather than other persons or endeavors because a social judgment is made that they are in some way "entitled" or the subsidy is justified. Entitlement to subsidy is asserted through a variety of justifications, such as the status of the persons receiving the subsidy, their past contributions to the social good, or their needs. Often, subsidy is justified because of the position the subsidized persons hold or the potential value of the endeavor they have undertaken to the larger society.

Typically, subsidy is thought of as the provision of monetary or economic assistance. But subsidy can also be delivered through the organization of social structures and norms that create and enforce expectations. Taking this observation into account, along with the earlier discussion of inevitable and derivative dependency, it seems obvious that we must conclude that subsidy is also universal. We all exist in context, in social 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

16. Using choice as justification for existing conditions also fails 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 imperatives aside), but does this choice mean she has also consented to the societal conditions attendant to that role and the many ways in which that status will negatively effect her economic prospects? Even if she did "consent" in that she knew she was taking risks or foregoing opportunities, is the ultimate situation in which she finds herself one which society can tolerate for some of its members? In other words, are some conditions just too oppressive or unfair to be imposed by society even if an individual ostensibly agrees to or chooses them?

economically or socially. We all live subsidized lives. Sometimes the benefits we receive are public and financial, such as in governmental direct transfer programs to certain individuals like farmers or sugar growers.¹⁷ Public subsidies can also be indirect, such as the benefits given in tax policy.¹⁸ Private economic subsidy systems work in the forms of foundations, religions and charities.¹⁹ But 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.

It seems clear that all of us receive one or the other or both types of subsidy throughout our lives. The interesting question in our subsidy shaped society, therefore, has to be why only some subsidies are differentiated and stigmatized while others are hidden. In substantial part, subsidies are hidden when they are not called subsidy (or welfare, or the dole), but termed "investments," "incentives," or "earned" when they are supplied by government, and called "gifts," "charity," or the product of familial "love" when they are contributions of caretaking labor.

VIII. A MORE RESPONSIVE STATE

In order to rethink how we might constitute a just system for handling dependency, our society must move beyond simplistic catch words and engage in a nationwide debate. What types of mechanisms can generate and sustain such a series of discussions? Shaped by the successes of early feminist consciousness raising techniques, which proved powerful in challenging entrenched ideas and assumptions about gender roles, I advocate for a national consciousness raising process. We need a forum for vigorous debate. The forum must not only be public in the sense that it will be created and supported by government, but also public in the sense that it will be participatory and beyond governmental control, inclusive and not politically partisan in composition.

It is important that the forum be a public responsibility (as

17. See Kenneth A. Cook, *The Cash Cropper* (visited July 11, 1999) <http://www.ewg.org/pub/home/reports/Croppers/Chapter_1.html> (calculating billions of dollars of Federal payments made through the United States Department of Agriculture (USDA) subsidy programs, including farm programs, conservation programs, and disaster programs).

18. See Daniel S. Goldberg, *Tax Subsidies: One-Time vs. Periodic, An Economic Analysis of the Tax Policy Alternatives*, 49 TAX L. REV. 305, 306-07 (1994) (discussing the elements of tax subsidies).

19. In the book, I focus on the "coercive institutions" of state, family, and market. I term these coercive because they are regulated and controlled by law. The voluntary institutions, such as charity and religion, are not mandated to address dependency although they may supply a supplemental set of resources.

antiquated and quaint as that idea seems at this point in our national history). In recent decades, it has become apparent that the role of the state has been overtaken by the presumed inevitability of market forces. As more and more is conceded to privatization, we are rapidly losing any sense of public responsibility. Even public education is in danger of falling victim to the privatizing siege. Missing from our discourse is strong support for an active or responsive state of the kind I am trying to imagine—the public as a mediating force against private, obscured excesses, and exploitation.

Although it was less successful than it might have been, President Clinton's initiative on race offers some ideas for how the government might fulfill its public responsibility to generate discussion on important national issues.²⁰ A Commission was created, made responsible for developing, encouraging, and publicizing public discussions on racial problems, as well as issuing a report on the "state of the nation" in regard to race.²¹ While the report suggested some on-going initiatives that might be helpful, one tremendous benefit of the exercise was that it put people face to face in high school gyms and public halls across the country and encouraged them to talk about race.²²

Reflecting on this process, I could not help but think that perhaps welfare reform would have taken a very different form if the President had employed the same mechanism in regard to the need and direction for reform. I imagine that we could have generated a series of thoughtful, factually informed, and depoliticized national discussions about the nature and implications of dependency in all its complexity to counter the inaccurate and ideologically driven sloganeering that passed for political debate. We may have even begun as a nation to realize that the real measure of any welfare reform should be whether it positively improved the welfare of all our children. We might have even reached a consensus that there is a collective, as well as an individual, parental responsibility for children. The point might have been made that, in today's world, independence and self-sufficiency require a minimal amount of social

20. See generally *One America: The President's Initiative on Race, About the Initiative* (visited July 11, 1999) <<http://www.whitehouse.gov/Initiatives/OneAmerica/overview.html>> (discussing President Clinton's vision of a national dialogue in which the community shares and celebrates cultural differences).

21. See *id.* para. 4 (indicating President Clinton's intent to present a report to the American public based on results derived from the Initiative).

22. See *One America: The President's Initiative on Race, One America on the Move* (visited July 11, 1999) <<http://www.whitehouse.gov/Initiatives/OneAmerica/move10.html>> (listing the Clinton Administration's efforts to establish national fora for addressing concerns relating to race).

resources (structural and monetary), and the amount required increases when one has responsibility for the care of others. Dependency on resources and/or on caretakers is not a unique position in which to find oneself; it is a universal, and therefore, unifying experience.

All of this might not have happened, of course. But at a minimum, important questions that need to be resolved and discussed in a very public forum would have been raised:

1) How should the need for caretaking resources be satisfied so that caretakers can act independently, make decisions, and fulfill societal expectations in ways that best respond to their individual circumstances?

2) Should caretakers be primarily dependent on the family in this regard?

3) Given the tenuous status of marriage in this society (where the divorce rate hovers near fifty percent²³ and women are expected to be wage earners, as well as wives and mothers) how can we continue to have a traditional model of the family served up by politicians as the solution for poverty?

4) Shouldn't the richest country in the history of the world have a family policy that goes beyond marriage as the solution for dependency?

5) Specifically, doesn't the family as it exists today require substantial assistance from other societal institutions?

6) Is it fair that the market and the state (which are totally dependent on caretaking labor and in no way self-sufficient or independent from caretaking) escape responsibility for dependency and continue to be freeloaders (or free riders) on the backs of caretakers and families?

7) Isn't it time to redistribute some responsibility for dependency, mandating that state and market bear their fair share of the burden?

As a result of such discussion, the very terms of independence and 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 the contexts that sustain us. A different understanding of independence is needed and attainable. Independence is gained when an individual has the basic resources

23. See generally *Marriage, Divorce, and Remarriage in the 1990's*, U.S. BUREAU OF THE CENSUS, CURRENT POPULATION REPORTS, P23-180 5 (1992) (reporting that younger people in the United States who are marrying for the first time face roughly a 40-50% chance of divorcing in their lifetime under current trends).

that enable her or him to act consistent with the tasks and expectations imposed by the society. This form of independence should be every citizen's birthright, but independence in this sense can only be achieved when individual choices are relatively unconstrained by inequalities, particularly those inequalities that arise from poverty. Independence, as well as justice, requires that those who are assigned a vital societal function are also provided with the wherewithal to do those tasks. This is a state or collective responsibility and may not be relegated to potentially exploitative private institutions.

IX. THE ACTIVE STATE

In order to move from our current situation to a more just resolution for the dilemma of caretaking and dependency, we will need more than a responsive state. The state will also have to be an active participant in shaping and monitoring other societal institutions. One fundamental task will be monitoring and preventing the exploitation and appropriation of the labor of some citizens through institutional and ideological arrangements. This must be prevented even when the justification for the labor's appropriation and exploitation is that it is used for the good of the majority. Further, it must be prevented even in contexts where social constraints and conventions coerce consent from the laborer.

In this endeavor, the state must use its regulatory and redistributive authority to ensure that those things that are not valued or are undervalued in market or marriage are, nonetheless, publicly and politically recognized as socially productive and given value. Conferral of value requires the transfer of some economic resources from the collective society to caretakers through the establishment of mechanisms that tax those who receive the benefits of caretaking in order to compensate those who do the caretaking. Other societies do this in a variety of ways, such as using tax revenues to provide childcare allowances and universal benefits that assist caretakers, or through a basic income guarantee.²⁴ Money, however, is not enough.²⁵ The active state must also structure accommodation of the

24. One author has argued for a refundable Dependent Care Tax Credit (DCTC) that would distribute average tax rate cuts to caregivers at all income levels. Anne L. Alstott, *Tax Policy and Feminism: Competing Goals and Institutional Choices*, 96 COLUM. L. REV. 2056-59 (1996).

25. I argue for an idealized re-imagination and an integration of the roles and responsibilities of the family, market, and state for dependency. This re-imagination of family, market, and state should begin with the basic premise that there are certain fundamental social goods that are necessary for survival and for the caretaking of others. These social goods are economic or financial in nature and include housing, health care, a basic income, and other

needs of caretaking into society's institutions.

The fact is that today, some workers must shoulder the burdens assigned to the family, while market institutions are relieved of such responsibility (even free to punish workers who have trouble combining market and domestic labor). The state must ensure that market institutions positively respond to dependency burdens. Workers cannot be assumed independent and unencumbered. Quite often, they are dually responsible for economic and caretaking activities. Restructuring workplaces to reflect that reality would more equitably distribute the burdens for dependency, and forge a more just relationship between family and market institutions.²⁶

X. CONCLUSION

I want to end with an epilogue—a dystopian fantasy in which I imagine what changes would have to be made in order to really foster our self-proclaimed national ideals of independence, autonomy, and self-sufficiency. This exercise focuses not on the welfare mother, but 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 his or her 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 the 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 other individuals are left mired in poverty or burdened by responsibilities not equitably shared.

For example, a society that truly sought independence as an ideal

necessities that complement and strengthen the civil and political rights we have as citizens of a democracy. The government has a crucial and undelegatable responsibility to secure that these goods are delivered independent of the market value of any individual labor. This responsibility marks a right of citizenship no less important and worthy of governmental protection than civil and political rights, and can be realized in a variety of ways.

The governmental functions in this regard fall into two basic redistributive channels—some income redistribution will be necessary to provide for basic social goods, and some redistribution of responsibility will be necessary so that the market and its institutions respond to dependency. The initial governmental task must be to ensure a more equitable distribution of the wealth this society is producing, a recognition that the resources currently going to all too few are really the product of a more widespread system of contribution. This financial adjustment is necessary in recognition and satisfaction of the social debt to caretakers accrued by all. The mechanism may be through such things as a restructuring of the tax and subsidy systems, and crediting (and ultimately taxing) market institutions and actors on the imputed benefits they receive from the uncompensated labor of others.

26. This restructuring can take multiple forms. A variety of proposals are necessary. For example, flexible work weeks, job sharing without penalty, paid family leave, and the guarantee of a living wage would contribute to a more sharing and equitable arrangement between the market and the family.

for individuals should institute a 100% inheritance tax. 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 demonstrate their inherent merit and worth because they are burdened by the wealth of their fathers.

Of course, inherited wealth is not the only distorting factor that interferes with independence and the realization of a true meritocracy. There are also existing and unequal economic and social advantages, and it is unlikely that they will ever be totally eradicated. I struggled with how to address this fact and concluded that a lottery system is the most appropriate and just way to distribute disparate social goods.²⁷ The 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 disbursed.

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 the professions they might legitimately pursue, appropriately grouped into categories, such as “service worker” or “professional.” We could also assign the schools they would be permitted to attend. If an individual was not inclined to be satisfied with her or his lot 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. To further equalize contexts, perhaps each child should be compelled to spend time in a number of different neighborhoods during childhood—two or three years in Westchester County would be balanced by equivalent time in Harlem, Alabama, Ohio, and California.

The point of this exercise is not to suggest seriously that this is what anyone would want, but to point out that context does matter. We do not begin our lives in equal circumstances but in unequal contexts. 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

27. This is not the same thing as imagining a society from behind a “veil of ignorance.” One significant difference is that I suggest we mandate rotation into existing, known, and socially accepted inequalities.

goods. The approach to a resolution to this type of inequality is not found in simplistic and hypocritical prescriptions, ideological placebos of independence, autonomy, and self-sufficiency.

