BURSTING THE FOUNDATIONAL MYTHS OF REPRODUCTIVE LABOR UNDER CAPITALISM: A CALL FOR BRAVE NEW FAMILIES OR BRAVE NEW VILLAGES?

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> When Tabitha Walrond, a 19-year-old welfare recipient, gave birth to her first child on June 27, 1997, she did what new mothers rich and poor are urged to do these days: she breast-fed her baby. But on August 27, seven weeks after leaving the hospital, the son she had named Tyler Isaac Walrond died in her arms of malnutrition.[1]

Tabitha Walrond "was charged with recklessly causing Tyler's death by failing to nourish him adequately and failing to obtain prompt medical attention."[2] This recent court case in the Bronx underscores the contradiction embedded in the myths of independence, autonomy, and self sufficiency in the jurisprudential constructions of justice that holds an individual responsible for failing to successfully fulfill her family obligation. The district attorney's charges are based on the assumptions surrounding the naturalness of motherhood—namely, breast-feeding and caring for babies. Because she had breast reduction surgery, Walrond was biologically unable to successfully

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1. Nina Bernstein, *Placing the Blame in an Infant's Death: Mother Faces Trial after Baby Dies from Lack of Breast Milk*, N.Y. TIMES, Mar. 15, 1999, at A21.

2. *Id.*

breast-feed her baby.[3] She lacked the assumed "natural" knowledge of assessing the baby's health, and no public support was provided to assist her. Medical experts agree that routine pediatric checkups would have identified the problem, but Medicare declined to enroll Tyler despite Walrond's numerous attempts,[4] delaying his enrollment until months after his death.[5] In addition, no one ever informed Walrond that her breast reduction surgery greatly increased her risk for difficulties in breast-feeding.[6] Even though Walrond received inadequate prenatal and postpartum health care, as well as being denied public access to health care for her baby, the state charged her as being responsible for the baby's death. Unlike an earlier case where a Brooklyn prosecutor dropped similar charges against a young breast-feeding mother,[7] the Bronx District Attorney pressed on, arguing that photographs of Tyler eight days before his death constituted evidence that warnings and signs were obvious.[8] However, the baby's father, Keenan Purcell, who assisted the district attorney in the charges against Walrond,[9] was not held responsible. Purcell abandoned Walrond when she was six months pregnant when he informed her that his new girlfriend was also carrying his child.[10] Although the court granted Purcell visitation rights, he never provided financial support to the mother or baby.[11]

Tabitha Walrond's case exposes the cruelty and injustice of both designating an individual in the family with the role of caretaker and imposing that cultural and legal responsibility without public support. Unlike other institutions, the individual and not the family

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3. *See id.* (stating that although Walrond was unaware of it, she was at great risk for difficulties in breast feeding due to the breast reduction surgery she had when she was 15 years old).

4. *See id.* at A21 (stating that the Walronds made separate trips to at least three different city offices).

5. *See id.* (describing how the Medicaid cards arrived months after Tyler's death).

6. *See* Bernstein, *supra* note 1, at A21 (claiming that Walrond was unaware of the difficulties in breast-feeding associated with breast reduction surgery).

7. *See* Nina Bernstein, *Prosecutor Drops Charges in Case of Infant's Death*, N.Y. TIMES, July 16, 1999, at B3 (stating that the prosecutor's decision came after consultation with a lactation specialist).

8. *See* Bernstein, *supra* note 1, at B1 (quoting the District Attorney's spokesperson as saying, "All you have to do is look at the pictures .... Any reasonable person could look at this and say the baby looked like something out of Biafra.").

9. *See* Bernstein, *supra* note 1, at B1 (stating that Purcell urged the district attorney's office to hold Walrond responsible for Tyler's death).

10. *See* Bernstein, *supra* note 1, at B3 (stating also that, according to Purcell, he and Walrond broke up when Walrond refused to get an abortion).

11. *See* Bernstein, *supra* note 1 (stating that "[a]fter Tyler was born, Mr. Purcell went to court to secure visitation rights, and would have sought custody of the child, he said, except that he lacked the means to support him").

becomes the unit of analysis. Yet, the individual's actions may be interpreted through the ideological lens of the assumed family.[12] The individual dependency of Tyler is privatized and treated as the sole responsibility of his mother.[13] The biological father of the baby is not delegated primary responsibility for dependency.[14] The court, however, maintained his patriarchal privilege—without obligation—by granting him visitation rights.[15] The problem of dependency is placed solely upon the mother and any joint responsibility is eliminated.

Caretaker narratives, such as that of Tabitha Walrond, lurk behind many of the major social issues of today: welfare reform, AIDS treatment, expansion of the United States prison system, and the struggle of baby boomers to care for their aging parents. Behind welfare reform are the narratives of mothers who place their children with aging parents, engage a home-bound neighbor, or find no other option than to leave their children alone in order to take the mandated low-paying dead-end jobs.[16] Other ignored narratives arising from welfare reform include persons with disabilities cut off from benefits and programs, who are thus forced upon family members for care.[17] There are the silent narratives of mothers,

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12. The state prosecutes individuals for not adequately fulfilling their parental role all the time. These cases are not limited to sexual or physical abuse—crimes with which any individual may be charged—but the specific role of parenting. Waldron's case is not unique. Another recent example involved parents prosecuted for child abuse because they left their daughter sleeping alone while they went to the store for groceries. *See Parents Charged in Deaths of Young Children in Newark Fire*, N.Y. TIMES, Jan. 6, 1999, at B2. During their absence a fire broke out. *See id.* Authorities charged the parents with child endangerment. *See id.* Political discourse on caregiving does not address the contradiction involved in charging mostly poor and working class parents with child neglect, child abuse, and child endangerment when they are placed in impossible situations, lacking the necessary economic and social resources to fulfill their caretaker role.

13. *See* Ikimulisa Sockwell, Frankie Edozien & Rita Delfiner, *Jury Convicts Breast-Feed Mom of Starving Infant*, N.Y. POST, May 20, 1999, at 6 (quoting one juror as insisting that "no matter what, [Walrond] was the mother" and should have "taken responsibility when people started telling her the baby was too thin").

14. *See* Ikimulisa Sockwell & Rita Delfiner, *Starved Baby's Dad Erupts in Court*, N.Y. POST, Apr. 30, 1999, at 20 (relating that Purrell rarely saw Walrond while she was pregnant, attending only one prenatal appointment, at which time Purrell informed Walrond he had impregnated another woman).

15. *See* Rafael A. Olmeda, *Dad of Starved Baby Blasts Mom*, N.Y. DAILY NEWS, May 21, 1999, at 7 (relating how Purrell arrived at Walrond's door accompanied by police officers).

16. *See* KATHRYN EDIN & LAURA LEIN, MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK 125 (1997).

17. *See, e.g.*, James L. Franklin, *Aid Groups Brace for Rise in Need: Loss of Welfare Benefits Expected to Take Toll*, BOSTON GLOBE, Nov. 29, 1998, at 1 (noting that under Massachusetts' program welfare recipients can "qualify for waivers or exemptions because of a mother's or a child's . . . [b]ut that will only work if the recipient knows enough to ask for the papers and can fill out a lengthy form that must be reviewed by officials in Boston before it can be approved"); Holly Mullen, *A Picture of Utah's Poor: Report Identifies Factors Commonly Found in Long-Term Welfare*

daughters, sisters, and friends taking on the everyday care of family members and friends with AIDS.[18] Similarly, statistical updates on the growing number of incarcerated Americans ignore the narratives of grandmothers forced into the role of primary caretaker for grandchildren whose mother serves a fifteen-year sentence for a drug offense.[19] News reports on dual-wage families fail to include the stories of working-class parents taking different shifts as a way to juggle childcare—the most recent plight of middle-class parents seeking affordable childcare—or those faced with the caretaking responsibility for chronically ill or dependent parents.

A common theme in all of these narratives is the designation of caretaking responsibilities as mere personal problems that must be resolved through the unpaid labor of women family members or the underpaid labor of women—usually women of color and immigrants.[20] The dependency of childhood, old age, and illness buried in each of these social issues constitutes a crisis in institutional arrangements. Current institutional trends—welfare reform, drug laws and the growing number of incarcerated mothers, the absence of a national health program, the need for dual-wage families, and insufficient wages to assure adequate savings for retirement—point to caretaking as a collective responsibility that needs a public solution. Yet, these narratives disclose a society that still considers caretaking a personal matter, one that can and should be addressed within the private space of the family.

These buried narratives of reproductive labor emerging among welfare reform, the working poor, dual-wage families, and the expanding industrial prison complex are the catalyst behind my enthusiasm for Martha Albertson Fineman's article, "Cracking the Foundational Myth."[21] Her analysis highlights limitations and pitfalls

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Recipients, SALT LAKE TRIB., Mar. 11, 1999, at A1 (citing "mental illnesses such as depression and chronic anxiety . . . substance abuse and severe behavioral problems among their own children, such as hyperactivity, delinquency and running away" as barriers facing Utah's chronic welfare recipients).

18. *See, e.g.*, Krissah Williams, *Life-Changing Decision: Growing Number of Grandparents are Taking Up the Slack When Parents Fail*, HOUS. CHRON., Aug. 2, 1999, at 15 (reporting that social conditions such as "drug abuse, AIDS, child abuse, divorce, unemployment and welfare reform that requires teen parents to live at home with an older guardian has led to more grandparents becoming primary guardians").

19. *See* Jason DeParle, *Life After Welfare: The Grandmothers*, N.Y. TIMES, Feb. 21, 1999, at 1 (claiming that 1.4 million children live in households headed by grandparents—a 52% rise since 1990. Of these "skip generation" households, more than half of these households are headed only by a grandmother.).

20. *See infra* note 72 and accompanying text.

21. *See* Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER, SOC. POL'Y & L. 13 (2000).

in the political discourse on caretaking structured by ideologically loaded terms—independence, self-sufficiency, and autonomy. These concepts are essential to understanding how government delegitimizes support for families by maintaining that institutions belong to either private or public domains, while legitimizing subsidies to public domains only. Today's conservative political discourse accepts without question the Parsonian functionalist view of society, which places caretaking among the explicit functions, duties, and obligations of the family, and assigns the family to the "private" sphere of society.[22] Fineman demonstrates the inadequacies of political discourse that targets shortcomings of the American family when caregiving responsibilities are not fulfilled. Discourse limited to accepting the nuclear heterosexual family as the institution best suited to responsibility for dependency is shrouded in ideological beliefs like "natural," as well as "labor of love," "mother's wit," and "blood is thicker than water."

Unfortunately, the political climate at the end of the twenty-first century discourages us from exploring the collective alternatives proposed by Charlotte Perkins Gilman at the beginning of the century.[23] Instead, we are exhorted to turn our attention to strengthening the family in order to meet societal caretaking needs. This involves identifying the changing structure of family life and the increased demands and expectations placed upon the family. A closer look at the family will illustrate the inadequacies of the private/public division, as well as weaknesses in pursuing solutions limited to the family.

I. BRAVE NEW FAMILIES AND THE WORKING WOMEN IN THEM

Despite the traditional nuclear family structure conjured by the sentimental Republican rallying cry of "family values,"[24] the nuclear family does not represent the only functioning family structure in the

22. *See generally* TALCOTT PARSONS & ROBERT BALES, FAMILY, SOCIALIZATION AND INTERACTION PROCESS (1955). Parsons, a researcher in the social sciences, is considered the father of structural formalism, the theory on which much of the modern welfare system is based.

23. *See* CHARLOTTE PERKINS GILMAN, THE HOME: ITS WORK AND INFLUENCE (1972) (first published 1903).

24. *See generally* Rae Corelli, *The "Family Values" Thing: The Republicans Make a Major Issue of Moral Standards—And Celebrities Provide Some Examples*, MACLEAN'S, Aug. 31, 1992, at 32 (reporting on the "family values" agenda of the Republican party during its 1992 convention, culminating with a reference to then Vice-President Dan Quayle's attack on fictional TV character Murphy Brown for eschewing the nuclear family structure to bear and raise a child as a single mother).

United States.[25] Many diverse forms of family exist along racial and ethnic lines, as well as in different socio-economic classes.[26] However, setting these more diverse structures aside and focusing on nuclear families, we can still look to this Republican "ideal" in order to point to the difficulties families face in meeting the needs of reproductive labor. Regardless of the family structure or values, all families are facing challenges posed by economic restructuring. Even if "full-time mom" is the desired role for women in the family, most American workers do not receive what has been referred to as a "family wage."[27] Consequently, the majority of nuclear families are not in an economic position to allocate one person's labor solely to unpaid reproductive labor in the home.[28] The increasing number of women entering the labor force makes dual-wage families more common than previously.[29] Moreover, reliance upon the second wage of a female worker does not always raise families into actual "dual wage" economic circumstances, since women on the average are paid thirty-six cents less for every dollar received by men, equaling $148 less per week.[30]

Specific trends in women labor force participation determine the conditions under which caretaking roles are fulfilled.[31] Women not

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25. *See* Terri Finch Hamilton & L.Z. Granderson, *Here's What Families Value*, GRAND RAPIDS PRESS, July 11, 1999, at A1 (claiming that "[t]he nuclear family is dead" and that "[a]ny assumption you make about a family based on that idea just doesn't fit").

26. *See generally* Mary Nemeth, Hal Quinn, Kathy Trocheck, Dan Baum & Peter Kiernan, *American Dreamers: "Families Come in All Shapes and Sizes,"* MACLEAN'S, Oct. 12, 1992, at 47 (profiling six traditional and non-traditional families during the 1992 presidential campaign).

27. *See* Richard B. Freeman & Lawrence F. Katz, *Rising Wage Inequality: The United States vs. Other Advanced Countries*, *in* WORKING UNDER DIFFERENT RULES 36-62 (Richard B. Freeman ed., 1994) (demonstrating an increasing wage gap between U.S. workers and workers in other industrialized countries that began in the 1980s).

28. *See id.* (noting that research on the aforementioned wage gap is based on full-time working men); SARAH MCLANAHAN & GARY SANDERFUR, GROWING UP WITH A SINGLE PARENT: WHAT HELPS, WHAT HURTS (1994) (citing research demonstrating that the median income of single-parent families is only about half that of two-parent families, regardless of race or the educational background of the parents).

29. *See Equal Pay for Working Families: National and State Data* (visited July 3, 1999) <http://www.aflcio.org/women/exec99.htm> (stating that most married couples today rely on two incomes); *see also* Sheldon Danziger & Peter Gottschalk, *Demographic Groups with Persistent Disadvantage*, *in* AMERICA UNEQUAL 76-92 (1995) (indicating that women's earnings have become more important to families since 1969).

30. *See Working Women: Equal Pay—It's Time for Working Women to Earn Equal Pay* (visited Mar. 17, 1999) <http://www.aflcio.org/women/equalpay.htm> (finding that the pay gap results in an annual $200 billion loss of income for working families—an average $3,446 loss per working women's families). Over a lifetime of employment this not only leaves families with less money but less retirement. In 1994, women's private-pension benefits were less than half those of men—just $3,000 per year compared with $7,800 per year for men. *Id.*

31. *See* J.R. Wilkie, *Marriage, Family Life & Women's Employment*, *in* WOMEN WORKING: THEORIES AND FACTS IN PERSPECTIVE 149, 150 (Ann H. Stromberg & Shirley Harkness eds., 1988) (explaining that expectations regarding marital roles have significantly changed over the

only enter the labor markets in larger numbers, but their participation has changed over the years and they take less time off for reproductive labor.[32] Unlike previous generations of working women who experienced a separation of paid work from home life, women are immersed in both roles as workers and mothers simultaneously.[33] The family cycle dictated employment histories of early working mothers—working prior to starting a family and reentering the labor force when the children went to school.[34] By 1980, the life cycle of women's employment had altered significantly, particularly as a consequence of not leaving the labor force during childbearing years. Only eighteen percent of mothers with children under eighteen were employed in 1950; by 1990 this had tripled to sixty-three percent.[35] In the 1990s, women with children return to work much sooner or never leave. Over half (59.4%) of the mothers of preschoolers and over half (51.3%) of the mothers of infants (children under age one) were in the labor force in 1990.[36] This is up dramatically from the twelve percent of mothers with preschool age children that were employed in 1950.[37] Since this trend is not isolated to single or divorced mothers, researchers found that marital status is no longer an accurate predictor of women's employment status.[38] By 1990, 58.4% of all married women were employed.[39] "Between 1996 and 1997 alone, the number of dual worker families rose by 345,000, while the number of families with only the husband working fell by 144,000 .... Seventy-one percent of married couple families with children were dual worker families in 1997, a steep rise from fifty-four percent in 1977."[40]

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past 35 years). *See also* Janet Salzman Chafetz, *I Need a (Traditional) Wife!: Employment-Family Conflicts, in* WORKPLACE/WOMEN'S PLACE 116-23 (Dana Dunn ed., 1997) (discussing conflicts arising in dual-worker families, and exploring the strategies that families, organizations, and public programs can use to minimize conflict).

32. *See* PHYLLIS MOEN, WOMEN'S TWO ROLES: A CONTEMPORARY DILEMMA 114 (1992) (citing a survey from the Bureau of Labor Statistics, which found that although one-third of those surveyed were able to take unpaid maternity leave, only two percent did so).

33. *See id.* at 3 (explaining that a majority of American women engage in employment and child rearing simultaneously).

34. *See id.* at 4 (claiming that for most women, sequencing work and family roles means working outside the home before marriage and motherhood, and then withdrawing from the labor force until their children have grown).

35. *See id.* at 14.

36. *See id.* at 4.

37. *See* MOEN, *supra* note 32, at 14 (noting that according to fig 2.2, 6 out of every 10 working women have children under 18 years of age.)

38. *See id.* at 13 (stating that younger wives and mothers remained in the labor force despite their family obligations).

39. *See id.*

40. AFL-CIO Fact Sheet, *How Equal Pay Helps Men, Too* (visited Mar. 17, 1999)

Women's wage labor has not escaped the strong and pervasive ideological belief that women are naturally caregivers and domestic. Female dominated occupations are traditionally shaped around values and expectations that force women workers into caregiving and other domestic work in the labor market, commonly referred to as "industrialized housework."[41] Women continue to struggle against varying expectations when employed as teachers, nurses, flight attendants, and secretaries. Emotional labor and other caretaking components are frequently implied in job descriptions for women, changing the same occupation into different jobs for men and women.[42]

Reproductive labor is essential for productive labor to be conducted in the larger society. Combining the analysis of work and family helps dismantle myths perpetuated by assumptions about natural divisions of labor, and turns our attention towards comprehending the ways that the economy shapes the processes of reproductive labor. The terms "second shift" and "double day" reflect tensions resulting from the structural links between the family and the economy.[43] Feminist researchers on family and work continue to challenge common perceptions that reproductive labor is unconnected to the employment of men and women.[44] While more communal and collective means have existed for fulfilling society's

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<http://www.aflcio.org/women/eqp_men.htm>.

41. *See* Ellen Malos, *Introduction, in* THE POLITICS OF HOUSEWORK 35 (Ellen Malos ed., 1980) (defining "industrialised housework" as "women's waged work [that] does not challenge the division of labour by sex," such as nursing, catering, and employment in the textile industry). The author also discusses how other areas of women's employment have become "'feminised' to include personal services like making coffee because if is assumed that this kind of work is 'naturally' women's work." *Id.*

42. *See generally* ARLIE R. HOCHSCHILD, THE MANAGED HEART (1983) (providing a classic study on the commercialization of emotional work); MARY ROMERO, MAID IN THE USA (1992) (depicting emotional labor as paid labor in the experience of women of color household workers); Elaine J. Hall, *Waitering/ Waitressing: Engendering the Work of Table Servers*, 7 GENDER & SOC'Y 329 (1993) (presenting research findings on how gender is integrated into work performance and style of service).

43. *See Executive Summary, A Report on the National Survey from the Working Women's Department of the AFL-CIO* (visited Mar. 17, 1999) <http://www.aflcio.org/women/execsum.htm> (relaying a national survey of AFL-CIO women members, which found the following:

> [A]mong the most important employer policies are those that help working women gain greater control of their time so that they can better juggle work and family. Most believe it is very important to have paid sick leave (82%), paid vacation time (76%), paid family leave (70%), and flexible hours (61%). Yet, 42% say they do not have paid family leave, 39% lack flexible hours, 29% do not have sick leave, and 21% percent do not have paid vacation time.).

44. Conceptualizing the dual private/public spheres does not stand up to empirical investigation and fails as analytical categories. They are not mutually exclusive but elusive domains that are dynamic and constantly shifting rather than one fixed sphere. *See* LINDA PEAKE, *Engendering Change: Women's Work and the Development of Urban-Social Theory, in* WOMEN, WORK AND PLACE 13 (Audrey Kobayashi ed., 1994).

need for reproductive labor, our society charges families with the biological reproduction and the socialization of children. The additional work of caring for individuals during sickness and senility is also assigned to families. Based on cultural beliefs that women are by nature willing and able to fulfill such services, female family members—namely mothers, wives, and daughters—are expected to assume responsibility for reproductive labor. Cultural beliefs are reinforced by structuring women's roles accordingly in institutions other than the family. Everyday practices in school, church, government, and the economy reinforce values and beliefs about women's inherent ability to nurture and care.[45] This includes continued support for the gendered division of labor. For instance, conservative groups and religious fundamentalists have resurrected the "cult of domesticity," arguing that the sexual division of labor in the home is natural and established by God.[46] Advocates of this world-view call for women to accept their roles as mother and wives and to find happiness and fulfillment accordingly.[47]

Cultural changes in sex roles suggested by popularized media stereotypes—particularly in feature films[48]—of the "sensitive man" and of egalitarian marriages where men assume roles of full-time caretakers are not supported by empirical research. Studies on household division of labor reveal that husbands perpetuate the old sexual divisions of household labor.[49] Men's participation in

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45. Women's volunteerism and activism is frequently shaped by allocating caring, informal networking, organizing, and other managing tasks to women. *See* RUTH LISTER, CITIZENSHIP: FEMINIST PERSPECTIVES 149 (1997) (discussing how women's participation in public life is motivated by their desire to protect their families). "A cross-national study is typical in its finding that 'concern with the care, health and education of children is a unifying thread' running through women's local action." *Id.*

46. *See* KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 128, 158-60 (1984) (describing a conservative Christian/Catholic belief system or "world view . . . that men and woman are intrinsically different" and that "as a result of these intrinsic differences [men and women] have different roles to play: men are best suited to the public world of work, and women are best suited to rear children, manage homes, and love and care for husbands").

47. *See id.* at 160-63 (explaining that this "world view" is predicated upon the "bel[ief] that motherhood—the raising of children and families—is the most fulfilling role that women can have").

48. *See, e.g.*, MRS. DOUBTFIRE (Twentieth Century Fox 1993) (depicting a father so attached to his children that he evades a court-ordered custody arrangement by impersonating an older woman in order to work as a nanny for his children); KRAMER VS. KRAMER (Columbia Pictures 1979) (portraying a self-centered business executive forced to care for his son when the wife leaves him, only to become so attached to the boy that he fights for custody of the child when his wife returns); THREE MEN AND A BABY (Walt Disney Co. 1987) (presenting a story where a baby girl is left at the doorstep of three confirmed bachelors—any of whom could be the child's father—who decide to raise the child together).

49. *See* RICHARD LAYTE, DIVIDED TIME: GENDER PAID EMPLOYMENT AND DOMESTIC LABOR 40-45 (1999) (presenting a statistical analysis of the correlation between the hours worked by the wife and the domestic labor performed by the husband, demonstrating that "husbands do not

housework is always secondary to their employment and careers. Heidi Hartmann suggests that "the rather small, selective, and unresponsive contribution of the husband to housework raises the suspicion that the husband may be a net drain on the family's resources of housework time—that is, husbands may require more household work than they contribute."[50] When family members assist with housework, it tends to be sex-segregated by task: typically, husbands do minor repairs,[51] daughters wash dishes, and sons take out the trash.[52] Ann Game and Rosemary Pringle observed that the situation may actually be worsening as a result of the "liberating effects of technology" that have eliminated chores such as chopping wood and serve to break down the sexual division of labor into chores previously defined as masculine. Women's work is further extended through "do-it-yourself" kits, which shift certain tasks previously considered "men's work" to women.[53] Simultaneously, working mothers face an expanded parenting role that Sharon Hays refers to as "intensive mothering."[54] Now working mothers must be "supermoms" faced with the responsibility for child rearing that is child-centered, expert-guided, emotionally absorbing, labor-intensive, and financially expensive.[55]

Instead of a collective solution to a national problem, individualized solutions have emerged, suggesting various ways for women to organize their lives and ways to restructure housework and employment. Changes include limiting family size, working a different shift from their spouses, reducing housework standards, and purchasing labor-saving commodities and services.[56] Women may also

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respond to the paid time of their wives by doing more domestic work").

50. Heidi Hartmann, *The Family as the Locus of Gender, Class, and Political Struggle: The Example of Housework*, 6 J. OF WOMEN IN CULTURE AND SOC'Y 366, 383 (1981).

51. *See, e.g.*, WILLIAM R. BEER, HOUSEHUSBANDS: MEN AND HOUSEWORK IN AMERICAN FAMILIES (1983); RICHARD A. BERK & SARAH FENSTERMAKER BERK, LABOR AND LEISURE AT HOME: CONSENT AND ORGANIZATION OF THE HOUSEHOLD DAY (1983); Kathryn Walker, *Time Spent by Husbands in Household Work*, 4 FAM. ECON. REV. 8-11 (1970).

52. *See* Richard A. Berk & Sarah Fenstermaker Berk, *A Simultaneous Equation Model for the Division of Household Labor*, 6 SOC. METHODS & RES. 431-68 (1978).

53. *See id.* at 126.

54. *See generally* SHARON HAYS, THE CULTURAL CONTRADICTIONS OF MOTHERHOOD (1996).

55. *See id.* at 138-45 (discussing the pressures felt by both stay-at-home mothers and those women who choose to enter the workforce; and how women who enter the workforce have to then juggle the pressure of the traditional stay-at-home role, the pressure of a job, and the pressure to bring in additional income for the family).

56. *See Bargaining for Alternative Work Schedules: Why Are Alternative Work Schedules Important?* (visited June 30, 1999) <http://www.aflcio.org/women/f_altwrk.htm> (discussing ways women can adjust schedules to accommodate family and children); *see generally* WOMEN AND CAREERS: ISSUES AND CHALLENGES (Carol Wofe Konek & Sally L. Kitch eds., 1994) (discussing the increase of the percentage of women in the labor force and the corresponding changes in

seek jobs that are less demanding and offer flexible schedules. Chores and responsibilities might also be reallocated to husbands and children. For some households, the solution is to hire someone to do the work. However, such individualized solutions to modifying employment patterns are not without price. Taking time off can be extremely damaging to a woman's career in terms of pay and job security. Part-time work means "less pay, few if any benefits (such as health insurance and pensions), no seniority protection or employment security and little opportunity for upward mobility."[57] Non-standard hours frequently result in health problems and fatigue. Consequently, few of these options are available to single-parent mothers.[58]

Although the economy depends on women's unpaid labor within the family to fulfill the domestic and caregiving needs in society, Fineman notes that government assistance is framed as a subsidy and administered as a personal failing of the individual and family. Capitalism depends on women's unpaid domestic labor, but it rarely provides the wages, working conditions, or benefits to support this work.[59] Sick benefits and retirement plans seldom provide adequate support for purchasing long-term care, leaving the family as the sole source of aid an individual may have.[60] Moreover, as Fineman argues, the unpaid labor of a family member is not compensated. Government assistance is not considered essential in fulfilling caretaking needs; instead, the ultimate responsibility falls upon the family or individual. The lack of assistance, support, or responsibility offered by the capitalistic system and the government does not reflect

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women's lives, such as women's attitudes toward feminism, motherhood, shared domestic responsibilities, and discrimination faced by women in the work force); RITA MAE KELLY, THE GENDERED ECONOMY: WORK, CAREERS AND SUCCESS (1991) (asserting that women's roles have become imbedded in society through socialization, the segmented economic structure and labor force, and the "glass ceiling" facing women in the workplace).

57. *See* MOEN, *supra* note 32, at 39 (noting that while the employment of mothers of young children enables a "degree of attachment to the labor force ... it reinforces their confirmed economic dependence," either on a husband's salary or on public assistance).

58. *See* KATHLEEN GERSON, HARD CHOICES: HOW WOMEN DECIDE ABOUT WORK, CAREER AND MOTHERHOOD (1985) (examining the trend of increased female participation in the work force—and corresponding trends such as decreased fertility rates—by surveying women's attitudes toward work, reproduction, family, and economic comfort and stability).

59. *See* Margaret Coulson et al., *"The Housewife and her Labour under Capitalism": A Critique, in* THE POLITICS OF HOUSEWORK, *supra* note 41, at 218-34 (arguing that since capitalism separates production from consumption, and since women's unpaid domestic labor is classified as consumption, women's unpaid domestic labor goes uncompensated. The pressure of women to enter the workforce to participate in "production"—which has inherent value under capitalism—exacerbates the problem.).

60. *See* Labor Project for Working Families, *Work and Family Bill of Rights* (last visited June 30, 1999) <http://www.berkeley.edu/~iir/workfam/waf-bor.shtml> (stating that working families have the right to paid medical leave and adequate health care coverage).

either the changes in the family or the participation of women in the labor force. Nevertheless, as illustrated by the case of Tabitha Walrond,[61] the state holds women legally responsible and obligated to perform reproductive labor.

II. UNIVERSALITY OR DIFFERENCE: IN SUPPORT OF COLLECTIVE RESPONSIBILITY

Fineman tends to limit her treatment of dependence and independence to biology.[62] She focuses her discussion on describing the universality of various stages of life. However, inevitable biological stages of dependency do not create a universal experience because society is socially stratified. Certain groups are more privileged than others; therefore, economic circumstances cannot be ignored. For example, the dependency of a Rockefeller toddler or sick aging member of the Rockefeller clan is not the same as the dependency of a toddler or chronically ill parent of a secretary, waitress, sales clerk, nurse, or teacher. Definitions of dependency are modified by economic privilege, extending the tenure of dependency status as well as limiting the degree of caretaking to subsistence level for some and overabundance for others. A person may experience caretaking as a scarce resource, a gendered obligation, or the ability to purchase services, which raises issues of quality and quantity. Even when caretaking depends upon the unpaid labor of a family member, the experience is shaped by economic circumstances. Augmenting the care for a chronically ill family member with the assistance of a nurse's aid is much different from trying to fulfill the obligation alone. Parenting can be an uplifting and fulfilling experience for both mothers and fathers; however, when parenting is constrained by worries of food, shelter, and safety, it may be limited to basic survival and more of an unwanted and overwhelming burden.

Since our material existence modifies how we experience dependency, as well as how individuals responsible for caretaking experience the accompanying burden, I would argue that a public solution is incomplete without considering everyone affected. The social construction of responsibility cannot be limited to individuals as family members, but must include individuals as employees. Myths of independence, autonomy, and self cannot be dismantled for women whose unpaid labor as family members fulfills caregiving needs, unless the analysis also includes the impact on employees who

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61. *See* Bernstein, *supra* note 1 and accompanying text.

62. Fineman does recognize, to a certain extent, emotional, psychological, and social components. *See* Fineman, *supra* note 21.

are hired as paid caregivers. Attempting to change the conditions under which society[63] compensates unpaid caregiving cannot begin without bringing paid workers into the discussion. There are important similarities between paid and unpaid caregivers that force the consideration of cultural and structural constraints impeding efforts to establish national policy.

III. PAID CAREGIVERS

Two closely related myths found in domestic service are "rags to riches" success stories, and workers as "one of the family." Both are grounded in the family analogy. These myths evoke images of master-servant and mistress-maid legacies depicting the faithful old servant cared for in old age or the young, single, and attractive domestic who marries into the employer's family. Even though soap opera romances and inheritances are unlikely occurrences in the United States, these myths remain. Popular culture augments folklore, updating mythical images with sitcoms from the 1950s to the 1990s live-in workers as characterized in television shows such as "Frazier"[64] and "The Nanny."[65] The recent "Nannygate" scandal exposed the realities of workers employed as domestics and nannies.[66] Paid caretakers rarely receive social security or any other benefits, such as paid vacation or sick leave, maternity leave, or health insurance.[67] Live-in conditions are not dissimilar from the experiences of women employed at the turn of the century—long

63. For the purposes of this argument, "society" includes the government and other employers.

64. *See generally Frasier*, NBC, 1993-1999 (depicting a divorced psychiatrist and his father who share an apartment and who require the care of a younger, attractive, foreign female physical therapist who, in addition to treating the father, attends to housekeeping chores).

65. *See generally The Nanny*, CBS, 1993-1999 (portraying a women hired to care for the children of a Broadway tycoon, despite her lack of domestic skills—her humor, beauty, and sex appeal enable her to keep her job, and ultimately, marry her employer).

66. *See The Parent Trap: It's Hard to Follow the Law and Easy to Get Good, Illegal Child Care*, NEWSWEEK, Feb. 1, 1993, at 34-37 (describing the complex problems—from availability to economic constraints—of obtaining decent child care in the United States; and asserting that there is an increase in hiring illegal immigrants as childcare workers in order to meet the demand).

67. *See generally Facts on Working Women: Child Care Workers* (last visited June 30, 1999) <http://www.dol.gov/dol/wb/public/wb_pubs/childc.htm> [hereinafter *Child Care Workers*], *and 1998-99 Occupational Outlook Handbook BLS: Private Household Workers* (last modified Jan. 15, 1998) <http://stats.bls.gov/oco/ocos175.htm> [hereinafter *Private Household Workers*] (both discussing the benefits and drawbacks of childcare employment). For studies documenting the lack of benefits among private household workers according to specific racial groups, see JUDITH ROLLINS, BETWEEN WOMEN: DOMESTICS AND THEIR EMPLOYERS (1985) (African-Americans); EVELYN NAKANO GLENN, ISSEI, NISSEI, WAR BRIDE: THREE GENERATIONS OF JAPANESE-AMERICAN WOMEN IN DOMESTIC SERVICE (1986) (Japanese-Americans); ROMERO, *supra* note 42 (Chicanas).

hours and little private time for a life outside the demands of their employer's family. In real life, domestic service is stigmatized and remains undesirable work—only women with no other options enter the occupation.[68] The contradiction behind the lack of status and skill is captured in the following statement made by a domestic over two decades ago: "Our employers trust us with their children, their valuables, their household appliances, their automobiles, the preparation of their food, their health and their safety. Yet, we are the lowest-paid workers in the U.S."[69]

On the other end of the caretaking cycle, women of color—primarily immigrants—also dominate the labor force in nursing homes.[70] Illustrating the demographics of one nursing home, sociologist Timothy Diamond—who himself worked at a nursing home—quotes a white registered nurse as saying, "It's like the United Nations in here."[71] Not long after this comment, Diamond noticed that while he worked only one shift per day, his colleagues at the nursing home would leave their low-paying nurse's assistant position to travel to another low-paying nursing job before the end of the day.[72] Although engaged in skilled labor and certified as health care professionals, these women and men worried about having enough money for rent, transportation, and children's necessities.[73] Paid only slightly more than minimum wage, full time work as nursing assistants

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68. *See Child Care Workers, supra* note 67 (noting that the training and qualifications for child care workers varies depending on licensing requirements); *see also Private Household Workers, supra* note 67 (stating that private household work is "low paying with few benefits"); ROMERO, *supra* note 42, at 12 (discussing the stigma attached to domestic service. The history of women entering and leaving the domestic service profession indicates points to the urgency with which women leave the occupation in order to take other employment, even when their wages do not increase significantly.).

69. *See* LINDA MARTIN & KERRY SEGRAVE, THE SERVANT PROBLEM: DOMESTIC WORKERS IN NORTH AMERICA 159 (1985) (quoting D. Allen, *Household Technicians Organize*, 1 IN THESE TIMES 376 (1977)).

70. *See* United States Dep't of Labor, *Facts on Working Women, Black Women in the Labor Force* (Mar. 1997) [hereinafter Dep't of Labor] (noting that the Department of Labor listed "nursing aides, orderlies and attendants" as the primary occupation for African American women in 1996).

71. TIMOTHY DIAMOND, MAKING GRAY GOLD: NARRATIVES OF NURSING HOME CARE 39 (1992). Diamond observed that:

> [T]he reference was distinctly about the staff, not the people who lived in the home. The staff were mostly people of color, residents mostly white. . . . This behavior made more sense as time went on: except for the few male residents and occasional visitors, I was the only white man many would see from one end of the month to the next.

Id.

72. *See id.* at 42-48 (discussing the other workers' need to work a second job).

73. *See id.* at 44-45 (explaining that Diamond's concepts of jobs, wages, poverty, and unemployment began to change as he witnessed the everyday struggles of his colleagues).

did not meet the cost of supporting a family.[74]

Since the reproductive labor defined as "women's work" is devalued in society, rarely do we openly recognize the existence of skill involved, particularly the emotional labor of caregiving which is so often perceived as a "labor of love." Private household workers and nannies report that employers assume, as well as expect, emotional labor to accompany caregiving to children.[75] Not only are workers expected to change diapers and feed the baby, but they are also expected to love the baby.[76] This suggests the strong cultural constructions surrounding caregiving as a familial responsibility and the assumption that the act of caregiving is not an act of labor but an expression of love. However, research on both paid and unpaid reproductive labor demonstrates that women in the role of worker or family member do not necessarily experience deep emotional rewards in performing reproductive labor; they frequently experience the work as drudgery, and often feel unappreciated and invisible.[77] To make matters worse, reproductive labor is not only treated as unskilled labor but as "nonwork."[78] Research on private household workers identifies the ways that women in their family role(s) hire other women to relieve them of the unpleasant burdens of reproductive labor.[79] It is not unusual for these same women, when positioned as employers, to treat the paid worker in the same fashion that their family members treated them.[80]

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74. *See* United States Dep't of Labor, *Twenty Leading Occupations of Employed Women* (visited Aug. 3, 1999) <http://www.dol.gov/dol/wb/public/wb_pubs/20lead98.htm> (noting that in 1996 the median weekly earnings for female nurses aides were $308).

75. *See* United States Dep't of Labor, *Child Care Workers* (visited June 30, 1999) <http://www.dol.gov/dol/wb/public/wb_pubs/childc.htm> (stating that caregivers are responsible for nurturing and teaching children during their formative years). *See generally* JULIA WRIGLEY, OTHER PEOPLE'S CHILDREN 86 (1995) (explaining that caregiving jobs come with an expectation of emotional commitment).

76. *See* United States Dep't of Labor, *1998-99 Occupational Outlook Handbook, Private Household Workers* (visited June 30, 1999) <http://stats.bls.gov/oco/ocos175.htm#nature> (describing the nature of the work involved in caregiving). *See generally* MARTIN & SEGRAVE, *supra* note 69 (relating the untold duties of domestic workers).

77. *See* ROMERO, *supra* note 42, at 17 (reviewing the cultural distinctions made between paid and unpaid reproductive labor, and the practices at home and in the office that devalue such work). *See generally* MARTIN & SEGRAVE, *supra* note 69 (analyzing the reasons for a dramatic decline in domestic workers over the past 50 years).

78. *See generally* IVAN ILLICH, SHADOW WORK 1-2 (1981) (describing non-work or "shadow work" as "transactions which are not in the monetized sector and yet do not exist in pre-industrial societies"); ROMERO, *supra* note 42, at 23 (applying the concept of "non-work" to reproductive labor).

79. *See* ROMERO, *supra* note 42, at 99-105 (suggesting that, aside from household work, domestic servants provide personal services and status for the employer).

80. *See* ROMERO, *supra* note 42, at 99-105 (relating the tendency for employers to redefine housework for domestic employees to encompass standards and timeframes that the employer never followed herself).

Limiting proposals for caretakers to nonpaid workers excludes the realities for both domestic workers and nurses assistants who face decisions that include remaining home and caring for their own children or elderly parents, or receiving pay for caretaking in private homes and nursing homes. The dilemma of omitting paid workers from the discussion is similar to what was revealed by Nannygate. Feminist observers focused the gender lens and emphasized working mothers' needs for childcare while ignoring the situation of immigrant working-class women employees, both as paid caretakers workers and as unpaid caretakers in their own homes and communities.[81] Class issues need to be articulated to avoid pitting upper-middle class women, who can afford to employ full-time caretakers for their children and chronically ill family members, against lower and middle class workers, who cannot afford the luxury of live-in workers and are forced to accept inadequate part-time help and the unpaid labor of mothers, daughters, grandmothers, and other family members. It is inadequate to construct both the need for paid caretaking as a "yuppie" privilege, and the employment of undocumented workers and unpaid taxes as a "yuppie" crime, as occurred during Nannygate.[82] Rather, feminists need to engage in a discussion that addresses the national need for reproductive labor as an important societal resource. We must avoid contrasting the nostalgia of Norman Rockwell family life with the evils of institutional caretaking. The controversy over Nannygate exemplified our inability to move beyond privatized notions of the family, fear of socialized solutions, cultural contradictions of motherhood, and xenophobia towards workers of color and immigrants.[83] The result was a lost opportunity to explore collective and public solutions to problems consistently defined as private and individual.

Recognizing that differences exist between women caregivers who are paid and those who are unpaid is instrumental in searching for a public solution based on issues of equity and justice. A lens focused specifically on gender tends to limit the focus on the family and the issue of caretaking as one of supporting women's unpaid labor. For instance, broadening the lens to include the area of child care draws

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81. *See* Mary Romero, *Immigration, The Servant Problem, and the Legacy of the Domestic Labor Debate: Where Can You Find Good Help These Days!*, 55 U. MIAMI L. REV. (forthcoming 1999) (manuscript on file with the author) (analyzing news articles and editorials in the wake of the Nannygate scandal).

82. *See* Claudia Wallis, *The Lessons of Nannygate*, TIME, Feb. 22, 1993, at 76 (describing Nannygate as the White House scandal involving President Clinton's nominee for Attorney General Zoe Baird who hired two illegal immigrant nannies and paid them "off the books").

83. *See id.* (discussing the consequences of Nannygate).

attention to the inadequate federal child care tax credit which has not been increased in seventeen years.[84] A working parent is limited to $1,440 a year for child care costs when the actual costs range anywhere from $4,000 to $10,000.[85] Acknowledging the experiences of minorities, immigrants, and other paid employees among the working poor who engage in caregiving incorporates other important indicators of inequality, namely race, class, and citizenship; and expands the parameters of the debate to include the rights of all workers. Workers' rights need to include benefits that provide health insurance, sick leave, and other assistance during periods of dependency. Benefit packages are frequently the first step in the deterioration of overall workers' demands in employment disputes and in the negotiation of new contracts.[86] Rather than limiting compensation to government subsidies, the discussion should include issues of corporate responsibility for the paying of reproductive labor. If the pay gap between men and women were eliminated, women would have more to spend on their families and more to save for the future. Women's pensions would also be larger. "In 1994, women's private-pension benefits were less than half those of men—just $3,000 a year, compared with $7,800."[87] Workers' rights should not be limited to sick leave during their employment but include provisions for caregiving after their departure from the labor force.

Expanding the discussion of the role of caregivers outside the exclusive domain of the family allows for the rethinking of the institutional and structural arrangements of caretaking. For example, the AFL-CIO outlines numerous strategies for bargaining for alternative work schedules that are aimed specifically at helping working people care for their children and older relatives.[88] These strategies include: flextime, part-time work with benefits,

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84. *See* AFL-CIO, *Working Together for Kids* (visited Mar. 17, 1999) <http://www.aflcio.org/women/kids.htm> (stating that the federal child care tax credit is too small).

85. *See id.* (concluding that a bigger tax credit for families and a bigger national investment in child care are needed).

86. *See generally* AFL-CIO, *Fact Sheet: Equal Pay and Retirement* (visited Aug. 4, 1999) <http://www.aflcio.org/women/retirement.htm> (providing general information regarding worker's rights).

87. *See* AFL-CIO, *Fact Sheet: Equal Pay and Retirement* (visited Mar. 17, 1999) <http://www.aflcio.org/women/retiremt.htm> (observing that only 26% of older women receive a pension while 47% of older men receive one). In 1996, half of older women received a private pension that was less than $3,679 per year, whereas older men received $6,442 per year. *Id.*

88. *See* AFL-CIO, *Fact Sheet, Bargaining for Alternative Work Schedules* (visited Mar. 17, 1999) <http://www.aflcio.org/women/f_altwrk.htm> (explaining that changes in the workforce and in the kinds of hours people work are making alternative work schedules increasingly important for working families).

telecommuting from home, job sharing, compressed workweek, making overtime voluntary, shift swap provisions, shorter workweek, and voluntary reduced time.[89]

Another significant undertaking is the "Work and Family Bill of Rights" drafted by the New York City Central Labor Council and the Labor Project for Working Families.[90] The major goal of the bill is to assure that workers have the right to earn livable wages under conditions that allow them to fulfill caretaking responsibilities.[91] This is achieved by employers paying for child care and elder care or providing the caretaker with paid time off to care for family members.[92] The Labor Project for Working Families also suggests achieving this goal through union bargaining by expanding paid family and medical leave to include additional categories of both workers and circumstances for leave, flexible work options, child care financial assistance, on-site centers, eldercare financial assistance, adequate health care coverage for families, equal pay, and the expansion of the definition of family in all benefit packages to include extended family members and domestic partners.[93] Political action could also benefit working families through legislation at the state and federal level for increased childcare and eldercare funding; expansion of the Family and Medical Leave Act; health coverage for all families; an increased minimum wage; and the passage of legislation requiring equal pay at local, state, and federal level.[94]

IV. CONCLUSION

Fineman's argument is a very timely one. Welfare reform has eroded assistance and resources for poor families struggling to meet caregiving needs. Modern technology and medical practices have increased our life span, as well as the likelihood that dependent elderly relatives will live longer. To treat financial coverage during

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89. *See id.* (developing many creative strategies to give workers greater control over their work lives).

90. *See* The Labor Project for Working Families, *Work and Family Bill of Rights* (last modified Jan. 21, 1998) <http://socrates.berkeley.edu/~iir/workfam/waf-bor.shtml> (enumerating the rights of workers as "[t]he right to paid family and medical leave .... [t]he right to have control over work hours .... [t]he right to quality child care and eldercare which is affordable and accessible, that provides living wages for the care provider .... [t]he right to a living wage, including equal pay for work of equal value .... [and t]he right to adequate health care coverage for families and workers").

91. *See id.* (promoting the idea that working families have certain fundamental rights related to work and family).

92. *See id.* (stating that families have the right to paid family and medical leave).

93. *See id.* (listing union bargaining options).

94. *See id.* (listing political action options).

this period of dependency as the sole responsibility of aging individuals or their family members assumes a set of economic and societal conditions that clearly do not exist. Currently, individual families lack the public support to address the nation's collective caretaking needs. The inevitable dependency characterized by children, the sick and elderly, and persons who are disabled needs to be recognized as a public need requiring a collective solution, not as a private individualized need. However, the unequal distribution of resources, including the resource of caretaking, assures that only a small privileged group of families and individuals with an overabundance of resources has the ability to purchase its caregiving needs. The use of undocumented and immigrant labor to fulfill the market for paid caregivers blinds feminists to solutions that benefit both unpaid and paid workers.

The lack of urgency regarding the nation's caregiving dilemma is part of an attack on both the public sphere and progressive social programs. Such an attack includes proposals for voucher schools versus a public school system, the growing number of gated communities hiring their own security guards, shopping malls replacing public parks, and so on. These developments all relate to the myths of independence, autonomy, self sufficiency, and the ability of the market to deliver all services. A political agenda to move caretaking toward a legal category of collective or societal debt shares similarities with groups challenging the growing trend toward the privatization of social institutions and services. Making allies and forming a more inclusive political agenda will bring us closer to the door of Fineman's dystopian fantasy. We can then expand our political agenda beyond one of supporting brave new families to supporting collective bargaining created in brave new villages.[95]

95. *See generally* JUDITH STACEY, BRAVE NEW FAMILIES: STORIES OF DOMESTIC UPHEAVAL IN LATE TWENTIETH CENTURY AMERICA (1990) (expressing one trend in the reconsideration of the family that addresses new types of families, such as single heads-of-household and gay and lesbian couples); JUDITH STACEY, IN THE NAME OF THE FAMILY: RETHINKING FAMILY VALUES IN THE POSTMODERN AGE (1996) (discussing the same trend in the reconsideration of the family); HILLARY RODHAM CLINTON, IT TAKES A VILLAGE: AND OTHER LESSONS CHILDREN TEACH US (1996) (discussing a second trend in the reconsideration of the family; namely, a political discourse to collective responsibilities).