

Care's Critics:
Addressing Feminist Arguments against Public Support for Carework
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INTRODUCTION

The inevitable dependency of children, the elderly, and the disabled requires financial support of dependents and those who care for them. U.S. law and public policy assume that caregiving is primarily a private matter. Parents, for example, are expected to bear the costs of caring for their children. Feminist scholars such as philosopher Eva Kittay and legal theorist Martha Fineman have shown that relying on private arrangements for necessary carework obscures these dependencies and their costs, with unjust consequences for women.² The nuclear family norm, with the husband as chief breadwinner, gives women the responsibility for caregiving, while denying them adequate government support and vilifying those who do not depend on husbands. Instead, these scholars argue, caregivers have a legitimate claim for public support for the work they do caring for others.

Feminist theorizing on carework highlights a fundamental gender injustice in traditional family structure and current social policy. But not all feminists see the claim for public support for carework as the correct answer to women's unequal burden and its

¹ Kirkland and Ellis Professor, Northwestern University School of Law; Faculty Fellow, Institute for Policy Research. This paper borrows from Dorothy E. Roberts, "Welfare Reform and Economic Freedom: Low-Income Mothers' Decisions about Work at Home and in the Market," ___ Santa Clara L. Rev. ___ (forthcoming 2004) and Dorothy E. Roberts, "Poverty, Race, and the Distortion of Dependency: The Case of Kinship Care," in Eva Feder Kittay & Ellen Feder, eds., *The Subject of Care: Feminist Perspectives on Dependency* (2002).

² See, for example, Eva Feder Kittay, *Love's labor: Essays on Women, Equality, and Dependency* (1999); Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (1995).

economic consequences. Some critics frame the domestic and market aspects of women's economic welfare in dichotomous terms, pitting mothers' role as unpaid caregivers against their role as paid workers; and they see more strategic and cultural advantage in promoting women's market participation. This paper seeks to illuminate and reinforce claims for public support for carework by responding to care's critics. Focusing on welfare and child welfare policy, I explain how race and class inequalities promote the denial of public support for carework. Addressing race and class inequalities, in turn, bolsters feminist claims on the broader society to support caregiving while highlighting obstacles to translating these claims into policy.

I. Feminist Theorizing on Caregiving and Paid Work

The controversy over whether welfare should aid poor mothers' caregiving or encourage poor mothers to transition to paid employment arises in a larger debate within feminist thinking about women's economic welfare. Is the path to gender equality to be found in supporting women's work at home or work in the market? The most popular feminist approach has emphasized the importance of women's labor market equality, while a growing feminist discourse argues for greater state support for women's carework at home.

The dominant feminist approach has advocated that women achieve economic liberation by escaping their confinement to the domestic sphere and participating in the paid labor market on equal terms with men. The early women's movement abandoned claims to joint rights in marital property based on the value of wives' work in the home to campaign for earnings statutes that recognized wives' rights to wages.³ "In the years

³ Reva B. Siegel, *Home as Work: The First Women's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073 (1994).

after the Civil War,” writes legal historian Reva Siegel, “feminists began to disparage the household labor they originally sought to emancipate and to argue that women could achieve economic equality with men only by working outside the home for a market wage like men.”⁴

Feminist legal scholar Joan Williams traces this focus on labor market participation from Charlotte Perkins Gilman’s *Women and Economics* to Betty Friedan’s *The Feminine Mystique*. Professor Williams observes, “[f]eminism today is still associated with an insistence on employment for women with day care centers as the solution for the conflict between work and family demands.”⁵ The key to economic equality, in other words, is for women to achieve the same workforce participation as men while delegating household chores and child care to professional workers.

Williams argues that this “full-commodification” model is flawed by accepting three basic elements of the housewife/breadwinner dichotomy: the model accepts “the ideal of a worker who starts to work in early adulthood and works for forty years straight, taking no time off for child-bearing or child rearing;” the notion that household labor is not “work;” and “the privatized theory that reproductive work is a private responsibility and not a public necessity.”⁶ All of these assumptions devalue carework and negate the experiences of women who continue to perform the bulk of child care and other household labor. Rather than stress society’s responsibility to lend direct financial aid to caregivers, Williams highlights the need to eliminate the ideal worker norm in market work and family entitlements that discriminates against mothers. She shows that this

⁴ *Id.* at 1079.

⁵ Joan Williams, *Our Economy of Mothers and Others: Women and Economics Revisited*, 5 J. GENDER, RACE & JUSTICE 411, 413 (2002). at 413.

⁶ *Id.*

gender system forces mothers to marginalize themselves economically by failing to perform as ideal workers so that they can facilitate their husbands' performance of that role and care for their children.⁷

In contrast to the market-centered approach, a growing feminist jurisprudence centers on theorizing care work and advocates greater recognition and support for women's caregiving.⁸ An earlier feminist account of care characterized it as a manifestation of women's sex-specific nature.⁹ The more recent approach does not see care as essential "emanation" from women, but as a socially constructed and political practice that provides tremendous social value and whose lack of social support seriously disadvantages women.¹⁰

Legal theorist Martha Albertson Fineman powerfully contests the premise that women's caregiving is a private duty rather than a public good.¹¹ Assigning the care of children to the traditional private family, Fineman argues, merely obscures the inevitability and costs of children's dependency.¹² Instead, society owes a "social debt" to women whose valuable labor it appropriates to meet its caregiving needs. Philosopher Eva Feder Kittay makes a case for public support by any just society that cares for dependents based on the idea of reciprocal social cooperation, which she terms

⁷ JOAN C. WILLIAMS, *UNBENDING GENDER* (2000).

⁸ *See, e.g.*, WILLIAMS; FINEMAN; KITTAY; JOAN C. TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* (1994); MONA HARRINGTON, *CARE AND EQUALITY: INVENTING A NEW FAMILY POLITICS* (1999); NANCY FOLBRE, *THE INVISIBLE HEART: ECONOMICS AND FAMILY VALUES* (2001). *See generally Symposium on The Structures of Care Work* 76 CHI.-KENT L. REV. 1389 (2001).

⁹ Kathryn Abrams, *The Second Coming of Care*, 76 CHI.-KENT L. REV. 1605, 1607 (2001). *See, e.g.*, CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

¹⁰ Abrams, *supra* note 39, at 1612.

¹¹ FINEMAN; Martha Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 13 (2000).

¹² Williams notes that fathers can perform as ideal workers only by depending on child care and other family work performed by their female partners. Williams, *supra* note 5, at 418. Recognizing mothers' contribution to male wages "flips the traditional understanding of who is dependent on whom." *Id.* at 419.

“doulia”.¹³ Because those who are dependant aren't capable of reciprocating the care they receive, others must do so. These and other scholars have established the public's collective responsibility to compensate caregivers for their essential and valuable contribution to society.

II. Feminist Criticism of Public Support for Carework

A clash has recently emerged between feminist legal scholars who emphasize the importance of women's equal participation in the paid workforce and those who emphasize the importance of state support for women's caregiving. Critics of the caregiving scholarship worry that directing public support to women's caregiving reifies the gendered division of labor and women's traditional role in the home,¹⁴ reinforces a maternalist norm that stifles a positive concept of female sexuality,¹⁵ subjects family arrangements to state regulation,¹⁶ and unfairly shifts the costs of child raising to workers without children.¹⁷ As a practical matter, some critics argue that facilitating women's caregiving is less effective at achieving gender equality than challenging barriers in the workplace “so that women can make greater economic inroads on a level that will provide them with greater real choices than currently exist.”¹⁸

¹³ KITTAY, *supra* note 2.

¹⁴ See Vicki Schultz, *Life's Work*, 100 COLUM. L. REV. 1881, 1905-06 (2000); Michael Selmi & Naomi Cahn, *Caretaking and the Contradictions of Contemporary Policy*, 55 ME. L. REV. 289, 290 (2003).

¹⁵ See Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 183-198 (2001).

¹⁶ See Katherine M. Franke, *Taking Care*, 76 CHI.-KENT L. REV. 1541 (2001); Martha M. Ertman, *Changing the Meaning of Motherhood*, 76 CHI.-KENT L. REV. 1733 (2001).

¹⁷ Mary Anne Case, *How High the Apple Pie? A Few Troubling Questions about Where, Why, and How the Burden of Care for Children Should Be Shifted*, 76 CHI.-KENT L. REV. 1733 (2001). For a response to Katherine Franke and Mary Ann Case based on a theory of human need, see Mary Becker, *Care and Feminists*, 17 WIS. WOMEN'S L.J. 57 (2002).

¹⁸ Selmi, Michael Selmi, *Care, Work, and the Road to Equality: A Commentary on Fineman and Williams*, 76 CHI.-KENT L. REV. 1557, 1558 (2001); see also Selmi & Cahn, *supra* note 14, at 297-306; Peter B. Edelman, *Promoting Family by Promoting Work: The Hole in Martha Fineman's Doughnut*, 8 AM. U.J. GENDER SOC. POL'Y & L. 85 (2000) (criticizing Fineman for attaching insufficient weight to the “family-strengthening potential of work outside the home.”).

Williams characterizes this controversy as a recycling of the sameness/difference debate: “Feminists committed to making traditionally masculine gender performances available to women [the ‘tomboy strategy’] are pitted against feminists committed to decreasing the costs of conventionally feminine gender performances [the ‘femme strategy’].”¹⁹ Indeed, Naomi Cahn and Michael Selmi explicitly argue that proposals facilitating women’s caregiving “would likely have a serious negative effect on the quest for greater equality for women, particularly in the workplace, and they are likely to produce a replay of the debate over ‘difference’ feminism from the 1980s by identifying women as caretakers and by appearing to accept gendered differences.”²⁰ An illustration is the exchange in *Columbia Law Review* between Vickie Shultz, who advocates basing women’s identity primarily on paid work, and Williams, who advocates changing workplace conditions and norms to reflect women’s identity as mothers.²¹ (Interestingly, Williams, whose scholarship focuses largely on the workplace, is placed by critics among supporters of carework whose proposals allegedly interfere with women’s advancement in the market.)

One response to this controversy is to recognize that feminists can do both.²²

There is room for feminists of both persuasions to work simultaneously on

¹⁹ Joan Williams, “*It’s Snowing Down South*”: *How To Help Mothers and Avoid Recycling the Sameness/Difference Debate*, 102 COLUM. L. REV. 812, 815 (2002).

²⁰ Selmi & Cahn, *supra* note 14, at 290.

²¹ See Vicki Schultz, *Life’s Work*, 100 COLUM. L. REV. 1881 (2000); Williams, “*It’s Snowing Down South*,” *supra*; see also Michael Selmi, *Care, Work, and the Road to Equality: A Commentary on Fineman and Williams*, 76 CHI.-KENT L. REV. 1557 (2001) (disagreeing with the claim by Martha Fineman and Joan Williams that “facilitating women’s work in the home with children and other dependents [is] a way of furthering women’s interests”).

²² See Williams, *supra* note 28, at 430-31. Cf. Deborah Rhode, *Balanced Lives*, 102 COLUM. L. REV. 834 (2002) (arguing for “a reconstruction of public policies, workplace structures, and cultural values to

compensating mothers' caregiving while removing barriers to women's equal participation in the market. Poor single mothers, especially nonwhite women, are disadvantaged by both the stigma attached to their caregiving and by barriers to finding employment that can support their families. They benefit from efforts that address both forms of disadvantage.

Reconciling the two positions is more difficult, however, when scholars see public support for caregiving as necessarily *opposed to* women's increased labor market participation. Michael Selmi and Naomi Cahn, for example, contend that "emphasizing the importance of care work to women, and its status as a public good, suggests that women do, and should, privilege care work over their paid market work."²³ Proposals to place greater social value on caregiving, they conclude, "would likely have a serious negative effect on the quest for greater equality for women, particularly in the workplace."²⁴

Pitting public support for caregiving against women's increased equality discounts the extra devaluation of poor and minority women's work in the home and the importance of public recognition of its economic value to challenge their disadvantaged status. Advocacy of waged work as the principal means for women's emancipation also disregards the experiences of most women of color. First, the notion that employment is inherently liberating contradicts slave women's experience of forced labor and the discriminatory working conditions that minority women have historically faced. The market-centered approach tends to focus on a romanticized middle-class quest for

promote balanced lives for both men and women"). Deborah Rhode argues that the goal of feminists should be "a fuller integration of employment, family, and civic commitments than is now possible in most workplaces." *Id.* at 835.

²³ Selmi & Cahn, *supra* note 45, at 306.

²⁴ *Id.* at 290.

entrance into elite professions, rather than on the women who are exploited as a source of cheap labor.²⁵ Black women historically experienced work outside the home primarily as an aspect of racial subordination and the home primarily, although not entirely, as a site of solace and resistance to white oppression.²⁶

Moreover, the flawed components of the feminist model of emancipation through employment were supported by exploiting race and class hierarchies among women. Privileged women have resolved the tension between raising children and paid employment without changing the sexual status quo by relying on the low-paid domestic work of less privileged women, especially women of color.²⁷ The racial division of domestic service grounded in the institution of slavery persisted in the face of women's expanded participation in the paid workforce and the increased commodification of household chores in the second half of the twentieth century.²⁸ Thus, women's increased participation in the market alone will not eliminate the racial division of women's work. In addition, proposals to compensate carework more equitably must extend to paid as well as unpaid labor.²⁹

Another way of rejecting the dichotomous thinking that characterizes work/caregiving debates is to enable caregivers to make their own decisions about whether and when to work inside and outside the home. I call this ability "economic

²⁵ BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 146 (1981).

²⁶ PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* (1990); ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 123, 132 (1988). See generally JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK AND THE FAMILY FROM SLAVERY TO THE PRESENT* (1985).

²⁷ See WILLIAMS, *supra* note 7, at 145-76; Dorothy E. Roberts, *Spiritual and Menial Housework*, *YALE J.L. & FEMINISM* 51 (1997); Mary Romero, *Unraveling Privilege: Workers' Children and the Hidden Costs of Paid Childcare*, 76 *CHI.-KENT L. REV.* 1651 (2001).

²⁸ See Evelyn Nakano Glen, *Cleaning Up/Kept Down: A Historical Perspective on Racial Inequality in "Women's Work"*, 43 *STAN. L. REV.* 1333 (1991).

²⁹ Twila L. Perry, *Caretakers, Entitlement, and Diversity*, 8 *AM. U.J. GENDER SOC. POL'Y & L.* 153, 163 (2000); Mary Romero, *Bursting the Foundational Myths of Reproductive Labor Under Capitalism*, 8 *AM. U.J. GENDER SOC. POL'Y & L.* 177, 189-194 (2000).

freedom,” recognizing that both caregiving and paid employment have economic value and affect women’s economic welfare. The goal of economic freedom corresponds with the aims of the welfare rights movement, comprised mainly of poor Black mothers receiving AFDC, that fought to expand access to welfare in the 1960s and 1970s.³⁰ According to Premilla Nadasen, the welfare rights movement demanded a guaranteed income for multiple reasons:

It forced the state to recognize housework and childcare as legitimate work, freed women from dependence on men, debunked the racial characterizations of Black women as lazy by acknowledging the work they did as mothers, and gave women a viable option to degrading labor market conditions.³¹

These mothers advocated a right to public assistance both as compensation for their labor in the home and as a means to allow them to make the same choices about caregiving and paid employment that middle-class women made.³² In short, “[r]ather than prescribing that women either enter the workforce or stay home with children, choose to marry or reject marriage, welfare activists demanded that women have the power to define their own lives.”³³

Far from reinforcing women’s traditional role in the home, advocating for women’s economic freedom promotes women’s autonomy to make decisions about what is best for themselves, their children, and others who depend on their care. Thus, I do not think that the charge that proposals to support care work “appear to be targeted more at

³⁰ See Premilla Nadasen, *Expanding the Boundaries of the Women’s Movement: Black Feminism and the Struggle for Welfare Rights*, 28 FEMINIST STUDIES 271 (2002); Felicia Kornbluh, *The Goals of the National Welfare Rights Movement: Why We Need Them Thirty Years Later*, 24 FEMINIST STUDIES 65 (1998).

³¹ Nadasen, at 279.

³² Id.

³³ Nadasen, *supra* note 53, at 273.

benefiting dependents rather than women” applies to the economic freedom approach.³⁴

Indeed, I sense a paternalistic streak in care critics’ admonition to caregivers that they would be better off devoting more energy to getting ahead in the market.

III. Welfare Policy

Welfare reform has been framed in popular discourse, like in the feminist scholarship discussed above, as a debate over whether it is better for government to support women’s caregiving or women’s participation in the labor market. Most attempts to resolve this tension address difficulties working mothers face in balancing the demands of full-time employment and caring for children. Although the work-family conflict experienced by mothers of all socio-economic levels is well-documented, less attention has been paid to the freedom of mothers to decide whether or not to work full time.

The goal of welfare policy has shifted radically between encouraging most poor mothers to stay home and pushing them into paid employment. Maternalist legislation enacted during the Progressive Era laid the groundwork for the modern federal welfare system and shaped the terms of the debate about state support for mothering that still resonate in welfare policy discussions today.³⁵ A network of elite women reformers successfully exploited the ideology of motherhood to win public support for unmarried and widowed mothers living in poverty. The logic that propelled welfare legislation then was precisely the opposite of today’s welfare reform philosophy: widowed and single

³⁴ Selmi & Cahn, *supra* note 45, at 306; *see also* Gwendolyn Mink, *The Lady and the Tramp (II): Feminist Welfare Politics, Poor Single Mothers, and the Challenge of Welfare Justice*, 24 FEMINIST STUDIES 55, 59 (1998) (“We should not think of welfare as a subsidy for dependence but as insurance for the rights that comprise independence.”); Iris Marion Young, “Autonomy, Welfare Reform, and Meaningful Work,” in Eva Feder Kittay & Ellen K. Feder, eds., *The Subject of Care*, at 40, 45-47 (describing the ideal of personal autonomy).

³⁵ *See* LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHER AND THE HISTORY OF WELFARE (1994).

mothers needed government aid so that they would not have to relinquish their maternal duties in the home to join the workforce (or place their children in out-of-home care).

The original conception of welfare, however, did not give full public support to poor mothers' carework. From the outset, these programs were grossly inadequate to meet the needs of female-headed families.³⁶ Historian Linda Gordon traces the programs' stinginess to women reformers' adherence to a patriarchal family norm that relied on husbands to be the breadwinner. The crusaders who created welfare for single mothers were guided by a faith in the "family wage" and in mothers' economic dependence on men.³⁷ They believed in the prevailing sexual division of labor that "prescribes earnings as the sole responsibility of husbands and unpaid domestic labor as the only proper long-term occupation for women."³⁸ They therefore advocated a living wage for each family that enabled the husband to support a dependent, service-providing wife, rather than programs that would facilitate female independence.³⁹

The New Deal reinforced this gender norm by instituting a stratified and unequal structure for public assistance that provided support for caregiving women and for working men through separate programs.⁴⁰ Social insurance (Social Security and unemployment insurance) provided a dignified entitlement to primarily white, male wage earners and their wives; Aid to Dependent Children (ADC) doled out humiliating relief to poor single mothers. ADC's inferiority was enhanced by its provision of aid exclusively to the child, defeating the position that mothers' aid compensated women's work in the

³⁶ *Id.* at 61-62.

³⁷ *Id.* at 51-54.

³⁸ *Id.* at 53.

³⁹ *Id.* at 51-54.

⁴⁰ *Id.* at 253-85.

home and service to society as a principle of entitlement.⁴¹ While rejecting this potentially radical construction of women's caregiving as work, the New Deal welfare system incorporated the most restrictive aspects of the earlier reformers' view—the reliance on male wages to meet the needs of families and the moral supervision of recipients of poor relief.

Welfare policy at the turn of the twenty-first century has come full circle. Contemporary welfare reform rhetoric and law resurrects the early twentieth-century anxiety about single motherhood as well as the promotion of mothers' economic dependence on husbands. A primary mission of welfare reform is to promote marriage as a means of reducing poverty and providing stable homes for poor children. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 declares that “marriage is the foundation of a successful society” and “an essential social institution which promotes the interests of children and society at large.”⁴² A list of “the negative consequences of an out-of-wedlock birth on a child, the mother, and society,” as well as measures designed to penalize unwed mothers and their children, follows.⁴³

Welfare reform's other main goal is to dramatically reduce public aid for carework by requiring that welfare recipients take paid jobs. But the new welfare regime does not create the conditions necessary to enable poor single mothers to transition successfully from full-time caregiving at home to paid work. While removing disincentives to paid employment and setting time limits for welfare receipt, the federal law does not make paid employment a viable means of supporting a family. Welfare reform fails to offer a realistic opportunity to earn a livable income both because it does

⁴¹ *Id.* at 282.

⁴² 42 U.S.C. § 601.

⁴³ 42 U.S.C. § 601.

too little to improve single mothers' earning capacity and, more fundamentally, because its goal is not single mothers' economic security. This criticism alone, however, does not necessarily support a claim for state aid for carework. Is the problem with welfare reform solely its failure to adequately support caregivers' transition to employment?

Welfare reform denies poor mothers' economic freedom because it devalues and penalizes their care work. Underlying TANF's work requirements and time limits is the assumption that paid work, as opposed to welfare receipt, provides financial and cognitive benefits to poor mothers and their children. This position considers welfare receipt in and of itself—independent of economic and sociodemographic factors—as a harmful force on family functioning and child development.⁴⁴ According to this theory, welfare undermines recipients' motivation and self-esteem by discouraging work and deprives children of a positive role model.⁴⁵ Welfare reform advocates claim that by encouraging mothers to work, TANF improves recipients' self-perception, conferring cognitive and social benefits to their children.

Forcing low-skilled mothers into the workforce regardless of the type or conditions of employment available to them assumes that *any* job is more beneficial to their families than the care they provide at home. “The Personal Responsibility Act does not make work pay, or even make work available,” observes welfare historian Gwendolyn Mink. “Yet it insists that single mothers are worth more outside their homes than inside them.”⁴⁶ This work ethic is reinforced by setting welfare benefits below the

⁴⁴ See Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 247 (2000).

⁴⁵ See CHARLES MURRAY, *LOSING GROUND* 147-66 (1984).

⁴⁶ GWENDOLYN MINK, *WELFARE'S END* 113 (1998).

amount earned at a minimum wage job, both to avoid disturbing low-wage markets and to give recipients a financial incentive to leave the welfare rolls for paid employment.⁴⁷ Welfare reform's very philosophy—that paid employment is the test for good parenting and should take precedence over nurturing children—denies any value in recipients' caregiving and supports efforts to foreclose recipients' decision to care for their children at home.

Facilitating caregivers' employment is insufficient. As important as the amount that the government allocates for child care, for example, is its purpose in providing this service. The PRWORA treats child care as a tool for facilitating mandated maternal employment. The government views child care subsidies as a policy strategy to promote work, not as a means for enhancing women's economic freedom and children's well being.⁴⁸ Legal scholar Karen Czapanskiy observes that “[u]nder the parlance of welfare reform, the presence of children in need of child care is a ‘barrier’ to work. Once the system identifies a child care provider, the barrier has been removed, and the parent can go to work.”⁴⁹ Rather than generously providing child care as a resource for women to make decisions about caregiving and wage work, the state attaches minimal child care subsidies to the fulfillment of work requirements. Child care problems can exempt parents from work requirements only in limited circumstances.⁵⁰ States need not provide

⁴⁷ ROSE, *supra* note 21, at 10; Abramovitz, *supra* note 13, at ___; FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR* 371 (2d ed. 1993).

⁴⁸ See U.S. GENERAL ACCOUNTING OFFICE, *CHILD CARE: RECENT STATE POLICY CHANGES AFFECTING THE AVAILABILITY OF ASSISTANCE FOR LOW-INCOME FAMILIES 1* (2003) [hereinafter “GAO Child Care Report”] (stating that under TANF, “child care assistance became a significant strategy for helping welfare recipients move into the workplace and for helping other low-income families stay off welfare”).

⁴⁹ See Karen Syma Czapanskiy, *Parents, Children, and Work-First Welfare Reform: Where is the C in TANF?*, 61 MD. L. REV. 308, 366 (2002).

⁵⁰ To claim an exemption under TANF, recipients must show 1) that there is no “appropriate” child care provider within a “reasonable” distance from the recipient's home or workplace; 2) that there is no

child care assistance to mothers who wish to pursue a college education or simply need a break from their children.⁵¹ Welfare reform compels many low-income women to accept poor quality childcare because it provides low subsidies while penalizing women who do not work. This approach provides little incentive for fostering high quality child care services geared toward the needs of children and their caregivers.

Without a claim to public support for caregiving, mothers who are unable to rely on a male breadwinner or their own income to raise their children must pay a high price for needed state support. The U.S. welfare state provides stingy benefits to poor mothers, who are stigmatized and encumbered by behavioral regulations. Mothers must waive privacy rights as a condition of receiving public aid. The law permits bureaucratic surveillance of clients to determine their eligibility based on both means- and moral-testing, to check their conformance to behavioral mandates, and to guarantee that they are spending benefits properly. PRWORA converted welfare from a federal entitlement to a means for states to influence poor mothers' work, marital, and childbearing decisions.

A defining aspect of welfare has always been the social control of poor immigrant families and the neglect of Black women.⁵² Worried about urban immigrants' threat to the social order, the elite women reformers treated welfare as a means of supervising and disciplining recipients as much as a means of providing charity. They feared that welfare that was too generous might provide an incentive for state dependency, moral degeneracy, and family breakdown. The first maternalist welfare programs, moreover,

“suitable” informal child care available; or 3) that there is no “appropriate and affordable” formal child care available. *Id.* at 367, citing 42 U.S.C. § 607(e)(2).

⁵¹ State rules on providing child care subsidies to students vary. New York, for example, gives its counties the option of making four-year college education an activity eligible for child care assistance. GAO Child Care Report, at 33. Some states do not count participation in postsecondary programs as work activity.

⁵² GORDON, at 304; GWENDOLYN MINK, *THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE, 1917-1942*, at 3-120 (1995).

were intended for white mothers only; administrators either failed to establish programs in location with large Black populations or distributed benefits according to standards, such as suitable home tests, that disqualified Black mothers.⁵³

The New Deal's establishment of a federal welfare system preserved discrimination against Black mothers. In the 1960s, the welfare rights movement secured federal entitlements to welfare benefits, dramatically changing the demographics of the welfare rolls. But as welfare became increasingly associated with Black mothers, it became increasingly burdened with behavior modification rules, work requirements, and reduced effective benefits levels.⁵⁴ By the mid-1990s, the American public equated welfare with Black female degeneracy and supported the elimination of the federal entitlement along with the mandate that recipients find paid employment.

IV. Child Welfare Policy

Less explored by feminist legal scholars is the role of the public child welfare system in caregiving by poor mothers. The child welfare system intervenes when parents are alleged to have abused or neglected their children. State child protective agencies may provide services to these families while keeping them in tact or after removing children from the home to be placed in foster care. Although fewer families are involved

⁵³ GORDON, at 48; MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 201 (1988).

⁵⁴ MINK.

with child protective services than with the welfare system, the number of children in state custody is alarming. There are more than a half-million children in foster care. The vast majority of these children are poor. Not only is child maltreatment highly correlated with poverty, but child neglect is also defined and interpreted in a way that subjects greater numbers of poor families to state surveillance and intervention. Black children are grossly overrepresented in child welfare caseloads: Black children, who are less than one-fifth of the nation's children, make up more than two fifths of the foster care population.⁵⁵

The child welfare system, then, is a significant means of public support of poor children, especially poor Black children. It is important for theories interested in dependency to explore critically the child welfare system's treatment of dependency relationships in the families under state supervision.

The consequences for families involved in the child welfare system are even more devastating than the burdens attached to receiving welfare. Involvement in the child welfare system entails intensive supervision by child protection agencies, which often includes losing legal custody of children to the state. This state intrusion is typically viewed as necessary to protect maltreated children from parental harm. But many parents become involved in the child welfare system because it is the only way to receive needed financial support for their children. Transferring parental authority to the state is the price poor Black mothers must often pay for state recognition of their children's dependency. Instead of acknowledging and respecting the dependency relationship

⁵⁵ See generally DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002).

between Black children and their mothers, the state takes authority of the children as a condition of financial support.

Kinship foster care provides a good illustration of the distortion of dependency that requires relinquishing legal custody of children to gain access to necessary public resources.⁵⁶ Kinship foster care replaces a traditional, private African American family arrangement with a similar structure that is regulated by state child welfare agencies. In the last decade, kinship care has been transformed from a predominantly private family network to a widely used source of public foster care. By providing financial support for relatives' caregiving, kinship foster care is a chief state response to the dependency of poor Black children.

Although formal kinship foster care provides needed financial support for caregiving, it requires making children state wards, and the amount of state payments is correlated to the level of state supervision of caregivers. Most states require relatives to meet the same licensing requirements as nonrelative foster parents to receive foster care payments, the highest benefit level. Kinship care has many advantages over foster care with strangers, but incorporating it into the child welfare system often harms families by disrupting, rather than preserving, ties among kin. Becoming involved in the child welfare system requires relinquishing autonomy over child rearing decisions and waiving protections against state intrusion in family life.

Valuing the dependency relationship between Black children and their mothers would require providing the resources mothers need to care properly for their children.

⁵⁶ See Dorothy E. Roberts, "Poverty, Race, and the Distortion of Dependency: The Case of Kinship Care," in Eva Feder Kittay & Ellen Feder, eds., *The Subject of Care: Feminist Perspectives on Dependency* (2002).

Racism, however, helps to distort the state's approach to the dependency relationship: the state bypasses the dependency relationship by treating Black caregivers as themselves dependent and by taking direct authority over their children. The history of African enslavement and a long-standing mythology about Black maternal unfitness reinforce the view of Black mothers as themselves dependent and in need of white supervision. The dependency of Black children on their mothers, moreover, is treated as a source of intergenerational depravity.

The government's failure to respect dependency relationships in these kin networks stems from the child welfare system's more general failure to recognize the social context of dependency and to provide state support for caregiving. The system is based on the flawed assumption that parents are solely responsible for the care of children and that their inability to provide for them warrants coercive state intervention. The onerous price exacted by child welfare agencies from poor Black families for public assistance demonstrates the importance of a strong claim for state support of carework.

CONCLUSION

Should feminists advocate policies that support women's caregiving at home or policies that increase women's participation in the paid workforce? The experiences of low-income women, especially women of color, whose carework is vilified and market work is underpaid, show that feminists must take action in both arenas. Enhancing low-income women's ability to make decisions about work at home and in the market—increasing their economic freedom—recognizes this dual discrimination. The onerous price exacted from these women for needed support, bolstered by race and class

inequities, highlights the danger in relying on market strategies to improve their welfare and status. It also highlights the need to tackle race and class bias against the most disadvantaged caregivers to put theories of collective responsibility for carework into practice.