

CARETAKERS, ENTITLEMENT, AND DIVERSITY

TWILA L. PERRY*

I.	INTRODUCTION.....	153
II.	DIVERSITY, THE PRIVATIZED FAMILY AND THE ROLE OF MEN...	154
III.	THE IDEA OF SOCIAL DEBT	160
IV.	ISSUES FOR THE FUTURE	162
V.	CONCLUSION.....	164

I. INTRODUCTION

In *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*,¹ Professor Martha Fineman continues her project of developing a legal theory of entitlement on the part of those who perform caretaking work for members of their families.² The project is an important one. At a practical level, the project may assist women who do caretaking work to receive more economic resources.³ At a theoretical level, the project seeks to establish the principle that caretakers are entitled to support from the government as a matter of right and justice rather than on the basis of sympathy, pity, or even efficiency.⁴

Fineman's task is also a difficult one. In this article, she seeks to invigorate the idea of entitlement to government assistance for caretakers at a time when the very word "entitlement" seems to have become a code word for undeserved benefits.⁵ Her theory urges

* Professor of Law, Rutgers University School of Law-Newark.

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

2. See Fineman, *supra* note 1, at 16 (asserting that the idea of collective responsibility must be developed as a claim of "right" or entitlement on the part of caretakers).

3. See Fineman, *supra* note 1, at 16 (arguing that the work of caretakers creates a societal debt that all members of society must repay as a collective debt).

4. See Fineman, *supra* note 1, at 22-23 (noting that the benefits gained from caretaking deserve some sort of subsidy similar to that afforded other sectors of the marketplace).

5. See LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 288, 294-95 (1994) (noting that the idea of an entitlement suggests that citizens have

acceptance of ideas many will want to resist, such as the removal of men from centrality in the construction of family policy. Also, at a time when feminist theory is often scrutinized for essentialism, many will expect this, or any other new theory, to be relevant to the lives of women in diverse circumstances.

In this brief Essay, I focus on two elements of Fineman's proposed theory of entitlement: first, her rejection of economic reliance on men to meet caretakers' needs;⁶ and second, her articulation of the concept of "social debt" to support the legitimacy of caretakers' claims.⁷ I discuss what I see as some of the contributions these ideas offer to the construction of feminist theory that applies to a wide range of women.⁸ I also address some of the ways in which issues of race, class, and gender make the construction of such a theory a particularly difficult undertaking.⁹ Finally, I suggest some questions feminists might wish to consider as they continue developing legal theories to assist women who do the important work of caring for others.¹⁰

II. DIVERSITY, THE PRIVATIZED FAMILY AND THE ROLE OF MEN

Whenever I read an article on feminist theory, I inevitably ask whether the ideas in the article have the potential to assist women from different races, classes, and cultures to define and to work together on issues of common interest.¹¹ There are a number of ways in which Fineman's articulation of a theory of entitlement for caretakers contributes to that effort.

As readers of her earlier work, *The Neutered Mother*,¹² well know,

rights they are entitled to by law). The Social Security Act of 1935 established a number of government entitlement programs including old age insurance, unemployment insurance and aid to dependent children. *Id.* AFDC entitlement status was eliminated in the 1995 "welfare reform" legislation. *See infra* note 33 and accompanying text.

6. *See infra* Part II.

7. *See infra* Part III.

8. *See infra* Part IV.

9. *See infra* Part IV.

10. *See infra* Part IV.

11. *See generally* Twila L. Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 GEO. L.J. 2481 (1994) [hereinafter Perry, *Alimony*] (exploring whether the search to develop a theory of alimony divides rather than unites women in their search for economic justice); Twila L. Perry, *Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory*, 10 YALE J.L. & FEMINISM 101 (1998) [hereinafter Perry, *Transracial and International Adoption*] (exploring the implications for feminist theory of the fact that most transracial and international adoptions constitute transfers of children from the least privileged women to the most privileged).

12. MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995).

Professor Fineman argues that the focus on the heterosexual marital tie as the relevant unit for legal analysis of the family and the distribution of benefits and services should be discarded and replaced by a focus on the mother-child dyad and other relationships of dependency.¹³ The article that is the subject of this Symposium further develops the ideas in *The Neutered Mother*. In essence, Fineman argues that at certain times in their lives, especially at the beginning and towards the end of life, all human beings inevitably need the care of others.¹⁴ Fineman seeks to articulate a claim on society for assistance for those who take care of the "inevitably dependent."¹⁵

One idea central to Fineman's theory of entitlement for caretakers involves the rejection of reliance on men as the economic backdrop to women's lives. Under Fineman's analysis, society should not rely on the privatized family—usually headed by an economically dominant male—to meet the needs of the inevitably dependent and those who care for them.¹⁶ The rejection of the centrality of men in constructing family policy with respect to caretaking plays an important part in Fineman's theory. I see it as a positive contribution to the development of feminist theory in a number of ways.

First, rejecting the idea of men as the economic backdrop to women's lives builds a bridge between privileged women—usually those linked to economically powerful men—and women with ties to men who do not, and perhaps cannot, play the traditional role of strong economic provider. One need only glance, for example, at the statistics concerning the disparity in the numbers of Black women and men attending college,¹⁷ the statistics on the number of Black men in prison,¹⁸ and the unemployment statistics for Black men,¹⁹ to

13. See *id.* at 228-33 (arguing for the abolition of marriage as a legal institution and proposing instead that a new family line be drawn around dependency).

14. See Fineman, *supra* note 1, at 19 (noting that advanced age, illness, and infancy require some sort of care).

15. See Fineman, *supra* note 1, at 18 (basing the concept of "inevitable dependency" on biology). All human beings are physically dependent as infants and young children, and most people become physically weaker and vulnerable in their old age. *Id.* Thus, inevitable dependence is a universal human condition, transcending boundaries of race, class or culture. *Id.*

16. See Fineman, *supra* note 1, at 18 (arguing instead that society should value and accommodate caretakers and their inevitable dependents).

17. See STATISTICAL ABSTRACT OF THE UNITED STATES, THE NATIONAL DATA BOOK, U.S. DEPARTMENT OF COMMERCE BUREAU OF THE CENSUS 425 (118th ed. 1998) [hereinafter STATISTICAL ABSTRACT] (revealing that there are 764,000 Black men enrolled in college, in contrast to 1,136,000 Black women).

18. See UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 1997, at 498 (1998) (revealing that in 1995, there was a total of 1,126,287 federal and state prisoners; of these, 455,021 were White and 544,005

understand that the circumstances of some men in this society do not permit them to play an economically dominant role in the family. To the extent that Fineman's theory looks not to men, but rather to other sources of financial support for caregivers, it responds to the circumstances not only of many women of color,²⁰ but also to those of other poor women, single women, or women who may be in same-sex relationships. In short, Fineman's theory responds to the lives of women who do not fit the paradigm of married, White, and middle or upper class.

Removing the assumption of economic dependence on men also gives equal respect to the choices women might make about how best to care for those who depend on them. As previously discussed, society often fails to accord equal respect to the choices of differently situated women to stay out of the workplace to care for their children.²¹ Whereas society praises the woman who has a man to support her financially as being loving and sacrificing, it reviles the woman without a man, especially if she happens to be on public assistance.²² A theory in which the perceived rights of women are not dependent on their relationships to men places the choices of women not attached to men or attached to low-income men on the same level as the choices of women who are linked to men who have money.

Separating the issue of economic dependence on men from the reality of the caretaking work women actually do also permits a clearer focus on the value of the work itself. Such a focus makes it very difficult for feminist scholars to avoid what I believe is a very important issue for feminist theory: the contradiction between the way in which caretaking work and related tasks in the home are valued when they are done by wives, as compared to the way the very same work is valued when done by paid domestic workers.²³ Confronting and moving toward resolution of this contradiction would be an important step toward unity between women.

were Black).

19. See STATISTICAL ABSTRACT, *supra* note 17, at 190 (indicating that between 1992 and 1997, the unemployment rates for Black males were often twice that of White males).

20. See STATISTICAL ABSTRACT, *supra* note 17, at 57 (indicating that Black women are more likely than White women to divorce or never marry).

21. See Perry, *Alimony*, *supra* note 11, at 2500-02 (arguing that theories of alimony, for example, reinforce society's tendency to separate and divide women into categories of those who deserve economic support and those who do not).

22. See Perry, *Alimony*, *supra* note 11, at 2501-02 (discussing the different labels attached to middle class married mothers and single poor mothers who elect to care for their children).

23. See Perry, *Alimony*, *supra* note 11, at 2500-02 (discussing society's tendency to divide women into categories of those who deserve economic support and those who do not).

Another potential benefit of an approach that does not focus on the men in women's lives is that it can contribute to political unity and activism among women. Women who look to men to meet their economic needs may have less incentive to demand that the government and other institutions provide additional support in caring for their dependents. Women who can comfortably afford private nannies to care for their children may not have the same commitment to fighting for affordable, high-quality day care as women who desperately need this service. The Family and Medical Leave Act,²⁴ which permits workers to take time off to care for a sick family member, may be seen as a blessing by a woman married to a man with a high salary. On the other hand, a single mother who must continue to work to support herself and her children may view the Act very differently and perhaps even cynically.²⁵ For the latter, personal circumstances may provide the call to political action.

Fineman's rejection of men as the economic backdrop to women's lives is part of a larger picture, which rejects reliance on what she calls the "privatized family."²⁶ Indeed, the idea of the privatized family extends beyond the idea of dependence on a powerful male. Privatized solutions also assume the availability of other economic resources—perhaps gifts, loans, or inheritances—that a family can tap to assist with the care of children or the elderly. Minority families, however, are less likely to have such resources available. Reliance on the privatized family may also assume that there are relatives, such as grandmothers or cousins, who can assist with caretaking tasks on an ongoing basis. Although minority families have a long history of relying on extended families,²⁷ in today's mobile society, many people no longer live in close proximity to relatives on whom they can rely for caretaking help.²⁸ Moreover, the

24. See Family and Medical Leave Act of 1993 (FMLA), Pub. L. No. 103-3, 107 Stat. 6 (1993) (allowing the entitlement of leave for 12 weeks to an employee who demonstrates need for child birth, adoptive or foster care responsibility, to care for a family member, or for one suffering from severe health problems).

25. See *id.* at 10 (allowing employer to designate part of the 12 weeks as unpaid in addition to empowering them to require conversion of accrued paid vacation, family leave, or sick time as part of the 12 week period).

26. See Fineman, *supra* note 1, at 20-22 (explaining the concept of derivative dependency, which illustrates the effort, resources, and sacrifices caregivers expend to provide for dependents).

27. See ANDREW BILLINGSLEY, CLIMBING JACOB'S LADDER: THE ENDURING LEGACY OF AFRICAN-AMERICAN FAMILIES 28-35, 106-107 (1992) (illustrating the dynamics of an African-American family and the levels of possible caregivers available within that family).

28. See Laura M. Padilla, *Single-Parent Latinas on the Margin: Seeking a Room With a View, Meals, and Built-In Community*, 13 WIS. WOMEN'S L.J. 179, 212 (1998) (noting that parents today are less likely to obtain parenting support from extended family or a close-knit community, particularly because fewer relatives are close by).

majority of women are now employed, thus making them less available to provide this kind of assistance.²⁹ The idea that people can look to the extended family as unpaid caretakers or as sources of financial contribution for care of the inevitably dependent inappropriately relies on existing social inequalities and outmoded demographics.

Fineman rejects the privatized family and looks instead to the government to provide more support.³⁰ Reliance on the government, however, gives rise to other concerns. Fineman makes it clear, for example, that women must remain vigilant to insure that the extension of benefits to caretakers does not result in the government seeking to arrogate power to intervene in women's private lives in matters such as reproductive decision-making.³¹ I question as a general matter how much reliance should be placed on the government for support. Many feminist scholars agree that most women cannot realistically rely on men economically.³² The government, however, is no panacea either, especially for poor women of color. Whatever aid the government may provide to caretakers, even under Fineman's approach, would still probably leave them at the bottom of the barrel economically. Also, because we live in a system of elected representatives, government policy changes. The gutting of AFDC (Aid to Families with Dependent Children),³³ a program that had been in place since 1935, illustrates how radically the government can shift its notion of responsibility toward poor women and the children who depend on them. Also, inevitably, the children women care for at home will grow up, and the elderly parents they care for will pass away. At that point, what will happen to the caretakers who may have foregone educational and job opportunities in order to care for their loved ones? If the

29. See STATISTICAL ABSTRACT, *supra* note 17, at 408 (indicating that in 1997, 67.9% of single women and 61.6% of married women were in the workforce).

30. See Fineman, *supra* note 1, at 26-27 (arguing that the state needs to be more active in monitoring societal institutions).

31. See Fineman, *supra* note 1, at 16 (asserting that any theory of collective responsibility must not impede on the determination of intimate decisions, such as those relating to reproduction).

32. See Perry, *Alimony*, *supra* note 11, at 2489-91, 2503-07 (arguing that while alimony could be a supportive tool, the fact that it is rarely awarded to divorced women makes possible general benefits mythical); Herma Hill Kay, *Equality and Difference: A Perspective on No-Fault Divorce and Its Aftermath*, 56 U. CINN. L. REV. 1, 80 (1987) (arguing that no-fault divorce has harmed women economically and that women should be discouraged from becoming financially dependent on men). See generally LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 357-62 (1985) (noting that after a divorce, women suffer economically more than men).

33. AFDC was eliminated with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

government limits its support to caretakers for the limited period when they are providing care for others, caretakers may thereafter be left to fend for themselves. Thus, feminist theory faces the very important task of addressing the needs of caretakers for the period in their lives after their caretaking responsibilities are over.³⁴

The limitations on what one may reasonably expect from the government highlights another controversial and potentially divisive issue for feminists: whether it is more desirable to insist that the government do more for working mothers or whether it is better to demand financial support to enable women to stay at home to care for their children.³⁵ Fineman's theory invites us once again to think hard about this difficult issue. Supporting the choice of women to stay at home to care for their children affirms a kind of work and life plan that many women value very highly. On the other hand, it is clear that staying home to take care of children sets women up for economic vulnerability. Staying out of the workforce may exact an even higher price for minority women, for whom the general effect of lost opportunity may be compounded by racial discrimination in the work world. Minority women are also less likely to obtain generous alimony in the event of a divorce, and are less likely to be able to enter into economically advantageous marriages later in life.³⁶

Because today so many women with minor children are in the workforce,³⁷ work versus career may not present the same dichotomy that it once did. As a result, it may be appropriate for the paradigm

34. This may mean that we need to think more about the need for caretakers to work toward achieving at least some degree of economic independence. This is obviously not a simple matter since caretaking work conflicts with the commitment of time and energy needed for advancement in the workplace. Some way must be found to structure support for caretakers so as to enable them to obtain some training and education which they can rely on when their caretaking responsibilities end.

35. See Johanna Brenner, *Towards a Feminist Perspective on Welfare Reform*, 2 YALE J.L. & FEMINISM 99, 126 (1989) (arguing that the support needed to assist women is scarce and will never be enough, and instead advocating for providing working women with employment training support).

36. See Perry, *Alimony*, *supra* note 11, at 2483 (noting lower rates of alimony for Black women); M. Belinda Tucker & Claudia Mitchell-Kernan, *Trends in African-American Family Formation: A Theoretical and Statistical Overview*, in THE DECLINE IN MARRIAGE AMONG AFRICAN-AMERICANS: CAUSES, CONSEQUENCES AND POLICY IMPLICATIONS 12 (M. Belinda Tucker & Claudia Mitchell-Kernan eds., 1995) [hereinafter THE DECLINE IN MARRIAGE] (noting lower rates of marriage and higher rates of divorce for Black women); M. Belinda Tucker & Claudia Mitchell-Kernan, *Marital Behavior and Expectations: Ethnic Comparisons of Attitudinal and Structural Correlates*, in THE DECLINE IN MARRIAGE, *id.* at 167 (noting lower rates of remarriage for Black women).

37. See New BLS Report Shows Rise in Proportion of Families With Working Wives, Husbands, DAILY LAB. REP. (BNA) No. 116, June 17, 1997, at D1 (reporting that in 1996, both parents were employed in 63.9% of married couple families with children under 18 years old; only 28.3% of all two-parent families had an employed father and a homemaker mother; 77% of mothers of school-age children were working; and 63% of mothers with children under 2 years of age were in the labor force).

for a theory of entitlement for caretakers to be one which assumes a life in which women hold down paid jobs and take care of the inevitably dependent at home.

Finally, although I have noted a number of positive consequences of removing men from centrality in making family policy, I must also note that for Black women, this question is a very complex one. Racism in this country has denied many Black men the ability to play the role of breadwinner, thus forcing them into a state of economic irrelevance in terms of family life. The economic empowerment of Black men is an integral part of most Black feminists' articulation of a vision of liberation for Black people.³⁸ Reconciling the need for the economic empowerment of Black men within the family, with the need to continually struggle against patriarchy, remains a theoretical as well as a practical challenge for Black women.

III. THE IDEA OF SOCIAL DEBT

Under Fineman's proposed theory of entitlement, support for caretakers does not rest on charity, sympathy or even practicality.³⁹ Instead, the theory rests on the premise that society owes a "social debt" to caretakers, who earn the support by society's appropriation and exploitation of the caretakers' labor.⁴⁰ In the historical development of welfare policy under the Social Security Act,⁴¹ there was ongoing debate as to whether mothers were entitled to aid from the government on the basis of charity or need, or because they were performing socially productive labor.⁴² Fineman continues the theme of highly valuing the work women do. Her concept of social debt applies not only to mothers caring for their children, but also to other family member caretakers of the elderly or others who are inevitably dependent, and it seems to extend to caretakers of any marital or economic status.

38. See, e.g., BELL HOOKS, *FEMINIST THEORY: FROM MARGIN TO CENTER* 68-72 (1984) (noting that Black women and Black men are united in a common struggle for liberation). See also GLORIA I. JOSEPH & JILL LEWIS, *COMMON DIFFERENCES: CONFLICTS IN BLACK AND WHITE FEMINIST PERSPECTIVES* 38-39 (1981) (observing that Black men and women have shared a common struggle for nearly four centuries and stating that Black women cannot and will not end this partnership for the goal of pursuing male-female equality).

39. See Fineman, *supra* note 1, at 16 (arguing for a theory of collective responsibility, which "must be developed as a claim of 'right' or entitlement to support and accommodation on the part of caretakers").

40. See Fineman, *supra* note 1, at 18 (arguing that absent the caregiver's labor, society would not be able to perpetuate itself effectively).

41. 42 U.S.C. §§ 601-617 (1994).

42. See GORDON, *supra* note 5, at 56-58, 294-95 (discussing arguments in favor of aid to mothers as an entitlement based on social norms and state responsibility to labor).

The idea of "social debt" as articulated by Fineman has important possibilities for improving the lot of many women who do caretaking work. Basing the claims on the idea that a right to assistance has been earned rather than on the idea of help as a gift could result in women's claims being articulated with more force, and perhaps received with more respect and legitimacy. The sharp focus of Fineman's theory on the idea of exploitation of labor could also have other positive effects. It might increase the sensitivity of women in this country to other places in the world where poor people's labor is unpaid, underpaid, or unacknowledged.⁴³ The theory might also cause middle and upper-class women to squarely face the issue of exploiting the labor of poor women who are employed to perform childcare and other domestic labor in their homes.⁴⁴

As a general matter, changing the widespread assumption that women naturally do caretaking work, to an understanding that society owes women a social debt for this work, is no simple task. The idea that society should do more for caretakers as a matter of charity, generosity, practicality, or even necessity may be easier for many people to accept than the idea that society actually *owes* something to women. The former rationale fits comfortably with stereotypes of women as weak and supplicating. The latter invokes images of assertiveness, strength, and determination that some may find disturbing. It will not be surprising if in many quarters, the idea of "social debt" meets resistance, rejection, and even resentment.

Finally, even if the idea of "social debt" gains acceptance, not all women engaged in the caretaking of family members will be seen as equally owed this obligation. The current era of welfare reform, for example, often devalues the work of poor mothers in caring for their children.⁴⁵ Programs such as workfare, which require women to work at menial, often dead-end jobs in exchange for their welfare checks, reflect the belief that poor mothers, and especially poor Black mothers, are not deserving mothers, and that taking care of their children is worthless activity.⁴⁶ It will be difficult to convince society

43. See generally Kathleen Peratis, Joanna Kerr, Elizabeth M. Schneider & Martina Vandenberg, *Markets and Women's International Human Rights*, 25 BROOK. J. INT'L L. 141 (1999) (illustrating that in many countries, women make up most of the cheap labor force).

44. See Julia Wrigley, *Hiring a Nanny: The Limits of Private Solutions to Public Problems*, 563 ANNALS AM. ACAD. POL. & SOC. SCI. 162, 163 (1999) (discussing the inequalities between caregivers and middle and upper class parents, who hire women immigrants from countries such as Mexico, Central America, and the Caribbean to be their social subordinates).

45. See Dorothy E. Roberts, *The Value of Black Mothers' Work*, 26 CONN. L. REV. 871, 872 (1994) (discussing the devaluation of the child care performed by poor Black women).

46. See *id.* at 873-74 (describing how entitlement to welfare now depends on one's association with the workforce, and describing how unpaid caregivers, especially poor Black

that the social debt Fineman visualizes encompasses these women.

IV. ISSUES FOR THE FUTURE

Many people will continue to resist the call for increased respect for caretaking work. Certainly, many will outright reject the call to remove men from centrality in family policy analysis. Many men and women are invested in the present gendered social structure, and it will not be easy to change longstanding cultural patterns which minimize the value and importance of the work women do in the home. Moreover, acceptance of the idea of a "social debt" requires not only a major shift in the way people think about the value of caretaking work, but also a shift in the way people think about the value of the *people* who do this kind of work.

As feminists and others continue the work of developing theories helpful to women who provide care for family members, there are many issues still to explore. What form of assistance should the government provide—cash payments, tax relief, more flexibility in the workplace?⁴⁷ Should benefits to caretakers be given across the board, in equal amounts, or should some caretakers receive more than others, and if so, why? Indeed, the question of who qualifies as a caretaker for purposes of Fineman's theory also merits further consideration. Taking care of another person involves many different kinds of physical and emotional tasks. Should the woman who hires someone else to do most of her caretaking work be entitled to the same kind or level of support as the woman who provides the physical care herself? Should a woman married to a well-to-do man receive the same benefits as a woman who is struggling economically? On the one hand, Fineman argues that universal benefits might make the idea of receiving money from the government less stigmatizing.⁴⁸

women, are viewed as "undeserving clients of the welfare system").

47. See Fineman, *supra* note 1, at 21 (urging non-monetary responses to the needs of caretakers, such as making the workplace more responsive to the needs of working mothers).

48. See Martha Albertson Fineman, *The Inevitability of Dependency and the Politics of Subsidy*, 9 STAN. L. & POL'Y REV. 89, 95-96 (1998) (arguing that caretaking benefits should be universal in order to avoid the stigmatization of poor women: "We should consider bearing the burden of dependency to be work that merits public compensation, regardless of other sources of caretaker wealth. The universal nature of such programs underscores the inappropriateness of partitioning certain children and other dependents and their caretakers into stigmatized, need based programs where they become easy targets for criticism in public rhetoric."). It would be a positive development if benefits to caretakers could be thought of as being on the same plane as old age social security benefits where the question of eligibility does not depend upon economic status. However, when the group designated to collect a particular type of benefit is a group that has been performing work that is often devalued or undervalued, the elimination of stigma may still be difficult. Unfortunately, our society seems quite adept at compartmentalizing its view of government aid into that which is respectable and that which is not.

One could also argue that universal benefits are consistent with approaches that advocate analyzing women's rights, at least in some contexts, without reference to their relationships with men.⁴⁹ On the other hand, universal benefits may not be the best use of scarce resources in a world where there are so many needy women and children. Also, this may not be a context in which women's attachments to men should be treated as irrelevant. Many women married to well-to-do men have a level of comfort and economic advantage that may not warrant enhancement by payment of additional government benefits.

Fineman's article focuses on the unpaid caretaking work that is usually done by family members.⁵⁰ Her theory of entitlement has application to a wide range of women because women at all class levels and from all backgrounds take time out of the workforce to do this kind of work. The project of articulating a general theory of caretaking is extremely complex and difficult, and the needs of unpaid and paid caretakers may raise some different issues. Still, at some point in the continuing development of legal theory addressed to the work of caretaking, the needs of unpaid and paid caretakers should be considered together.⁵¹ Care of the inevitably dependent by non-family members is disproportionately the work of minority women,⁵² and these women are some of the lowest paid workers in this country.⁵³ Also, many of them perform double duty—caring for their own family members, in addition to those of their employers. Should this double-duty of caretaking work mean that the social debt owed to these women by the larger society is doubled, or is all or part of the debt cancelled or satisfied because they receive a salary for their work? The specific idea of social debt as articulated by Fineman may or may not be applicable to the context of paid caretakers. It

49. See Perry, *Alimony*, *supra* note 11, at 2501-02 (discussing the different views society holds of women who receive economic support from a man as opposed to the government).

50. See Fineman, *supra* note 1, at 20 (stating that some of women caretakers' economic problems derive from the fact that caretaking within families is unpaid).

51. See Perry, *Alimony*, *supra* note 11, at 2507-14 (arguing that in constructing a feminist theory of alimony the needs of middle class working mothers and the needs of the poor women they employ in their homes are inseparable); see also Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51, 59-60 (1998) (arguing that privileged women have delegated their menial household tasks to other women while retaining what they see as spiritual domestic tasks and arguing that this division devalues all household labor).

52. See STATISTICAL ABSTRACT, *supra* note 17, at 419 (stating that in 1997, 95.4% of private household workers were women. Of these, 16.2% were Black and 26.6% were Hispanic).

53. See Joel F. Handler, *Women, Families, Work, and Poverty: A Cloudy Future*, 6 UCLA WOMEN'S L.J. 375, 385 (1996) (finding that "[b]etween 1979 and 1991, the proportion of African Americans in low-wage jobs increased from 25.1% to 38.6% (again, with most of the growth occurring in very low-wage jobs), and for Latinos from 26.6% to 43.7%.").

may very well be, however, that part of Fineman's theory can be extended and adapted to argue for greater compensation and non-monetary assistance for these women as well. Connecting the plight of unpaid caretakers and paid caretakers may lead feminist theory to the best possible remedies for both.

Finally, there is the question as to whether the same theory of entitlement to societal support should apply to both caretakers of young children and caretakers of the elderly. The needs of mothers is a popular topic in both scholarly and popular literature. Much less attention, however, has been devoted to the question of the needs of those who provide care for the elderly.

There is no legal obligation for people to care for their elderly parents that mirrors the legal obligation to care for one's own children. Still, many people willingly undertake this responsibility, and society certainly benefits when they do so. Should the choice to stay out of the workforce to care for an elderly family member be regarded differently than the choice to care for babies or young children? Should benefits provided to caretakers of the elderly be based on the same standard as those for caretakers of children, whether that choice is a needs-based system or across the board? Some elderly people have substantial assets and the family member who provides care for them may be an heir to that property. In such a case, it may be that such property should be thought of as available to compensate or support the family member who is a caretaker before society is called upon to provide benefits. It must be remembered that the idea of a "social debt" as the basis for the entitlement focuses on what is owed to the caretaker, rather than what is owed to the individual cared for, although obviously the needs of the latter are what gives rise to the whole issue. There are theoretical as well as more practical issues relating to a theory of entitlement for caretakers of the elderly that may warrant a somewhat different analysis than that appropriate for the caretakers of children. Fineman's theory, which encompasses the needs of caretakers of both, inspires us to think more about these kinds of questions.

V. CONCLUSION

The effort to assist caretakers and those who depend on them challenges us to focus on an important question: On whom should women depend? Men? The government? Themselves? For the foreseeable future at least, some dependence on each of these sources will continue, and people will differ with respect to the degree of reliance that should be placed on each. It is important to

find a way to ensure that in the future, the government does more to assist caretakers than it has done in the past. Recent measures, such as the Family Leave Act, suggest that the government has become more responsive. At the same time, the government's message is a mixed one. The assistance so far has been quite limited, and so-called welfare reform measures make it clear that the government does not value the work of all caretakers equally.

While it is clear that the government must be made to do more, there are also important issues of policy with respect to the needs of caretakers that women must continue to consider and discuss. Fineman's project of articulating a theory of entitlement poses many of the critical questions we must struggle with in our task of addressing a critical issue in the lives of many women.

