

PROMOTING FAMILY BY PROMOTING WORK: THE HOLE IN MARTHA FINEMAN’S DOUGHNUT

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I. INTRODUCTION

Martha Fineman’s call for a more robust idea of the family in our public policy and public attitudes is important and worthwhile.¹ A major failing of current welfare policy is its lack of constructive emphasis on families and its focus on work above all else. The politicians who promoted the so-called welfare reform legislation of 1996² said the problem was that too many people were remaining on welfare for too long instead of going out and getting jobs.³ Their solution was to make people—mainly women—go to work.⁴

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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. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 1305 (1996).

3. See generally H.R. CONF. REP. NO. 104-403, at 4 (1995) (stating that “[t]he welfare system contradicts fundamental American values that ought to be encouraged and rewarded: work, family, personal responsibility and self-sufficiency.”).

4. See Jennifer M. Mason, Note, *Buying Time for Survivors of Domestic Violence: A Proposal for Implementing an Exception to Welfare Time Limits*, 78 N.Y.U. L. REV. 621, 628 (1998) (noting that

However, the women they pursued were also parents. They have children and what happens to the children is of critical importance. Pushing parents to work outside of the home without regard to the effects on their children will have disastrous effects. The “reformers” should have paid attention to real family values. Professor Fineman does.

On the other hand, I believe strongly in work. And I wonder if Martha Fineman attaches enough weight to the value of mothers working outside the home. She does say that many caretakers today also must work.⁵ She also says, quite appropriately, that “[t]he state must ensure that market institutions positively respond to dependency burdens,”⁶ meaning that public policy should push to assure that the workplace is family-friendly.⁷ Nonetheless, these references seem incidental to the larger point of the piece, that “caretaking work . . . creates a collective or social debt.”⁸ She says the military “have [the] right to be compensated for their services from collective resources Caretakers should have the same right”⁹

These and similar statements cause me to question whether the family-strengthening potential of work outside the home receives enough attention from Professor Fineman’s formulation. I fear that when she unpacks what she calls the “foundational myths” of “independence, autonomy, and self,”¹⁰ she does not accord enough importance to working outside the home as an avenue to achieve genuine independence, autonomy and a real sense of self-worth, and as a positive model for children. The welfare “reformers” went too far in their single-minded emphasis on work, but Professor Fineman may err in the other direction. That is the main point I will make in this brief Essay.

The new law is not friendly to families. Its arbitrary lifetime limit on federally financed cash assistance ignores individual family facts (as well as local and national economic realities), as does its bumper-

one of the primary goals of the Personal Responsibility Act of 1996 was to get people working); see also Patricia M. Anderson & Phillip B. Levine, *Child Care and Mothers’ Employment Decisions*, prepared for the N.V. 1998 Joint Center for Policy Research Conference, “Labor Markets and Less-Skilled Workers” (visited June 27, 1999) <http://www.jcpr.org/anderson_levine.html> [hereinafter *Mothers’ Employment Decisions*].

5. Fineman, *supra* note 1, at 21.

6. Fineman, *supra* note 1, at 27.

7. Fineman, *supra* note 1, at 27.

8. Fineman, *supra* note 1, at 18.

9. Fineman, *supra* note 1, at 19.

10. Fineman, *supra* note 1, at 14.

sticker “Work First” attitude. Its block grant “trust the states”¹¹ structure ignores the punitive anti-family animus of states like Idaho and Mississippi and numerous localities that have been cut loose by their states to be as mean as they want to be. Adults, generally mothers, are widely required to go to work when their children are as young as twelve weeks old. Mention is made of child care, but the reality is that infant and toddler care ranges from being in short supply to nonexistent, and is very expensive, too.

Elected officials and others are now saying that economically advantaged mothers should remain at home.¹² Many of these new child advocates are just practicing old-style sexism in new dress, but it is also true that there are new findings about brain development and, consequently, new reasons to stress stimulative interaction between adults and children from the very beginning. Caring adults, interacting lovingly, are more important than ever. Does that mean mom shouldn’t go to work? How about dad? And what about the fact that research shows that good child care coupled with good parenting works as well as mom staying home, or dad.

Still, we hear these calls that mom should stay home. Except poor moms, of course. Many of the same people who think mothers of small children should stay home are the leading proponents of requiring low-income mothers to go to work.¹³ This is rank hypocrisy, and it shows, dramatically, how family-unfriendly the new welfare world is.

So Martha Fineman implies—and I agree—that one welfare policy we should re-examine immediately is how old a child should be before mom should be working outside the home, and that we should advocate the same recommended bonding period for poor folks that we do for everyone else.¹⁴ At this point Professor Fineman and I diverge. She propounds “a theory of collective responsibility for dependency,”¹⁵ which means that caretaking work creates a collective or societal debt. She says that “caretakers should be

11. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 601 (1996).

12. See Faye B. Zuckerman, *How Dr. Laura Would Clean Up the Mess*, *PROV. J.-BULL.*, Jan. 25, 1996, at H6 (indicating Dr. Laura Schlesinger’s approval of mothers staying at home to parent kids).

13. See Ruth Conniff, *Republican Women On & Off the Yacht*, *THE PROGRESSIVE*, Oct. 1, 1996, at 1 (noting Phyllis Schlafly’s admission that although mothers should stay at home with their children, they should not do so if they rely on welfare for support).

14. Fineman, *supra* note 1, at 14.

15. Fineman, *supra* note 1, at 16.

compensated,”¹⁶ and that “conferral of value requires the transfer of some economic resources from the collective to caretakers.”¹⁷

If Professor Fineman’s position is that the caretaking parent should receive support from the state to stay home until the last child is eighteen years old, she loses me. I would require some mothers to work outside the home as a condition of receiving a full measure of cash assistance, although I would ring that requirement with a number of standards and protections that are not present in current federal law.

To the extent that Professor Fineman’s call for societal support of parents in the care of their children includes a broader demand for a more family-sensitive intersection between the workplace and child-rearing responsibilities, we are on the same page. She says that “[q]uite often, [workers] are dually responsible for economic and caretaking activities,”¹⁸ and calls for “[r]estructuring workplaces to reflect that reality.”¹⁹ If that is at the heart of Professor Fineman’s definition of collective responsibility, my suggested emphasis on the value of work outside the home is perhaps more in the nature of a friendly amendment than a disagreement.

II. THE IMPORTANCE OF WORK OUTSIDE THE HOME

Most people agree that those who are independently wealthy should not be required to work. Whatever our views about the effect on children of not seeing their wealthy parents earning money from work, no one suggests there should be a law governing the subject. If there are two parents in a household and they can sustain themselves with only one of them working outside the home, that is also fine, whether the purpose of the arrangement is for one of them to be a full-time parent or for any other reason. Again, there is no legal obligation to work.

A problem begins to arise when a mom (or dad) with caretaking responsibilities has to work if the family is to make ends meet without receiving a caretaking allowance. This is not about what our wealthy society can afford. If that were the issue, I would be with Martha Fineman. We can afford to pay for a caretaking allowance. This has to do with the beneficial effect on one’s self-esteem from working outside the home, which also affects the emotional health and well-

16. Fineman, *supra* note 1, at 21-22.

17. Fineman, *supra* note 1, at 26.

18. Fineman, *supra* note 1, at 27.

19. Fineman, *supra* note 1, at 27.