

SUBSIDIZED LIVES AND THE IDEOLOGY OF EFFICIENCY

MARTHA T. MCCLUSKEY*

I.	FROM “SPECIAL” TREATMENT TO “REDISTRIBUTIVE” TREATMENT	121
II.	WHOSE EFFICIENCY?.....	128
III.	WHOSE MORAL HAZARD?	138
IV.	DEPENDENCE ON WHOM?	149

“We all live subsidized lives.”

— Martha Albertson Fineman¹

“[T]he habits of self-reliance and individual responsibility . . . are and must be constitutive of the entire American political order.”

—William J. Bennett & John J. DiIulio, Jr.²

Martha Fineman challenges us to move caretaking from the margins to the center of society. In a recent book,³ she argued powerfully for a vision of the family that recognizes the relationship of caretaking—Mothering⁴—as central. Her current work further

* Associate Professor of Law, State University of New York at Buffalo. B.A., Colby College; J.D., Yale Law School; LL.M., Columbia Law School. Email: mcclusk@buffalo.edu. Thanks to Carl Nightingale and participants in the SUNY Buffalo faculty theory workshop for comments on earlier drafts.

1. See Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER, SOC. POL’Y & L. 13, 22 (2000) [hereinafter Fineman, *Cracking the Foundational Myths*].

2. *What Good is Government?*, 104 COMMENTARY 25, 31 (1997).

3. See MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995) [hereinafter FINEMAN, *THE NEUTERED MOTHER*] (criticizing the dominant focus on sexual affiliation as the legal and cultural core of the family).

4. Fineman uses “Mothering” and the Mother/Child pair as metaphors to recognize the gendered history and continuing gendered culture of caretaking. FINEMAN, *THE NEUTERED MOTHER*, *supra* note 3, at 233-34. She intends this metaphor to be non-essentialist and non-biological, allowing for men to be Mothers and for women to be non-Mothers. *Id.* at 234-35.

develops that analysis by explaining how caretaking⁵ also should be recognized and rewarded as central to the market and the state.⁶ This vision reveals and reshapes the interrelationships between the three basic institutions of state, market, and family.

In the dominant “liberal” theory of politics and economics, autonomy is the key to both a free state and a free market;⁷ dependency is relegated to the family.⁸ By probing this founding myth, Fineman strikes a fault line: globally and locally, the institutions of state, family, and market are undergoing a dramatic shift. This shift, however, is moving the family and its caretaking labor further toward the margins of the market and state. Fineman’s vision challenges us to reverse the direction of this shift at a critical—and critically difficult—moment.

Fineman directly defies what many see as the unavoidable demise of the welfare state.⁹ A new political consensus claims to endorse “individual responsibility, as opposed to social responsibility, for societal problems.”¹⁰ This is a time of strong political movement *away* from collective responsibility for caretaking.

5. Fineman chooses the term “caretaking” over “caregiving” to counter the assumption that this labor should be a “gift.” FINEMAN, *THE NEUTERED MOTHER*, *supra* note 3, at 234.

6. See Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 14-15 (arguing for a theory of collective responsibility for dependency).

7. See, e.g., RICHARD ASHCRAFT, *LOCKE’S TWO TREATISES OF GOVERNMENT* 102 (1987) (explaining that the assumption that individuals have the “freedom to order their [own] actions” is the foundation of Locke’s theory of political liberty); JOHN GRAY, *LIBERALISM* 60-61 (1986) (describing the liberal view that “[a] free man is one who possesses the rights and privileges needed for him to act autonomously—to rule himself, and not be ruled by another”). Here, “liberal” refers to liberal political theory, which grounds both “liberals” and “conservatives” in contemporary U.S. politics. See *infra* note 16 (noting different usages of the term “liberal”).

8. See ASHCRAFT, *supra* note 7, at 109-11 (stating that Locke conceives the family as a pre-natural, pre-political institution in which people act not individually, but for the mutual benefit of others); FINEMAN, *THE NEUTERED MOTHER*, *supra* note 3, at 17-18.

9. See, e.g., Thomas J. Duesterberg, *Reforming the Welfare State*, 35 *SOC’Y* 44, 44 (1998) (reporting that “the welfare state is under broad attack” for failing in its goals and for possibly even “worsen[ing] the conditions it was designed to alleviate”); *Free to Grow*, *WALL ST. J.*, Sept. 3, 1996, at A16 (quoting World Economic Forum report: “We know that the era of big government is over The current social welfare system is proving to be too heavy a burden—even for rich European countries such as France, Germany, and Sweden.”); Llewellyn H. Rockwell, *Republican Reforms Fail Market Test*, *J. OF COM.*, Apr. 18, 1996, at A5 (stating that “[t]he welfare state has become an unworkable and crushing burden”); Joseph Kahn, *China Quietly Shrinks Classic Welfare State, Leaving People to Pay for Pensions, Healthcare*, *WALL ST. J.*, Jan. 30, 1998, at A10 (quoting a Chinese government official’s report declaring that “the state doesn’t take care of people anymore. You take care of yourself.”); James S. Smith, *Latin Countries Rediscover Joys of Capitalism*, *L.A. TIMES*, Oct. 9, 1989, at 1 (noting that “[a]cross Latin America, governments are throwing out their welfare-state economic recipes”). Welfare state programs have fallen far short of feminist ideals: they generally incorporate race, class and gender bias and have offered inadequate, stigmatized support for many caretakers—but recent attacks on the welfare state aim to exacerbate, not alleviate these problems.

10. Duesterberg, *supra* note 9, at 44.

For example, recent welfare “reforms” require parents in poverty to substitute market labor or unpaid “workfare” for government support for child care.¹¹ Increased pressure for labor market “flexibility” in a competitive global market often requires working class and middle class parents to bend their family lives to accommodate lower pay, longer hours, fewer benefits and protections, and less stable employment.¹² Reduced government spending on social services and public infrastructure means families—caretakers—put more time and money into procuring or providing transportation, education, health care, recreation, and dependent care.¹³ Around the world, this movement away from social support for human needs appears to many to be the inevitable result of a newly integrated global economy.¹⁴

11. See FINEMAN, *THE NEUTERED MOTHER*, *supra* note 3, at 110-14 (discussing wage work requirements in the federal Family Support Act of 1988 and in subsequent state legislation); see generally JOEL F. HANDLER & YEHESKEL HASENFELD, *WE THE POOR PEOPLE: WORK, POVERTY, AND WELFARE* (1997) (criticizing the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and recent state “welfare reform” policies for inadequate attention to the problems of low-wage labor).

12. See Guy Standing, *Labor Insecurity through Market Regulation: Legacy of the 1980s, Challenge for the 1990s*, in *POVERTY, INEQUALITY AND THE FUTURE OF SOCIAL POLICY: WESTERN STATES IN THE NEW WORLD ORDER* 153-79 (Katherine McFate, Roger Lawson, & William Julius Wilson eds., 1995) (discussing the growth of worker insecurity and inequality from “flexible labor markets”). Whether flexibility is *good* for women with caretaking obligations depends on *who* has to be flexible, the employer or worker; much of the new labor market “flexibility” involves a female-dominated “secondary” job market with less control and more risk for workers. See generally CHRIS TILLY, *HALF A JOB: BAD AND GOOD PART-TIME JOBS IN A CHANGING LABOR MARKET* (1996). For example, some employers explain the advantages of part-time employment as the ability to cover shifts at odd and unpredictable hours. *Id.* at 72. See also PIERRE BOURDIEU, *ACTS OF RESISTANCE: AGAINST THE TYRANNY OF THE MARKET* 34 (Richard Nice trans., 1998) (criticizing “flexible working” as “another magic word of neoliberalism . . . meaning night work, weekend work, irregular working hours, things which have always been part of the employers’ dreams”).

13. See Isabella Bakker, *Engendering Macro-economic Policy Reform in the Era of Global Restructuring and Adjustment*, in *STRATEGIC SILENCE: GENDER AND ECONOMIC POLICY* 10-13 (Isabella Bakker ed., 1994) (discussing the effect on women in many nations, both North and South, of reduced government capital expenditures, service delivery, and public employment); Mariarosa Dalla Costa, *Introduction*, in *PAYING THE PRICE: WOMEN AND THE POLITICS OF INTERNATIONAL ECONOMIC STRATEGY* 1-12 (Mariarosa Della Costa & Giovanna F. Dalla Costa eds., 1993) (arguing that economic adjustment policies imposed by international institutions on some African and Latin American countries have systematically intensified women’s family and community labor and worsened conditions for women and children). In the United States, federal domestic discretionary (non-entitlement) spending fell from nearly five percent of Gross Domestic Product (GDP) in the late 1970s to a little more than three percent of GDP in the late 1980s and early 1990s; this spending includes many resources which support caretakers and dependents, such as education, Head Start, and housing assistance. See Doug Henwood, 88 *LEFT BUS. OBSERVER*, Feb. 25, 1999, at 1, 7.

14. See THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* xviii (1999) (introducing his book on the triumph of global free-market policies by explaining that he views “globalization” like the sunrise: there’s not much he can do to stop it, and he’s not going to waste time trying). See BOURDIEU, *supra* note 12, at 34 (criticizing the “myth” of “globalization” as “the main weapon in the battles against the gains of the welfare state”); GARY TEEPLE, *GLOBALIZATION AND THE DECLINE OF SOCIAL REFORM* 104-07 (1995) (describing and criticizing the neoliberal

What accounts for the widening chasm between Fineman's vision and the current political reality? How can we begin to establish collective responsibility for caretaking as the reasonable, reachable policy goal Fineman elegantly shows it to be?

Fineman's visionary proposal is blocked from mainstream view by two strands of right-wing ideology. First, and most obviously, neoconservative ideology defends a hierarchical and patriarchal vision of caretaking at the margins of state and market, relegated to unpaid or underpaid women in families headed by men. For example, George Gilder argues that the "most fundamental" problem with welfare is that it tends to "destroy the key role and authority of the father."¹⁵ Second, neoliberal¹⁶ ideology, which defends the "free market" and "economic efficiency" as pillars of state and society, may present a more subtle but even stronger barrier to Fineman's vision. Like neoconservatism's overtly gendered vision, neoliberalism's superficially gender-neutral doctrine keeps caretakers and their dependents—most women—from securing their fair share of support from the state and market.

Fineman explains that "we all live subsidized lives."¹⁷ At one level, this statement recognizes the importance and universality of

rationales for dismantling the welfare state in industrial countries); JULIA S. O'CONNOR, ANN SHOLA ORLOFF & SHEILA SHAVER, STATES, MARKETS, FAMILIES: GENDER, LIBERALISM & SOCIAL POLICY IN AUSTRALIA, CANADA, GREAT BRITAIN & THE UNITED STATES 219-22 (1999) (describing how globalization has formed a "policy logic" in those four countries that has justified economic changes harmful to women, including restricted social programs and restructured labor markets); WILLIAM GREIDER, ONE WORLD, READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM 360-87 (1997) (giving examples of global market pressures constraining the welfare state in Germany, Japan, and the United States, and arguing that these pressures are not inevitable but dependent on political choices).

15. George Gilder, *The Coming Welfare Crisis*, 11 HERITAGE FOUND. POL'Y REV. 25, 26 (1980). Gilder goes on to complain that the father "can no longer feel manly in his own home. . . . In the welfare culture, money becomes not something earned by men through hard work, but a right conferred on women by the state." *Id.* at 26-27.

16. Neoliberalism revives the nineteenth century laissez-faire ideals of markets unfettered by government regulation. See DANIEL YERGIN & JOSEPH STANISLAW, THE COMMANDING HEIGHTS 14-16 (1998) (discussing the "return toward traditional liberalism around the world" and distinguishing this "liberalism" from the common American usage of the term as the opposite of "conservatism"). The term "neoliberal" gained prominence in reference to policies led by the United States in response to the 1980s Latin American debt crisis. These policies typically include cutting federal spending (particularly funds for social welfare programs), raising consumption taxes, tightening credit, maintaining high interest rates, and promoting increased foreign trade and investment. See Enrique Carrasco, *Law, Hierarchy, and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a Neoliberal World*, 30 STAN. J. INT'L L. 221 n.117 (1994). For a discussion of the historical development of neoliberal economic theory, see TEEPLE, *supra* note 14, at 2-3. Though the term "neoliberal" is more often used outside of the United States, I use it in part in an effort to join a global conversation not cabined by the limited spectrum of American "liberal" and "conservative" politics—neither of which challenge fundamental assumptions of "free market" ideology.

17. Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 22.

caretaking. None of us are self-made; all have depended on others—especially mothers—to give us birth, to nurture and teach us in the myriad ways required to become functional human beings.¹⁸ All will need to depend on others at some point in our lives to perform the mundane tasks of daily living, as well as to reach larger goals. At another level, we all live subsidized—and subsidizing—lives because we all receive benefits—and costs—from a wide range of resources we did not directly produce or purchase: whether in the form of government aid, inheritance, tax breaks, private charity, infrastructure, the natural environment, or the generations of labor and wisdom that went into shaping the political, social and economic institutions that frame our lives. Fineman's dystopian vision shows how far from the mainstream we would have to go to try to construct a world of "un-subsidized" lives.¹⁹

From this foundation of subsidized lives, Fineman questions why some subsidies are "stigmatized while others are hidden" or rewarded.²⁰ In this Article, I aim to follow up on her question by exploring how neoliberal ideology, which pervades contemporary policy, scholarship, and culture,²¹ makes ubiquitous subsidies take on drastically different meanings.

Neoliberalism incorporates and promotes the neoclassical version of economics as a matter of scientific fact divorced from politics or ideology.²² Neoclassical economics teaches that scarce resources mean we cannot have it all, but that impartial cost-benefit

18. See Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 19 (noting that infants will perish if not nurtured).

19. See Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 19, 27-28.

20. See Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 23.

21. "Everywhere we hear it said, all day long—and this is what gives the dominant discourse its strength—that there is nothing to put forward in opposition to the neo-liberal view, that it has succeeded in presenting itself as self-evident, that there is no alternative." BOURDIEU, *supra* note 12, at 29 (criticizing the dominance of free-market ideology). See also YERGIN & STANISLAW, *supra* note 16, at 14-15 (favorably describing a fundamental shift in ideas, with the result that "it is the University of Chicago's free-market school that is globally influential in the 1990s").

22. See, e.g., Joshua Cooper Ramo, *The Three Marketeters*, TIME, Feb. 15, 1999, at 39 (reporting that leading U.S. policymakers Federal Reserve Chairman Alan Greenspan, Treasury Secretary Robert Rubin, and Deputy Treasury Secretary Lawrence Summers insist on focusing on free-market economic facts beyond ideology or partisan considerations). Legal scholars analyzing feminist issues frequently treat neoclassical economics as an objective, descriptive tool separable from political ends. See, e.g., EDWARD J. MCCAFFERY, TAXING WOMEN 168-69 (1997) (expressing some skepticism about the neutrality of neoclassical economic theory in tax law, but concluding that it "does provide an external grounding . . . outside the subjective preferences of any one author, or of any liberal, culturally elite vanguard"). For a critical analysis of how neoclassical economic analysis in law incorporates value judgments in the guise of value-free science, see Arthur Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451, 478-81 (1974).

calculations tell us how to make the most of what we have.²³ The question of which subsidies are public rights and which subsidies are public wrongs thereby appears to become a question of economics, not politics—of principle or fact, not power.²⁴ Neoliberal ideology transforms the privatization of caretaking from a moral, divine, or biological imperative (in the view of neoconservatives and the religious right) to an economic imperative.²⁵

Feminists—including Fineman—have gone far to expose the biases underlying seemingly neutral liberal principles in the context of equality theory.²⁶ But as “efficiency” goals eclipse “equality” goals,²⁷ feminists’ critical scrutiny needs to turn toward “economic efficiency” principles. By re-envisioning subsidies for dependency,²⁸ Fineman leads us in this crucial direction.

23. See, e.g., RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 3 (5th ed. 1998) (declaring that “[e]conomics is the science of rational choice in a world—our world—in which resources are limited in relation to human wants”).

24. See SIDNEY A. SHAPIRO & JOSEPH P. TOMAIN, *REGULATORY LAW & POLICY* 55 (1993) (economic analysis deflects normative criticisms by disclaiming any normative judgments implicit in economic theory); MARK KELMAN, *A GUIDE TO CRITICAL LEGAL STUDIES* 118-21 (1987) (explaining that Law and Economics claims to base its policy prescriptions not on moral or political goals but on a technical and empirical determination of people’s freely chosen self-interest).

25. See, e.g., YERGIN & STANISLAW, *supra* note 16, at 323-24 (asserting that Europeans will reduce their welfare state programs because “the overextended welfare system undermines the ability to create the wealth required to pay for it” and because of “competitive pressures” from a newly integrated global economy). Secretary of the Treasury Lawrence Summers explained U.S. economic policymakers’ approach to global economic problems by saying, “we start with the idea that you can’t repeal the laws of economics,” *quoted in* Ramo, *supra* note 22, at 36 (interviewing Summers during his former job as Deputy Treasury Secretary). For an insightful analysis of how neoliberal ideology conjoins with conservative authoritarianism, despite neoliberalism’s apparent emphasis on individual freedom, see EVAN WATKINS, *EVERYDAY EXCHANGES: MARKETWORK AND CAPITALIST COMMON SENSE* 49-54 (1998).

26. See, e.g., MARTHA ALBERTSON FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* 52 (1991) [hereinafter FINEMAN, *THE ILLUSION OF EQUALITY*] (explaining how equal division of property at divorce ignores most women’s unequal contribution to caretaking); MARTHA MINOW, *MAKING ALL THE DIFFERENCE* 111 (1990) (presenting an equality approach that recognizes difference not as located in particular persons, but as produced socially from the perspective of those with the power to label others); CATHARINE MACKINNON, *FEMINISM UNMODIFIED* 32-35 (1987) (analyzing attributions of gender “difference” as a problem of gender “dominance”).

27. See Gerald F. Seib & Alan Murrey, *Changed Party: Democrats’ Platform Shows How Different They Are From 1972*, *WALL ST. J.*, July 15, 1992, at A1 (quoting 1992 Democratic Party platform’s statement that “[a]n expanding, entrepreneurial economy . . . is the most important family policy, urban policy, labor policy, minority policy, and foreign policy America can have”); see also Irving Kristol, *Board of Contributors: Hoover, Nixon, Carter . . . Bush?*, *WALL ST. J.*, Oct. 8, 1990, at A12 (stating that “[t]he American people are much more interested in economic growth and in the individual economic opportunity it creates, than in coercive redistribution of income or a legislated equality of condition.”).

28. See Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 19, 22-23 (explaining collective support for caretaking as payment on a social debt, in contrast to the dominant view of caretaker subsidies as charity).