

CARETAKERS, ENTITLEMENT, AND DIVERSITY

TWILA L. PERRY*

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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).