

FOUNDATIONAL MYTHS AND THE REALITY OF DEPENDENCY: THE ROLE OF MARRIAGE

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In her most recent body of work, of which this symposium essay is a part,¹ Professor Fineman has been exploring the nature and character of dependency and its relationship to the operation of institutions in our society, including the state, the market and the family.² In particular, she has been developing a theoretical framework both for challenging the existing distribution of responsibility for dependency among and within these institutions and for imagining a more just reallocation of that responsibility.³ This conceptual project has both contributed to and emerged from Professor Fineman's critiques of social policies and political developments concerning welfare "reform."⁴ In her analysis of how dependency is understood and addressed in contemporary efforts to increase the punitive, invasive and demeaning character of "welfare," Professor Fineman has not only articulated a feminist analysis of the underlying assumptions driving the recent changes in welfare policy and practice, but also linked those changes to fundamental societal understandings of gender that affect women situated in multiple ways throughout society.⁵

In her work on welfare reform, Professor Fineman has attempted

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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) [hereinafter Fineman, *Cracking the Foundational Myths*].

2. *Id.* at 19.

3. *Id.* at 16.

4. *Id.* at 24.

5. *See generally id.*

to reorient the discourse about poverty and welfare away from ideological rhetoric about family form to an examination of multiple aspects of dependency within different institutional structures.⁶ Professor Fineman has analyzed the different forms of dependency.⁷ She has identified how our current, limited conceptual frameworks for understanding dependency have both distorted our appreciation for the caretaking work that is required to sustain those who are dependent and has resulted in policies that punish harshly those who fail to engage in caretaking in particular, socially and legally privileged ways.⁸ Law and society have privatized dependency by consigning responsibility for dependency to the family.⁹ The glorification and rewarding of the nuclear family form as the site for caretaking have produced the appropriation of women's unpaid labor and continuing inequality within the family, in spite of a dominant rhetoric of egalitarian relationships within that realm.¹⁰ Professor Fineman, by revealing the multiple and often hidden forms of subsidies for dependency administered by the state, has shown how certain kinds of subsidies, such as welfare payments, are reviled while others, often disguised as "investment," are valued.¹¹ Furthermore, she has described how the market, by continuing to rely on caretaking performed within the family, has eschewed any responsibility for dependency.¹²

In the essay that is the subject of this symposium, Professor Fineman extends her critique to show how the "foundational myths" of "independence, autonomy and self-sufficiency" distort our understanding of both biological and socially constructed forms of

6. Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 19-20.

7. See Martha Fineman, *The Inevitability of Dependency and the Politics of Subsidy*, 9 STAN. L. & POL'Y REV. 89, 92 (1998) [hereinafter Fineman, *Inevitability of Dependency*]; Martha Fineman, *The Nature of Dependencies and Welfare "Reform,"* 36 SANTA CLARA L. REV. 287, 289, 292-94 (1996) [hereinafter *Nature of Dependency*]; Martha Fineman, *Masking Dependency: The Political Role of Family Rhetoric*, 81 VA. L. REV. 2181, 2200 (1995) [hereinafter Fineman, *Masking Dependency*].

8. Fineman, *Inevitability of Dependency*, *supra* note 7, at 89-90; Fineman, *Nature of Dependency*, *supra* note 7, at 288-94; Fineman, *Masking Dependency*, *supra* note 7, at 2182, 2193-94, 2210. See also MARTHA FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 101-06 (1995) [hereinafter FINEMAN, *THE NEUTERED MOTHER*].

9. Fineman, *Masking Dependency*, *supra* note 7, at 2187; Fineman, *The Inevitability of Dependency*, *supra* note 7, at 92.

10. See Fineman, *Masking Dependency*, *supra* note 7, at 2181, 2188, 2209; see also FINEMAN, *THE NEUTERED MOTHER*, *supra* note 8, at 25-26, 157-60.

11. Fineman, *Inevitability of Dependency*, *supra* note 7, at 89-90, 91; Fineman, *Nature of Dependency*, *supra* note 7, at 288-94; Fineman, *Masking Dependency*, *supra* note 7, at 2205-06.

12. Fineman, *Inevitability of Dependency*, *supra* note 7, at 91-92, 96; see also FINEMAN, *THE NEUTERED MOTHER*, *supra* note 8, at 106-18.

dependency.¹³ She advocates for recognition of the ways that the “foundational myths” are built on the invisibility and maldistribution of the work of caring for those who are dependent.¹⁴ In place of these myths, Professor Fineman seeks a national dialogue about the collective stake in care for those who are dependent, a dialogue that could generate social policies and legal regimes that would support multiple forms of caretaking and lead to meaningful redistribution of responsibility for dependency.¹⁵

At the root of Professor Fineman’s analysis of dependency is her critique of the traditional family.¹⁶ The ideal of the nuclear family both supports the myths that Professor Fineman seeks to dispel in this essay and misdirects social policy towards reasserting both the naturalness and legitimacy of this social form.¹⁷ Those who deviate from this family form in performing caretaking work are punished through law and social practice.¹⁸ Those who participate are caught within the gendered structure and operation of the institution.¹⁹ Although Professor Fineman’s focus in this essay and in her larger project is on dependency and caretaking within multiple institutions of society, she, perhaps more than any contemporary feminist theorist, has continued to insist that we cannot understand fundamental allocations of responsibility within society or the gendered nature of foundational concepts within our legal, political and social institutions without confronting women’s position within the traditional, patriarchal family.²⁰ Therefore, in this Comment, I will identify several aspects of Professor Fineman’s critique of the nuclear family that are most central to her theory of dependency and caretaking.

Professor Fineman begins her critique of the family with a

13. Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 14.

14. Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 19.

15. Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 26-27.

16. Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 15.

17. Fineman, *Masking Dependency*, *supra* note 7, at 2195-97, 2207-08, 2210-11, 2213-14; Fineman, *Inevitability of Dependency*, *supra* note 7, at 93-94; *see also* FINEMAN, THE NEUTERED MOTHER, *supra* note 8, at 23-24, 146.

18. *See* Fineman, *Masking Dependency*, *supra* note 7, at 2192-97, 2210, 2213 (commenting on the treatment by society of caretakers that do not fit the traditional family form); *see also* FINEMAN, THE NEUTERED MOTHER, *supra* note 8, at 106-18.

19. *See* Fineman, *Masking Dependency*, *supra* note 7, at 2197, 2209 (explaining the repercussions of failure to conform to the traditional family form); *see also* FINEMAN, THE NEUTERED MOTHER, *supra* note 8, at 161-64.

20. Fineman, *Cracking the Foundational Myths*, *supra* note 1; *see also* FINEMAN, THE NEUTERED MOTHER, *supra* note 8, at 161-64.