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CARE AS A PUBLIC VALUE: LINKING RESPONSIBILITY, RESOURCES, AND REPUBLICANISM

LINDA C. MCCLAIN*

More than any message [concerning welfare reform], perhaps, we hear that paid work is the only activity, the only contribution that positions one as a “responsible” person. But many parents challenge this idea. Fathers and mothers, middle-class and less privileged people argue that the work of caring for children and other kin is valuable work. Poor parents, however, face this unpaid, unrecognized work without some basic resources. . . .

. . . .

The kind of responsibility of tending to people who need your care is without mention or value in the policy debate, but it is the glue that keeps low-income families from falling apart. Who will take over this work when those who have been doing it leave for minimum-wage jobs that do not support the children left behind?

. . . .

. . . If we believe that all who raise families need time to care, that all our people need the opportunity for advancement, and that all our children need stability to develop into the best adults they can become, we must look far beyond caseload decline or low-wage jobs filled.

—Lisa Dodson¹

New Jersey’s [Family Cap] does not attempt to fetter or constrain the welfare mother’s right to bear as many children as she chooses, but simply requires her to find a way to pay for her progeny’s care.

* Professor of Law, Hofstra University School of Law. I presented an early draft of this Article at the Feminism and Legal Theory Workshop “Uncomfortable Conversation” organized by Martha Fineman on “Children: Public Good or Individual Responsibility,” held at Cornell Law School and benefited from comments by participants. I also presented a draft in the Ethics Seminar of the Harvard University Center for Ethics and the Professions while I was a Faculty Fellow at the Center. Thanks to seminar participants Dennis Thompson, Arthur Applbaum, Victoria Beach, Paula Casal, Sharon Dolovich, Jim Fleming, Robert Gordon, Ashish Nanda, Jim Sabin, and Noam Zohar for helpful discussion. Thanks also to Lisa Dodson, Mona Harrington, Linda Kerber, Russ Muirhead, Kate Silbaugh, and Lucie White for valuable comments on an earlier draft, and to Mary Anne Case and Martha Ertman for their thoughtful contributions to this Symposium. I appreciate the excellent efforts of my editor, Eric Moran. Connie Lenz, Assistant Director of the Law Library at Hofstra University provided vital research assistance. Hofstra University School of Law and the Harvard University Center for Ethics and the Professions provided generous research support.

1. LISA DODSON, DON’T CALL US OUT OF NAME: THE UNTOLD LIVES OF WOMEN AND GIRLS IN POOR AMERICA 223-25 (2d prtg. 1999).

This is not discrimination; rather, this is the reality known to so many working families who provide for their children without any expectation of outside assistance. [These] legislative choices . . . reflect [the] judgment that the exercise of fundamental rights by welfare recipients oftentimes brings with it the onset of fundamental responsibilities which the recipients themselves must bear.

—*C.K. v. Shalala*²

INTRODUCTION: CARE AND THE SOCIAL CONTRACT

I begin this Article with the preceding two statements concerning care for children because they focus on the relationship between resources and responsibility and capture two conflicting approaches to that relationship. The first statement resists a definition of “responsibility” that leaves out the work of social reproduction, that is, of caring for children and preparing them to take their place as responsible, self-governing members of society. Highlighting the lack of resources that poor parents face when tackling the work of social reproduction, the statement also suggests common ground among parents across class lines as to the importance of caring for children and it quests for public policy that both incorporates recognition of public responsibility for the health of families and measures “success” at least in part based on meeting that responsibility.

In contrast, the second statement, made in the context of upholding New Jersey’s Family Cap (which denies a family any additional welfare payment for a child born to a mother already on public assistance), uses an us-them trope to separate the welfare mother—who, without the cap, would look to government to “pay for her progeny’s care”—from “working families”—who do not expect such a subsidy. Here, responsibility for caring for children, or rather, paying for the care of children, properly resides in the individual mother. What should unite persons across class lines is the absence of any expectation of entitlement to public subsidy. The relevant “fundamental responsibility” to be borne by the mother is defined solely in terms of payment: that market labor to “pay” for children does not by itself ensure actual care for children and almost by definition requires that someone *else* engage in such care (during such market participation) is beside the point. The underlying principle is that everyone should play by the same rules: welfare families and

2. 883 F. Supp. 991, 1015 (D.N.J. 1995), *aff’d sub nom* C.K. v. N.J. Dep’t of Health & Human Servs., 92 F.3d 171 (3d Cir. 1996).

working families, prior to enlarging their families, should undertake an economic calculus to determine whether they can absorb the costs of reproduction—and social reproduction—without reliance upon the state. A central premise animating the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”)—as expressed also in the Republican *Contract with America*—was that well-meaning governmental benefit programs had the unintended consequences of “snaring” the poor in a web of dependency by providing perverse incentives to deviate from those rules of personal responsibility and of self-sufficiency.³ Accordingly, in the legislative debates and public discourse attending the enactment of PRWORA, the expressed goal of bringing the welfare poor back into line with mainstream American values of personal responsibility through such measures as Family Caps and work requirements was an animating theme.⁴

The definition of personal responsibility that informed the passage of PRWORA reflected an impoverished and unsupportable conception of the proper relationship between parental and public responsibility for the support and well-being of children. Indeed, several years after the enactment of PRWORA, it is apparent that the notion that responsible, working parents “provide for their children without any expectation of outside assistance” is not an entirely accurate statement of public policy and social practice concerning families. As legislators, executives, and policy analysts take stock of welfare reform thus far and articulate the next steps (or, “welfare reform, phase two”), many articulate a model of “mutual responsibility”—or of personal responsibility and governmental provision of opportunity. This was, of course, a central theme in the Clinton-Gore administration’s pledge to “end welfare as we know it”; and it was the gloss put by that administration on the implementation of PRWORA.⁵ Some scholars of welfare policy suggest that the new

3. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in various sections of 42 U.S.C.); CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY AND THE HOUSE REPUBLICANS TO CHANGE THE NATION 65-69 (Ed Gillespie & Bob Schellhas eds., 1994) [hereinafter CONTRACT WITH AMERICA].

4. I discuss this elsewhere. See Linda C. McClain, “Irresponsible” Reproduction, 47 HASTINGS L.J. 339 (1996).

5. See BILL CLINTON & AL GORE, PUTTING PEOPLE FIRST 164-68 (1992) (“We can provide opportunity, demand responsibility, and end welfare as we know it.”); Remarks by the President at Welfare-to-Work Transportation Event, U.S. NEWSWIRE, Oct. 14, 2000, available at 2000 WL 26849656 (assessing welfare reform in light of his 1992 “profoundly important vision” that “every person willing to be a responsible citizen should have an opportunity to share in the

model of anti-poverty policy is supporting work by low-income workers, or supporting working families rather than supporting traditional welfare.⁶ This model assumes that government should play a role in supporting work (and the move “from welfare to work”) by “making work pay” through a variety of forms of assistance (ranging from job training and education to subsidies for childcare, healthcare, transportation, the Earned Income Tax Credit, and the like). This model of helping—or strengthening—working families contradicts the idea, and enhancing their financial well-being belies the idea, that responsible parents should have no expectation of “outside” assistance. So redefined, the new social contract underlying the post-welfare era seems to be, not that responsible parents should have *no* expectation of outside assistance, but that parents who manifest their personal responsibility by working for wages may reasonably expect governmental support of their efforts to provide for their families. It is one’s willingness to *work* for wages, i.e., to “play by the rules,” that makes it appropriate for government to support that work.⁷ Indeed, recent public opinion poll data suggests that Americans embrace a principle of “reciprocity,” one that rejects “something for nothing” (supposedly the “old” 1960s and 1970s idea of entitlement) in favor of the idea that, in exchange for society providing certain material benefits, persons “should give something back . . . if they are mentally and physically able to do so.”⁸

American dream”).

6. David Ellwood, *Anti-Poverty Policy for Families in the Next Century: From Welfare to Work—and Worries*, 14 J. ECON. PERSP. 187 (Winter 2000).

7. See *Testimony Department of Health and Human Services’ Fiscal 2002 Budget Before the Senate Committee on the Budget* (Mar. 6, 2001) (testimony of Tommy G. Thompson, Secretary, Dep’t of Health & Human Servs.), available at <http://www.senate.gov/~budget/republican/about/hearing2001/thompson.htm> [hereinafter *Thompson Testimony*] (testifying that the Department of Health and Human Services’ budget aims to invest in programs to “support working families”). Again, this idea of playing by the rules was prominent in the 1992 Clinton-Gore campaign and again in Vice President Al Gore’s 2000 campaign. CLINTON & GORE, *supra* note 5, at 14 (“Putting our people first means honoring and rewarding those who work hard and play by the rules.”); *id.* at 100-04 (proposing measures, like a childcare network, to help “working families”); see also *Excerpts from Platform Approved by Democratic National Convention*, N.Y. TIMES, Aug. 16, 2000, at A26 (“[W]e must reinforce the basic American bargain of requiring and rewarding hard work and we must provide Americans with the opportunity to participate in key decisions at work and in their communities.”).

8. Daniel Yankelovich, *What’s Fair?*, BLUEPRINT: IDEAS FOR A NEW CENTURY, Spring 1999, available at (<http://www.ndol.org/blueprint/spring99/thechallenge3.html>). A new compact of “mutual responsibility” is a central theme in the “new progressive” rhetoric of the Progressive Policy Institute and the Democratic Leadership Council. See Democratic Leadership Council/Progressive Policy Institute, *The New Progressive Declaration, A Political Philosophy for the Information Age*, THIRD WAY, July 10, 1996, available at http://www.ndol.org/ndol_ci.cfm?contentid=839&kaid=128&subid=174.

In this Article, I call into question the near-exclusive focus on “supporting work,” i.e., participation in the paid labor market, as a way to think about public responsibility to families, and I urge more explicit attention to supporting the “work” that families do in caring for family members and fostering their development and capacities for self-government. I contend that it is important to recognize care as a public value worthy of societal and governmental support and to view supporting the work of social reproduction, engaged in by parents and others who care for children, as a public responsibility. Concern for this public value should inform public policy in a wide range of areas, but in this Article I focus especially on family policy, government benefits, and, to a lesser extent, employment policy. Focusing on “making work pay” or on supporting work is an important initial step; and it is encouraging that policy makers, professional service organizations, and experts recognize the important role of childcare in facilitating parents as workers and that problems of affordability, availability, and quality of childcare pose a serious obstacle for low-income workers.⁹ But so long as that remains the central framework within which to conceive public responsibility, support for care remains peripheral or an indirect means to the end of better market participation.

There is another theme in current public discourse, along with the rhetoric of supporting working families, that, if supported and elaborated, could provide a foundation for care as a public value and societal and governmental support of the work of social reproduction. That theme is that the most important job anyone has in society is that of parent, and that government ought to support parents’ efforts to nurture and provide for their children, just as workplaces ought to be more “parent-friendly,” better to facilitate parents balancing the demands of “work” and “family.”¹⁰ Ironically, one place where this

9. For a recent example, see *Thompson Testimony*, *supra* note 7 (testifying that “[o]ne of the most important things that we as a government can do to help working families is to assist them in obtaining high-quality child care” and supporting funds in the Department of Health and Human Services’ budget for after school care). As this Article goes to press, Congress is debating President Bush’s budget proposal, which includes some increased funding for programs affecting low-income families and children, but also some funding cuts (e.g., a \$200-million cut in funds for the Child Care Development Block Grant). See *Bush Administration Budget*, CLASP UPDATE (Ctr. for Law & Soc. Policy, Washington, D.C.), Apr. 2001, at 6.

10. For examples from Vice President Al Gore’s 2000 presidential campaign, see *Al Gore Proposes Next Step in Welfare Reform: Help for Responsible Parents, Crackdown on Deadbeats*, at http://www.algore2000.com.briefingroom/releases/pr_102099_welfare_reform.html (last visited July 14, 2000) (on file with the Chicago-Kent Law Review); *Gore to Delegates and Nation: “My Focus Will Be on Working Families”*, N.Y. TIMES, Aug. 18, 2000, at A21. For an example from the campaign of George W. Bush, see *infra* note 12 and accompanying text.

theme makes a vivid appearance is in the bipartisan calls for governmental measures and social movements to strengthen families by supporting “responsible fatherhood,” or the idea that (as former President Clinton expressed it): “For the health of our families, it is important that fathers have the time, the support, and the parenting skills necessary to fulfill their children’s moral and emotional needs as well as provide for their physical well-being.”¹¹ Indeed, as the Clinton-Gore administration expressed it, if phase one of welfare reform was encouraging personal responsibility by moving mothers from welfare to the “dignity” of a real job, then phase two is “promoting responsible fatherhood,” i.e., not only to be better workers but also to be better parents; as in the words of then-Governor George W. Bush (representing the new administration), “[t]here is no more important mission in life than to love and care for a child. . . . Every man needs to know that no matter how lofty his job or position, he will never have a greater duty or more important title than dad.”¹² In contrast to the punitive and condemnatory rhetoric that accompanied the passage of PRWORA (focused especially on welfare mothers, but also on deadbeat dads), this focus on fathers eschews condemnation in favor of facilitation, support, and providing

11. Office of the Press Secretary, *Father's Day, 2000*, M2 PRESSWIRE, June 19, 2000, available at 2000 WL 22277024 (Father's Day statement by President Clinton directing various federal agencies “to develop guidance for State and local governments, community providers, and families on Federal resources that are available to promote responsible fatherhood”). The last Congress concluded without enacting the proposed Fathers Count Act of 1999, H.R. 3073, 106th Cong. (passed by the House), or the Responsible Fatherhood Act, H.R. 4671, 106th Cong. (2000) and S. 1364, 106th Cong. (1999). On March 29, 2001, identical versions of the Responsible Fatherhood Act of 2001 were introduced in the Senate (as S. 653) and in the House (as H.R. 1300); both bills were referred to committee. President Bush's proposed budget includes \$64 million to promote “responsible fatherhood” through providing competitive grants to faith-based and community-based organizations. *Thompson Testimony, supra* note 7. The keen interest in promoting responsible fatherhood is manifest in the burgeoning governmental and nongovernmental initiatives: e.g., the Congressional Task Force on Fatherhood Promotion; the Governors' Task Force on Fatherhood Promotion; President Clinton and Al Gore's various initiatives; the responsible fatherhood initiatives in nearly all fifty states; and such organizations as the National Fatherhood Initiative and the Institute for Responsible Fatherhood and Family Revitalization. See NAT'L CTR. FOR CHILDREN IN POVERTY, MAP AND TRACK: STATE INITIATIVES TO ENCOURAGE RESPONSIBLE FATHERHOOD, 1999 EDITION, at <http://cpmnet.columbia.edu/dept/nccp/MT99text.html>. See discussion *infra* Part II.E.

12. *Governor Bush Addresses National Summit on Fatherhood*, PRESIDENTIAL CAMPAIGN PRESS MATERIALS, June 2, 2000, LEXIS, News Library, Transcripts File. For examples from the Clinton-Gore administration, see Press Release, Admin. for Children & Families, U.S. Dep't of Health & Human Servs., White House Unveils New Responsible Fatherhood Initiative to Promote Work and Boost Child Support Payments (Jan. 26, 2000), available at <http://www.acf.dhhs.gov/news/fath0126.htm>; *President William J. Clinton's Message to Congress: The Unfinished Work of Building One America*, U.S. NEWSWIRE, Jan. 15, 2001, available at 2001 WL 4138975; *Al Gore Proposes Next Step in Welfare Reform: Help for Responsible Parents, Crackdown on Deadbeats, supra* note 10.

resources to help fathers be better providers and more capable parents.¹³

As I will discuss, the movement invites the intriguing question of whether it could bring about incremental progress toward longstanding feminist goals of addressing women's disproportionate responsibility for household labor and caring for children, and of increasing men's engagement in such work. At the same time, this movement does not advocate a radical redistribution of household labor, but seems to assume that involving fathers somewhat more in caregiving avoids the problem of working parents' need to obtain "substitute" caregiving for their children. And, as feminist critics have argued, its intertwined agenda of promoting marriage risks inattention to such problems as family violence as a cause of poverty and the needs of single-parent families.¹⁴

The recognition of governmental responsibility both to support "working families" and to support the role of parent (or at least, father) suggests some movement toward instantiating care as a public value. What is needed is a more sustained focus upon the role of care in fostering human and social capital and a rejection of the simple equation of personal responsibility and good citizenship with market participation, without attending to the other responsibilities adults must honor and the other roles they must fulfill.¹⁵ It is encouraging that, in contrast to evaluations of the success of "welfare to work" that focus simply on rates of participation in paid labor, some voices urge that measures of success (and failure) look to the impact upon family health and the well-being of children.¹⁶ An important step is to address the problem of a "collapsing care system," or a care crisis, facing American families across the economic spectrum: many families cannot fully provide for the care needs of their members, either by personally affording such care or by obtaining appropriate substitute care, and "public supports are not available because

13. See discussion *infra* Part II.E.

14. See discussion *infra* Part II.E. The most recent "responsible fatherhood" bills, discussed *infra* Part II.E, go further than their predecessors in addressing these feminist concerns.

15. In another work, I advance this argument, focusing especially on the approach to supporting working families taken by the Clinton-Gore administration and by other proponents of Third Way politics (such as the Democratic Leadership Council). See Linda C. McClain, *Citizenship Begins at Home: Building Support for Working Families into the New Social Contract*, in *PROGRESSIVE POLITICS IN THE GLOBAL AGE* (Henry Tam ed., forthcoming Nov. 2001).

16. See discussion *infra* Part I.A.3.

families are *supposed* to take care of themselves.”¹⁷ This, I argue, impairs families’ capacities to engage in the vital work of caregiving as a part of social reproduction. This crisis is most acute for Americans with the fewest material resources. As feminist and welfare scholars amply demonstrate, this crisis stems from the fact that, in the industrial era, the care arrangement in the United States was a male breadwinner/female caregiver model (a model that was “more norm than fact for many households”),¹⁸ one that gave mothers (and female caregivers) special responsibilities for care. Today, that traditional family no longer reflects the actual practice of the majority of American families; women’s increased labor-force participation has “significantly altered the structure of family life, especially the need for child care providers.”¹⁹ And yet, as Mona Harrington argues in her book *Care and Equality*, “we have not devised any equality-respecting system to replace the full-time caretaking labor force of women at home.”²⁰ As this Article elaborates, and as so many feminist scholars document, women (both as paid and unpaid caregivers) continue to bear the disproportionate burden for caregiving. This problem imposes substantial costs upon children, parents, employers, and society as a whole.²¹ The next phase of welfare reform, as well as the current interest in strengthening families, accord an opportunity to think creatively about institutional arrangements that would move the United States closer to a new caregiving order. As Harrington persuasively argues, the challenge for that new order is to take both care and women’s equality seriously, and so move from the gendered division of labor for care to a redistribution of responsibility between women and men, and among families, employers, and government.²²

In sum, I believe that one fruitful way to begin moving toward those new institutional arrangements is by arguing for care as a public value and to make more explicit the relationship between resources and responsibility, i.e., fostering responsibility by providing resources

17. I take this formulation from MONA HARRINGTON, *CARE AND EQUALITY* 39 (1999).

18. Lucie White, *Quality Child Care for Low-Income Families: Despair, Impasse, Improvisation*, in *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* 116, 131 (Joel F. Handler & Lucie White eds., 1999).

19. AMARA BACHU & MARTIN O’CONNELL, U.S. CENSUS BUREAU, *FERTILITY OF AMERICAN WOMEN: POPULATION CHARACTERISTICS: JUNE 1998*, at 9 (Sept. 2000); see also discussion *infra* Part II.

20. HARRINGTON, *supra* note 17, at 17.

21. See discussion *infra* Part II.B.

22. See discussion *infra* Part II.

that help parents and caregivers better provide care. Recognizing and supporting the public value of care—as well as the actors and institutions that provide such care—should be a component of government’s responsibility to prepare persons for democratic and personal self-government (what I have described elsewhere as government’s “formative project”²³). Ample foundation for this public value may be found in leading strands of contemporary political thought, such as feminism and liberalism (as reconstructed in light of salient feminist criticisms). In addition, even though certain civic republican ideals, such as the close relationship between independence and citizenship, may seem in conflict with affirming care as a public value, I suggest that certain important civic republican ideas, such as the political economy of citizenship, if reconceived or extended, could support care as a moral and public value, and as a precondition to civic and democratic life.²⁴ They could also help to highlight the costs of the care crisis to self-government. In her recent call for a “care movement,” Deborah Stone usefully puts it thus:

Caring for each other is the most basic form of civic participation. We learn to care in families, and we enlarge our communities of concern as we mature. Caring is the essential democratic act, the prerequisite to voting, joining associations, attending meetings, holding office and all the other ways we sustain democracy. Care, the noun, requires families and workers who care, the verb. Caring, the activity, breeds caring, the attitude, and caring, the attitude, seeds caring, the politics.²⁵

In Part I, I explain the idea of care as a public value and suggest its vital importance to democratic and personal self-government. I then turn to important theoretical underpinnings in contemporary feminist and liberal thought for care as a public value. I suggest how key civic republican ideas, such as government’s formative project and the political economy of citizenship, might be reconstructed to support care as a public value and to illuminate the link between care and self-government. In Part II, I discuss the gendered care economy

23. For my elaboration of this idea, see Linda C. McClain, *Toleration, Autonomy, and Governmental Promotion of Good Lives: From “Empty” Toleration to Toleration As Respect*, 59 OHIO ST. L.J. 19, 22 (1998).

24. As I examine later in this Article, civic republican themes of work as fostering citizenship also serve as an indictment of the sorts of low-income jobs that not only make it difficult for parents to secure adequate care for their children, but that threaten the values of self-government associated, in republican thought, with certain forms of work. Here I refer to the recurrent theme in civic republican rhetoric about the threat of “serfdom” or servility posed by certain kinds of work. See discussion *infra* Part I.A.3.

25. Deborah Stone, *Why We Need a Care Movement*, NATION, Mar. 13, 2000, at 13, 15.

and some of the hidden costs of that system, drawing on extensive feminist work on women's historic role in that economy and the ongoing gendered division of labor for care. I offer some preliminary ideas about institutional design that might foster care as a public value. I briefly consider the potential of the responsible fatherhood movement to foster such a value. Then, I return to the link between responsibility and resources in the practical context of poor families, especially families with unmarried mothers making the transition from "welfare to work." I consider what the voices of poor mothers reveal about the important link between resources and responsibility.²⁶ I also consider how taking seriously a formative project might shift some of the current parameters of women's, particularly young women's, reproductive and mothering choices.

I. CARE AS A PUBLIC VALUE: THEORETICAL RESOURCES AND PRACTICAL DILEMMAS

A. *Preliminary Ideas*

1. Resources from Liberalism and Feminism

I should explain at the outset that, although this Article focuses on the issue of families caring for children, I regard establishing "care as a public value" to cast a far wider net. I find persuasive accounts of care that characterize it as "essential to human health and balanced development," including "developing human . . . potential."²⁷ Human development literature finds that "[t]he role of care in the formation of human capabilities and in human development is fundamental" not

26. In particular, I rely on the experiential accounts in DODSON, *supra* note 1.

27. HARRINGTON, *supra* note 17, at 49; see also Berenice Fisher & Joan Tronto, *Toward a Feminist Theory of Caring*, in CIRCLES OF CARE: WORK AND IDENTITY IN WOMEN'S LIVES 35, 40 (Emily K. Abel & Margaret K. Nelson eds., 1990) (proposing that "[o]n the most general level, . . . caring [is] a species activity that includes everything that we do to maintain, continue, and repair our 'world' so that we can live in it as well as possible"). As Berenice Fisher and Joan Tronto elaborate, in their quest for a feminist theory of caring:

As a species, we have no choice about engaging in caring activities.

. . . [For] [a]ll activities, including those that we think of as political, involve a caring dimension because in addition to acting we need to sustain ourselves as actors. Conversely, all caring activities entail the political dimensions of power and conflict, and necessarily raise practical and real questions about justice, equality, and trust.

. . . Caring is social because caring efforts speak ultimately to our survival as a species rather than as isolated individuals. It is problematic because it involves social interactions that contain the potential for conflict and because it requires material resources that might be difficult or impossible to obtain.

Id. at 39-40 (citations omitted).

only for children, but also for adults.²⁸ Thus, I agree with Harrington's proposal that "to assure good care to all members of the society should become a primary principle of our common life, along with the assurance of liberty, equality, and justice."²⁹

The idea of "care as a public value" thus casts a wide net. I refer to "social reproduction" to invite attention to a vital component of care, one that focuses more particularly on the task of nurturing children and ensuring their moral development and education in order to prepare them to take their place in the wider culture, as responsible, self-governing persons. This is a central notion in political liberalism, as explained in John Rawls's account of the family. (I begin with this political liberal account because it is an important basis of my own, more explicitly feminist, liberal approach to the idea of government's formative project to foster the capacities for self-government.) I quote Rawls's discussion of social reproduction to bring into consideration its basic ideas:

The family is part of the basic structure [of political society], since one of its main roles is to be the basis of the orderly production and reproduction of society and its culture from one generation to the next. Political society is always regarded as a scheme of social cooperation over time indefinitely; the idea of a future time when its affairs are to be concluded and society disbanded is foreign to the conception of political society. Thus, reproductive labor is socially necessary labor. Accepting this, a central role of the family is to arrange in a reasonable and effective way the raising of and caring for children, ensuring their moral development and education into the wider culture. Citizens must have a sense of justice and the political virtues that support political and social institutions. The family must ensure the nurturing and development of such citizens in appropriate numbers to maintain an enduring society.³⁰

28. UNITED NATIONS DEVELOPMENT PROGRAMME, *The Invisible Heart—Care and the Global Economy*, in HUMAN DEVELOPMENT REPORT 1999, at 77, 77, 79 (1999).

29. HARRINGTON, *supra* note 17, at 48. The discussion in text should make clear that I recognize that the argument for care as a public value also applies to forms of caregiving other than that provided in a parent-child relationship. Thus, I disavow an interpretation of my argument, suggested in Martha Ertman's commentary in this Symposium, that it impliedly excludes a range of family forms other than heterosexual marital families in which there are "substantial care responsibilities (such as adults caring for elderly, ill, or otherwise dependent adult family members)." Martha M. Ertman, *Changing the Meaning of Motherhood*, 76 CHI.-KENT L. REV. 1733, 1737 (2001); see also Mary Anne Case, *How High the Apple Pie? A Few Troubling Questions About Where, Why, and How the Burden of Care for Children Should Be Shifted*, 76 CHI.-KENT L. REV. 1753, 1766 (2001) ("[P]art of what needs to be questioned on the part of both employers and the state may be the traditional and limited way care obligations and family relationships have been defined.").

30. John Rawls, *The Idea of Public Reason Revisited*, 64 U. CHI. L. REV. 765, 788 (1997) (citations omitted).

I should state at the outset that, although one might infer from this statement that political liberalism treats the family as *solely* responsible for the work of social reproduction with respect to children, I do not regard this as a necessary or proper inference.³¹ In this Article, I will assume that families have a special—although not exclusive—role to play in social reproduction (and thus I will not advocate any sort of radical reconceptualization of collective child rearing or the state as parent). This important family role in social reproduction is reflected in constitutional jurisprudence about the fundamental right—and responsibility—of parents for the care, custody, and education of their children.³² Similarly, many prominent strands of political thought recognize a vital role for families and other institutions of civil society in the formative project of shaping children into future adult members of society.³³ But such constitutional jurisprudence also recognizes government's own, strong interest in fostering children's development into capable persons and citizens, just as it affirms that government may properly seek to facilitate parents' exercising their own responsibility to foster children's well-being.³⁴

One might conclude that the best way to ensure social reproduction is to regard civil society as a realm free of governmental regulation. A different, and I submit, better conclusion is that the project of fostering capacities for self-government depends upon both governmental noninterference with the institutions of civil society, such as families, and upon governmental support and regulation to foster the capacities of such institutions for self-government and to protect the capacities of individual members within those

31. For example, political liberalism contemplates that public education plays a role in the moral development of children and in preparing them for citizenship. See JOHN RAWLS, *POLITICAL LIBERALISM* 199-200 (1993). For a robust liberal defense of this governmental role, see STEPHEN MACEDO, *DIVERSITY AND DISTRUST: CIVIC EDUCATION IN A MULTICULTURAL DEMOCRACY* (2000). I do not discuss the important role of education in this Article.

32. For a recent affirmation of this constitutional liberty, see *Troxel v. Granville*, 120 S. Ct. 2054, 2059-60 (2000) (citing earlier precedents, such as *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923), *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534-35 (1925), as well as many more recent cases, such as *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972)).

33. I discuss this in Linda C. McClain, *The Domain of Civic Virtue in a Good Society: Families, Schools, and Sex Equality*, 69 *FORDHAM L. REV.* 1617 (2001). For examples from the civil society literature, see the contributions in *SEEDBEDS OF VIRTUE: SOURCES OF COMPETENCE, CHARACTER, AND CITIZENSHIP IN AMERICAN SOCIETY* (Mary Ann Glendon & David Blankenhorn eds., 1995).

34. See *Prince v. Massachusetts*, 321 U.S. 158, 165-67 (1944); *Ginsberg v. New York*, 390 U.S. 629, 639-41 (1968). It is outside the scope of this Article to address the important issue of how such jurisprudence has resolved conflicts between parental constitutional liberty and the state's *parens patriae* power.

associations. In other words, respect for persons' capacities for self-government should lead government both to refrain from acting in order to protect an important sphere of personal autonomy as well as to pursue a formative project to facilitate the development of these capacities.³⁵ It is, in any case, inaccurate to think that such institutions as the family are "independent" of the state, since law sets the boundaries of what constitutes a family, of parental rights and responsibilities, and of what state interests may justify intervening in family life.³⁶ It is also not helpful to view the family as somehow a self-sufficient unit of caregiving, given the importance of networks of support for families through other associations within civil society as well as governmental organizations.

My own liberal feminist approach to the formative project draws from political liberalism's assumption that cooperating members of a well-ordered society possess certain basic capacities for democratic and personal self-government the inference that a just society has a responsibility to provide the basic, or primary, goods necessary to develop those capacities.³⁷ I believe that cogent feminist criticism of political liberalism's account of those primary goods, such as that of Susan Moller Okin and, more recently, Eva Kittay, suggests that it does not make explicit enough the fact of human dependency and the importance of caregiving and caring relationships to human development, and that some reconstruction is appropriate.³⁸ So too, I

35. See McClain, *supra* note 23, at 107-08.

36. See, e.g., Martha A. Fineman, *What Place for Family Privacy?*, 67 GEO. WASH. L. REV. 1207, 1207-09 (1999) (discussing how law shapes the institution of the family); Rawls, *supra* note 30, at 790-91 ("If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing" within political liberalism. "The equal rights of women and the basic rights of their children as future citizens are inalienable and protect them wherever they are.").

37. For the idea of primary goods, see RAWLS, *supra* note 31, at 187-90; JOHN RAWLS, A THEORY OF JUSTICE 90-95 (1971). I will not attempt, in this Article, to rebut recent arguments that appear to reject this idea of justice and object to governmental policies supporting families, either because such arguments question whether childrearing is an important part of social reproduction or complain that supporting such childrearing unfairly privileges families over "child free" members of society. See ELINOR BURKETT, THE BABY BOON: HOW FAMILY-FRIENDLY AMERICA CHEATS THE CHILDLESS 179-209 (2000); Lisa Belkin, *Your Kids Are Their Problem*, N.Y. TIMES, July 23, 2000, § 6 (Magazine), at 30. See *infra* note 41 and accompanying text.

38. SUSAN MOLLER OKIN, JUSTICE, GENDER, AND THE FAMILY 106-09 (1989); EVA FEDER KITTAY, LOVE'S LABOR: ESSAYS ON WOMEN, EQUALITY, AND DEPENDENCY (1999); see also Amy R. Baehr, *Feminist Politics and Feminist Pluralism: Can We Do Feminist Political Theory Without Theories of Gender?*, in IDENTITIES AND DIVISIONS: NEW FEMINIST STRATEGIES FOR POLITICS AND AGENCY (Linda Lopez McAlister et al. eds., forthcoming 2001) (arguing that "basic goods must reflect the needs of citizens with significant dependency-related obligations and they must be distributed in a way that does not systematically disadvantage those with such obligations"). Professor Ertman also helpfully draws attention to Marsha Garrison's invocation of Rawls to elaborate a contractarian theory of family governance

would make more explicit a principle of public responsibility for fostering the work of social reproduction, both as it is done by families and by other types of associations within society.³⁹ Moreover, I support the efforts of Harrington and others to revise and redirect current liberal *practice* better to instantiate care as a national value and to accept public responsibility for doing so.⁴⁰ To avoid possible misunderstandings of my position, which the commentaries of Professors Mary Anne Case and Martha Ertman in this Symposium helpfully bring to light, I should make two disclaimers. First, by arguing for societal support for the task of fostering children's capacities to live self-governing lives, I am not implying that no other tasks make a valuable contribution to social reproduction, which may also warrant support. Second, I believe that an argument that government has a responsibility to secure such basic liberties as reproductive autonomy and parental autonomy does not rest on a cultural script that compels motherhood as natural and inevitable for all women. Far from it.⁴¹ Finally, I have not attempted here fully to articulate the right balance with respect to the question of what they call accountability: that is, my call to instantiate care as a public value and for government support of the work families do in social reproduction implies a societal interest in families carrying out that

that would justify support for caregivers. See Marsha Garrison, *Toward a Contractarian Account of Family Governance*, 1998 UTAH L. REV. 241, 257-61 (arguing that using such Rawlsian devices as the original position and veil of ignorance should lead contractors to "insist on governance principles that will ensure each child a fair opportunity of attaining a fruitful, self-selected adulthood").

39. For example, should families be presumed to be especially deserving of public support because of their role in providing care and fostering human capacities? Or should public policy instead consider which types of associations best foster such capacities? See MARTHA C. NUSSBAUM, *WOMEN AND HUMAN DEVELOPMENT: THE CAPABILITIES APPROACH* 275-83 (2000) (arguing that public policy should focus on individual capabilities and determine, on the basis of how they promote human capabilities, which types of groupings the state wishes to protect and support).

40. See HARRINGTON, *supra* note 17. For my own discussion of how progressive politics (including Democratic "Third Way" politics) might better embrace care as public value, see McClain, *supra* note 15.

41. See Case, *supra* note 29, at 1759; Ertman, *supra* note 29, at 1748 (both citing Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181 (2001) (using the term "repronormativity" to connote the unacknowledged social incentives and pressures leading women to bear children and mother, and treating those activities as natural and inevitable). I must save for elaboration elsewhere my disagreement with many of Franke's contentions. In Part II.F, *infra*, I address how various economic and social pressures shape young women's decision to become mothers. In other work I argue that certain features of current reproductive law and policy promote an impermissible governmental orthodoxy concerning women's natural and proper role as mothers and conflict with governmental obligation to respect and foster women's responsible self-government. See, e.g., McClain, *supra* note 23, at 57-65, 91-100.

work successfully so that children's capacities for self-government are, in fact, fostered. It is necessary to work out an approach to how government pursues that objective in a way that avoids the contrasting dangers of affording parents (and other familial caregivers) either too much or too little deference, and of according either too much or too little respect to family self-government.⁴²

There are important affinities between this reconstructed liberal (or, better, liberal feminist) project of fostering social reproduction and important feminist arguments for public responsibility to support the society-preserving work done by families. For example, feminist legal theorist Martha Fineman makes such an argument, based upon the notion that caregivers who meet the inevitable dependencies of (among others) children provide a subsidy to society.⁴³ The first important affinity is in the common focus upon social reproduction, or societal preservation, as a necessary and vital role performed by the family. The second is in emphasizing that government's legitimate concern be with the functions that families perform, rather than with dictating the form that families assume.⁴⁴ This focus on function reflects a political liberal concern to respect persons' moral capacities and their freedom to form, act on, and revise their conceptions of the good life (including that of their intimate affiliations). It also reflects a feminist concern, rooted in demographic realities, that many women are organizing their family lives in ways that "deviate" from a patriarchal norm, and that law and policy should be fashioned in a manner that respects, rather than stigmatizes diverse families. This emphasis upon function over form also allows us to read Rawls's reference to the family as ensuring the "orderly production and reproduction of society and its culture from

42. For articulation of these contrasting concerns, see Case, *supra* note 29, at 1772-73; Ertman, *supra* note 29, at 1736, 1750. Elsewhere, I begin some of this work, in discussing the idea of families as seedbeds of civic virtue. McClain, *supra* note 33.

43. See Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 13, 22-23 (1999) [hereinafter Fineman, *Cracking the Foundational Myths*]; Fineman, *supra* note 36; Martha Albertson Fineman, *The Inevitability of Dependency and the Politics of Subsidy*, 9 STAN. L. & POL'Y REV. 89 (1998). See generally MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995) [hereinafter FINEMAN, *THE NEUTERED MOTHER*].

44. See Rawls, *supra* note 30, at 788 n.60 ("[N]o particular form of the family (monogamous, heterosexual, or otherwise) is required by a political conception of justice so long as the family is arranged to fulfill these tasks [of social reproduction] effectively and doesn't run afoul of other political values."); Fineman, *supra* note 36; Fineman, *Cracking the Foundational Myths*, *supra* note 43.

one generation to the next”⁴⁵ as not insisting upon some sort of narrow, fixed, or rigid conception of “culture.” I read these together as allowing for critique of social practices and for cultural reconstruction and transformation (e.g., through alternative family forms and shifting gender roles within the family).⁴⁶ This functional approach is in tension with an approach that views alternative family forms—as such—as evidence of serious moral decline and views shoring up the two-parent, heterosexual marital family, and discouraging other family forms, as the anchor of family policy.⁴⁷

2. Care and Republican Self-Government

My argument is that it is important to recognize care as a public value and that facilitating such care is a core component of a governmental “formative project” to foster persons’ capacities for democratic and personal self-government, to secure free and equal citizenship, and, thereby, to help them live good lives.⁴⁸ As I employ this idea of a formative project, its synthetic account of governmental responsibility has important roots in liberalism and feminism, and also incorporates certain important ideas from the civic republican

45. Rawls, *supra* note 30, at 788.

46. I discuss how my own idea of toleration as respect, which draws on this functional approach, supports same-sex marriage and arguments for cultural transformation in McClain, *supra* note 23, at 113-15, 119-24.

47. By the qualifier “as such” I mean to acknowledge that one version of the functional argument that proponents of such a family policy make is that it is because two-parent, marital families do much better than single-parent families at raising healthy, well-developed children that government should favor two-parent families. In light of my embrace of cultural reconstruction and transformation, as well as my critique of family policy that focuses primarily on family form, I am puzzled by Professor Ertman’s suggestion that I “overlook[] the retrograde dangers of elevating conventional families to ‘seedbeds of civic virtue’” and that I focus on “heterosexual, two-parent families . . . , as this is the only intimate relationship that passes the rigid test of public acceptability.” Ertman, *supra* note 29, at 1740, 1744.

48. For elaboration, see Linda C. McClain, *Toward a Formative Project of Securing Freedom and Equality*, 85 CORNELL L. REV. 1221 (2000); McClain, *supra* note 23. Throughout her commentary, Professor Ertman makes the startling claim that I contend that mothers are citizens, not as individuals (as they would be under liberal ideas of autonomy and individualism), but derivatively, due to their contribution to social reproduction. See Ertman, *supra* note 29, at 1737-38, 1741, 1747. I do not hold such a view. My idea of a formative project is that government has a responsibility to foster the capacities for democratic and personal self-government of each member of society, including women, to help them achieve the preconditions for free and equal citizenship. The institutions of civil society also have a role to play in that project. Because families, in particular, are one institution of civil society that plays a vital role in helping to foster such capacities in children, I argue that there is a justification for societal support of families to help them engage in that work. By basing such an entitlement on this socially necessary and valuable work, I am not urging, for example, a return to the idea of republican motherhood, see discussion *infra* text accompanying notes 54-58, under which mothers fulfilled their civic obligations by serving their husbands and children, and this role served to exclude them from certain obligations and obligations to the state.

strand of American political thought and history.⁴⁹ With respect to the latter, I believe that civic republicanism's idea of a formative politics, or formative project—what civic republican theorist Michael Sandel describes as a politics that “cultivate[s] in citizens the qualities of character necessary to the common good of self-government”—and the political economy of citizenship, i.e., what institutional and economic arrangements are conducive to self-government,⁵⁰ are a potential resource in arguing for the public value of care.

To be sure, certain aspects of the republican tradition might seem to make it singularly unhelpful for grounding a public value of care. It is a fair question whether a tradition with a history that so vividly links citizenship to independence, to political participation, to manhood, and to certain forms of “productive” work (e.g., the yeoman farmer, the independent producer) is useful in an attempt to ground public responsibility for care. The work of social reproduction—caregiving, rearing children, the role of families in fostering capacities—is invisible in the glorification of work that fosters independence. As Sandel recounts the changing social and political approaches to “the political economy of citizenship,” the focus is almost exclusively on what kind of market labor is most conducive to democratic participation and self-government.⁵¹ And Sandel reports without comment or critique imagery that is often explicitly gendered male, i.e., the concern is to develop and protect “manhood,” and to have independent businessmen rather than serfs, slaves, or cogs in a machine.⁵² More attentive to the highly gendered and exclusionary aspects of this tradition, legal historian William Forbath points out that, although the founders linked work and citizenship, “it was not work in general that they dignified, and not all kinds of labor qualified one for citizenship—certainly not slave labor

49. Elsewhere I explain how my approach has affinities with perfectionist feminist, liberal, and civic republican accounts of government's proper responsibility. McClain, *supra* note 23. For a recent liberal argument for liberalism's formative politics, or “transformative” project, see MACEDO, *supra* note 31, at 8-12.

50. MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENT: AMERICA IN SEARCH OF A PUBLIC PHILOSOPHY* 25 (1996). In other work, I have criticized Sandel's sharp dichotomy between republicanism's formative politics and liberalism's supposed “procedural republic” and incapacity to carry out a formative project. James E. Fleming & Linda C. McClain, *In Search of a Substantive Republic*, 76 TEX. L. REV. 509 (1997); see also McClain, *supra* note 23, at 39-40, 105-09.

51. SANDEL, *supra* note 50, at 123-316.

52. There are many examples throughout the chapters on the political economy of citizenship. See *id.* at 173-273. Just to offer one, from Louis Brandeis on industrial policy: “It is the development of manhood to which any industrial and social system should be directed.” *Id.* at 213.

nor the uncompensated toil of women in their husbands' households."⁵³

Feminist work on republicanism has amply addressed its exclusion of women (and many other groups) from the ideal of republican citizenship and its deeply gendered division of labor for care, and so I will not belabor the point here.⁵⁴ Relevant to the present discussion is that, as Linda Kerber's work on republican motherhood demonstrates, this tradition viewed the work of social reproduction done in families as a necessary undergirding for independence and regarded families as an important seedbed of civic virtue.⁵⁵ Indeed, this notion of families as seedbeds of civic virtue is prominent in contemporary arguments for strengthening families (especially in the civil society movement).⁵⁶ Yet, paradoxically, the ideology of republican motherhood posited that married women fulfilled their civic obligations—and fostered civic virtue—by serving their husbands and children, even as married women were denied personal self-government within marriage and all women were excluded from full participation in democratic self-government and from conception of the virtuous citizen.⁵⁷ As historian Nancy Cott observes: the husband “became the one *full* citizen in the household, his authority over and responsibility for his dependents contributing to his citizenship capacity.”⁵⁸

As I discuss elsewhere, the idea of families as “seedbeds of civic virtue”—and of virtues, generally, helpfully connotes that families, in a good society, serve as places or sources of growth or development of capacities and virtues important to being good citizens and good people.⁵⁹ But this focus on civic virtue may miss that families also provide necessary caregiving that nurtures human development and fosters human capital; and, whether or not children are part of

53. William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1, 18 (1999). Forbath continues: “Nor did the servant’s or hiring’s labor equip him for citizenship in the eyes of Jefferson, Madison, or most other eighteenth-century political thinkers.” *Id.*

54. See, e.g., LINDA K. KERBER, *WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA* (1980); NANCY F. COTT, *THE BONDS OF WOMANHOOD: “WOMEN’S SPHERE” IN NEW ENGLAND, 1780–1835* (1977).

55. KERBER, *supra* note 54, at 11-12; LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* (1998); see also MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 116-20 (1991).

56. See GLENDON, *supra* note 55, at 116-20; SEEDBEDS OF VIRTUE, *supra* note 33.

57. KERBER, *supra* note 55, at 8-11.

58. NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* 12 (2000).

59. Elsewhere, I explore the idea of families as seedbeds of civic virtue and consider the role of families in promoting the public value of sex equality. McClain, *supra* note 33.

families, families also allow persons to realize goods of intimate association. As Fineman's critique of the "foundational myth" of independence indicates, all human beings depend upon certain life-preserving care; caregivers afford a subsidy to the rest of society by engaging in this valuable work of societal preservation, or, what I prefer to call social reproduction.⁶⁰

Thus, I argue that the notion of a formative project is useful if there is a more explicit focus on the role of care in such a project. Restated, a formative project would inquire concerning what institutional arrangements foster personal and democratic self-government, including what institutional arrangements are conducive to fostering social reproduction.⁶¹ If, indeed, republicanism puts a high value on the possession of certain competencies and capacities of citizens, then it would seem that it should similarly put a high value on caring for children so that they may develop such competencies and capacities. If economic arrangements, including the current structure of the workplace and institutional arrangements for care, are not conducive to fostering self-government, including, social reproduction, then this should warrant serious concern.

3. The Political Economy of Citizenship, the New Social Contract, and the Care Crisis

Attention to the political economy of citizenship is relevant in at least two ways to the current consideration of the new social contract of government supporting work or working families. The first way is the link between citizenship and work. This strand of republicanism is part of what Forbath calls America's forgotten "social citizenship" tradition of constitutional interpretation—a tradition that makes a powerful case against class inequality and that even argues for a right to decent work.⁶² For example, one obvious way in which this tradition is relevant to "welfare to work" is its indictment of the "bad jobs" held by many low income workers (including former welfare

60. Fineman, *Cracking the Foundational Myths*, *supra* note 43. For an insightful critique of the dependency/independence dichotomy, see Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 *SIGNS* 309 (1994).

61. See also McClain, *supra* note 48, at 1249 (arguing that "[o]ne important dimension of a formative project is public responsibility to help members of society secure the resources or material preconditions for a good, self-governing life").

62. Forbath, *supra* note 53, at 1. A recent article by Vicki Schultz, published when this Article was substantially complete, argues for a right to participate meaningfully in life-sustaining work because of the importance of work to citizenship, community, and personal identity. Vicki Schultz, *Life's Work*, 100 *COLUM. L. REV.* 1881 (2000).

recipients) and its support for an argument that “good jobs” are a precondition to responsible self-government.⁶³ Apt may be this tradition’s indictment of workplace conditions that rob persons of a sense of self-determination and that treat them as fungible and leave them at the mercy of decision-making structures in which they have no voice.⁶⁴ (Indeed, a reader could easily transport the nineteenth century’s rhetoric about the dangers of concentrated corporate power and its human cost to contemporary concerns over a lack of corporate accountability for the human cost of downsizing and the like.) The republican notion of work as a source of character building or as fostering self-government or conferring dignity could be a useful measure against which to assess the practical realities of what “welfare to work” means in many poor women’s lives. Ending welfare does not mean ending poverty, if the welfare poor simply become the employed poor, working in “bad jobs” and still facing a lack of adequate resources. Although my focus in this Article is on care as a public value, there appears to be considerable potential in current articulations of this civic strand of argument, as well as in some contemporary liberal and feminist scholarship, to make the case for the important link between work and citizenship and for a right to decent, meaningful, or “just” work as a component of responsible self-government.⁶⁵

63. I am adopting Joel Handler’s use of the terms “bad job” and “good job.” Joel Handler, *Low-Wage Work “As We Know It”: What’s Wrong/What Can Be Done, in HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA*, *supra* note 18, at 3, 6. He defines a “good job” as one that pays “at least \$8 an hour for at least 35 hours of work a week”—the type of job low-wage women workers say they need to make “to cover child care, transportation, and other work-related expenses.” *Id.* “Bad jobs” refers to jobs, like part-time jobs, that “are more likely to be dead-end [jobs], for shorter periods of employment, often without health or pension benefits, and with a lower hourly wage.” *Id.* at 5.

64. See SANDEL, *supra* note 50, at 205-08; 233-34; Forbath, *supra* note 53, at 3-4.

65. See Forbath, *supra* note 53, at 23-62 (social citizenship tradition); Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 552-59, 570-71 (1997) (arguing for a constitutional right to work); RUSS MUIRHEAD, *JUST WORK* (forthcoming) (articulating the requirements for “just” work); Schultz, *supra* note 62, at 1883 (feminist argument for a right to meaningful, life-sustaining work). Although Sandel’s account of the civic strand of argument often sharply distinguishes “mere” arguments for fairness and distributive justice from republican arguments concerned with self-government, see SANDEL, *supra* note 50, at 209-14, this need not be such a sharp dichotomy. A fair reading of the sources Sandel cites is that the civic strand of economic argument viewed as necessary, but not sufficient, certain material preconditions for self-government: e.g., decent shelter, education, employment. Consider this passage from Brandeis quoted by Sandel:

We Americans are committed not only to social justice in the sense of avoiding . . . [an] unjust distribution of wealth; but we are committed primarily to democracy. . . . It is absolutely essential in order that men may develop that they be properly fed and properly housed, and that they have proper opportunities of education and recreation. We cannot reach our goal without those things. But we may have all those things and have a nation of slaves.

If the idea of the political economy of citizenship is restated, as I propose, to incorporate concern with social reproduction, then it may usefully highlight certain features of the “care crisis.” First, given current demographic patterns—both the fact that the majority of married households have two parents in the paid workforce and rely on someone else to provide childcare and the fact that the custodial parent in the majority of single-parent families is in the paid workforce⁶⁶—for parents to be successful workers (in the market), safe, affordable, and developmentally appropriate childcare is a “critical resource.”⁶⁷ The need for such childcare exceeds the supply. Various studies find that an alarming percentage of childcare facilities are inadequate.⁶⁸ At the same time, facilities that offer higher quality childcare, i.e., facilities that are more likely to care for children in developmentally appropriate ways, are also too expensive for many families without some sort of employer or governmental subsidy.⁶⁹ This leads to a second feature of the crisis: it disproportionately burdens parents who work in low-income jobs, a fact that is of considerable relevance to the “welfare to work” direction of PRWORA.⁷⁰ As one recent study concluded, “while some would debate whether the nation is experiencing a child-care ‘crisis,’ for many low-income working families, child care is a perpetual emergency.”⁷¹ Many low-income jobs fail to afford workers with the

SANDEL, *supra* note 50, at 213-14 (first two alterations in original).

66. See BACHU & O’CONNELL, *supra* note 19, at 8 (reporting 1998 Census Bureau labor force characteristics of mothers with children); Tamar Lewin, *Now a Majority: Families with 2 Parents Who Work*, N.Y. TIMES, Oct. 24, 2000, at A20 (summarizing data from the same Census Bureau report).

67. ANNIE E. CASEY FOUND., KIDS COUNT DATA BOOK 5 (1998); BACHU & O’CONNELL, *supra* note 19, at 8 (“The large increase in labor force participation rates [of women with infants] since 1976 is an important reason why child care issues have been a key component of family policy legislation in recent years.”).

68. ANNIE E. CASEY FOUND., *supra* note 67, at 9-11; Ellen E. Kisker & Christine M. Ross, *Arranging Child Care*, 7 FUTURE CHILD. 99, 103-04 (1997).

69. MELISSA LUDTKE, ON OUR OWN: UNMARRIED MOTHERHOOD IN AMERICA 175 (1997). Ludtke reports on a study by psychologists and economists in which the economists determined that the most important factor in the quality of child care is how generously parents’ contributions to its cost are supplemented by employers or government programs. The more expensive care is, the more likely there will be well-trained child-care providers who know how to care for children in developmentally appropriate ways and who will remain their caregivers for more continuous periods of time.

Id.

70. See U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM: IMPLICATIONS OF INCREASED WORK PARTICIPATION FOR CHILD CARE 3, 8-14 (GAO/HEHS-97-75, May 1997) [hereinafter GAO/HEHS-97-75]; ANNIE E. CASEY FOUND., *supra* note 67, at 5-10; White, *supra* note 18, at 117-19; Kisker & Ross, *supra* note 68, at 99-105.

71. ANNIE E. CASEY FOUND., *supra* note 67, at 6.

financial resources to make safe and developmentally appropriate arrangements for the care of their children.⁷² The terms and conditions of many low-income jobs (e.g., unusual hours, nontraditional jobs) make the task of finding such childcare especially difficult, if not impossible.⁷³

There is growing recognition that “the success of welfare reform depends on the existence of accessible, affordable, quality child care for all low wage workers.”⁷⁴ Childcare problems have been a major reason that poor mothers are not in the paid labor force and they are often a serious obstacle faced by former welfare recipients who must find and hold onto paid work.⁷⁵ Some of the most innovative approaches to welfare reform have found that affording childcare resources, as part of an overall package of “supports for work” (which may allow parents to reduce their hours in the labor market) can enhance families’ economic and emotional well-being, producing such nonmonetary effects as reducing parental stress and parental worries, and improving parent-child relations.⁷⁶ To be sure, there have been some encouraging examples of states taking advantage of the flexibility afforded them under PRWORA’s block grant approach to

72. *Id.* at 7-8; Kisker & Ross, *supra* note 68, at 103-05; White, *supra* note 18, at 118.

73. ANNIE E. CASEY FOUND., *supra* note 67, at 9-10; see S. Jody Heymann, *Work and Parenting: The Widening Gap*, CLASP UPDATE (Ctr. for Law & Soc. Policy, Washington, D.C.), Apr. 2001, at 1, 3 (reporting, based on eight years of research, that “[d]angerously, many low-income families are at multiple jeopardy having a high caretaking burden, poor working conditions and few social supports. . . . Currently, the social and working conditions [poor families] face make it difficult for all—and impossible for many—to succeed at work while caring for their families”).

74. Margy Waller, *Welfare-to-Work and Child Care: A Survey of the Ten Big States* (July 1, 1997), at http://www.ndol.org/ndol_ci.cfm?contentid=2379&kaid=114&subid=143 (policy briefing by the Democratic Leadership Council).

75. U.S. GEN. ACCOUNTING OFFICE, WELFARE REFORM: STATES’ EFFORTS TO EXPAND CHILD CARE PROGRAMS 4 (GAO/HEHS-98-27, Jan. 1998); GAO/HEHS-97-75, *supra* note 70, at 12-16; Kisker & Ross, *supra* note 68, at 102; Waller, *supra* note 74, at 2-3.

76. *Effects of Changes to the Welfare System: Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means Hearing on the Effects of Welfare Reform* (May 27, 1999), available at 1999 WL 20008291 (statement of Robert C. Granger, Senior Vice President, Manpower Demonstration Research Corp.) [hereinafter *Granger Testimony*] (referring to HANS BOS ET AL., MANPOWER DEMONSTRATION RESEARCH CORP., NEW HOPE FOR PEOPLE WITH LOW INCOMES: TWO-YEAR RESULTS OF A PROGRAM TO REDUCE POVERTY AND REFORM WELFARE (Apr. 1999) (reporting on the New Hope project in Milwaukee, Wisconsin, which pre-dated PRWORA)); see also PAMELA A. MORRIS ET AL., MANPOWER DEMONSTRATION RESEARCH CORP., HOW WELFARE AND WORK POLICIES AFFECT CHILDREN: A SYNTHESIS OF RESEARCH 61 (Mar. 2001) (finding, in a study of eleven welfare and employment programs, that, in contrast to programs stressing only raising employment, “[t]he programs that aimed to promote parental employment through earnings supplements had positive impacts on children’s well-being”); *id.* at 63 (“These findings suggest that earnings supplementation policies such as the EIC and child care subsidies may be important for children as well.”).

childcare support, which affords former welfare recipients the resources to attain appropriate childcare.⁷⁷ However, other states “retain a child care system with gaps and inequities”; these problems are likely to worsen as more and more welfare recipients reach their time limits.⁷⁸ Third, because of the devaluation of caregiving labor itself, childcare workers generally receive comparatively low wages (even poverty-level wages), and there is high turnover in childcare centers, which in turn affects the quality of care available.⁷⁹ For example, one consequence of “welfare to work” is that many daycare centers are hiring welfare recipients to care for young children; because the centers that hire these recipients offer low wages and little training, these workers are unlikely to become self-sufficient.⁸⁰ Finally, as is frequently observed, workers’ childcare problems also impose costs on employers in terms of childcare related absenteeism, turnover, and lost productivity.⁸¹

77. Waller, *supra* note 74, at 4-5; VIRGINIA KNOX ET AL., MANPOWER DEMONSTRATION RESEARCH CORP., REFORMING WELFARE AND REWARDING WORK: A SUMMARY OF THE FINAL REPORT ON THE MINNESOTA FAMILY INVESTMENT PROGRAM (Sept. 2000), available at <http://www.mdrc.org/Reports2000/MFIP/MFIP-ExSum-Final.htm> (reporting improvement in child well-being in a program that focused on work incentives and poverty reduction, and paid childcare subsidies directly to the provider if the recipient worked while receiving welfare, in contrast to AFDC’s practice of requiring parents to pay and be reimbursed later, “a practice that may have discouraged them from going to work but may have also hindered their ability to stay employed”).

78. Waller, *supra* note 74, at 7; see also Karen DeBord et al., *Understanding a Work-Family Fit for Single Parents Moving from Welfare to Work*, 45 SOC. WORK 313 (2000), available at 2000 WL 10784697 (advocating that a perspective on “work-family fit” as applied to welfare reform recognizes that low-income single-mother families often experience imbalance in the fit between family needs and work demands and that a study of one group of such families indicated that “dependable child care was a difficulty for many parents,” just as parents with reliable childcare “had more positive attitudes about their ability to balance work and family responsibilities”). There is also a “lawlessness” in the implementation of the PRWORA whereby welfare recipients are uninformed or misinformed about available resources and are subjected to erroneous censures and penalties. Karen Houppert, *You’re Not Entitled!: Welfare “Reform” Is Leading to Government Lawlessness*, NATION, Oct. 25, 1999, at 11 (reporting that “a new lawlessness reigns. Whether out of willful disregard or real misunderstanding, states are failing to fulfill their legal obligations to the poor”). Julie Nice reported, in comments at an October 23, 1999, Cornell Law Review Symposium, that she found in her interviews with welfare recipients that the rhetoric against welfare has “won” in the sense that recipients have the feeling that they are no longer entitled to anything, even if they are, in fact, eligible for certain services.

79. ANNIE E. CASEY FOUND., *supra* note 67, at 10-11; White, *supra* note 18, at 124-25.

80. MARCY WHITEBOOK ET AL., CTR. FOR THE CHILD CARE WORKFORCE, WORTHY WORK, UNLIVABLE WAGES: THE NATIONAL CHILD CARE STAFFING STUDY, 1988-1997, at 7 (1998) (also finding that, of those childcare centers that employ TANF recipients, “[o]nly 16 percent of programs currently offer TANF recipients college-credit-bearing training, which is nearly always required by the better-paying child care jobs that offer the best hope of achieving economic independence”); Tamar Lewin, *From Welfare Roll to Child Care Worker*, N.Y. TIMES, Apr. 29, 1998, at A14 (citing WHITEBOOK ET AL., *supra*).

81. ANNIE E. CASEY FOUND., *supra* note 67, at 10 (“Nationwide, businesses lose \$3 billion

All of these problems impose costs on the parents' own capacities for self-government; for example, their capacities to participate in the marketplace and their capacities to fulfill their responsibility to attend to the nurture, care, and support of their children. These costs ought to be a possible rallying point for efforts to instantiate care as a public value. Focusing on care as a public value might help to highlight the human costs of the care crisis. For example, in implementing "welfare to work," forcing mothers to leave children in unsafe and/or inadequate childcare arrangements or face losing benefits and other sanctions denies such mothers, rather than conferring upon them, any sense of being in control of their own lives. There are also the serious costs to children of having inadequate childcare in terms of their cognitive and social development, safety, and overall well-being.⁸² There may also be costs to family life: although most empirical studies concerning the impact of mothers working at paid employment suggest that such employment may be beneficial for women and children, some studies also caution that the terms and conditions of the low-income jobs many former welfare recipients are likely to find may actually be detrimental to the quality of children's home life and to the quality of the parent-child relationship.⁸³

It is encouraging that, in contrast to evaluations of the success of "welfare to work" that focus simply upon rates of participation in paid labor, some politicians, policy shapers, and evaluators urge that measures of success (and failure) look to the impact upon family health and the well-being of children.⁸⁴ As the opening quotation in

each year because of child care-related absenteeism, turnover, and lost productivity.").

82. ANNIE E. CASEY FOUND., *supra* note 67, at 10-11; White, *supra* note 18, at 124-25.

83. Toby L. Parcel & Elizabeth G. Menaghan, *Effects of Low-Wage Employment on Family Well-Being*, 7 *FUTURE CHILD*. 116, 116-17 (1997); Martha J. Zaslow & Carol A. Emig, *When Low-Income Mothers Go to Work: Implications for Children*, 7 *FUTURE CHILD*. 110, 110-115 (1997).

84. See, e.g., MORRIS ET AL., *supra* note 76, at 63 ("So much rhetoric and so many of the provisions for welfare reform have been focused on parental employment and welfare receipt that it is easy to lose sight of the fact that changes in parents' and families' circumstances can affect the development and well-being of children."). This was a theme in a series of congressional hearings concerning the effects on welfare reform brought about by PRWORA. See, e.g., *Effects of Changes to the Welfare System: Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means Hearing on the Effects of Welfare Reform* (May 27, 1999), available at 1999 WL 20008286 (statement of Howard Rolston, Dir. Office of Planning, Research, & Evaluation, Admin. for Children & Families, U.S. Dep't of Health and Human Servs.) (testifying that "[a] critical measure of the success of welfare reform is how it affects children" and reporting that the Department of Health and Human Services has funded grants "to develop measures of child well-being to examine how different welfare reform programs and policies are affecting children"); *State and Local Welfare Initiatives: Testimony "National Problems, Local Solutions: Federalism at Work" Before the United States*

this Article suggests, without attending to that human cost, “[t]he kind of responsibility of tending to people who need your care is without mention or value in the policy debate.”⁸⁵ Indeed, to the extent that there has been a rallying around the childcare problem, a powerful motivator has been concern for these costs to children, put either in terms of affording all children opportunity for safe and developmentally appropriate care or in terms of avoiding the negative consequences—and costs to society—of children failing to receive such care.⁸⁶ A crude cost/benefit analysis could compare the cost of investing in such care with the “costs” to society of not affording it, in terms of the harm done to children and the risks that they will, as they grow, become antisocial, violent, or otherwise be incapable of responsible self-government. To put this in terms of the expanded view of political economy of citizenship that I urge, government’s formative project should not just focus on supporting “working” families, in the sense of facilitating market labor, but also upon the “work” families do, in creating persons capable of self-government, and upon the types of resources and institutional restructuring necessary to carry out that important formative process. However, as I will discuss in Part II, in our gendered care economy, the costs of the care crisis are also borne disproportionately by women: by mothers, paid female caregivers, and by daughters in low-income families that lack resources to obtain other sources of care. I now consider how

House of Representatives Committee on Government Reform (Apr. 22, 1999), available at 1999 WL 16946610 (statement of the Honorable Tommy G. Thompson, Governor, State of Wis.) (discussing Wisconsin Works (W-2) and stating that “[t]hrough it is a good indicator, welfare reform success cannot and should not be measured by caseload reduction alone. A second measure of success must be the direct impact the program has on our participants, their families and, most importantly, their children”); *Granger Testimony*, *supra* note 77 (reporting on study of New Hope Program, in which “[a] critical aspect . . . is its complementary focus on assessing the well-being of families and children, capturing outcomes that are not easily measured in dollars and cents”); *Effects of Changes to the Welfare System: Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means Hearing on the Effects of Welfare Reform* (May 27, 1999), available at 1999 WL 20008290 (statement of Deborah Weinstein, Dir. Family Income Div., Children’s Def. Fund) (describing Children’s Defense Fund’s evaluation of welfare reform as asking “welfare to what?” because we believe that success cannot be judged until we know what is happening to children and families when they leave welfare”). Some testimony referred to well-being in more narrowly economic terms. *See, e.g., Effects of Changes to the Welfare System: Testimony Before the Subcommittee on Human Resources of the House Committee on Ways and Means Hearing on the Effects of Welfare Reform* (May 27, 1999), available at 1999 WL 20008285 (testimony of Wendell Primus, Dir. of Income Sec., Ctr. on Budget & Policy Priorities) (“Caseload reduction alone, however, is an inadequate measure of the success of welfare reform. The ultimate criteria should include whether the economic well-being of children and families has been enhanced.”).

85. DODSON, *supra* note 1, at 224.

86. *See, e.g., ANNIE E. CASEY FOUND., supra* note 67, at 10-11; White, *supra* note 18, at 116-20.

feminist analyses of the care economy and women's historic and ongoing disproportionate responsibility for caregiving could usefully shape debates about how to instantiate care as a public value.

II. THE GENDERED CARE ECONOMY AND INSTITUTIONAL DESIGN

Guidance about the contours of the public value of care and the practical dilemmas of instantiating it may be gleaned from extensive feminist work on women's historic and ongoing disproportionate responsibility for care and the work of social reproduction. In this Article, I do not attempt to recapitulate this rich literature in its entirety. Instead, I draw upon it to support my argument that public policy should recognize and promote care as a public value, but that it should do so in a way that does not replicate the inequality and injustice of the gendered care economy that has characterized much of this nation's history, nor the devaluing of care in law and public policy. Focusing on the gendered care economy reveals how women disproportionately bear the costs of the care crisis. Moreover, this feminist work suggests that there is no simple blueprint for optimal institutional design, but a range of possible models. I note but do not fully address the great diversity among feminist proposals and tensions concerning such design (as reflected in this Symposium itself). Nonetheless, I suggest that one model, the "Universal Caregiver" model proposed by Nancy Fraser,⁸⁷ which urges a redesign of the workplace as a site that more readily allows workers to meet both breadwinning and caregiving responsibilities, seems a promising way to bring about the redefinition of personal responsibility that I urge should guide family policy. Family policy should not only support "working families" in terms of successful market participation but also support the "work" families do by supporting parents' and other caregivers' work of social reproduction. I will conclude by asking whether the recent political campaign to promote "responsible fatherhood" is likely to advance this sort of family policy. I will then consider the relevance of my focus on the political economy of citizenship to Lisa Dodson's compelling accounts of the lives of poor urban mothers and girls.⁸⁸

87. See *infra* Part II.D, for a discussion of Fraser's proposal.

88. See DODSON, *supra* note 1.

A. *Feminist Analyses of the Care Economy and Care As Women's Responsibility*

Feminist examination of American history reveals the close association of women with caregiving. Under the law of coverture, the marriage contract delineated mothers' and wives' duty to provide domestic services.⁸⁹ As noted above, married women were thought to fulfill their civic obligations by serving their husbands and children, and this role served to exclude them from certain obligations and privileges of citizenship.⁹⁰ The ideology of separate spheres (and the "cult of True Womanhood") reinforced women's association with this role responsibility and legitimated women's exclusion from the market, politics, and public life.⁹¹ Even late into the last century, as a matter of law and policy, women's maternal role and caregiving responsibilities were used as a justification for women's exclusion from employment and from aspects of civic life, and to regulate the terms and conditions of women's employment in ways not applicable to men.⁹²

And yet, as feminist historians document, women creatively expanded the separate sphere and the ideal of True Womanhood, and the notion of women's maternal responsibility served to empower women's philanthropic work whereby women's organizations served as a sort of "shadow government" that engaged in the nurturing, life-sustaining work that "government" might otherwise neglect.⁹³ Women claimed the mantle of motherhood as a justification for attempting to improve society, influence policy, and gain suffrage.⁹⁴ As Theda Skocpol observes, even as women were formally excluded from politics, their organized efforts, or "municipal housekeeping," bore fruit in legislative enactment of such "maternalist" measures as

89. WILLIAM BLACKSTONE, COMMENTARIES *430-45; KERBER, *supra* note 54, at 11-15.

90. See KERBER, *supra* note 54, at xx-xxiv, 13-15.

91. See THEDA SKOCPOL, PROTECTING SOLDIERS AND MOTHERS 322-43 (1992) (discussing the ideal of domesticity in the "cult of True Womanhood") (citing, *inter alia*, Barbara Welter, *The Cult of True Womanhood: 1820-1860*, in *THE AMERICAN FAMILY IN SOCIAL-HISTORICAL PERSPECTIVE* 255 (Michael Gordon ed., 1973); COTT, *supra* note 54).

92. See, e.g., Hoyt v. Florida, 368 U.S. 57, 61-62 (1961); DEBORAH L. RHODE, JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW 2 (1989).

93. Martha Minow, "Forming Underneath Everything That Grows": *Toward a History of Family Law*, 1985 WIS. L. REV. 819, 827.

94. See generally LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890-1935, at 37-64 (1994); KERBER, *supra* note 54, at 124-220; SKOCPOL, *supra* note 91, at 321-72. Some feminist legal scholars also address these themes. See, e.g., Sylvia A. Law, *The Founders on Families*, 39 U. FLA. L. REV. 583, 594-600 (1987); Minow, *supra* note 93, at 824-26.

pensions for poor mothers and protective labor legislation.⁹⁵ Moreover, as Linda Gordon documents, feminist activists (including many unmarried women) invoked the values of mothers' social contribution (or "maternal citizenship") to advocate for such measures as mothers' pensions.⁹⁶

This separate spheres ideology and the romanticizing of women's maternal role inaptly describes the historical experience of some women, most acutely, African American women and poor women. Enslaved African American women suffered harm to their family integrity due to forced separations and lack of legal protection of their families, but also contributed forced "care" to white children, as well as to children borne to them from rape by slave masters.⁹⁷ After slavery, many African American women continued to engage in "caregiving" as domestics.⁹⁸ In this way, even though care was coded as a predominantly female responsibility, some white women could shift some care work across lines of class and race. The separate spheres ideal of male breadwinner/female homemaker was unrealistic for many families who had insufficient resources for the mother to stay wholly out of the paid labor force. This was particularly true for African American families and for working class and poor families.⁹⁹ Different sorts of family arrangements, including sharing care for children with "other mothers," or "conscripting" kin, were prevalent among African American families.¹⁰⁰ At the same time, African American women reformers who "believed that slavery had undermined the bases of maternalism—home and family ties, the

95. SKOCPOL, *supra* note 91, at 314-20, 331-33.

96. GORDON, *supra* note 94, at 165-67.

97. See PAULA GIDDINGS, WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA 17-56 (1984); DOROTHY ROBERTS, KILLING THE BLACK BODY 22-56 (1997).

98. PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT 43-78 (Routledge 1991) (1990); TERA W. HUNTER, TO 'JOY MY FREEDOM: SOUTHERN BLACK WOMEN'S LIVES AND LABORS AFTER THE CIVIL WAR, at viii-ix (1997).

99. GIDDINGS, *supra* note 97, at 119-34; GORDON, *supra* note 94, 111-43.

100. COLLINS, *supra* note 98, at 49, 55-58; CAROL B. STACK, ALL OUR KIN 62-89 (1971). There is an ongoing and controversial debate, in the study of African American families, over the shape of such families during and after slavery and over how to evaluate female-headed families, whether as a healthy adaptation under conditions of subordination, as a consequence of female choice, a sign of "pathology" or male irresponsibility, or all of the above. See BARBARA OMOLADE, THE RISING SONG OF AFRICAN AMERICAN WOMEN, at xvii-xx (1994); ORLANDO PATTERSON, RITUALS OF BLOOD: CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES 150-67 (1998) (discussing the history of studies of African American slavery and advocating a "revisionist" view); WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED, at ix (1987).

sanctity of marriage, and the instincts of motherhood”—sought maternalist reform to shape the welfare state.¹⁰¹

Continuing the tradition of a “shadow government” of female care up to the present, women, through volunteer work and other engagement in civil society, have provided care in the form of many important neighborhood- and community-preserving services. Sometimes these efforts bear fruit in legislative programs (as in the efforts of Progressive-era white and African American women’s groups advocating for mothers’ pensions).¹⁰² This vital role of women in caregiving (broadly defined) is a point recognized today in some alarms sounded over the decline of civil society. It is assumed that the dramatic movement of married women out of the home and into the paid labor force from the 1960s on has led to a decline in mothers’ heavy investment in “social-capital formation,” i.e., their capacity, inclination, or time to provide this “glue” holding communities together.¹⁰³ (In fact, Robert Putnam’s recent study suggests that this shift has had a very modest effect on social capital; on the one hand, it has increased women’s opportunities for civic engagement and, on the other, decreased time available for exploring those opportunities. Interestingly, in the case of single mothers, work force participation has had a positive effect on “virtually all forms of civic engagement.”¹⁰⁴)

A central tenet of the “mothers’ pensions” movement championed by women’s voluntary organizations in the late nineteenth and early twentieth centuries was that mothers engage in vital work of caring for children, and that they perform a valuable service by raising future citizens. This acceptance of separate spheres and of the idea of mother’s vital social—and political—contribution is evident, for example, in President Theodore Roosevelt’s remarks that: “when all is said and done it is the mother, and the mother only, who is a better citizen even than the soldier who fights for his

101. GORDON, *supra* note 94, at 111-43; see also GIDDINGS, *supra* note 97, at 95-117.

102. See generally GORDON, *supra* note 94, at 37-66.

103. ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 194-202 (2000) (considering the question of whether women’s movement into the workforce could be the “main reason” for the decline of social capital over the last generation; concluding that “the emergence of two-career families over the last quarter of the twentieth century played a visible but quite modest role in the erosion of social capital and civic engagement”) (emphasis omitted). For a helpful account of women’s civic activism, and possible reasons for its decline, see Kathryn Kish Sklar, *A Historical Model of Women’s Voluntarism*, in *CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL* 185 (Robert K. Fullinwider ed., 1999).

104. PUTNAM, *supra* note 103, at 194-95, 202.

country. . . . [T]he mother is the one supreme asset of national life."¹⁰⁵ This idea of social contribution was an important root of the Aid to Families with Dependent Children ("AFDC") program, whereby government assumed responsibility to provide financial subsidy to allow (in theory) mothers without a breadwinner to stay out of the market to care for their children.¹⁰⁶ As feminist welfare historians show, some affirmative consequences of this included the ideal that all women, whatever their ethnic or class background, could be educated toward and supported in this mothering role. At the same time, this afforded latitude for social control and intervention when mothers did not seem deserving or worthy (evident in "suitable home" requirements and restrictions on mothers' sexual behavior).¹⁰⁷

Moreover, at least white feminist activists who advocated such pensions (in contrast to black women's organizations) largely accepted the male breadwinner/female caregiver ideal and did not focus on fostering the economic self-sufficiency of women in the labor market. Thus, as Linda Gordon concludes, one legacy of the mothers' pensions movement was a two-tier public benefits system that treated ADC (subsequently AFDC) as mere "welfare" and social security as an earned entitlement: recipients of the former, but not the latter, were subject to moral scrutiny and supervision.¹⁰⁸ Finally, notwithstanding the normative ideal behind mothers' pensions—allowing mothers to engage in the important social task of rearing children—political compromises and discriminatory administration largely excluded African American women from its reach (just as social security exempted from its reach occupations disproportionately filled by African American men and women) and it was not until the welfare rights efforts of the 1960s that African American women gained significant inclusion.¹⁰⁹ This very inclusion fueled public resentment against welfare and the increasing association of

105. SKOCPOL, *supra* note 91, at 337 (quoting Roosevelt's address to the First International Congress in America for the Welfare of the Child, organized by the Congress of Mothers in 1908).

106. See GORDON, *supra* note 94, at 165-67; SKOCPOL, *supra* note 91, at 535-39.

107. GORDON, *supra* note 94, at 44-49, 298-99.

108. *Id.* at 107 ("Above all the welfare reformers' feminism was characterized by a class double standard. . . . For women of education and high status, they supported careers, public-sphere activism, and economic independence. For poor women, they recommended domesticity and economic dependence on men."); *id.* at 287-93 (describing a two-tier, social insurance and welfare, benefits system).

109. MIMI ABRAMOVITZ, REGULATING THE LIVES OF WOMEN 181-206 (1988); Joel F. Handler, "Constructing the Political Spectacle": *The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 BROOK. L. REV. 899, 912-41 (1990).

AFDC with black mothers, viewed as manipulative, lazy, and irresponsibly bearing children at public expense.¹¹⁰

If the social contract underlying AFDC was not already repudiated by various reform efforts in the 1960s, 1970s, and 1980s, to move from “welfare to work,”¹¹¹ by the 1990s, the *Contract with America* and its proposed Personal Responsibility Act (which formed the basic framework of PRWORA) made it emphatically clear that the state no longer wished to afford subsidies to mothers so that they could care for children without husbands or without jobs.¹¹² This was *not* a valuable social contribution. Mothers should “play by the rules” and move “from welfare to work” (or to marriage). A central theme surrounding welfare reform in the 1990s was that “illegitimacy” was a leading, if not, the leading, social problem at the root of many other social problems and that welfare was its “life support” system.¹¹³ Feminist scholars critiquing the attack on single mothers have revealed the rhetorical power of the notion of the “deviant mother,” as well as how stereotypical construction of welfare mothers as women of color gave special intensity to the drive to “end welfare as we know it.”¹¹⁴ Nonetheless, the attack on single mothers is not confined only to poor mothers or mothers who require public subsidy through welfare, and is not simply a “functional” critique. As Fineman has argued, on some accounts, all single mothers are immoral and deviant because of the absence of the father from the household and because of the threat to marriage posed by such deviation.¹¹⁵

Feminist scholars and many welfare experts warned that the focus on moving women “from welfare to work” must attempt to

110. See ROBERTS, *supra* note 97, at 202-08; RICKIE SOLINGER, WAKE UP, LITTLE SUSIE: SINGLE PREGNANCY AND RACE BEFORE *ROE V. WADE* 41-85 (1992).

111. See ABRAMOVITZ, *supra* note 109, at 349-81. Particular examples are the Family Support Act and the JOBS program.

112. CONTRACT WITH AMERICA, *supra* note 3, at 65-77.

113. I discuss this in McClain, *supra* note 4, at 345-57; 374-81. See, e.g., Charles Murray, *The Coming White Underclass*, WALL ST. J., Oct. 29, 1993, at A14; *Written Welfare Testimony of William J. Bennett: Delivered Before the House of Representatives Ways and Means Subcommittee on Human Resources* (Jan. 20, 1995) (on file with the Chicago-Kent Law Review).

114. See FINEMAN, THE NEUTERED MOTHER, *supra* note 43, at 106; JILL QUADAGNO, THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY 117-34 (1994); ROBERTS, *supra* note 97, at 208-45. For the calls to “end welfare as we know it,” see CLINTON & GORE, *supra* note 5, at 164-65; CONTRACT WITH AMERICA, *supra* note 3, at 65.

115. FINEMAN, THE NEUTERED MOTHER, *supra* note 43, at 101-25; see also McClain, *supra* note 4, 345-64 (discussing labeling single mothers as “irresponsible” in the sense of being “immoral,” as distinct from also labeling single mothers as “irresponsible” for expecting public subsidy, and thus being “unaccountable” for the consequences of their actions).

address the practical difficulties of combining caregiving for children with market labor and that one reason that women have cycled on and off of welfare is the difficulty of finding adequate childcare for children, or for paying for children's care and health insurance on minimum wage jobs without adequate benefits.¹¹⁶ Historically, the burden upon states of providing such childcare no doubt was a significant reason for states' widespread use of the exemption of mothers with small children from previous work requirements (e.g., under the Family Support Act of 1988).¹¹⁷

This dilemma faced by low-income workers and by parents seeking to move from welfare to work is one manifestation of the "care crisis" discussed earlier in this Article. Indeed, one might argue that the new social contract repudiates a "maternalist" view of state responsibility to support mothers' caregiving in favor of an unreflective adoption of a new social contract requiring mothers to be breadwinners (as it were, the "male" side of the old separate spheres model). What is rendered invisible, except as it appears as an "obstacle" to successful market participation, is care as a vital component in the well-being of children and a component of parental responsibility. As I have argued throughout this Article, recognizing care as a public value would require that policy discussions about the success of welfare reform attend—as some do—to supporting not only market work but also the work families do in providing care and fostering human capacities for self-government. Ironically, there seem to be glimmers of this in calls for "responsible fatherhood" as "phase two" of welfare reform, or the proposition that government should foster fathers' capacities not merely to be breadwinners but also caregivers, i.e., actively involved in their children's lives (as I discuss below).

B. Care, Justice, the Idea of Subsidy, and the Hidden Costs of the Gendered Care Economy

Within contemporary families, gender continues to be "a major organizing feature of household labor," and, among married

116. See, e.g., KATHRYN EDIN & LAURA LEIN, *MAKING ENDS MEET* (1997) (exploring disincentives under AFDC for low-income mothers to participate in paid labor force and reasons such mothers move back and forth between welfare and low-wage work); Alan M. Hershey & LaDonna A. Pavetti, *Turning Job Finders into Job Keepers*, 7 *FUTURE CHILD* 74, 75-80 (1997).

117. Family Support Act of 1988, Pub. L. No. 100-485, §§ 201-04, 102 Stat. 2343, 2356-81 (enacted in scattered sections of 42 U.S.C.) (repealed 1996).

(heterosexual) couples, women continue to perform more of the domestic labor than men.¹¹⁸ A recent survey of the last decade's scholarly literature on household labor found that, "[a]lthough the vast majority of both men and women now agree that family labor should be shared, few men assume equal responsibility for household tasks": further, although "[o]n average, women perform two or three times as much housework as men, . . . the vast majority of men, as well as most women, rate these arrangements as fair."¹¹⁹ The surveyed literature has insufficiently examined both care for children as a component of household labor, and the extent to which such households depend upon purchased care.¹²⁰ Nonetheless, women—both as mothers and as paid caregivers—perform a disproportionate amount of that caregiving labor as well.¹²¹ Indeed, these demographic facts have led some scholars to puzzle at the "problematic persistence of traditional marital roles"¹²² and to argue that, far from being dead, "domesticity," the traditional breadwinner-caregiver gendered division of labor, still holds sway as the "entrenched, almost unquestioned, American norm and practice."¹²³

The feminist literature on the gendered household division of labor is voluminous; feminist legal scholars have made extensive contributions to it. My aim here is not to review the corpus, but to highlight three important theoretical claims made by feminist scholars that are of particular relevance to recognizing care as a public value: (1) the claim that existing law and policy devalue care, even as they reinforce the gendered division of labor within families; (2) the claim that the gendered care economy is unjust to women and hinders their liberty and equality, and that concerns for justice and equality call for a redistribution of responsibility for such care; and (3) the claim that caregiving labor—by meeting the burdens of "inevitable dependency"¹²⁴—affords a subsidy to society and that there should be public and corporate support of that caregiving labor, including institutional

118. Scott Coltrane, *Research on Household Labor: Modeling and Measuring the Social Embeddedness of Routine Family Work*, 62 J. MARRIAGE & FAMILY 1208 (2000).

119. *Id.* at 1208.

120. *Id.* at 1210.

121. See HARRINGTON, *supra* note 17, at 14-24; JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (2000).

122. Ira Mark Ellman, *Divorce Rates, Marriage Rates, and the Problematic Persistence of Traditional Marital Roles*, 34 FAM. L.Q. 1 (2000).

123. WILLIAMS, *supra* note 121, at 1.

124. This is Martha Fineman's formulation in FINEMAN, *THE NEUTERED MOTHER*, *supra* note 43, at 161-66.

redesign better to permit persons to be both caregivers and breadwinners. I will then discuss some of the hidden costs of the gendered care economy.

1. Care, Difference, and Inequality

Feminist theoretical work on care invites consideration of whether the invisibility of care as an important public value reflects a widespread bias in law and policy toward masculine values and experience. Carol Gilligan's book, *In a Different Voice*, has had a defining role in influencing feminist theory because it suggested that prevailing models of moral development left out women's distinct patterns of moral reasoning, which placed a primary emphasis on care, connection, and taking responsibility for the needs of others.¹²⁵ In the realm of legal theory, relational feminists, or difference feminists, have argued that law and legal theory—with their emphasis upon individual autonomy, rights, justice, and governmental noninterference—reflect male values and male experiences, and that bringing women's values and experiences to law would support a legal system that gave greater primacy to connection, responsibility, care, and a greater role for affirmative governmental obligation.¹²⁶ Some theorists have proposed looking to the mother-child relationship as a model for other forms of relationship.¹²⁷

Feminist critics of the "different voice" and relational feminism have warned that it may simply glorify values "chosen" by women due to gender subordination. As Catharine MacKinnon memorably expressed it, we cannot know in what voice women speak so long as they have the male foot on their throat.¹²⁸ Some feminists (like Joan Williams) specifically challenge the idea of women's "choices" to invest more in caregiving than in market labor, in a society whose

125. CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982).

126. See, e.g., ROBIN WEST, *CARING FOR JUSTICE* (1997) [hereinafter WEST, *CARING FOR JUSTICE*]; Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 4 (1988); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988). I critically evaluate these relational feminist claims in Linda C. McClain, "Atomistic Man" Revisited: *Liberalism, Connection, and Feminist Jurisprudence*, 65 S. CAL. L. REV. 1171 (1992); Linda C. McClain, *The Liberal Future of Relational Feminism: Robin West's Caring for Justice*, 24 LAW & SOC. INQUIRY 477 (1999) (book review) [hereinafter McClain, *Relational Feminism*].

127. See, e.g., Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J.L. & FEMINISM 7, 12 (1989).

128. CATHARINE A. MACKINNON, *Difference and Dominance: On Sex Discrimination* (1984), in FEMINISM UNMODIFIED 32, 45 (1987) ("Take your foot off our necks, then we will hear in what tongue women speak.").

model of the ideal worker presupposes a worker with no childcare responsibilities and that closely links female identity with caregiving.¹²⁹ Some feminist theorists, urging more contextual accounts of care in women's lives that focus on the intersection of gender with such factors as race and class, offer accounts that reveal both the strengths and vulnerabilities of caregivers.¹³⁰

Even prominent "difference" or relational feminists argue that institutional practices and ideas of women's identity that assign them disproportionate responsibility for care reinforce traditional gender roles and may harm women. Thus, Gilligan herself warned, in *In a Different Voice* and in subsequent writings, that "care" too readily becomes female self-sacrifice, and that moral maturity, for women, requires that they learn to think of their own needs, as well as the needs of others, in defining what "responsibility" requires of them (just as men should learn to think more of others, and not primarily of themselves).¹³¹ Similarly, even as she argues that "our capacity for care should be at the center of our understanding of our public and legal, as well as private and personal, virtues," relational feminist legal theorist Robin West also theorizes that "care," without justice, as practiced by women in their roles as wives and mothers, is too often precisely this kind of self-sacrificing behavior, whether sexual altruism or domestic altruism, and that it is in reality not a moral virtue but a "gender-specific harm."¹³² This suggests that relational feminism's own internal critique of care without justice is similar to the demands of those feminist critics of relational feminism (for seeming to endorse women's disproportionate responsibility for care) who would pair the recognition that "care is an essential social

129. WILLIAMS, *supra* note 121, at 1.

130. Patricia Hill Collins, for example, stresses that African American women's mothering has a communal dimension, since taking care of their children also engages them in supporting the survival of African American communities. COLLINS, *supra* note 98, at 46-58; Patricia Hill Collins, *Shifting the Center: Race, Class, and Feminist Theorizing About Motherhood*, in MOTHERING: IDEOLOGY, EXPERIENCE, AND AGENCY 45, 46-47 (Evelyn Nakano Glenn et al. eds., 1994). As a component of nurture, mothers also need to teach children about skills necessary for survival in the face of racism and to cultivate the resilience to define oneself in the face of prejudice and stereotypes. *Id.* at 49-61.

131. GILLIGAN, *supra* note 125, at 74; Carol Gilligan, *Prologue: Adolescent Development Reconsidered* to MAPPING THE MORAL DOMAIN, at vii, xxx-xxxi (Carol Gilligan et al. eds., 1988).

132. WEST, CARING FOR JUSTICE, *supra* note 126, at 9, 79-84, 98-99. West argues that our current law and legal theory fail both to protect women from such harmful forms of connection and to value and support good forms of connection. *Id.* at 98-99. Elsewhere, I argue that her ideal is that of the "choosing, caring self," in which care is a central value but it is one chosen under conditions more conducive to responsible self-determination and the exercise of agency. McClain, *Relational Feminism*, *supra* note 126, at 480.

function” with a demand that “justice requires that no one have a greater immunity or a greater responsibility than anyone else” with respect to responsibility for care.¹³³

Many feminist legal theorists have focused, not so much on care as a distinctively feminine value informing women’s moral lives, but on how existing legal rules and entitlement programs both devalue care and reinforce the breadwinner/caregiver division of labor. For example, feminist legal historians have explored how the early feminist movement included attacks upon coverture as a prime source of women’s inequality and made demands that household labor be deemed “work” warranting compensation.¹³⁴ Katharine Silbaugh has analyzed how the treatment of women’s unpaid household work as “an expression of affection” has exempted housework “from the benefits and protections that other value-producing labor receives.”¹³⁵ Other feminist scholars have argued for reforming tax laws that encourage the gendered division of labor and penalize married women for participation in the paid workforce.¹³⁶

2. Liberal Feminist Critique of Gender Injustice within Families

Rectifying the injustice of women’s disproportionate responsibility within families for care is a central theme in liberal feminism. In her influential account, *Justice, Gender, and the Family*, Susan Moller Okin insists that liberalism traditionally has failed to focus on the issue of justice within the family, even as it depends upon the invisible labor of mothers in order for the family to engage in necessary social reproduction.¹³⁷ The gendered division of labor within families, Okin argues, hinders women’s equal opportunities, renders women financially vulnerable, and impairs both girls’ and boys’ development of the moral capacities that are prerequisite to

133. JUDITH A. BAER, *OUR LIVES BEFORE THE LAW: CONSTRUCTING A FEMINIST JURISPRUDENCE* 195-95 (1999). Baer says: “While women should not have exclusive or disproportionate responsibility for care, they deserve credit for providing it.” *Id.* at 195. Although I agree with her on the problem of disproportionate responsibility, I do not agree with her rather sweeping attacks on feminist theorists, or her suggestion that feminist theorists somehow bear the blame for this disproportionate burden on women.

134. See Reva B. Siegel, *Home As Work: The First Woman’s Rights Claims Concerning Wives’ Household Labor, 1850–1880*, 103 *YALE L.J.* 1073 (1994).

135. Katharine Silbaugh, *Turning Labor into Love: Housework and the Law*, 91 *NW. U. L. REV.* 1 (1996).

136. See EDWARD J. MCCAFFERY, *TAXING WOMEN* (1997); Nancy C. Staudt, *Taxing Housework*, 84 *GEO. L.J.* 1571 (1996).

137. OKIN, *supra* note 38, at 89-109.

self-government.¹³⁸ Nonetheless, she also argues that liberalism can be reconstructed to support a move toward justice within families, and that certain liberal tools may be valuable to aid this movement.¹³⁹ Okin's own two-tier approach to family policy is to encourage an androgynous family model (e.g., egalitarian division of labor not based on gender) and also to permit gendered divisions of labor, but to protect vulnerable caregivers by affording them half of the breadwinner's wages.¹⁴⁰

Responding to Okin's critique, Rawls has written that it is an appropriate goal of social policy to aim at justice within the family, subject to certain limiting principles like toleration and respect for voluntary choices.¹⁴¹ For example, Rawls argues that the "involuntary division of labor" in the family must be "reduced to zero" (e.g., employment discrimination in the workplace—which may contribute to women's "preferences" in the household division of labor by making a gendered division seem the "rational" and less costly thing to do—should be forbidden) and suggests that "[i]f a "basic . . . cause of women's inequality is their greater share in the bearing, nurturing, and caring for children in the traditional division of labor within the family, steps need to be taken either to equalize their share, or to compensate them for it."¹⁴² From a range of perspectives, feminist legal theorists have also explored measures such as wage-splitting or income sharing that would protect caregivers against economic vulnerability and recognize the economic value of domestic labor. Some, such as Martha Ertman, who supports giving the homemaking spouse a secured interest against the breadwinner's earnings, suggest that such a scheme might also disturb the gendered division of labor by changing the power dynamics between breadwinner and caregiver.¹⁴³

As I have argued in Part I, I agree with Okin's assessment of the possibility of a reconstructed, more explicitly feminist liberalism.¹⁴⁴ I

138. *Id.* at 99-100, 106-09, 149-69.

139. *Id.* at 101-09.

140. *Id.* at 170-86.

141. Rawls, *supra* note 30, at 792.

142. *Id.* at 792-93.

143. Martha M. Ertman, *Commercializing Marriage: A Proposal for Valuing Women's Work Through Premarital Security Agreements*, 77 TEX. L. REV. 17 (1998); Martha M. Ertman, *Reconstructing Marriage: An InterSEXional Approach*, 75 DEN. U. L. REV. 1215 (1998).

144. For example, Martha Nussbaum, who elaborates a human capabilities approach to the problem of sex equality, identifies her approach as "political liberalism," even as she diverges in some particulars from Rawls. See NUSSBAUM, *supra* note 39, at 5 (emphasis omitted). Feminist theorist Judith Baer argues for a "feminist postliberalism," which would have an "imperative

believe that political liberalism's account of social reproduction is an important root for developing care as a public value. Although I cannot detail my position here, I argue elsewhere that sex equality should be affirmed as an important public value, as well as a value with implications for family governance and family policy.¹⁴⁵

3. "Inevitable" Dependency, Subsidy, and Public Responsibility

In contrast to Okin's ideal of the androgynous, egalitarian family, Martha Fineman uses the metaphor of the mother-child dyad as the appropriate family unit.¹⁴⁶ She begins her analysis with the differences in women's and men's gendered lives. She posits a biological "universal" of "inevitable dependency," and the related concept of "derivative dependency," that is, the need of the caretaker for resources to engage in caretaking and the costs to her of engaging in it. Our legal system and polity assign responsibility for this work to the "private" institution of the family. Within the family, overwhelmingly, it is women who perform this labor. Fineman's recent work calls for challenging this division of labor by recognizing the "subsidy" provided by caregivers, who engage in valuable work of societal preservation (or what I also call social reproduction), and arguing for collective responsibility for this work.¹⁴⁷ (As discussed above, both political liberalism's and Fineman's approach advocate a functional approach to families; discourse concerned with the breakdown of the family unduly focuses upon a particular family form. Instead, we should ask what functions families serve and how government can support those functions.) Similarly, philosopher Eva Kittay argues about the vital role of caregivers in meeting inevitable dependency and argues for public support of caregiving.¹⁴⁸

jurisprudence" that recognizes "that the satisfaction of basic human needs and the reproduction of the species are individual and societal necessities," and suggests that "[t]he right to a means of meeting human needs . . . must join the traditional rights of liberal theory." BAER, *supra* note 133, at 189, 192, 199.

145. McClain, *supra* note 33. As discussed in Part I.A.1, Harrington urges reconstructing liberalism—at the level of liberal practice—to include care as a national value, and has urged that a new care economy must also affirm women's equality. See *supra* notes 29, 40 and accompanying text.

146. This paragraph in text summarizes FINEMAN, *THE NEUTERED MOTHER*, *supra* note 43, at 161-66, 226-36.

147. Fineman, *Cracking the Foundational Myths*, *supra* note 43; Martha Albertson Fineman, *The Family in Civil Society*, 75 CHI.-KENT L. REV. 531 (2000).

148. KITTAY, *supra* note 38, at 140-46.

C. *Viewing the “Care Crisis” As Women’s Problem—Hidden Costs of the Gendered Care Economy*

The call to recognize care as a public value implicitly acknowledges feminist critique that care has been an invisible, but indispensable, foundation for societal preservation. As I have argued above, the formative project of fostering the capacities for self-government depends upon the work of social reproduction and upon the role of families—as an important site of caregiving—in this process. Thinking of the challenge as affirming both care and equality, or care and justice, is a useful way to recognize both that present institutional arrangements insufficiently value and support care, and that the historical roots of women’s disproportionate responsibility for care—and, to some extent, women’s and men’s respective preferences about caregiving—make it important not to attribute the gendered care economy to women’s and men’s fixed natures or unvarying choices. Indeed, the idea that care is more appropriately women’s responsibility is deeply entrenched. Important studies in moral development amply illustrate how girls are socialized to be mothers, to accept responsibility for “caregiving” work, and to engage in the work of social reproduction.¹⁴⁹ Studies of household labor indicate that “women continue to feel responsible for family members’ well-being and are more likely than men to adjust their work and home schedules to accommodate others.”¹⁵⁰ As has been well documented, this gendered care economy results in employed wives enjoying less leisure and experiencing more stress than their husbands; also, “when women shoulder a disproportionate share of responsibility for housework, their perceptions of fairness and marital satisfaction decline.”¹⁵¹

Women also regard it as an important part of their responsibility as mothers to find appropriate “substitute” caregivers when they have to balance other responsibilities. Absent institutional reforms and greater support for care work, individual women juggling maternal and market labor are left to solve “their” care problems in ways that do not address, and may even perpetuate, these inequalities.¹⁵²

149. See, e.g., NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING* (1978).

150. Coltrane, *supra* note 118, at 1212 (citations omitted).

151. *Id.* at 1209.

152. See Taunya Lovell Banks, *Toward A Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER RACE & JUST. 1 (1999). For one feminist theorist’s painfully honest exploration of the unsatisfying resolution of this dilemma in her own life, see Jennifer Nedelsky, *Dilemmas of Passion, Privilege, and Isolation: Reflections on Mothering in a*

“Upwardly mobile and well-educated women [i.e., predominantly white, middle-class women] are the most likely to purchase domestic services . . . and it is immigrant, ethnic minority, and working-class women who produce and provide them.”¹⁵³ With respect to this phenomenon of women shifting “their” care responsibilities by purchasing such services, feminists urge attention to the social practice of who, in society, assumes responsibility for paid care work: disproportionately, such work is done by women and men of color, poor women, and immigrant women.¹⁵⁴ Given societal devaluation of caregiving, specifically maternal labor and the work of childrearing, this translates into comparatively lower (and even poverty-level) wages for paid caregivers.¹⁵⁵ As discussed above, welfare reform is leading to more placement of poor mothers as paid childcare providers, but this is unlikely to bring them out of poverty.¹⁵⁶ Focusing upon the transnational dimension of the care crisis, Arlie Hochschild has urged attention to the human costs (especially for children) of the “global care chain,” or “invisible human ecology of care,” linking rich and poor countries, when first world mothers depend on nannies emigrated from third world countries, who in turn depend upon other caregivers to care for the children left behind.¹⁵⁷ To address these costs, an adequate and just approach to recognizing care as a public value needs to be holistic and to aim at safe childcare for all and societal valuation of domestic labor.

There is another type of shifting of responsibility for care work that has human costs. Some recent studies of the experiences of girls in low-income families indicate that mothers with few economic resources may rely heavily upon their daughters as “family workers,” enlisted to provide housework, childcare, and other efforts to help keep families together.¹⁵⁸ In the absence of economic resources, such

White, Middle-Class Nuclear Family, in MOTHER TROUBLES: RETHINKING CONTEMPORARY MATERNAL DILEMMAS 304 (Julia E. Hanigsberg & Sara Ruddick eds., 1999).

153. Coltrane, *supra* note 118, at 1221 (citations omitted).

154. See, e.g., JOAN C. TRONTO, MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE 112-14 (1993); Banks, *supra* note 152.

155. TRONTO, *supra* note 154, at 112-14; Fisher & Tronto, *supra* note 27.

156. See discussion *supra* text accompanying note 80.

157. Arlie Russell Hochschild, *The Nanny Chain*, AM. PROSPECT, Jan. 3, 2000, at 32; see also Pierrette Hondagneu-Sotelo & Ernestine Avila, “I’m Here, but I’m There”: *The Meanings of Latina Transnational Motherhood*, 11 GENDER & SOCIETY 548 (1997) (examining how Latina immigrant women working as nannies or housekeepers while their children remain in their countries of origin transform the meaning of motherhood to accommodate this separation).

158. See, e.g., DODSON, *supra* note 1, at 14-49 (discussing experiences of girls in low-income families as “family workers”).

daughters' labor is viewed as a necessary substitute when there are "no nannies, no cars, no child-care centers, no washers or dryers or dishwashers, no vacations, no house cleaners, no takeout dinners."¹⁵⁹ As Lisa Dodson argues, such conscription of daughters has considerable costs, in terms of girls' identity, loss of sense of "childhood," school performance, their tendency to view gaining a boyfriend as the way of passage to a different role, and their readiness to become mothers at an early age.¹⁶⁰

These various costs of the gendered care economy, borne by mothers, daughters, paid caregivers (many of whom are themselves parents), all too often hidden, would seem to hinder, rather than foster, responsible self-government. The political economy of citizenship should attend to institutional arrangements that would impose fewer of these costs and that could support the work of social reproduction. Below, I will consider how this approach would better inform analysis of early motherhood among poor young women.

D. Care As a Public Value: Preliminary Ideas about Institutional Design

My argument is that instantiating care as a public value should lead to a definition of "personal responsibility" that resists defining parental responsibility solely in terms of market labor, but insists upon the value of care-work. My purpose has been to argue that recognizing care as a public value should inform public policy, so that supporting "working families" means not only facilitating successful market participation but also supporting the work families do in social reproduction. In a society in which social practice is such that most women who are mothers work in the paid labor market at least some of the time, a discussion of care must also include "substitute" care.¹⁶¹

159. *Id.* at 41.

160. *Id.* at 14-49 (reporting on her interviews and also giving other sources).

161. On this dilemma, consider the words of anthropologist and primatologist Sarah Blaffer Hrdy, in her recent book, *Mother Nature: A History of Mothers, Infants, and Natural Selection*. Stressing how mothers, animal and human, juggle domestic and other work, Hrdy stresses mothers' need for "allomothers," i.e., others who assist the mother in caring for her children, and observes that female primates, including human females, "have always entrusted infants to willing allomothers whenever a mother could be confident of safely retrieving them." SARAH BLAFFER HRDY, *MOTHER NATURE: A HISTORY OF MOTHERS, INFANTS, AND NATURAL SELECTION* 498-99 (1999). Hrdy concludes:

The real constraint on working mothers has little to do with imagined ideals of Pleistocene motherhood, far more to do with locating and enlisting reliable, motivated, long-term allomothers. Human infants need mothers and allomothers to keep them

In this Article, I will not attempt to lay out a blueprint for institutional design. Such policymaking should result from deliberative processes and experimentation, and should involve the different constituencies affected by the issues, including families of different incomes and backgrounds, communities, and various organizations seeking to establish a new care economy.¹⁶² Perhaps a pluralistic approach will allow an array of models appropriate in different contexts. For example, there is a creative tension between advocating for a direct government subsidy of caregivers—like a modern mothers' pension—and advocating for paid childcare as a universal employment entitlement.¹⁶³ But, I will venture that, consistent with my approach to political economy, one model with good potential to inform current political discourse is one that seeks to break down the breadwinner/caregiver dichotomy. I believe that Lucie White helpfully poses the question: "How could public policy encourage and enable parents of both genders, at all income levels to play a major role in caring for their own children, without reinforcing either the gendered distribution of care work or the marginalization of caretakers from waged work and public life?"¹⁶⁴

Feminist scholarship offers helpful analyses of the need to deconstruct the ideal worker as someone with no childcare responsibilities (implicitly depending upon the offsite, and thus

warm, safe, mobile, stimulated, clean, fed, hygienically hydrated, and, most important, to communicate tenderly and responsively their commitment to go on caring. Hour by hour, supplying this kind of care is tedious. . . . [C]aregiving is also more or less onerous, depending on personal tastes, training, expectations, and working conditions. A vast divide separates the ideal of childcare from its realities.

Id. at 504.

162. See DODSON, *supra* note 1, at 220 (recommending a "principle of self-representation" in building American public policy that would bring the people who will live with the policy consequences to the table); HARRINGTON, *supra* note 17, at 176-87 (calling for "a new politics of conversation" that would involve diverse constituencies); JULIE ANNE WHITE, *DEMOCRACY, JUSTICE, AND THE WELFARE STATE: RECONSTRUCTING PUBLIC CARE* 164-73 (2000) (advocating "[a] democratic politics of care" that employs a deliberative model, so that "everyone engaged in the process of care has a voice that is heard"); Fineman, *Cracking the Foundational Myths*, *supra* note 43, at 23-26 (calling for a national conversation about issues of subsidy and dependency); White, *supra* note 18 (recommending community-based approaches to the care crisis).

163. For example, direct public support of caregivers might be a good model in certain circumstances. But as a general approach, it seems politically unfeasible in an era in which the majority of married mothers engage in some market labor. Moreover, one objection to such a model is that it reifies caregiving as a "female" responsibility. It may also encourage isolation of the caregiver, especially when families have limited resources and support networks; that is good neither for mothers nor for children. See White, *supra* note 18, at 138 (reporting that "many studies have shown that low-income single parents who are isolated from social networks often experience negative psychic and social effects").

164. *Id.*

invisible, domestic labor of women) and to reconstruct both the ideal worker as someone who must balance both market and domestic labor and the workplace as a site that more readily allows workers to meet both kinds of responsibilities.¹⁶⁵ Thus, one promising answer to White's question is Nancy Fraser's proposed shift from a "Universal Breadwinner" model to a "Universal Caregiver" model of a welfare state, which would "promote gender equity by effectively dismantling the gendered opposition between breadwinning and caregiving."¹⁶⁶ She advocates using as a norm women's current life-patterns, i.e., combining breadwinning and caregiving, for this reason: "Women today often combine breadwinning and caregiving, albeit with great difficulty and strain. A postindustrial welfare state must ensure that men do the same, while redesigning institutions so as to eliminate the difficulty and strain."¹⁶⁷ Fraser offers these particulars:

What, then, might such a welfare state look like? . . . [I]ts employment sector would not be divided into two different tracks; all jobs would be designed for workers who are caregivers, too; all would have a shorter workweek than full-time jobs have now; and all would have the support of employment-enabling services. Unlike Universal Breadwinner, however, employees would not be assumed to shift all carework to social services. Some informal carework would be publicly supported and integrated on a par with paid work in a single social-insurance system. Some would be performed in households by relatives and friends, but such households would not necessarily be heterosexual nuclear families. Other supported carework would be located outside households altogether—in civil society. In state-funded but locally organized institutions, childless adults, older people, and others without kin-based responsibilities would join parents and others in democratic, self-managed carework activities.¹⁶⁸

There are, of course, difficult policy decisions about how to organize care work that I cannot take up here. For example, if the

165. See WILLIAMS, *supra* note 121.

166. NANCY FRASER, *After the Family Wage: A Postindustrial Thought Experiment*, in JUSTICE INTERRUPTUS 41, 61 (1997). Professor Case's commentary on this Article raises a different gender equity concern that I will not try to address here: she fears that requiring employers to provide benefits to employees who are parents will discriminate against female employees who are childless and primarily benefit male employees (with wives and children). Case, *supra* note 29, at 1758-59.

167. This reminds me somewhat of Kimberle Crenshaw's argument that antidiscrimination efforts begin with "addressing the needs and problems of those who are most disadvantaged and with restructuring and remaking the world where necessary, then others who are singularly disadvantaged would also benefit." Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 167.

168. FRASER, *supra* note 166, at 61.

low wages for paid childcare contribute to its poor quality, then one approach would be to treat childcare more like a profession, which would have an upward effect not only on wages but also on quality. However, without generous subsidies to low-income workers, the cost of this professional care might well exceed the incomes of low-income workers or require such a substantial percentage of their income as to be out of reach.¹⁶⁹ For this reason, some scholars favor less expensive, community-based models.¹⁷⁰ In some cases where costs are prohibitively high, e.g., for infant care, a better model might be to facilitate parents in providing the primary care to their children. In either case, concern should be with what sorts of arrangements best help to foster children's capacities and shape them to be responsible future citizens, as well as what fosters adults' own capacities for self-government.

Another challenging issue is that the type of model Fraser proposes requires a "wholesale restructuring of the institution of gender," including a "new view of the male role and a radical change in the organization of working life."¹⁷¹ Here, as important, if not more important, as legal reforms or workplace restructuring are cultural shifts concerning appropriate roles for men, the value attached to caregiving vis-à-vis success in the market, and role identification.¹⁷² This transformation in men's roles remains a challenge. I now will turn to a brief consideration of whether governmental efforts to promote "responsible fatherhood" have such transformative potential.

E. Responsible Fatherhood

Are the current bipartisan attempts to promote responsible fatherhood a promising vehicle for promoting care as a public value? Several years after the enactment of PRWORA, perhaps the most striking development in the ongoing discussion of government's role in encouraging personal responsibility in the areas of reproduction and family formation is the growing prominence of "responsible fatherhood" as an organizing concept for next steps to take in

169. White, *supra* note 18, at 122-23, 125-26.

170. *Id.* at 135.

171. FRASER, *supra* note 166, at 61, 62 (citations omitted).

172. Speaking from personal experience, taking my children to my local park on a weekday, I consistently find myself almost exclusively in the company of other women, whether moms, female relatives, or paid caregivers. (Saturday and Sunday are a different story, when dads often get park duty to give moms some time off.)

implementing PRWORA and advancing welfare reform. As discussed in the Introduction, this idea of promoting “responsible fatherhood” entails affirming the important role fathers play in children’s well-being and encouraging fathers to provide financial and emotional support for their children, and to become more involved in their children’s lives because of the importance of such involvement to children’s well-being.¹⁷³ During the mid-1990s, around the time of the debate over PRWORA, a new “social movement” was emerging, calling for “responsible fatherhood.” One influential text in this movement, David Blankenhorn’s book, *Fatherless America*, diagnosed “fatherlessness” as “the engine driving our most urgent social problems.”¹⁷⁴ The voices in this movement cross racial and class lines, sounding common themes about the importance of fathers and the dire consequences for women, children, society, and indeed men when men flee paternal responsibility and fatherhood is no longer at the core of cultural definitions of manhood. Voices in this movement have been critical of welfare policy because it is said to focus too much on women, subsidize fatherless families, and fail to recognize the important role of men in the family.

As early as 1995, President Clinton directed federal agencies to evaluate their programs to see how they might strengthen the role of fathers in families.¹⁷⁵ And in recent years, the Clinton-Gore administration often has spoken of promoting responsible fatherhood as an important next step in welfare reform.¹⁷⁶ The cause of “responsible fatherhood” enjoys broad bipartisan support, including

173. Responsible Fatherhood Act, H.R. 4671 (2000) and S. 1364 (1999) (proposed legislation).

174. DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM 1* (1995). Some of the organizations associated with this movement are: the National Fatherhood Initiative, the Institute for Responsible Fatherhood and Family Revitalization, and Promise Keepers. Susan Chira, *War over Role of American Fathers*, N.Y. TIMES, June 19, 1994, § 1, at 22; Gustav Niebuhr, *Men Crowd Stadiums to Fulfill Their Souls*, N.Y. TIMES, Aug. 6, 1995, § 1, at 1; Tamar Lewin, *Creating Fathers Out of Men with Children*, N.Y. TIMES, June 18, 1995, § 1, at 1.

175. Memorandum from President William J. Clinton for the Heads of Executive Departments and Agencies, Supporting the Role of Fathers in Families (June 16, 1995), available at <http://aspe.os.dhhs.gov/fathers/pclinton.txt>; *Fathering: The Man and the Family*, The Department of Health and Human Services’ Response to President Clinton’s June 16, 1995 Memorandum to Strengthen the Role of Fathers in Families (Oct. 16, 1995), available at <http://fatherhood.hhs.gov/hhsresp.htm>.

176. William J. Clinton, *Statement on Welfare Reform*, WKLY. COMPILATION PRESIDENTIAL DOCUMENTS, Aug. 28, 2000, available at 2000 WL 13131444; *Vice President Gore Calls for “Father-Friendly” Workplaces*, U.S. NEWSWIRE, May 3, 1996, available at LEXIS, News Library, U.S. Newswire File.

that of President George W. Bush.¹⁷⁷ Not only has nearly every state formed a task force or undertaken some initiatives to promote responsible fatherhood,¹⁷⁸ but, in the last few terms, Congress has considered (and continues to consider) proposed legislation such as the Responsible Fatherhood Act.¹⁷⁹

In this Article, I will not attempt a full evaluation of the “responsible fatherhood” agenda. I will focus particularly on several points that are relevant to the idea of care as a public value and to the idea of the link between responsibility and resources in the new social contract. My evaluation suggests that a mixed report card is in order.

First, there is an obvious element of continuity between PRWORA and the movement because a key goal of PRWORA was to promote marriage and end childbearing and childrearing outside the two-parent, marital family. Likewise, proposals to promote responsible fatherhood stress the importance of marriage and the harm to children from the father’s absence from the family. For example, the Responsible Fatherhood Act of 2001, pending in Congress, includes findings that “[c]hildren who live without contact with their biological father” suffer comparative disadvantages and that “[s]tates should be encouraged to implement programs that provide support for responsible fatherhood, promote marriage, and increase the incidence of marriage.”¹⁸⁰ It allocates substantial funds to states for block grants to engage in media campaigns to “promote the formation and maintenance of married 2-parent families, strengthen fragile families, and promote responsible fatherhood,” and to support responsible fatherhood programs, which, *inter alia*, “promote marriage.”¹⁸¹ Reflecting the current keen political interest in public-private partnerships, it also authorizes the Secretary of the

177. *Child Welfare/Family Policy*, at <http://www.georgewbush.com/issues/childwelfare.html> (last visited Feb. 16, 2001) (George W. Bush for President Official Site).

178. NAT’L CTR. FOR CHILDREN IN POVERTY, *supra* note 11.

179. The last Congress concluded without enacting the proposed Fathers Count Act of 1999, H.R. 3073, 106th Cong. (passed by the House), or the Responsible Fatherhood Act, H.R. 4671, 106th Cong. (2000) and S. 1364, 106th Cong. (1999). On March 29, 2001, Senator Bayh introduced the Responsible Fatherhood Act of 2001, S. 653, 107th Cong., which has been referred to committee. Also on March 29, Representative Carson introduced an identical bill, the Responsible Fatherhood Act of 2001, H.R. 1300, 107th Cong., which has also been referred to committee. On April 3, 2001, Senator Bayh introduced the Strengthening Working Families Act of 2001, S. 685, 107th Cong., which incorporates much of S. 653. That bill was also referred to committee.

180. S. 653 and H.R. 1300, § 2(6)-(8), (10).

181. S. 653 and H.R. 1300, § 3 (allocating \$25 million annually for 2002–2006 for block grants for media campaigns); S. 653 and H.R. 1300, § 4 (allocating \$50 million annually for 2002–2006 for block grants to support responsible fatherhood programs).

Department of Health and Human Services to contract with a nonprofit fatherhood organization to establish a “National Clearinghouse for Responsible Fatherhood Programs,” which would “assist States and communities in efforts to promote and support marriage and responsible fatherhood.”¹⁸²

On the one hand, this focus on marriage is problematic. As feminist critics of proposed responsible fatherhood legislation have testified, marriage is unlikely to prove a satisfactory, all-purpose, anti-poverty program, both because of problems with some men’s earning capacity and family violence, as well as changing demographic and economic realities: “marriage is not the solution for everyone, nor is it the solution to poverty.”¹⁸³ Moreover, such critics argue that these efforts fail to reckon adequately with the problem of family violence.¹⁸⁴ In this regard, no doubt in response to this criticism, it is notable that the most recent legislative proposals to promote responsible fatherhood appear to recognize the problem of violence against women and children, since they include a finding that “[t]he promotion of responsible fatherhood must always recognize and promote the values of nonviolence”; include, within responsible fatherhood programs eligible for funding, those that “promote marriage” through “teaching on how to control aggressive behavior, and disseminating information on the causes of domestic violence and child abuse”; and, most strikingly, require that the nonprofit fatherhood organization selected to establish the National Clearinghouse for Responsible Fatherhood Programs must coordinate its media campaign with a “national, State, or local domestic violence program.”¹⁸⁵ Thus, the emphasis upon promoting marriage is ill advised if it pressures young women to accept partners whom they sensibly view as unsuitable and even dangerous.¹⁸⁶ The responsible fatherhood movement often makes claims about marriage as the optimal family form, the unique and irreplaceable contribution fathers make to children’s lives, and the serious social problems

182. S. 653 and H.R. 1300, § 5 (allocating \$2 million annually for 2002–2006 for establishing a national clearinghouse).

183. *Prepared Testimony of Jacqueline K. Payne, Esq. Policy Attorney NOW Legal Defense and Education Fund, Before the Senate Finance Committee Social Security and Family Policy Subcommittee: Fatherhood Legislation*, 106th Cong. (July 25, 2000), available at LEXIS, Individual Legal News Library, Federal News Service File.

184. *Id.*

185. S. 653 and H.R. 1300, §§ 2, 4-5.

186. See Kathryn Edin, *Few Good Men: Why Poor Mothers Don’t Marry or Remarry*, AM. PROSPECT, Jan. 3, 2000, at 26 (reporting the results of a study of low-income single mothers’ attitudes about marriage and what factors prevent them from marrying).

assumed to arise from father absence. These claims raise challenging empirical questions. As one recent article observed, “despite scholarly disagreement over the meaning of these concepts and the extent and consequences of father absence, these debates influence how the public, policy makers, and the research community frame various questions concerning fathers and families.”¹⁸⁷

On the other hand, to the extent that these responsible fatherhood efforts aim at facilitating marriage among people who actually wish to marry, but face barriers to doing so, these efforts might help to support families. To explain: if the imagery driving the PRWORA debate was of single women willfully procreating outside of marriage and without financial resources, the imagery underlying the responsible fatherhood efforts is of “fragile families” in need of support and protection. That is, legislators and policy analysts look at empirical studies indicating that most “single” mothers are actually, at the time of a child’s birth and for a few years after, in a relationship with the father and that the great majority of them view marriage as a likely possibility; however, several years later, few fathers are still involved.¹⁸⁸ It would certainly be useful to try to understand why those families do not stay together and, if they initially plan to marry, what obstacles prevent that. For example, some studies suggest that low-income men’s financial instability and poor employment prospects play a role,¹⁸⁹ and one goal of responsible fatherhood efforts is to enhance low-income men’s earning capacity so they are more successful in the labor market. Yet studies also suggest that such factors as low-income women’s distrust of men’s commitment and sex role expectations, and unequal distribution of power and responsibilities within marriage play a role in women’s resisting marriage.¹⁹⁰ If the idea of addressing obstacles to marriage could expand to include a look at those factors, then it might do some good.

Second, the promotion of responsible fatherhood would be valuable if it could bring about incremental changes in family

187. William Marsiglio et al., *Scholarship on Fatherhood in the 1990s and Beyond*, 62 J. MARRIAGE & FAM. 1173 (2000), available at 2000 WL 23509773.

188. See Rep. Nancy L. Johnson, *Q: Should Congress Fight Poverty by Promoting Marriage? Yes: We Now Know That Marriage Keeps Parents and Their Children Out of Poverty*, INSIGHT MAG., Dec. 13, 1999, at 40, available at 1999 WL 27692064 (relying on a study by Irwin Garfinkel and Sara McLanahan, described by them in Irwin Garfinkel & Sara McLanahan *Fragile Families and Child Well-Being: A Survey of New Parents*, 21 FOCUS 9, 9-10 (2000)).

189. Edin, *supra* note 186.

190. *Id.*; see also PATTERSON, *supra* note 100, at 76, 79 (discussing role of men’s sexist attitudes and infidelity in explaining low rates of marriage among African American men and women).

dynamics and work/family arrangements that would advance longstanding feminist goals for reform. As discussed above, the gendered care economy disproportionately burdens women. Two central feminist themes have been that women bear a disproportionate burden within families for caregiving and household labor and that current work/family arrangements devalue caregiving and are insufficiently supportive of parents' efforts to care for their children. The responsible fatherhood movement envisions that fathers not only should support their children financially, but also play an active role in their lives.¹⁹¹ To that end, some proponents of responsible fatherhood, including the recent Clinton-Gore administration, have sought "father-friendly workplaces" that would better allow fathers to play a role in their children's lives.¹⁹² Indeed, as noted above, in advocating responsible fatherhood, both recent presidential candidates extolled the role of father as the most important duty or job any man will ever have.¹⁹³ The proposed Responsible Fatherhood Act of 2001, for example, offers this definition: "Responsible fatherhood includes active participation in financial support and child care, as well as the formation and maintenance of a positive, healthy, and nonviolent relationship between father and child and a cooperative relationship between parents."¹⁹⁴ Finally, while some feminists may be skeptical about whether promoters of "responsible fatherhood" really seek any male role beyond breadwinner, some significant efforts in the field to promote responsible fatherhood among noncustodial fathers of children on welfare reveal a curriculum with a focus not only on fathers as providers, but also on fathers as caregivers, nurturers, meal preparers, and instructors in values.¹⁹⁵

191. BLANKENHORN, *supra* note 174, at 117, 124-47, 212-21.

192. *Vice President Gore Calls for "Father-Friendly" Workplaces*, *supra* note 176.

193. George W. Bush for President, *Governor Bush Addresses National Summit on Fatherhood: Promotes Texas Fatherhood Initiative* (June 2, 2000), at http://b75.upd.pitt.edu/election-2000/07042000/www.georgewbush.com/news/2000/june/pr060200_father.html; Gore 2000, *To Strengthen Families, Reduce Child Poverty, Promote Responsible Fatherhood: Al Gore Proposes Next Step in Welfare Reform: Help for Responsible Parents, Crackdown on Deadbeats* (1999), at http://b75.upd.pitt.edu/election2000/07042000/www.algore2000.com/briefingroom/releases/pr_10_2099_welfare_reform.html.

194. S. 654 and H.R. 1300, § 2(9).

195. See EILEEN HAYES & KAY SHERWOOD, MANPOWER DEMONSTRATION RESEARCH CORP., THE RESPONSIBLE FATHERHOOD CURRICULUM: A CURRICULUM DEVELOPED FOR THE PARENTS' FAIR SHARE DEMONSTRATION (2000), available at <http://www.mdrc.org/InPractice/FatherhoodCurriculum/FatherhoodContents.htm> (used over the years in peer support groups of the Parents' Fair Share Demonstration).

This sort of recognition of the value of fatherhood and of connecting with children seems to stand in stark contrast to the rhetoric several years ago that urged moving mothers away from their children and into the workplace so that they could have the dignity of a “real” job. To put the point dramatically, if phase one of welfare reform was moving mothers into the paid workplace, phase two is to move fathers more into the home. More, but not exclusively. That is, it is possible that promoting responsible fatherhood may encourage incremental movement away from the traditional male breadwinner/female caregiver model. But, as these efforts have unfolded so far, government is not seeking radical social change, which would encourage fathers to become full-time caregivers, while mothers are full-time breadwinners. The assumption appears to be that women must now handle parenting and market responsibilities, and so fathers must learn to do the same.

Similarly, it must be understood that the goal of getting fathers more involved in the home does not mean that governmental proponents of responsible fatherhood are promoting either a completely egalitarian division of household labor or an androgynous model of parenting (of the sort supported by some feminist theorists¹⁹⁶). To the contrary, proponents of responsible fatherhood often speak of fathers’ unique and irreplaceable contributions to children and resist any notion that mothers and fathers do the same thing.¹⁹⁷ To be fair, some organizations engaged in promoting responsible fatherhood are not wedded to this kind of gender ideology; if anything, they seek to educate fathers about the role of gender, race, and other stereotypes about parenting and manhood.¹⁹⁸ However, some groups within the social movement (such as Promise Keepers and the Nation of Islam) adhere to norms of male authority and leadership and female submission within the home, norms sharply at odds with such important principles of political morality as sex equality and the repudiation of a family governance model premised on male domination.¹⁹⁹ Thus, as governmental authorities seek to broaden “charitable choice”²⁰⁰ and to utilize it as a resource

196. OKIN, *supra* note 38, at 170-86.

197. BLANKENHORN, *supra* note 174, at 117-23.

198. HAYES & SHERWOOD, *supra* note 195.

199. Ellen Goodman, Editorial, *New Men? Really?*, BOSTON GLOBE, Oct. 30, 1995, at 79; Donna Minkowitz, *In the Name of the Father: Undercover in the Evangelical Men's Movement*, MS., Nov.-Dec. 1995, at 64-69.

200. This expansion of the 1996 “Charitable Choice” provision of PRWORA is an emerging, controversial, central theme in Bush’s new administration.

for promoting responsible fatherhood as the broader social movement, it is important to be attentive to possible clashes with such public principles.

If it were possible to push the rhetoric of responsible fatherhood in the direction of valuing caregiving by fathers *and* mothers, then perhaps attention to responsible fatherhood could engender broader efforts to foster the capacities of parents to be responsible caregivers and to help parents meet the often conflicting demands of market and household labor. But I think this is unlikely to occur until there is a more explicit focus upon the importance of caring for children as an end in itself, and not just—as is often the case in discussions about moving mothers from welfare to work—as an obstacle to successful market participation. One risk of the current rhetoric about responsible fatherhood is that it may assume that getting fathers more actively involved in their children's lives will eliminate the significant problem that many parents cannot find safe, affordable, quality substitute childcare for their children so that they can participate in the workplace and provide financial support for their children.

This brings me to a third and final point. If the calls to responsible fatherhood recognize the paramount role of father (or parent), what sort of responsibility does government have to support responsible fatherhood (and motherhood)? And what does “playing by the rules” mean in this context? Here, there are some striking and potentially encouraging rhetorical shifts from the discourse of the 1990s. As I discussed above, a central premise in the rhetoric surrounding PRWORA was that welfare recipients failed to play by the rules because they—unlike working families—expected public subsidies for their families. Both the responsible fatherhood movement and the policy discourse about implementing PRWORA make it apparent that this was an inaccurate statement of the social contract. Indeed, in contrast to the punitive rhetoric about illegitimacy surrounding PRWORA, legislators supporting responsible fatherhood legislation stress that their goal is not to condemn unwed fathers, but to offer resources to help them.²⁰¹ Thus, while “deadbeat dads” still draw condemnation, the rhetoric of responsible fatherhood speaks of empowering “dead broke” dads and of helping to enhance their earning potential and play a more active role in their children's lives.

201. Discussion of Fathers Count Act of 1999, CONG. REC. H11871 (daily ed. Nov. 10, 1999) (statement of Rep. Wynn), available at <http://thomas.loc.gov>.

This rhetorical shift is important. Yet, as studies find that most of the unwed, low income fathers at whom such facilitative efforts aim “are poorly equipped in terms of human capital to support a family” and “will need a lot of help if they are to maintain stable families,”²⁰² it forces the question of whether society will make this significant investment in human capital, even as it invites a dose of realism about promoting marriage as the solution to family poverty. Similarly, as some of the most heralded experiments in moving mothers formerly receiving welfare to paying jobs (such as Wisconsin Works) yield the result that “a substantial percentage of those who are employed [and their children] remain in poverty, and publicly financed programs” (such as childcare subsidies) are “essential to supporting” their employment, it forces society to confront just how seriously it takes the rhetoric of an emerging social contract of supporting “working families.”²⁰³ To be most useful in promoting care as a public value, however, this rhetoric needs to go further to recognize a proper governmental role not only in supporting “working families” but in supporting the work families do in social reproduction.

F. The Political Economy of Citizenship: Linking Responsibility and Resources in Poor Women's Lives

1. Learning from the Stories of Poor Mothers and Girls

It is striking, in reading some recent accounts of the lives of unmarried mothers—both poor, young mothers and older, better off mothers—what a crucial role resources play in their ability to be “good enough” mothers. Some of these resources are material, others are social. The narratives of the lives of the poor mothers included in Lisa Dodson’s *Don’t Call Us Out of Name* as well as in Melissa Ludtke’s *On Our Own*²⁰⁴ bring out the remarkable triumphs of will and determination that allow struggling families to thrive, often with the help of a committed grandparent, a teacher, or friend. These informal networks, however, can be quite fragile. These stories also convey the terrible human costs when families lack adequate resources: tales of children molested or neglected in childcare

202. Garfinkel & McLanahan, *supra* note 188, at 10 (summarizing Fragile Families and Child Well-Being Study).

203. DEP’T OF WORKFORCE DEV., AN EVALUATION: WISCONSIN WORKS (W-2) PROGRAM 85-86 (Apr. 2001); *id.* at 77 (concluding that the legislature must consider “how best to assist individuals who have entered the workforce but remain in poverty in becoming fully self-sufficient”).

204. LUDTKE, *supra* note 69; DODSON, *supra* note 1.

arrangements a mother thought were safe, but also tales of children suffering from the ignorance, indifference, neglect, and abuse of their own mothers, who simply cannot cope with responsibility without resources.²⁰⁵ It is here that the rhetoric about social reproduction as a valuable social contribution seems most strained and that the need for sensitive policy responses seems especially acute.

These narratives of poor mothers seem to raise at least two important points about resources and responsibility. The first is that, as Dodson's account details, early motherhood in conditions of poverty is hard labor in America, an extremely difficult job that can become impossible without certain material and social preconditions. When young mothers spoke about how their struggling families did manage to "move on" to less chaotic, safer, more financially and emotionally stable lives, such women noted the role played by work they did themselves, but also stressed the importance of outside help. Dodson reports: "Every single interview and group discussion enunciated clearly and with detail that you cannot move on, overcome problems, and seize onto new dreams if you cannot get some real opportunity and practical help, not rhetoric but tangible, adequate support."²⁰⁶ In other words, resources. It is also striking that, for these women, welfare was the antithesis of such support and seemed to thwart, rather than to foster opportunity.²⁰⁷ Similarly, Melissa Ludtke's study of adolescent unmarried mothers and older unmarried mothers stresses the importance of informal networks of support.²⁰⁸

In the literature about poor, young mothers, the relationship among resources, responsibility, and mothering is also present in a second, compelling way. This relates to what, in a feminist utopia, might be the social and material preconditions for responsible mothering and the role of motherhood in women's lives. Despite the hard labor of early motherhood, many young women view such motherhood as inevitable and attribute the lack of any other path, or options, as a factor that leads to becoming a young, poor mother. As one woman put it to Dodson, "What are you waiting for anyway? . . . Nothing's coming . . ." ²⁰⁹

205. See DODSON, *supra* note 1, at 114-46.

206. *Id.* at 150-51.

207. Most of Dodson's interviews seemed to predate the implementation of PRWORA.

208. LUDTKE, *supra* note 69, at 38-39, 218-19, 238-39.

209. DODSON, *supra* note 1, at 83.

Here republican rhetoric about self-government and citizenship seems both jarring and important. As so many studies of teen pregnancy and childbearing conclude, a significant factor in adolescent motherhood is the perception that there are no other opportunities (such as college education and a good job) and that having a baby now imposes few opportunity costs.²¹⁰ Dodson's study also illuminates that because poor girls are expected to engage in so much caregiving in their household, this may contribute to early motherhood in two ways: girls come to view getting a boyfriend as the only path to a different role and, since they are already engaging in caregiving, if they have their own baby, at least they will be caring for their own child. Often, both boyfriend and family support drop out of the picture, and such young mothers face a living situation that is unsafe, impoverished, and filled with hardships for mother and child. Dodson concludes:

The advice which I have received from these women and girls is clear. Low-income girls must be given the time and freedom away from family work if they are to "develop another picture of themselves" in the world. And that will only come about when the larger adult world, which controls the resources and has the power to choose, decides to choose to support the development of all youth. Until that time, low-income girls, and some boys too, will continue to shoulder the burdens of family care without money, without public support, and at the profound cost of attention to their own development.²¹¹

Would instantiating care as a public value lead to facilitating adolescent girls' early motherhood? Or would "care" also mean affording adolescents educational and employment opportunities so that parenthood is not "chosen" simply as the only option? Many of the girls and young women interviewed by Dodson stressed that "if there is somewhere else you truly believe you are going," then early motherhood is less likely.²¹² It almost appears that childbearing and, even more, repeated childbearing, are the default position because "what else is there?" But as some authors have concluded, "waiting" isn't really the solution either, because, if there is no concrete change in the material parameters of one's life, many poor women will never be able to afford to have children.²¹³ As welfare scholar Joel Handler

210. See, e.g., KRISTIN LUKER, *DUBIOUS CONCEPTIONS: THE POLITICS OF TEENAGE PREGNANCY* 116-17 (1996); LUDTKE, *supra* note 69, at 44-45, 417-18.

211. DODSON, *supra* note 1, at 215.

212. DODSON, *supra* note 1, at 103 (emphasis omitted); *id.* at 83-113.

213. LUKER, *supra* note 210, at 170-73; Christopher Jencks & Kathryn Edin, *Do Poor Women Have a Right to Bear Children?*, *AM. PROSPECT*, Winter 1995, at 43.

points out, even many young women who finish high school are unlikely to hold “good jobs,” and for women who do not, the prospects are even worse.²¹⁴

Of course, a heavier investment in human capital can make a difference, which supports the idea of helping young women by affording them opportunity. It is striking that, once a young woman has a child, pursuing college education has a dramatic effect on improving her economic and employment prospects and also on delaying any subsequent births until she has more resources and regards herself as better situated.²¹⁵ Similarly, young mothers with access to comprehensive services, including quality childcare, are far more likely to pursue such education than young mothers without them.²¹⁶ Love for children is often a powerful factor in a mother’s pursuit of such education. Of course, young mothers trying to obtain higher education face daunting challenges, including childcare problems (and including the mother’s own fear that her children will feel deserted).²¹⁷ Subsequent births soon after a first birth may make it significantly harder for a young mother to escape poverty. I view these policy issues about early motherhood as important and difficult if one talks about children as a public good, care as a public value, or social reproduction as a valuable social contribution. The problem, in part, is baselines. I have argued that government’s proper concern for families should be not with form but with functions they are expected to fulfill in society. Yet without some accompanying notion of public responsibility to foster the capacity to fulfill those functions or to address economic inequality, then we are left with the myth of individual self-sufficiency or the idea that people with fewer resources don’t deserve to have children. At the same time, if childbearing is “adaptive” under a set of circumstances of economic deprivation, educational inequity, and life scripts shaped by constrained circumstances, then this is not ideal, either.

Taking seriously the idea of a formative project, or of public responsibility to foster the political economy of citizenship, which would also include “care” as a component of that project, would result in some of these situations looking very different. That is, young girls would less frequently believe that going to college or

214. Handler, *supra* note 63, at 6-7.

215. LUDTKE, *supra* note 69, at 173.

216. *Id.*

217. *Id.* at 175-76, 234-35.

securing a good job was out of their reach, or that the only path to meaningful participation in their community or in the broader polity was as a mother. I do not want to denigrate young girls' passion to be mothers (a passion that is often untethered to any realistic sense of the responsibilities and burdens of mothering), but I advocate public policies that attempt to help them be responsible and self-governing citizens. My argument is that public policy should focus on helping girls—and boys—have other options, in other words, changing their opportunity structure. This argument is consistent not only with the conclusions of many feminist scholars assessing “the politics of pregnancy,”²¹⁸ but also with the ongoing National Campaign to Prevent Teen Pregnancy.²¹⁹ Feminist and other work on adolescent sexuality also makes it clear that changing the opportunity structure also requires challenging (e.g., through education and cultural counter-programming) cultural models of male sexual entitlement and female responsibility to accommodate raging male sexual desire,²²⁰ as well as challenging our “hypersexualized media and marketplace.”²²¹ Finally, some recent studies on preventing teen pregnancy suggest the important role not only of close parental and family relationships, but also of neighborhood organizations and schools in helping to form a more supportive environment that will help girls foster their capacities and pursue their goals.²²²

Presenting more difficult issues, in terms of any concrete social policy, is familial drafting of girls (disproportionately to boys) into caregiving, to the point where that familial drafting exacts costs on

218. THE POLITICS OF PREGNANCY: ADOLESCENT SEXUALITY AND PUBLIC POLICY (Annette Lawson & Deborah L. Rhode eds., 1993).

219. See, e.g., DOUGLAS KIRBY, NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY, NO EASY ANSWERS: RESEARCH FINDINGS ON PROGRAMS TO REDUCE TEEN PREGNANCY: SUMMARY 11-12 (1997) (“Several trends suggest that improving young women’s education and life options reduces their pregnancy and birth rates. . . . Some professionals working with youths believe that one of the most promising approaches to reducing teen pregnancy is to improve educational and career opportunities for youths, as well as their belief in their own futures.”).

220. DODSON, *supra* note 1, at 54-82; Tracy E. Higgins & Deborah L. Tolman, *Law, Cultural Media[ti]on, and Desire in the Lives of Adolescent Girls*, in FEMINISM, MEDIA, AND THE LAW 177, 177-82 (Martha Fineman & Martha McCluskey eds., 1996); Michelle Fine, *Sexuality, Schooling, and Adolescent Females: The Missing Discourse of Desire*, 58 HARV. EDUC. REV. 29, 30-31, 34, 42-43 (1988). For a helpful discussion of the many societal factors constraining adolescent females’ sense of self and of sexual agency, see Michelle Oberman, *Turning Girls into Women: Re-Evaluating Modern Statutory Rape Law*, 85 J. CRIM. L. & CRIMINOLOGY 15 (1994).

221. See BARBARA DAFOE WHITEHEAD & THEODORA OOMS, NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY, GOODBYE TO GIRLHOOD: WHAT’S TROUBLING GIRLS AND WHAT WE CAN DO ABOUT IT 11 (1999).

222. *Id.* at 20-25.

their self-development (as discussed above).²²³ It would be heavy-handed and intrusive to prohibit families from drafting daughters for such labor or from inculcating in daughters some notion of the “sacred” role of mother and of the need to learn early how to discharge such a role. At the same time, given that this conscription of girls directly stems from treating care as a “private,” family responsibility, so that overburdened mothers turn to daughters in the absence of any other sources of help, then a more robust structure of publicly-supported care, as well as of various groupings within civil society giving care, could influence social practices and take some of this burden off the shoulders of daughters.

With these sorts of institutional and cultural changes, who knows what part motherhood, or its ideal timing, might play in girls’ and women’s self-conception? In some illuminating recent studies of unmarried motherhood among adolescent females and older women, there is a striking theme that each group is pursuing a rational reproductive strategy, given its perceptions of opportunity structure and costs, which include, obviously, the lack of a robust public value of care or institutional support for combining motherhood and market labor.²²⁴ This can lead young women without many resources to become mothers at a time when they think they can still enlist the resource of family support. If a future of “bad jobs” and poverty awaits them, having a child when those resources are available may seem a better strategy. Conversely, women with more initial advantages often delay childbearing until they can achieve enough success in their career so that motherhood does not threaten job security and amass the resources that they think are necessary to support a child.²²⁵ I find it striking that older women, who delayed childbearing for reasons of career or the lack of the right relationship, often experience a keen passion to be mothers and go to extraordinary lengths, often with a commitment of substantial resources (in terms of assisted reproduction technology, adoption proceedings, etc.) to do so.²²⁶ What impact might accepting more public responsibility for children’s development and restructuring

223. See *supra* Part II.C.

224. See LUKER, *supra* note 210, at 170 (“[T]he birth patterns of poor and affluent women in the United States have begun to bifurcate, as each group tries to come to terms with the difficulties of having children in a country that provides so little support.”); LUDTKE, *supra* note 69.

225. LUKER, *supra* note 210, at 170-74; LUDTKE, *supra* note 69, at 117.

226. LUDTKE, *supra* note 69, at 102-61.

institutions of civil society to better discharge that responsibility have on these two “adaptive” strategies?

CONCLUSION

In this Article, I have argued for recognizing and promoting care as a public value. This value should inform public deliberation about the meaning of personal responsibility and about the interplay of personal and public responsibility for social reproduction. Providing children the nurture and care that they need to develop their capacities to live successful lives and be good citizens is a vital component of social reproduction. In this Article, I have marshaled theoretical resources from feminist, liberal, and civic republican theory to ground the idea of care as a public value, the indispensable role of care in fostering persons’ capacities for democratic and personal self-government, and the responsibility of government to instantiate this public value as a component of its formative project of fostering human capacities.

Family policy and the next phase of welfare reform offer important opportunities to reflect on the social contract and to think creatively about institutional arrangements that would recognize and support care as a public value and move the United States closer to a new caregiving order. There is growing recognition that problems of affordability, availability, and quality of childcare pose a serious obstacle for low-income workers, for whom the care crisis is the most acute, and that this care crisis imposes costs on society. I have highlighted that the care crisis has hidden costs that fall disproportionately on women and girls. Contemporary political rhetoric about “supporting working families” and “strengthening families” reflects an important rhetorical shift from the welfare debates of the 1990s, in which responsible parents were those who provided for their children with no expectation of outside help.

The emerging social contract of supporting working families includes an appropriate governmental role in helping families who attempt to provide for their children. This is a promising beginning, but I have urged that family policy and welfare policy should focus in a more sustained way upon the role of care in fostering human and social capital, and recognize and support the important “work” parents and other caregivers do in nurturing and rearing children. Glimmerings of this shift may be found in current political rhetoric about parenting as an important “job” and in arguments that

measures of the success of welfare reform must look not only at caseload reductions but also at family well-being. Ironically, although caution about the emphasis upon marriage in current bipartisan proposals to promote “responsible fatherhood” is in order, such proposals may hold the potential to increase men’s involvement in nurturing children, thereby legitimating the nurturing of children as an important dimension of personal responsibility and incrementally changing the gendered care economy. “Responsible fatherhood” may also be an important test case for the new social contract, and how much society is willing to invest in facilitating parents’ abilities to be successful in combining both market participation and family labor. Finally, I have suggested that a commitment to the idea of public responsibility to foster the political economy of citizenship would aid reflection upon the social and material preconditions for responsible mothering and the role of motherhood in women’s lives.

