

Inevitable Dependencies: A Comment On Martha A. Fineman, *The Neutered Mother, The Sexual Family, And Other Twentieth Century Tragedies*
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ABSTRACT (ABSTRACT)

Fineman challenges the cultural associations of dependency from the outset by preceding it with the word inevitable. Inevitable dependency describes the way in which periods of intense and (in the short term) unreciprocal need are embedded in human existence, i.e., the status of the need for caretaking embodied in the young, many of the elderly and disabled, as well as the ill. 5 Few in our culture could deny the appropriateness, indeed the nobility, of all of these forms of dependency and the caretaking they require. Likewise, the role of government in facilitating the meeting of these needs, which Fineman calls derivative dependency, 6 has been grudgingly conceded by most conservatives since the Eisenhower era. Making sure that the young get raised and educated, that disabled and elderly adults are not left to fend for themselves, were recognized as challenges meriting government intervention well before the triumph of welfarism, or even liberalism itself. 7 It is possible that urban societies can survive prolonged periods in which these functions are in crisis, but at least in the modern industrialized West, decreasing tolerances for disorder have led to policies aimed at making sure that the vast bulk of the population is able to manage its dependencies. 8

The crisis of youth violence has frequently been blamed on the demoralizing influence of welfare and the culture of poverty. From this perspective, institutionalized dependency is the problem. The rising prominence of this view contrasts sharply with the received wisdom of social policy for much of the 20th century, which linked the problems of juvenile crime to the pathologies of industrial society. The juvenile court was invented to institutionally address the new forms of dependency that urban life was creating for youth. The juvenile court spread from one state in 1899 to all but three by 1917, making it one of the most rapidly developed legal institutions in American history. 29 The court, with its legal justification of *parens patriae* (or parent of the nation), recognized the government's obligation to address the growing gap between youth needs and the capacity of private caretaking in modern societies. 30 Its major supporters were leading feminists among the Progressive era reformers, including Jane Addams and Julia Lathrop. Indeed, one of the leading historians of the juvenile court describes its origins as maternal justice. 31 For all its naive optimism, this vision constituted a recognition of the way modern society had expanded the space of child dependency by removing children from the labor force and ghettoizing them in youth environments like schools, where their interactions could be defined as problems for new professions like social work, educational psychology, and juvenile justice. 32

Elsewhere I have argued that it is time to renew the tradition of middle range theory by developing a variety of postmodern (and thus inevitably post-Merton) middle range research practices. 53 These research practices might be called postmodern in several senses. First, they confront the implications of constructivist epistemology, i.e., the recognition that the interpretive and the ideological run through in even the hardest features of social life. The modern sociological tradition has generally taken terms like society, nation, and class as essentially unproblematic parameters for analysis.

INEVITABLE DEPENDENCIES: A COMMENT ON MARTHA A. FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES

THE INEVITABLE DEPENDENCIES OF POLITICS

We already know what the sound byte version of this book 1 will be. Martha Fineman wants to outlaw the nuclear family. Martha Fineman would define fatherhood out of legal existence. Martha Fineman would create a legal obligation for taxpayers to subsidize mothers and their illegitimate children. Indeed, the arguments in this book stand in rather stark contradiction to what we are constantly assured is the consensus of our time. That Dan Quayle was right. 2 That the patriarchal family must be strengthened. That illegitimacy is a major causal force in the social and economic decline of the United States. What the sound bytes will miss, unfortunately, is perhaps the most radical element of Fineman's analysis, her discussion of dependency. 3

1 Martha Albertson Fineman, *The Neutered Mother, the Sexual Family, and Other Twentieth Century Tragedies* (1995). 2 Barbara Dafoe Whitehead, Dan Quayle was Right, *The Atlantic*, Apr. 1993, at 47. Radical not because it speaks from far away on the edges of some political spectrum, but radical because it speaks from so close to where Americans all over that spectrum imagine themselves to dwell.

The Politics of Dependency

It is clear that dependency is a particularly bad term these days. A broad swath of mainstream opinion insists that America's malaise stems in no small part from its dependence on drugs, on welfare, on borrowed capital, on big government solutions to social problems. This, of course, is hardly a new invention of the present age. You do not have to look very deeply to discover that independent is an important thing to be in this culture and has been for a long time. At the same time, advanced industrial societies (including this one) have been experiencing a deepening crisis in the legitimacy of most forms of dependence for at least the last thirty years. Attacked by forces on the left, as well as on the right, it has become harder and harder to exercise power over people in the name of caring for them and others, institutionalized in families, schools, prisons, and welfare systems. 4 The struggles within each institutional setting have been driven by their own highly specific motives (many of them ones with which this author sympathizes). At its broadest this has been deemed a crisis of the legitimacy of government, see Jurgen Habermas, *Legitimation Crisis* (Thomas McCarthy trans., 1975).

Fineman challenges the cultural associations of dependency from the outset by preceding it with the word inevitable. Inevitable dependency describes the way in which periods of intense and (in the short term) unreciprocal need are embedded in human existence, i.e., the status of the need for caretaking embodied in the young, many of the elderly and disabled, as well as the ill. 5 Few in our culture could deny the appropriateness, indeed the nobility, of all of these forms of dependency and the caretaking they require. Likewise, the role of government in facilitating the meeting of these needs, which Fineman calls derivative dependency, 6 has been grudgingly conceded by most conservatives since the Eisenhower era. Making sure that the young get raised and educated, that disabled and elderly adults are not left to fend for themselves, were recognized as challenges meriting government intervention well before the triumph of welfarism, or even liberalism itself. 7 It is possible that urban societies can survive prolonged periods in which these functions are in crisis, but at least in the modern industrialized West, decreasing tolerances for disorder have led to policies aimed at making sure that the vast bulk of the population is able to manage its dependencies. 8 Fineman, *supra* note 1, at 8.

One might also add forms of dependency that are made inevitable by the modernization process, which has rendered people far less capable of assuring the reproduction of society through local processes. Such dependencies include physical disabilities brought on by accidents with technology (either while producing or consuming it), pollution, as well as functional disability through unemployment, crime, and other social pathologies.

Id.

Michel Foucault, *Governmentality*, in *The Foucault Effect: Studies in Governmentality: With Two Lectures By and An Interview with Michel Foucault* 87 (Graham Burchell et al. eds., 1991).

For discussions of the growing taste for order in American cities, see Roger Lane, *Violent Death in the City: Suicide, Accident, and Murder in Nineteenth-Century Philadelphia* (1979); Eric H. Monkmon, *America Becomes Urban: The Development of U.S. Cities and Towns, 1780-1980* (1988).

In American political culture the preferred mode of assuring the management of dependencies has been through quasi-private networks of insurance, mortgage loans, and consumer credit, bolstered by a quasi-public system of tax deductions, legal immunities (like insurance from anti-trust law), and sometimes monetary policy. Where those fail, we much less generously address dependencies through various forms of income transfer from tax revenues.

But to a degree unique among modernized societies the United States has also experienced a cultural loathing for dependency, born long before the birth of the republic and still surviving. It is the Declaration of Independence, after all. During and after the Revolution, the stigma associated with dependence on King George, and on Great Britain, could hardly be kept from influencing social practices. This stigma raised the level of criticism of the family, slavery, and the estate of women. 9 Succeeding generations have renewed this line of attack, including the Radical Republicans in the 1860s, the conservative business elite in the Gilded Age, and more recently the civil rights struggle, the counter-culture, feminism, etc. These moments have in common not the internal coherence of an ideological code, but instead a rhetoric rich in the language and images of anti-dependency. Rather than a sign system that determines what Americans can believe or desire, anti-dependency ideology in this sense is an enabling resource that makes it possible to do certain kinds of political work much more easily than others, one of which has been dismantling policies that address inevitable dependency.

Gordon S. Wood, *The Radicalism of the American Revolution* (1992).

Caretaking as a primary social function might take different forms in imaginable cultures. In the predominant cultures within the United States (primarily European) and in most of the less dominant ones, caretaking is gendered. The dominant cultural picture of caretaker is of Mother. Acknowledging the risk that some will read her as an essentialist, Fineman chooses to use that very term to describe the general role of caretaking. That risk is worth taking because the opposite risk, of ignoring the historic gendering of caretaking relationships, is greater still. It may be liberating to be reminded that social roles are not determined by biology or natural law, but it does not mean we can simply wish or word the gendering of our culture away.

It would be possible to describe caretaking in the language of functionalist social science, but by referring to all caretakers as Mother, Fineman makes sure that we cannot avoid appreciating the ways in which the larger subordination of women in our culture has added to the vulnerability of Mother. Even for elite caretakers, the cultural stigma of dependency and its gendering means that receiving facilitation from institutions becomes problematic. At the same time, Mother reminds us that the powerful cultural associations linked to the caretaking of inevitable dependency provide opportunities to empower women that should not be suppressed in the name of a gender-blind society that does not exist. Nor should a gender-blind term be used to affirm an argument for the social construction of gender identities which does not need its support. This ambiguous status of Mother is embedded in laws which amplify and reproduce it. Mother is a location highly marked out and charged by laws which accord it significant recognition, but only under conditions set by the requirements of patriarchal ideology, primarily Mother's linkage to the male dominated sexual family.

This means Mother is a very dangerous formation to bring into play:

In its various configurations, Mother is a pivotal factor in defining our understanding of our own familial, sexual, and social circumstances. In this way, Mother is also significant in our construction of universal meanings, defining the general qualities of life for us. Mother is an ambiguous symbol--one about which there is social and cultural contest. For that reason, focusing on Mother may be considered too dangerous: Mother is neither fixed nor containable. 10 10 Fineman, *supra* note 1, at 72. The political complexity of raising Mother is well illustrated by the on-going attack on welfare mothers. Welfare in this context refers to the social programs that support caretaking among the poor, primarily poor women and their children, who receive cash assistance and a variety of services and goods from federal and state programs like AFDC and Food Stamps. Welfare combines multiple layers of dependency. First, it recognizes the dependency of children on parents (mostly mothers). Second, welfare acknowledges the dependency of some mothers on the government (and here racist ideology has been particularly key in picturing the African-American mother as the welfare mother).

Ultimately, welfare also admits the dependency of state governments on the federal government. Opposition to welfare as a political issue benefits from the ease with which anti-dependency ideology can attach at any and all of these levels. To justify dismantling the legal and financial support for this caretaking, Mother must be discredited by her association with the word welfare. Mother as the

caretaker of inevitable dependency is dangerous to attack straight on. No doubt part of the explanation for how welfare has been delegitimized is attributable to race ideology in the United States. 11 Fineman's analysis of the rhetoric of the welfare debate shows that the recent popularity of reforms aimed at encouraging work and establishing paternity are operating against an image of deviant motherhood. This deviance is defined by patriarchal ideology in contrast to caretaking in the context of a father- dominated household. 12

11 Id. at 107.

12 Id. at 112.

Fear of what mothers would do to their children and to society if they were allowed to support themselves and their children outside of such discipline has been a central theme in the political imagination for decades now. Exemplary among these ideas is the misogynist work of Philip Wylie, whose book *Generation of Vipers* was first published in 1942 and went through multiple printings throughout the late 1960s. 13 Wylie attributed many of the nation's problems to the increased political power of mothers, a condition he termed momism.

13 Philip Wylie, *Generation of Vipers* (1942).

Meanwhile, megaloid momworship has got completely out of hand. Our land, subjectively mapped, would have more silver cords and apron strings crisscrossing it than railroads and telephone wires. Mom is everywhere and everything and damned near everybody, and from her depends all the rest of the U.S. Disguised as good old mom, dear old mom, sweet old mom, your loving mom, and so on, she is the bride at every funeral and the corpse at every wedding. 14

14 Id. at 185.

The current mainstream consensus on welfare reform stresses connecting children to fathers, and mothers to the labor market. 15 Increased enforcement of child support payments promises to decrease the state's fiscal burden (speculative) and presumably to create incentives for fathers to reassert themselves in the caretaking of their children (even more speculative). Another reform strategy is to force welfare recipients into the workforce where, it is widely assumed, they will be subject to the disciplines and normative influence of mainstream society. This replaces the direct reinsertion of the father with the more abstracted force of the name of the father as embodied in the world of business and responsibility.

For a summary of the basic positions, see Mickey Kaus, *They Blew It!: Welfare Reform, Clinton and the Future*, *The New Republic*, Dec. 5, 1994, at 14.

The new Republican majority in the House has now pushed the reform debate in an even more extreme direction than the programs and proposals that Fineman analyzes in her book, but they further confirm her cultural and ideological insights. 16 Maternal deviancy is intensified in the mother who not only goes about caretaking within abnormal contexts, but actually manipulates the inevitable dependency of childhood to advance her own less than inevitable dependency on the government. Republican proposals have a decidedly more coercive quality, aimed at eliminating the fact of single motherhood by directly discouraging pregnancy and threatening to take children away from the youngest single mothers. 17

Fineman, *supra* note 1, at 110-18.

See Kaus, *supra* note 15 (describing the infamous orphanage solution bandied about by triumphant House Republicans in December of 1994).

What is left of a liberal stand on welfare generally argues that the social problems of the poor are mainly to be blamed on the conditions of the economy. The view propounded by most academic experts attributes existence of a long-term, welfare-receiving population to de-industrialization, which has stripped many unskilled jobs from the inner cities, and to a spatial mismatch between the location of entry level jobs and concentrations of the urban poor. 18 Fineman's revisioning of family law would leap over this analysis. By arguing that the law should provide direct legal recognition of Mother independent of the sexual bond between adults (which should be protected from state interference but not accorded state institutional support, at least not at the expense of caretaking inevitable

dependencies), Fineman provides a basis on which to reconfigure the entire debate over issues like welfare. The current institutions would almost certainly be under attack, but primarily for their failure to create adequate support for Mother.

William Julius Wilson, *The Truly Disadvantaged: The Inner City, The Underclass, and Public Policy* (1987); John D. Kasarda, *Jobs, Migration, and Emerging Urban Mismatches*, in *Urban Change and Poverty* 148 (Michael G.H. McGeary & Laurence E. Lynn, Jr., eds., 1988).

Welfare Sons

Mother as functional social practice and Mother as gendered archetype come together in Fineman's analysis so that we can recognize that the effects of social and legal change on Mother are not limited to poor and minority women. Because inevitable dependencies are so crucial to the maintenance of the social order, the vicissitudes of Mother are of tremendous consequence for most other relationships. Thus the failure to institutionally support Mother has potentially disastrous effects for those that depend on Mother and others who form partnerships with her. Men, as partners and sons of Mothers (as well as potentially Mothers themselves) have much at stake.

The current cultural weakness of Mother is reflected in another social problem which has been frequently identified as the flip side of the welfare Mother problem, the crisis of young males growing up in America's zones of hardened urban poverty (what we used to call Ghettos). The criminalization and criminal victimization of these youth over the last half-century together represent one of the most dramatic examples of the deterioration of the civil status of a citizen population in U.S. history (words like genocide are not as inappropriate here as one might hope). Crime, especially violent crime among African-American youth, has reached a truly horrific level in recent years. 19 The odds of dying violently if you are a young African-American male are more than ten times the rate for young White males. 20 Approximately one out of every thousand young African-American males in the United States (between the ages of 14-17) was convicted of a criminal homicide or its juvenile equivalent in 1991. 21 Most of this violence is being perpetrated by people who are demographically the same as their victims. 22 In many respects our current obsession with crime in the United States is almost a purely ideological reaction with little to support it in the statistics. While crime rates in the United States remain high as compared with the experience of other industrialized societies and with our own experience before 1960, they are no higher now than they were twenty years ago and in many crime categories, the numbers are considerably better than they were a decade ago.

U.S. Dep't of Justice, *Criminal Victimization in the United States, 1973-92 Trends* 1-4 (1993).

Bureau of Justice Statistics, *Sourcebook of Criminal Justice Statistics* 385 (Kathleen Majure et al. eds., 1992). 21 *Id.* at 392.

Id.

The toll this cycle of escalating violence has taken on young African-American males and their communities has been matched in a very real sense by the grasp of an expansive justice juggernaut 23 which has committed itself to punitive responses. It is not an exaggeration to say that the criminal justice system has become the main institutional space to which a large percentage of underclass youth are now condemned. An analysis conducted in the late 1980s showed that one in four young African-American men were in the custody of the criminal justice system. 24 When large cities are singled out the figure is closer to one in two. 25

Diana Gordon, *Justice Juggernaut: Fighting Street Crime, Controlling Citizens* (1991).

Marc Mauer, *Young Black Men and the Criminal Justice System: A Growing National Problem* (1990). 25 See William Raspberry, *The Making of Certified Criminals*, *Wash. Post*, Dec. 20, 1992, at A19.

It is controversial to talk about the meaning of the massive relationship between crime, punishment, and minority youth in America. One way to finesse this difficulty is to focus on discrimination. The evidence of a historic pattern of dual justice systems for Blacks and Whites in most parts of the country is overwhelming. 26 Despite intensive efforts to limit discretion in the assignment of punishments, and despite a wealth of high quality research on sentencing over the last ten years, few

criminologists are prepared to find that the roots and branches of the dual system have been eradicated. 27

Daniel E. Georges-Abeyie, *Race, Ethnicity, and the Spatial Dynamic: Toward a Realistic Study of Black Crime, Crime Victimization, and Criminal Justice Processing of Blacks*, 16:4 *Social Justice* 35 (1989); Coramae Richey Mann, *Unequal Justice: A Question of Color* (1993); Marjorie S. Zatz, *The Changing Forms of Racial/Ethnic Biases in Sentencing*, 24 *J. of Res. in Crime and Delinq.* 69 (1987); Patrick Horan et al., *Prior Record and Court Processes: The Role of Latent Theory in Criminology Research*, 67 *Sociology and Soc. Res.* 40 (1982); Marjorie S. Zatz, *Race, Ethnicity, and Determinate Sentencing*, 22 *Criminology* 147 (1984); Marjorie S. Zatz & John Hagan, *Crime, Time and Punishment: An Exploration of Selection Bias in Sentencing Research*, 1 *J. of Quantitative Criminology* 103 (1985).

For the most sophisticated study to suggest that there has been improvement but that discrimination probably remains, see Stephen Klein et al., *Race and Imprisonment Decisions in California*, 247 *Sci.* 812 (1990).

In some way evidence of discrimination would be oddly comforting. We know a little something at this point, about how to use government to police discrimination. 28 It is more disturbing to think about the accumulation of young minority men in the criminal justice system even without discrimination. Imagine that discrimination accounts for half of the African-American men in the custody of the criminal justice system (which is likely to be an overstatement). We would still be condemning a quarter of the men in a community to a lifetime of membership in a separate political society with different living standards and different rules of government. Most people in prison or on parole or probation are not protected by the Fourth and Fifth Amendments as ordinary citizens. For too many, periods of criminal justice custody run into each other, creating a semi-permanent deprivation of legal rights. Even when custody has ended, those convicted of a felony may find themselves deprived of suffrage.

Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (1991).

The crisis of youth violence has frequently been blamed on the demoralizing influence of welfare and the culture of poverty. From this perspective, institutionalized dependency is the problem. The rising prominence of this view contrasts sharply with the received wisdom of social policy for much of the 20th century, which linked the problems of juvenile crime to the pathologies of industrial society. The juvenile court was invented to institutionally address the new forms of dependency that urban life was creating for youth. The juvenile court spread from one state in 1899 to all but three by 1917, making it one of the most rapidly developed legal institutions in American history. 29 The court, with its legal justification of *parens patriae* (or parent of the nation), recognized the government's obligation to address the growing gap between youth needs and the capacity of private caretaking in modern societies. 30 Its major supporters were leading feminists among the Progressive era reformers, including Jane Addams and Julia Lathrop. Indeed, one of the leading historians of the juvenile court describes its origins as maternal justice. 31 For all its naive optimism, this vision constituted a recognition of the way modern society had expanded the space of child dependency by removing children from the labor force and ghettoizing them in youth environments like schools, where their interactions could be defined as problems for new professions like social work, educational psychology, and juvenile justice. 32

Anthony M. Platt, *The Child Savers: The Invention of Delinquency* 10 (2d ed. 1977); David J. Rothman, *Conscience and Convenience: The Asylum and its Alternatives in Progressive America* 207 (1980).

The legal theory of the juvenile court is discussed at greater length in Jonathan Simon, *Power Without Parents: Juvenile Justice in a Postmodern Society*, 16 *Cardozo L. Rev.* 2501 (1995).

Platt, *supra* note 29, at 75-100.

The youth social control problems of the urban poor are also found in their more privileged brethren but are masked by the quality of the detention centers we have set up for them and called colleges. For a description of the delinquent aspects of undergraduate life, see Helen L. Horowitz, *Campus Life: Undergraduate Cultures from the End of the Eighteenth Century to the Present* (1987).

The hubris of the juvenile court often led to petty and not so petty tyrannies. 33 Scientific expertise about child development was often used as a cover for class and ethnic prejudices. 34 In response, the liberal Warren Court led the charge in delegitimizing the juvenile court in the 1960s in the name of individual rights for juvenile defendants. Federal policy in the 1970s followed this lead by encouraging states to reduce the jurisdiction of the courts. In more recent years that jurisdiction has been further reduced by placing juveniles accused of violent crimes directly into adult courts. 35 The facts of *In re Gault*, 387 U.S. 1 (1967), are exemplary. 34 Platt, *supra* note 29, at xx-xxii. See Cynthia R. Noon, *Waiving Good-bye to Juvenile Defendants: Getting Tough vs. Getting Smart*, ___ U. Miami. L. Rev. ___ (1995) (forthcoming).

For more than thirty years now, an unintended coalition of left and right political movements has stripped much of the legitimacy from the overtly paternalistic and maternalistic foundations of juvenile justice. 36 Instead, with little disagreement among the political parties and virtually no public debate, we have engaged in a massive strategy of incarcerating poor youth, an urban policy that has cost America more tax dollars than Lyndon Johnson could have dreamed of spending on the poor. The protection of juvenile status for many young offenders has been severely cut back in many states as fourteen and fifteen-year olds are moved directly to adult court, where they face terms as severe as life without parole. 37

See Martin L. Forst & Martha-Elin Blomquist, *Cracking Down on Juveniles: The Changing Ideology of Youth Corrections*, 5 Notre Dame J.L. Ethics & Pub. Pol'y 323 (1991).

Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. Rev. 821, 842-47 (1988).

Ironically, the juvenile court is being marginalized at the very moment that the young generation is experiencing just the sort of social disorganization that the Court's promoters bewailed. This young generation is being abandoned to lives of criminalization and criminal victimization due to a lack of real institutional links to the mainstream of economic and social opportunities. The condemnation of minority youth to lives of incarceration and criminalization is a product, in large part, of anti-dependency ideology and the cultural struggle against Mother. 38 The explosive growth of incarceration has been accompanied by an explicitly patriarchal ideology that decries the supposed permissiveness and leniency of social policy toward the young urban poor in the 1960s and 1970s. 39 The popularity of recent penal programs like curfews and boot-camps for young offenders seem to promise that the state will forcibly reassert the power of the father to control and discipline the sons of the urban poor.

The decline of the juvenile court, or really its restructuring into a more punitive instrument, has been driven by a number of factors including the increasing minority make-up of the system, the politicization of crime policy and the shifting cultural image of adolescence. Ideology plays a role that is rarely determinative but always can be discerned after the fact, in the moves of the victors. See generally Simon, *supra* note 30, for a discussion of the evidence. See e.g., James Q. Wilson, *Thinking About Crime* (2d ed. 1986).

We are facing a broad-based crisis of parenting in which some children lose parents to an economy that increasingly demands high-skilled labor, and in which others lose parents to the illicit, underground economy of drugs and violence. Moral panics about sexually perverse day-care workers and video games mask a profound quiescence in the face of major reductions in the quality of childhood for individuals in all classes. 40 Poor mothers and their children are simply the preferred targets (for reasons of class and race) for a much more general cultural repudiation of caretaking responsibilities.

Laura Shapiro et al., *Rush to Judgment*, *Newsweek*, Apr. 19, 1993, at 54.

Strengthening Mother

According to Fineman's legal genealogy of Mother, the development of modern domestic law has entrapped Mother within the structure of a formally egalitarian heterosexual dyad between a man and

a woman to which children are attached in the problematic ways that preoccupy a good deal of family law. 41 The current political struggle is oriented around the issue of how far to broaden the boundaries of this sexual family. 42 Should it include gay men and lesbian women? How should we work the relationship of children into the complex set of broken sexual families that serial monogamy often means? Fineman's proposal would reorient the whole structure of law around the axis of the Mother-Caretaker and the Child-inevitable dependent. The legal protection of the state would advantage whomever undertook with appropriate commitment to be Mother and accept responsibility for a broad range of inevitable dependencies. 43

Fineman, *supra* note 1, at 74.

Id. at 4.

43 *Id.* at 234.

Fineman's analysis of the vicissitudes of Mother in our culture is timely not only because its predictions about the politics involving single mothers are so rapidly proving true, but also because of its robust practical applicability. Her legal genealogy of Mother and her re-visioning of the family are not tied to any particular reform strategy. They do not address any one branch or level of government. Nor are their essential appeals tied strongly to any particular political ideology. Because Mother and the Sexual Couple are such deeply embedded formations in our culture, the call to strengthen Mother has implications which move the discussion beyond any type of political, religious, or gender-related dividing line. This is especially attractive now when even questions of where policy will be made, let alone what policy will be made, is in spin. If the center of law and government shifts back to the states, or into private law altogether, new kinds of arguments and alliances are going to have to be made. Although Fineman focuses on law as a central field in which Mother is constructed and reconstructed, her analysis does not assume a specific path for legal change or even insist that a transformation in the position of Mother must come from law. Her scholarship has no set interlocutor. If her proposed legal changes are utopian because they are not likely to be adopted by legislatures or courts (any time soon) this does not mean that they will not shape arguments that can be taken seriously in both arenas. On the contrary, by illuminating Mother in American law and politics, Fineman opens up the possibility of many different engagements within the political field.

Democratic societies have always struggled with a paradox. The key to establishing a population capable of self-government, i.e., one which rules itself through democratic forms, is to establish and maintain practices which subject individuals to a government of the self, i.e., to the exercise of power over the self. This problem was already evident to monarchical critics of Parliament during the British Civil War. How can a society be said to have consented to anything when its very being is constantly shifting, and when examples abound of those incapable of governing themselves in the affairs of life?

44 Liberals like John Locke ducked the question and responded with their own withering critique of Monarchical social theory. 45 They could do so because of the existence of many seemingly settled power relationships which promised to bridge the paradox of self-government and government of the self--the power of fathers, and of father analogs like Masters and Magistrates--and because they contemplated nothing like universal suffrage. 46

Gordon J. Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England* (1975).

Most famously in John Locke, *The Second Treatise of Government* (Thomas P. Peardon ed., 1952, n.p. 1690).

Notwithstanding the relatively unproblematic nature of these power relationships for 17th century liberals, Locke worried tremendously about the actual forms that such power might take, so much so that he wrote a lengthy treatise on child-rearing for gentlemen. That space has narrowed considerably in the last three centuries. There is virtually no relationship of power that is not subject to some aspect of anti-dependency critique. This has been the product of a great increase in democratization, but it has heightened the contradiction that liberalism has always embedded, the inevitable dependency of our own freedom on the maintenance of crucial modes of unfreedom. 47

See Roberto M. Unger, *Knowledge and Politics* (1984).

Democratic politics is inevitably dependent on effective means of caretaking that ensure the reproduction of social order without irreparably damaging the capacity of self government. The stigma associated with dependence and the caretaking of dependency has now reached terminal levels with respect to the leading institutions undertaking the social support of caretaking. In raising the question of inevitable dependency at this time, Fineman's book may offer a concrete cultural path out of the increasingly self-destructive logic of anti-dependency ideology.

THE INEVITABLE DEPENDENCIES OF KNOWLEDGE

What does law do? That was the question propounded by Roscoe Pound and the first generation of legal realists in American law schools in the first decade of the 20th century. 48 Studying the law-in-action has remained a worthy goal of legal scholarship since that time. Yet, with important exceptions, including Wisconsin, UCLA, Berkeley, SUNY Buffalo, and the University of Miami, most sociological jurisprudence, in Pound's sense, has gone on outside American law schools, among the anthropologists, historians, political scientists, and sociologists who make up the Law & Society movement. The popularity of economics, analytic philosophy, and semiotics in law schools makes them appear intellectually diverse, but all tend to share common academic methodologies with classic doctrinal scholarship, especially the thoughtful reading of texts and the spelling out of conceptual intuitions. The law-in-action may be deemed worthy of study, but all too often, it is studied just like law-in-the-books. Studying the law as a social practice remains rare.

Roscoe Pound, *Liberty of Contract*, 18 Yale L.J. 454 (1909).

Because the voices asking what law does as a social practice have only intermittently been accorded much of a hearing in law, the considerable following that Martha Fineman's scholarship has developed both in and out of law schools would be noteworthy to those of us interested in the sociology of legal knowledge. This is so particularly because Fineman's scholarship brings important innovations to the empirical tradition. Too often the goal of studying the law-in-action has meant a narrow commitment to quantifiable data which has often limited the reach of its best practitioners 49 and led its lesser lights into a sterile numerology. The Law & Society movement that developed in the 1960s grew out of the rapid growth in the prestige of the social (or, as they were then called, behavioral) sciences and for a long time has remained largely wedded to the paradigm of middle range research established by the leaders of that era. Perhaps the most important of these is Robert K. Merton whose powerful methodological writings have influenced two or three generations of social scientists.

See Jonathan Simon, *The Long Walk Home to Politics: Review of Gerald Rosenberg, The Hollow Hope*, 26 Law & Soc'y Rev. 923 (1993).

For Merton, commitment to the middle range meant steering a course between:

The minor working hypotheses evolved in abundance during the day-by-day routines of research, and the all-inclusive speculations comprising a master conceptual scheme from which it is hoped to derive a very large number of empirically observed uniformities of social behavior. 50

Robert K. Merton, *Social Theory and Social Structure* 5-6 (1968).

Merton believed that sociology was in an early stage of scientific development where only the slow accumulation of observations combined with provisional conceptualization, closely tied to specific ranges of data, would support significant progress. However, Merton in no way abandoned the positivist goal of a comprehensive and integrated theory of social life. In her earlier study of divorce reform, 51 Fineman identified with Merton's approach:

Martha A. Fineman, *The Illusion of Equality: The Rhetoric and Reality of Divorce Reform* (1991).

In my opinion, one significant distinction between my feminist approach to legal theory and the more traditional varieties is my belief in the desirability of basing law on what is concrete rather than on what is abstract. Such an emphasis on context also has had rather honorable nonfeminist adherents. For example, Robert Merton coined the term theory of the middle range to describe work that mediated between stories and grand theory. 52

Id. at 7.

Elsewhere I have argued that it is time to renew the tradition of middle range theory by developing a variety of postmodern (and thus inevitably post-Merton) middle range research practices.⁵³ These research practices might be called postmodern in several senses. First, they confront the implications of constructivist epistemology, i.e., the recognition that the interpretive and the ideological run through in even the hardest features of social life. The modern sociological tradition has generally taken terms like society, nation, and class as essentially unproblematic parameters for analysis. Jonathan Simon, *Between Power and Knowledge: Foucault, Habermas, and the Future of Legal Studies*, 28 *Law & Soc'y Rev.* 947 (1995).

Merton turns to the French sociologist Emile Durkheim, whose studies of suicide and law have been among the most influential models of sociological method, as an example of well crafted middle-range theory. But almost all of Durkheim's work presupposed as its underlying subject, France, as a coherent and singular society defined by common language, racial composition, and autonomous economy. It is difficult to imagine how Durkheim would even locate France today, with its economy determined by German bankers, and its increasingly multicultural and multilingual population. A postmodern middle range then, takes seriously the concrete features of lived experience, but without the previous assumption of a fixed frame of analysis that will be progressively filled in by an advancing normal science of the concrete. Second, postmodern middle range research would internalize the insights of modernist schools like critical theory and the study of the social construction of reality so as to see research itself as contiguous with other forms of self-interpreting activity. The work produced is itself inevitably ideological, in the sense that it becomes part of the available material for the interpretive strategies of other people.⁵⁴

We recognize the unintended consequences of thought rather more easily today, but even that expression codifies a questionable distinction between intended and unintended. The Neutered Mother moves beyond the modernist understanding of middle range in both of these senses. The formations Fineman analyzes are concrete and immediately recognizable to anyone with minimal competence in the culture as distinct figures (albeit ones constantly intertwined with others like constellations in the night sky). The deviant mothers discussed in chapter five are all figures of popular as well as expert discourses. What Fineman succeeds in doing is making visible the elements of a cultural system that we already recognize and use. They are products of ideology, but not in the sense that they are derived from some generative grammar reproducing the structures of domination from on high. We speak of the broken family, the disintegration of the family ... and, perhaps inevitably from some perspectives, the death of the family. Underlying such labels is the specter of single motherhood--statistically on the upswing-- pathological and disease-like, contaminating society, contributing to its destruction and degeneration.⁵⁵
Fineman, *supra* note 1, at 124.

Fineman can talk about Mother and her fate without resolving fundamental issues of social ontology (difference vs. domination) or committing herself to particular ways of producing or testing the truth of social realities. Patriarchal ideology is described sometimes as a determinative force but rarely one which dictates terms. Motherhood is a colonized concept,⁵⁶ but in the sense that its content is given by the power of patriarchy to describe, give meaning, and attach consequences. There is room in this account for agency and politics.⁵⁷ The term utopian, with which Fineman self-identifies her vision of a whole new basis for family law, is in this sense not an alternative to pragmatism but a consequence of it. Because Mother encompasses so much social history and meaning, only a brand of scholarship fluently conversant with existing social institutions holds any promise of illuminating her fate. But that is to acknowledge the inevitable dependency of knowledge on the very ideologies it attacks. In doing so, The Neutered Mother points to a new model of scholarship.
⁵⁶ Id. at 124-25.

Patriarchy, after all, has often been the target of anti-dependency ideology. In this sense it would be a mistake to take away from a reading of The Neutered Mother the assumption that the current attack

on welfare is simply a product of patriarchy. At that level of abstraction it would be equally easy to argue that patriarchy requires welfare.

CONCLUSION

The Mother-child dyad, which Fineman offers as the key representation of inevitable dependencies and the central social institution for addressing it, exemplifies the seriousness about practices and the self-consciously political nature of her work. Fineman acknowledges the risks of helping to essentialize the gender role of mothering but she chooses to accept that risk. 58 Social construction, after all, is no guarantee of liberty (and, of course, no endorsement of anarchy). Rationally informed strategic action is possible, but always under the constraints of a world where the embeddedness of power and knowledge make it extraordinarily difficult to fathom how particular strategies of resistance will feedback into the popular perceptions of reality. These may not be the ideal conditions for scholarship or politics, but they are conditions on which we are inevitably dependent. Providing a model of how to respond to those dependencies may be Fineman's most significant contribution. Perhaps this book marks the beginning of the end of the social construction debate which seems to have so preoccupied academicians in the social sciences and humanities of late. It is late in such an exhausting century to be treated to a whole new round of debates about relativism, nihilism, and the politicization of knowledge most which were hashed out more eloquently fifty or seventy-five years ago.