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Cover Page Footnote

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CONTINUITY AND CONTRADICTION IN THE THEORY AND DISCOURSE OF DEPENDENCE

*Brigid Kennedy-Pfister**

INTRODUCTION

Since the seventeenth century, the terms “dependence” and “independence” have been used as status markers in social and political discourse in the United States. This discourse has colored both historical and modern theory and philosophy of citizenship, race, gender, family, work, welfare, and the role of government. As various groups and individuals have pursued particular political goals, they have used and defined those terms in diverse ways and attached different meanings and connotations to them. The category of “dependent” in particular has been transformed from a term that at one time marked a natural condition in which certain groups existed, to a term that today defines a social problem. This article describes the content of, and reasons for, this transformation. My examination attempts to “bring into the open some implications of our language and actions regarding [dependency] about which officials and interest groups are usually silent, a silence or obliviousness that also buttresses preferred ideologies.”¹

The discourse and philosophy of dependency show that the terms “dependent” and “independent” have meant many things both in legal and political rhetoric and within individual relationships. Their meanings are mutable and informed by social, theoret-

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1. MURRAY EDELMAN, *CONSTRUCTING THE POLITICAL SPECTACLE* 13 (1988). My inquiry focuses on the social problem of dependence in particular, while Professor Edelman’s was an inquiry concerned with the construction of social problems in general.

ical, economic, and experiential forces. At the same time the terms seem to connote both objective and subjective states of being. Communities, social philosophers, commentators, politicians, media, and policy experts may categorize certain individuals or classes as dependent, whereas, in their own consciousness, these supposedly dependent individuals or classes may feel a great measure of freedom. Similarly, individuals who are classified as independent may feel constrained, oppressed, and without a sense of autonomy. As with many terms used in political discourse, reality does not match rhetoric. The terms dependent and independent are used not to describe the reality of a set of relations, but, rather, to mark certain individuals and groups as inferior.

In my examination of these terms, I concentrate upon dependency discourse as it has been used in shaping welfare reform and in the treatment of poor people in the United States. I also focus on the historical transformation of various groups as they have moved from being dependent to independent classes. After reviewing this discourse and history, I conclude that commentators who use dependence as a status marker root their distinctions in two theories that are fundamental to liberal American thought: individualism and social contract theory. In the context of welfare programs, these theories are evident in policy determinations about whether individuals are competent, productive, and morally upstanding. Moreover, if an individual fails in one of these respects, the discourse is concerned with both the cause of this failure and the length of time the individual remains in this fallen state.

The ideal of individual independence and autonomy is, of course, one of the central animating features of American political and legal theory. Early republican theory during the American Revolution emphasized "independence for the citizen (as well as for the former colonies) [as] a key term: it implied economic independence (as opposed to vassalage) along with, and as the underpinning for, freedom of judgment."² Some commentators even have gone so far as to characterize the struggle between individual liberty and state power as a "fundamental contradiction" in American legal theory, and to describe this tension as embodied by the contradictory beliefs that "the goal of individual freedom is at the same time dependent on and incompatible with the communal co-

2. Nancy F. Cott, *Giving Character to Our Whole Civil Polity: Marriage and the Public Order in the Late Nineteenth Century*, in *U.S. HISTORY AS WOMEN'S HISTORY: NEW FEMINIST ESSAYS* 110-111 (Linda K. Kerber et al. eds., 1995).

ercive action, [or state power,] that is necessary to achieve it.”³ The question is whether and how the individual can achieve sovereignty and full self-determination when she must submit to the authority of the community. And, how can the individual achieve this actualization without also relying upon the security of the state?

A second and connected central tenet guiding American political and legal theory, is the idea that all members of civil society enter into a social contract under which they not only obtain certain rights and privileges, but also accept certain obligations. This idea of a social covenant is not so much concerned with the extent of state infringement on and protection of individual and market autonomy; rather, it focuses upon the rights that people relinquish, the privileges they obtain, and the obligations they must perform as members of society. Thomas Hobbes described the need of individuals voluntarily to restrain themselves by the introduction of a greater collective power, the “Common-wealth.” Hobbes explained that:

The finall Cause, End, or Designe of men, (who naturally love Liberty, and Dominion over others,) in the introduction of that restraint upon themselves, (in which wee see them live in Common-wealths,) is the foresight of their own preservation, and of a more contented life thereby; that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent . . . to the naturall Passions of men, when there is no visible Power to keep them in awe, and tye them by feare of punishment to the performance of their covenants, and observation of those Lawes of Nature.

The only way to erect such a Common Power . . . is, [for men] to conferre all their power and strength upon one Man, or Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will[;] . . . and to submit their Wills, every one to his Will, and their Judgments, to his Judgment. This is more than Consent . . . it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man.⁴

John Locke set forth a similar concept,⁵ and in the contemporary American context, Lawrence Mead describes it thus:

3. Duncan Kennedy, *The Structure of Blackstone's Commentaries*, 28 *BUFF. L. REV.* 205, 211 (1979); Joseph William Singer, *The Legal Rights Debate in Analytical Jurisprudence from Bentham to Hohfeld*, 1982 *WIS. L. REV.* 975, 980 (1982).

4. THOMAS HOBBS, *LEVIATHAN* 93, 93-95 (Richard E. Flathman & David Johnston eds., 1997) (original spelling retained).

5. JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT*, chapter VIII, 52-65 (C.B. Macpherson ed., Hackett Pub. 1980) (1690).

[E]quality to Americans tends not to mean middle-class income or status at all, but rather the enjoyment of equal citizenship, meaning the same rights *and* obligations as others. While we usually think of citizenship as something political, specifying rights like free speech and duties such as obedience to the law, it has a social dimension too. Benefit programs define a set of social rights for vulnerable groups, while Americans tend to regard minimal competencies like work or getting through school as obligatory even if they are not legally enforced. These *social* obligations may not be governmental, but they are public in that they fall within the collective expectation that structures an orderly society. Both political and social duties are included in what I shall call the common obligations of citizenship.⁶

Questions about the content of these obligations and the sources from which they are derived have become more complicated as the United States has become a more pluralistic society. Normative questions arise concerning the nature and content of government regulation, including questions about the mutual expectations of government and citizen; the sources from which the content of our social obligations are derived; the level and consistency with which social obligations are imposed upon a plural citizenry; the manner and nature of enforcement of social duties; and the moral, economic, or legal sanctions for failure to live up to these obligations. The continuing cultural use of the terms "dependent" and "independent" as rhetorical tools for social categorization is an attempt to develop answers to some of these most complicated questions.

I. SOCIAL MEANINGS IN THE DISCOURSE OF DEPENDENCY

One contemporary dictionary definition of dependent is:

. . . 2 A: determined or conditioned by something else: CONTINGENT . . . B: unable to exist, sustain oneself, or act suitably or normally without the assistance or direction of another or others . . . C: connected in a subordinate relationship: subject to the jurisdiction of another . . . D: lacking the necessary means of support and receiving aid from others (as from persons outside the immediate family or from a private or public welfare agency).⁷

6. LAWRENCE M. MEAD, *BEYOND ENTITLEMENT: THE PROBLEM OF OBLIGATION IN SOCIAL POLICY* 12 (1986) (emphasis in original).

7. WEBSTER'S NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 604 (3d ed. 1981).

According to *Black's Law Dictionary*, as a legal term, dependent also has multiple meanings. Generally, however, a dependent individual is "[o]ne who derives his or her main support from another. Means relying on, or subject to, someone else for support; not able to exist or sustain oneself, or to perform anything without the will, power or aid of someone else."⁸ Even without reference to the discursive context in which this word is used, the different registers of these definitions reveal the manner in which the term might be used to construct relationships. The images invoked are about contingency, insecurity, vulnerability, lack of self-governance, reliance, subordination, and inferiority. Nothing in these definitions indicates positive aspects of a dependent relationship; neither does the term connote mutuality or inter-dependence among individuals.

Almost universally, societies understand that each member is, to some extent, a dependent being in the sense that we rely upon people and institutions for support. We depend upon our families and friends for emotional support and assistance to care for our physical and economic needs, and upon individuals with particular skills, such as doctors, mechanics, lawyers, or technicians, to help us identify and treat or solve problems. Moreover, we depend upon our parents, siblings, teachers, religious leaders, mentors, and co-workers for mutual sustenance, guidance, knowledge, values, and experience. Indeed, most of us find, as we seek a better life, that depending on other human beings is beneficial, positive, and fulfilling to our individual and social well being. Furthermore, most of us benefit from returning the favor by allowing others to depend on us. In short, dependency is "universal and inevitable in our individual lives and inherent in the human condition."⁹ Each individual has dependent, or interdependent, relationships with other human beings, with social institutions, and with the state.

This positive interpersonal reliance and support, or interdependence, among individuals and entities is not, however, the central focus of dependency discourse. Indeed, it rarely appears even in the background. Rather, commentators and social philosophers who strategically use dependency rhetoric as a means to achieving their goals, focus on making judgments about both the abilities and character of individuals and the proper place or status of these individuals in society. The judgments and rhetoric center on four claims. Some social philosophers claim that dependent individuals

8. BLACK'S LAW DICTIONARY 437 (6th ed. 1990).

9. Martha Albertson Fineman, *The Nature of Dependencies and Welfare "Reform,"* 36 SANTA CLARA L. REV. 287, 292 (1996).

are unable adequately to act in their own or society's best interest;¹⁰ these commentators focus on the dependent individual's capacity to act or to govern.¹¹ Others assert that dependency is a status defined by an individual's failure to conform to social and moral norms because of a personal moral deficiency.¹² Still others contend that dependent status is characterized by a coercive relationship with the state.¹³ Finally, some theorists define dependency as an economic status tied to an individual's failure to participate in the wage labor market, or as reliance upon others or the state for sustenance.¹⁴

Although I have recognized these strands within dependency discourse, these four concerns are neither all-inclusive nor static. Our cultural use of dependence rhetoric is complex, with different strands more or less prominent at any given time. In addition, theorists who are preoccupied with a given class of dependent persons often employ more than one of these meanings and visions. The lines between these meanings are further blurred because even at the same time, more than one conception may be invoked.

A. Dependence and Capacity

Early English usage of the term "dependent" arose in the context of defining social relations between and among individuals in pre-industrial England and America.¹⁵ This usage was so common that it was uncontroversial, and denoted a normal state of subordination. That state of subordination did not incorporate concomitant moral stigma, although it did connote status inferiority.¹⁶ Social use of the term dependency in this early period encompassed aspects of both governance and self-governance. Dependent individuals did not have the social or political competence or

10. LOCKE, *supra* note 5 (identifying children, the mentally ill, and the mentally retarded as individuals without sufficient capacity); MEAD, *supra* note 6 (stating that in earlier centuries, women, slaves, and indentured servants were also among the groups that society customarily believed were treated as incapable of self-governance); *see infra* note 17 and accompanying text.

11. LOCKE, *supra* note 5; MEAD, *supra* note 6.

12. CHARLES A. MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980*, at 29 (1984); Raymond A. Mohl, *The Abolition of Public Outdoor Relief, 1870-1900*, in *SOCIAL WELFARE OR SOCIAL CONTROL? SOME HISTORICAL REFLECTIONS ON REGULATING THE POOR* 35, 39 (Walter I. Trattner ed., 1983).

13. Charles A. Reich, *The New Property*, 73 *YALE L.J.* 733 (1964).

14. MEAD, *supra* note 6; *infra*, Section III.B.

15. Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 *SIGNS* 309, 312 (1994).

16. *Id.* at 313.

capacity to act in the best interest of themselves, their families, or society. Dependents were men, women, and children for whom it was better to be ruled by others than ruled by themselves.¹⁷ Independent individuals, by comparison, were masters both of their own destinies and the destinies of others, their dependents. They were full members of the polity, trusted to act appropriately and in the best interest of all. These individuals controlled their bodies, actions, relationships, and property free from the interference by others. They spoke for themselves and their dependents in both the community and the political process. They exercised dominion over themselves and were “fre[e] from dependence on the wills of others.”¹⁸

In modern times, the status relations between children and parents, the mentally ill or seriously infirm and their guardians, and, to a more limited extent, prisoners and their wardens, are what remain of this system.¹⁹ The ability of each of these groups to exercise the full social and political capacity that inheres to the average citizen is legally restricted. In these cases, the law appoints someone who does have full capacity, or independence of will, to act for the dependent. To a greater or lesser extent, depending upon the specific category, a separate individual or entity, whether a parent, guardian, next friend, hospital, or agency, has control over and responsibility for the actions, will, and person of the dependent. In addition, the law may bestow the guardian either with benefits to encourage undertaking the relationship,²⁰ or wide latitude in exercising control.²¹

17. See ROBERT J. STEINFELD, *THE INVENTION OF FREE LABOR: THE EMPLOYMENT RELATION IN ENGLISH AND AMERICAN LAW AND CULTURE, 1350-1870*, at 56 (1991) (defining the dependent members of a household).

18. C.B. MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE* 3 (1962).

19. I include prisoners in this category because they are denied full citizenship rights. But, unlike other groups so categorized, the cause of their dependence is a “voluntary” one; they “voluntarily” have forfeited their rights of control because of their actions or judgment. Thus, they might more properly be a worry for commentators who are concerned about individual morality and behavior as a marker of dependency. As I have said, however, these categories often overlap and work together to construct social relations.

20. Such benefits might include incentives such as tax relief for individuals caring for dependents, or allocation of a higher level of funds for schools that enroll disabled children.

21. Parents have wide, although not unlimited, latitude and there is little oversight in their care and control of the children. *E.g.*, *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (holding a parent’s right to conceive and rear her children essential under the Fourteenth Amendment); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) (affirming *Meyer*); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (upholding exemption for Amish

Today, the number of classes of people that are dependent in this way, and the extent of control the guardian may exercise, is more limited than it has been historically. At various times the law has defined the status of slaves, free blacks, workers, women, and paupers as such dependents.²² Indeed, until relatively recently, in both England and the United States, only male, white land-owners, were full legal, social, and political citizens.²³ Certainly, prior to the passage of the Thirteenth, Fourteenth, Fifteenth, and Nineteenth Amendments, the disabilities of dependence, as they do today, included not only a transfer of control over and responsibility for the actions, will, and person of the dependent, but also a denial of the right to vote and participate in self-governance.

This status of dependence was a normal, as opposed to a deviant, condition, a social relation, as opposed to an individual trait. Thus it did not carry any moral opprobrium.

Nevertheless, *dependency* did mean status inferiority and legal coverture, being a part of a unit headed by someone else who

families from compulsory education statute, and stating that a family has privacy interest in rearing and educating children); *Hodgson v. Minnesota*, 497 U.S. 417, 447 (1990) (upholding statute requiring parental notification of abortion and forty-eight hour delay and stating "a natural parent who has demonstrated sufficient commitment to his or her children is thereafter entitled to raise the children free from undue state interference").

Similarly, because of concerns about safety and control, prison administrators retain wide discretion in operating their institutions and controlling the conduct of the inmates in their charge. *Bell v. Wolfish*, 441 U.S. 520 (1979).

22. Slaves and free blacks were controlled both by legal and extra-legal means at work and in decisions about their family lives. Both of these groups were explicitly excluded from the political process. For centuries, certain classes of laborers and servants were subject to compulsory work requirements on pains of imprisonment and were considered inadequate to the task of self governance. In addition, during the impetus for minimum wage and maximum hour laws, the Supreme Court approved a state law restricting the hours that underground miners could work. *Holden v. Hardy*, 169 U.S. 366 (1898). The Court allowed such restrictions on the acknowledged liberty of miners to sell their labor under the philosophy of "freedom of contract" at least in part because of the workers' dependence. *Id.* As the Court later described its holding in *Holden*, "the kind of employment . . . and the character of the employés in such kind of labor, were such as to make it reasonable and proper for the state to interfere to prevent the employés from being constrained by the rules laid down by the proprietors in regard to labor." *Lochner v. New York*, 198 U.S. 45, 54 (1905) (emphasis added). Women were also long held to be subject to the domination of their husbands, or if unmarried, simply did not enjoy the same rights and privileges as men to contract for themselves, control their property, or vote. *Muller v. Oregon*, 208 U.S. 412 (1908).

23. Laura F. Edwards, *The Marriage as Covenant is at the Foundation of All Our Rights: The Politics of Slave Marriages in North Carolina After Emancipation*, 14 *LAW & HIST. REV.* 81, 83 (1996); Nancy F. Cott, *Marriage and Women's Citizenship in the United States, 1830-1934*, *AM. HIST. REV.* 1440, 1451 n.32 and accompanying text (Dec. 1998).

had legal standing. In a world of status hierarchies dominated by great landowners and their retainers, all members of a household other than its “head” were dependents, as were free or servile peasants on an estate. They were . . . caught up, so to speak, “subsumed” . . . into the personalities of their fathers and masters.²⁴

Marriage was one of the most prevalent customary and legal relationships of dependency, and when a propertied man entered into that covenant, his marital status and property owner status combined to form evidence of his suitability for civic participation.

The institution of marriage required the wife to serve and obey her husband—to become his dependent—as he was to support and protect his wife. Participatory citizenship in the American political tradition required the opposite, however: independence [R]evolutionary spokesmen had highlighted personal independence as necessary to public virtue and political rights. Independence meant freedom of judgment—freedom from the imposition of the will of another—and in the eighteenth century that meant heading a household and owning property of one’s own so as not to have to look to anyone else for a job, credit, or support.²⁵

These dependent status relations benefited both parties to the relationship and society. For example, children simply could not survive physically without depending on adults. Within the dependent, parent-child relationship, each generation was nourished and taught socially acceptable behaviors and survival mechanisms. New generations of workers were bred, the benefit of whose labor accrued to the household, at least for some period of time. Similarly, women’s historically dependent status was beneficial both to woman and society. Women had a claim to the support and protection of their husbands and fathers as much as the men had a claim to the women’s labor and reproduction. In addition, society and government benefited from these dependent household relations as they formed and reproduced the central organizing unit of society.

The basic social unit to which everyone belonged was a family. Women in particular were “understood either [as] married or to be (sic) married” according to a 1632 English treatise regarding

24. Fraser & Gordon, *supra* note 15, at 313 (internal quotation marks and citations omitted). In the case of prisoners, of course, moral opprobrium does attach.

25. Cott, *supra* note 23, at 1451.

the legal status of women.²⁶ Moreover, because marriage was the means of creating legitimate blood lineage, it “necessarily preceded the relationship between a father and his sons, which many theorists interpreted as the foundation of all political authority.”²⁷ John Locke, for example, explained that “[t]he *first society* was between man and wife which gave beginning to that between parents and children; to which, in time, that between master and servant came to be added.”²⁸ Furthermore, this first society was “made by a voluntary compact between man and woman.”²⁹ That compact was marriage, the ultimate end of which was “procreation, and the mutual support and assistance,”³⁰ as might be necessary to maintain their affection and the nourishment and maintenance of their children.³¹ Even two hundred years later this concept of family governance continued to be an explicit basis for legal decision-making. As one court noted, “the marriage relation, as old as the human race, [is] the basis of the family, which is itself the basis of society and civil states.”³²

In contrast to the “status inferiority and legal coverture” that attached to the dependent person,³³ the ideal of individual independence and autonomy was assigned to the master of the household. This concept of independence developed into a central feature of Colonial American political and legal theory.³⁴ For example, John Locke’s *Second Treatise of Government*, first published in 1690, a document that was especially influential in America as a source of the doctrines of limited government and the right of the people to overthrow the government,³⁵ was, fundamentally, a theory animated by an ideal of individual autonomy.³⁶ In

26. MARY BETH NORTON, *FOUNDING MOTHERS AND FATHERS: GENDERED POWER AND THE FORMING OF AMERICAN SOCIETY* 57 (1996) (quoting an anonymous lawyer in 1632).

27. *Id.*

28. LOCKE, *supra* note 5, at Chapter VII, § 77.

29. *Id.* § 78.

30. *Id.* § 83.

31. *Id.* §§ 80, 83.

32. *Ritter v. Ritter*, 31 Pa. 396, 398 (1858) (holding that a married woman could not sue her husband to collect a debt on a contract made between them during marriage).

33. Fraser & Gordon, *supra* note 15, at 313.

34. LOCKE, *supra* note 5, at xxi. In his introduction, the editor describes Locke’s theory as beginning “with free and equal individuals none of whom have any claim to jurisdiction over others.” *Id.* That autonomy, along with individual rationality and consent, form the basis of the theory. *Id.* See generally MACPHERSON, *supra* note 18, at 3.

35. LOCKE, *supra* note 5, at vii.

36. MACPHERSON, *supra* note 18, at 255-57.

American legal thought, this independent ideal was elaborated in Adam Smith's theory of the capitalist political economy, and in the notions of legal rights and duties.³⁷

These concepts created areas of protection and exclusion through which individuals could enforce and maintain a zone free from the interference of others. The concepts also popularized the notion that ideal interactions between individuals, as far as possible, should be unmediated or unregulated by the state. The role of the state was only to preserve an individual's ability to act and bargain freely without interference from others. Individualism thus included an ideal of self-sufficiency and independence that "meant invulnerability to the wants and needs of others and not having to depend on their good will or solidarity."³⁸ The independent being was an autonomous, freely-bargaining individual who relied upon the security of the state not only to recognize these bargains as a product of free will but also to enforce them.

This individualist theory also had a "possessive quality,"³⁹ in the sense that the individual was the proprietor of his person, capacity, and will, and owed nothing to the community for that ownership.⁴⁰ From that individual proprietorship also sprang the existence, protection, and perpetuation of the institution of private property. According to the theory, every man held "unquestionable property" over his own person and capacities and over "the *Labour* of his body and the *Work* of his Hands"⁴¹ Locke asserted that the act of mixing a man's labor with products of the natural world was the act of making private property.⁴² The essence of freedom, the individual's dominion or proprietorship over his body, energies, and thoughts, was therefore "freedom from dependence on the wills of others, and [that] freedom [was] a function of possession."⁴³

37. Singer, *supra* note 3, at 986.

38. William H. Simon, *Rights and Redistribution In the Welfare System*, 38 *STAN. L. REV.* 1431, 1433 (1986).

39. MACPHERSON, *supra* note 18, at 3.

40. *Id.*

41. LOCKE, *supra* note 5, at § 27.

42. *Id.*

43. MACPHERSON, *supra* note 18, at 3. It goes without saying that slaves could never be independent in this sense despite the fact that they certainly worked because, as a matter of law, custom, and theory, they had no dominion over their own bodies or energies. Slaves simply did not govern themselves; they were governed by their masters. For example, it was impossible for male slaves to maintain parallel claims to those held by free-men for payment for the labor of their wives and offspring. Margaret A. Burnham, *An Impossible Marriage: Slave Law and Family Law*, 5 *LAW & INEQ.* 187, 216 (1987). "The slave husband . . . had no marital ownership

In the Lockean view, independence was defined by an individual's power: the recognized ability of an individual to choose the relationships into which he entered, the extent of an individual's control over actions taken within those relationships, and the freedom from interference due to regulation of those actions that an individual enjoyed. The difference between dependence and independence rested in the individual's capacity. For example, Locke explained that children, although they were born *to* such freedom, were not born *into* it.⁴⁴ Rather, a child was not free until the he attained:

[The] maturity wherein he might be supposed capable to know [the] law [of nature], that so he might keep his actions within the bounds of it. When he has acquired that state, he is presumed to know how far that law is to be his guide, and how far he may make use of his *freedom*, and so comes to have it; till then, some body else must guide him, who is presumed to know how far the law allows a liberty. . . . [What makes a man free] to have the liberty to dispose of his actions and possessions according to his own will, within the permission of [the] law? A capacity to know that law; which is supposed by that law If this *made* the father *free*, it shall *make* the son *free* too. Till then we see the law allows the son to have no will, but he is to be guided by the will of his father or guardian who is to understand for him. [Further,] if, through defects that may happen out of the ordinary course of nature, any one comes not to such a degree of reason, wherein he might be supposed capable of knowing the law and so living within the rules of it, he is *never capable of being a free man*, he is never let loose to the disposure of his own will (because he knows no bounds to it, has not understanding, its proper guide) but is continued under the tuition and government of others⁴⁵

From this individualist theory it followed that independence was reserved for those individuals who had the specific capacity to understand the law and exercise reason in managing their thoughts, actions, and property.

interest in his wife, and therefore he had no ownership interest in his children. This effected a double diminution of the slave father's legal and social status: he could not claim ownership of his children, as could free men, nor could he, through his progeny, enrich his master, as could slave women. He had only his own labor to 'give' his master, not that of his wife or his children." *Id.*

44. LOCKE, *supra* note 5, at § 55.

45. *Id.* §§ 59, 60 (emphasis in original).

The outcome of this idea of dependence was a hierarchy in which only one group was allowed to rule.⁴⁶

[Others] lived as dependents within the private sphere, sheltered from the public gaze. Subject to the governance of a household head, they could not claim the requisite civil and political rights that would allow them to move freely in the space outside the household's borders The figure of a household head was an adult, white, propertied male. To those who held the reins of power, such men were the only people capable of the responsibilities of governance, whether private or public. Because women, children, and African Americans were considered to lack both self-control and the capacity for reason, they required the protection and guidance of a white man.⁴⁷

Characteristically, the relationship operated only in one direction; there was no acknowledged interdependence or mutuality between the master and dependent. The benefits, both of production and reproduction, that the independent man accrued from his spouse, child, slave, servant, or laborer, did not in any way diminish his independence. His reliance upon them for income, property, or sustenance remained invisible, perhaps intentionally so, within the discourse and definition.

Independence . . . for the male household head existed in counterpoint to the dependence of others. Having and supporting dependents was *evidence* of independence. Thus marriage as well as property empowered a man in civic status, showing his capacity for citizenship by making him head of a household In corollary, marriage made women into dependents. There was no middle ground here: either one was independent and had the capacity to have dependents or one was dependent on someone else. The coverture of married women in the Anglo-American common law represented and perpetuated this polarity. In making a woman a wife, marriage removed from her and transferred to her husband her property and income, the very items that indicated free will. The property cession both symbolized and operationalized a husband's independence and his wife's (economic) dependence and consequent civic disability.⁴⁸

46. It was not all white men who had sufficient capacity to be *independent*, it was only those with property. See generally STEINFELD, *supra* note 17, at 56.

47. Laura F. Edwards, *The Marriage Covenant is at the Foundation of All Our Rights: The Politics of Slave Marriages in North Carolina after Emancipation*, 14 *LAW & HIST. REV.* 81, 83 (1996).

48. Cott, *supra* note 25, at 1452.

B. Dependence and Morality

The uses of “dependent” and “independent” that I described thus far do not fall overtly within moral or behavioral dimensions. Distinctions are based upon apparently natural occurrences such as youth, gender, or property distribution.⁴⁹ The normative questions of who has or should have capacity to act independently do, however, contain a moral element. I now turn to the historical and continuing rhetorical uses of dependency that define people by how strictly they conform their behavior to prevailing norms. Social philosophers who use the term dependence to denote an individual or group moral defect, specifically distinguish from this definition specific groups of people who are dependent because of a “defect[] that may happen out of the ordinary course of nature.”⁵⁰ Instead, these theorists classify dependents as individuals who have been complicit in the making of their status; dependent individuals have identifiable moral or behavioral shortcomings, and these deficiencies result in their subordination. The existence of these defects justifies a policy judgment about the desirability of allowing these individuals to control their own lives.

The common modern use of the term “drug dependent” is an example of this application of dependent. Although drug and alcohol abuse in contemporary society is treated as an illness, moral connotations are still attached to the term; drug addicts are still considered to contribute to their own failings by taking the first puff of marijuana. But this category of dependents includes all individuals who could in some way be held responsible for their own subjugated state. Such individuals might include slaves, indentured servants, prisoners, and the poor. These are groups that historically have existed both at the bottom of the social scale, and under the physical domination and whim of others. These individuals are weak and subject to the immoral influences of other people, of chemicals, or of a set of values, desires, or psychological forces. For any of these reasons, the dependent in some sense appears to be acting irrationally, or without the requisite measure of appropriate social control. The individual has ignored social norms that bind society, and, therefore, deserves sanction. The individual’s lack of moral temperance justifies intervention by the state

49. Unequal distribution of property, of course, is not in reality *natural*, nor is the inferiority of gender or youth, but the use of “dependence” and “independence” as status markers among these classes, is certainly *naturalized* by law, theory, and custom.

50. LOCKE, *supra* note 5, at § 60.

whether by punishment through incarceration, or imposition of conditions regulating the individual's personal or family life.

When dependent is used in this way, the person so classified is not necessarily stripped of her legal or political rights, although she may be.⁵¹ Nor is she unable to care for herself because of a bodily limitation on her capabilities or a physical restriction on her person. Rather, because she is perceived to be unable to act in appropriate ways, the person is restricted, punished, or treated to correct the offensive behavior. That the individual succumbed to weakness or temptation is attributable to the fibre and fault of the person and for this reason she is subject to the moral judgment of her fellow citizens. This use of the category dependent looks to the cause of the person's dependent state as a distinguishing feature.

In a certain respect, this use of dependent resembles claims about an individual's lack of capacity and trustworthiness to govern his or herself. Dependent individuals, in this second usage, albeit for morally blameworthy reasons, are not trusted either to act in their own best interests or in the interests of society. For example, until the late eighteenth century, poor Englishmen and Americans were subject to compulsory work requirements on penalty of imprisonment in order to limit their idleness and to improve their

51. Felons and/or prisoners in most states are stripped of their voting rights. *E.g.*, ALA. CONST. OF 1901, art. VIII, § 182 (stating that “[n]o person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability”); ALASKA CONST., art. V., § 2 (stating that “[n]o person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored. No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed”); ARK. CONST. OF 1874, art 3.; CAL. ELECTION CODE, § 2101 (West 1998) (“A person entitled to register to vote shall be a United States citizen, a resident of California, not in prison or on parole for the conviction of a felony, and at least eighteen years of age at the time of the next election.”); COLO. CONST. OF 1876, art. VII., § 10 (stating that “[n]o person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon, or by virtue of having served out his full term of imprisonment, shall without further action, be invested with all the rights of citizenship, except as otherwise provided in this constitution”); N.D. CONST. art. II, Elective Franchise, General Election, § 2 (stating that “[n]o person who has been declared mentally incompetent by order of a court or other authority having jurisdiction, which order has not been rescinded, shall be qualified to vote. No person convicted of a felony shall be qualified to vote until his or her civil rights are restored”). *See also* Richardson v. Ramirez, 418 U.S. 24 (1974) (upholding California's felony disenfranchisement statute).

In addition, while they are incarcerated, prisoners may be subject to strict control of all their activities and after their release they may be subject to long term monitoring, including restrictions on their freedom to travel, to freely associate, to vote, and to live anonymously.

character. Conditions in workhouses were deliberately intolerable to discourage all but the most severely needy from seeking relief.⁵² These policies were rooted in the Puritan belief that "poverty [w]as a mark of moral shortcoming,"⁵³ or the result of "some personal failing: intemperance, improvidence, indolence . . . the greatest [of which] by far was thought to be intemperance."⁵⁴ These policies also stemmed from a desire to control a wide variety of economic and social causes of pauperism,⁵⁵ and for social control of the laboring masses.⁵⁶ This latter goal was paramount in times of high unemployment, for in the face of a large number of unemployed workers, social control is at its weakest. At times like this,

52. FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 33-34 (2d ed. 1993). The authors note that "[c]onditions in the workhouse were intended to ensure that no one with any conceivable alternatives would seek public aid." *Id.* at 33. Indeed, "workhouse conditions were terrifying even in an age when life for the laboring classes was always brutal. Conditions were such that a House of Commons investigation conducted in 1767 found that only seven of one-hundred infants born or received into workhouses had survived for two years." *Id.* at 34, n.66.

53. MACPHERSON, *supra* note 18, at 226.

54. Miles F. Shore, *Psychological Factors in Poverty*, in *THE NEW PATERNALISM* 306 (Lawrence Mead ed., 1997).

55. Before the industrial age, the class named "the poor" was akin to what we now call the common man. "Actually, the gentlemen of England judged all persons poor who did not command an income sufficient to keep them in leisure." KARL POLANYI, *THE GREAT TRANSFORMATION* 87 (1944). These men were "conspicuous as individuals unattached to the manor, 'or to any feudal superior.'" *Id.* at 104. But there were many causes of the great increase in poor individuals as the industrial age got underway:

Amongst [these] were scarcity of grain; too high agricultural wages, causing high food prices; too low agricultural wages; too high urban wages; irregularity of urban employment; disappearance of the yeomanry; ineptitude of the urban worker for rural occupations; reluctance of the farmer to pay higher wages; the landlords' fear that rents would have to be reduced if higher wages were paid; failure of the work house to compete with machinery; want of domestic economy; incommensurable habitations; bigoted diets; drug habits. Some writers blamed a new type of large sheep; others, horses which should be replaced by oxen; still others urged the keeping of fewer dogs. Some writers believed that the poor should eat less, or no, bread, while others thought that even feeding on the "best bread should not be charged against them." Tea impaired the health of many poor, it was thought, while "home brewed beer" would restore it.

Id. at 90.

56. See generally PIVEN & CLOWARD, *supra* note 52; Mohl, *supra* note 12, at 39 (disputing use of public assistance programs for social control, but agreeing that historically, "it was generally believed [that those in need] had come to their dependent state through personal failings such as immorality, idleness, intemperance, improvidence, and so on").

[t]here is no harvest or paycheck to enforce work and the sentiments that uphold work; without work, people cannot conform to familial and communal roles; and if the dislocation is widespread, the legitimacy of the social order itself may come to be questioned. The result is usually civil disorder—crime, mass protests, riots—a disorder that may even threaten to overturn existing social and economic arrangements. It is then that relief programs are initiated or expanded.

However, simply providing aid to quiet the unemployed will not stop disorder; it may even permit it to worsen, for although the remedy may prevent workers' starvation, the trigger that sets off disorder is not economic distress itself but the deterioration of social control. To restore order, the society must create the means to reassert its authority. Because the market is unable to control men's behavior, at least for a time, a surrogate system of social control must be evolved, at least for a time. Moreover, if the surrogate system is to be consistent with normally dominant patterns, it must restore people to work roles.⁵⁷

Some early seekers of the causes of dependency also proposed overtly eugenic explanations.

In "Seeking the Ultimate causes of Dependence," the final chapter of a long report, [Chester Lee Carlisle, M.D.] stated [the causes] bluntly. . . . "The story of the poor," he wrote, "is best read in the annals of cases of mental defect, affective deviation and all the other psychopathic reactions of conduct All such types constitute the subnormals of the human race."⁵⁸

The moral and behavioral dimension of dependence was reasserted in the mid-twentieth century in the aftermath of the Civil Rights and welfare rights movements. The resurgence of this aspect of the discourse tied persistent, intergenerational dependency to the existence a culture of poverty. The modern ascension of this theory began in 1968 when anthropologist Oscar Lewis first formally proposed it after he studied the poor of Mexico.⁵⁹ The idea that there might be a behavioral component to poverty was, of course, not new. Lewis' work, however, focused on the idea that "the culture of poverty in modern nations is not only a matter of economic deprivation, of disorganization, or of the absence of something. It is also something positive and provides some re-

57. PIVEN & CLOWARD, *supra* note 52, at 7-8.

58. MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* 191 (1996).

59. Oscar Lewis, *The Culture of Poverty*, in *ON UNDERSTANDING POVERTY: PERSPECTIVES FROM THE SOCIAL SCIENCES* 187 (Daniel Patrick Moynihan ed., 1968).

wards without which the poor could hardly carry on."⁶⁰ Since 1968, commentators and policymakers have elaborated and transformed the notion of a *culture* of poverty and connected it to the social problem of dependency.

Lewis believed that a particular set of conditions was necessary for the growth of a culture of poverty, and that the development of that culture was an adaptive response to those conditions.⁶¹ Of particular importance for the development of a culture of poverty in a given population was their feeling of individual and community isolation from and lack of identification with other larger groups. Indeed, Lewis did not believe that the growth of a culture of poverty was universal among the poverty stricken. Lewis observed that poor people who were organized or part of a movement that promoted solidarity, a sense of identity or place in the society, and hope for change were much less likely to exhibit the so-called cultural traits.⁶²

Lewis viewed the development of a culture of poverty as "represent[ing] an effort to cope with feelings of hopelessness and despair that develop from the realization of the improbability of achieving success in terms of the values and goals of the larger society."⁶³ But Lewis believed that it was more than just an individual reaction to being in a marginal position in a stratified capitalistic society. Once present in a society, the culture of poverty represented a basic change in personal and community values and attitudes that were inter-generationally transmitted and perpetuated.⁶⁴ In addition, Lewis believed that participation in social institutions such as educational or public relief systems did not necessarily arrest the development of a culture of poverty, but instead might contribute to it.⁶⁵ It was these ideas that were further developed and transformed by later social scientists and commentators.

60. *Id.*

61. Those elements were: a cash and wage-labor based and profit driven economy, high rates of unemployment and underemployment of unskilled laborers, low wages, lack of social, political, and economic organization of the low-income population, a bilateral kinship system, and the existence of a dominant set of values stressing accumulation of wealth and upward mobility, and that poverty is the result of personal failure. *Id.* at 187-188.

62. *Id.* at 193. Up to and throughout the American Civil Rights struggle of the 1960s, a so-called culture of dependency did not manifest itself among African Americans despite their desperate poverty because of a feeling and history of solidarity and community within that group.

63. *Id.* at 188.

64. *Id.*

65. *Id.* at 189.

When Lewis identified the traits typical of a culture of poverty, he included characteristics that might be common at the community, family, and individual levels. Some of these traits include an awareness and claim of middle class values without practicing them; a minimum of organization beyond the family; transiency;⁶⁶ “absence of childhood as a prolonged and protected stage in the life cycle[;]”⁶⁷ lack of privacy; early, frequent sexual involvement; female-centered families and competition for maternal affections; frequent abandonment of wives and children;⁶⁸ “lack of impulse control; strong present-time orientation, with relatively little ability to defer gratification;”⁶⁹ “high tolerance for psychological pathology of all sorts;”⁷⁰ “little sense of history”⁷¹ or awareness of the troubles others; and “strong feelings of marginality, of helplessness, of dependence, and of inferiority.”⁷²

Lewis argued that the adoption of these features and values actually provided the poor with rewards or positive experiences that would otherwise be unattainable. “[F]or example, the low aspiration level helps reduce frustration, the legitimization of short-range hedonism makes possible spontaneity and enjoyment.”⁷³ In addition, unlike later commentators, Lewis carefully emphasized that nothing inherent in poor people causes either them or their communities necessarily to develop a culture of poverty.⁷⁴ He argued that the development of the traits associated with the culture of poverty in a given segment of the poor requires the presence of certain social conditions.⁷⁵ But he did conclude that because of the inter-generational, psychological, and behavioral aspects of the culture of poverty, elimination of these traits, once present, would require more effort than would improving the individual’s material status.⁷⁶

Lewis’ controversial ideas about the existence of a culture of poverty sparked much denouncement and praise in both the aca-

66. *Id.* at 190.

67. *Id.* at 191.

68. *Id.*

69. *Id.* at 192.

70. *Id.*

71. *Id.*

72. *Id.* at 192.

73. *Id.* at 197.

74. *Id.* at 193. He also explicitly stated that there was nothing in his concept of the culture of poverty “that puts the onus of poverty on the character of the poor.” *Id.* at 199.

75. *Id.* at 187.

76. *Id.* at 199.

demic and popular press, and it contributed to a dramatic shift in the focus of poverty discussion, and in the behavioral models informing that discussion. This shift included a distinct change in policy focus away from elimination of poverty and toward minimizing *dependency*. Whereas during and after the Great Depression societal critiques and government policy focused upon the structure of the U.S. economy and models of rational choice, after Lewis' article, the focus turned to the apparently distorted and unhealthy values of poor people, and models of expectancy and culture.⁷⁷

The rational choice model focuses on individual behavior and assumes that all individuals, whether poor or not, rationally engage in utility, or satisfaction, maximizing behavior.⁷⁸ The assumptions of a rational choice model include the presumption that a poor individual has agency over both his preference and his choices. In addition, in its pure form, it does not legitimize one set of preferences over another, other than the inherent ordering of preferences in favor of wealth or utility maximization. This model comes closest to the individualist model, because it favors the independent exercise of an individual's will; the individual is free to order her own tastes and preferences and to act to maximize them.

In contrast, expectancy and cultural models of behavior posit different assumptions about individual behavior. Expectancy models focus on the interdependence of an individual's choices with her confidence that she will succeed at her choice.⁷⁹ Consequently, an individual might not opt to participate in a training or education program because she does not have the confidence that she will succeed at getting a good job in any case. Cultural models, on the other hand, emphasize individually held social norms through the suggestion that poor people receiving state assistance actually have different values from the dominant social class that affect the decisions that they will make.⁸⁰

Since Lewis presented his ideas, the social traits he identified with the culture of poverty have become central to the moral register of dependency rhetoric. The contemporary version of this cultural or moral register of dependency is present in a new political

77. David T. Ellwood, *Understanding Dependency*, in WELFARE REALITIES: FROM RHETORIC TO REFORM 67-68 (Mary Jo Bane & David T. Ellwood eds., 1994).

78. *Id.* at 68-74. This model, as Professors Bane and Ellwood describe it, focuses entirely on the choices confronting an individual.

79. *Id.* at 75.

80. *Id.* at 80.

concern about the “underclass” and the apparently distinctive culture in which its members live.⁸¹ As Christopher Jencks has described it, “By the late eighties . . . a fairly broad consensus had developed that the underclass was a subset of the poor and that it included only those families and individuals whose poverty was somehow attributable to their behavior.”⁸²

In the context of the debate about welfare and work, some commentators who concentrate on the morality of a dependent class reject the existence of structural poverty altogether.⁸³ Many others combine the two concerns, attributing poverty to causes such as long term joblessness, employment and residential mismatch, suburbanization, and changes in the global economy, while at the same time asserting that the existence of intergenerational, hard core poverty can lead to underclass behavior and dependency.⁸⁴

Those commentators who reject structural poverty theories, including Charles Murray and Lawrence Mead,⁸⁵ argue that the shift in American policy and philosophy away from blaming individuals for their poverty and toward blaming systemic causes, combined with the permissiveness of the welfare system and the availability of cash assistance, has contributed to the development of dependency as a social problem. By this they seem to mean that the change from a premise that stigmatized individuals for relying on state assistance, to one that blamed the system and diminished the status of work, resulted in a change in the moral fibre of poor individuals. In their views, welfare reciprocity actually changes recipients’ morals for the worse; it saps them of their work ethic and has a deforming effect on their communities.⁸⁶

81. JUNE AXINN & MARK J. STERN, *DEPENDENCY AND POVERTY: OLD PROBLEMS IN A NEW WORLD* 98-99 (1988). See generally CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS* 145 (1993); WILLIAM J. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987).

82. JENCKS, *supra* note 81, at 145.

83. “Structural poverty” refers to a view of poverty and inequality as a product of the capitalist economy itself. It posits that no matter the level of economic growth, the system itself perpetuates inequality through policies that encourage massive capital accumulation, unequal distribution of income, and maintenance of unemployment, among others. Charles Murray puts it more bluntly. He characterizes structural poverty as the destructive view that “[p]overty was not the fault of the individual but of the system.” MURRAY, *supra* note 12, at 29.

84. JENCKS, *supra* note 81; WILSON, *supra* note 81.

85. E.g., MEAD, *BEYOND ENTITLEMENT*, *supra* note 6 at 21, 24; MURRAY, *LOSING GROUND*, *supra* note 12 at 26-29; Charles A. Murray, *Redefinition of Rights: Its Deforming Effect on Communities*, 1 MICH. L. & POL’Y. REV. 291, 291-92 (1996).

86. Murray, *supra* note 85.

There are, however, differences even within this position—illustrative of this point is the disagreement between Murray and Mead. Although both conclude that dependency is deforming to the individual and the community,⁸⁷ they begin with different premises and end with different policy solutions. Murray's theory, by eliminating the assumption that poor individuals do not act rationally, remains tied to the individualist pole of dependency rhetoric in a way that Mead's does not.⁸⁸ Indeed, Murray's position is that welfare benefits are so generous that any rational poor person who engages in an assessment of the relative benefits of marriage, work, and welfare, will rationally conclude that relying on government assistance is the better option.⁸⁹ The result of this calculus is that individuals are sapped of their motivation to work, to contribute, and to better themselves—an ethic that they then transmit to their children. Accordingly, Murray's solution is simply to eradicate welfare assistance.⁹⁰

Mead, conversely, espouses an overt paternalism that is tied to the second pole—social contract theory.⁹¹ In Mead's view, dependent individuals should not be allowed to exercise their will freely if in so doing they will deviate from certain social norms.⁹² He asserts that unlike

traditional policy [which] assumes [that poor individuals] will usually follow the interests of society but leaves them free to diverge, paternalism assumes that they may not follow society's interests and seeks to prevent their divergence. Individuals' decisions about their own self-interest are not routinely deferred to. Rather, a harmony of interests is assumed: enforcing soci-

87. *Id.*; MEAD, *BEYOND ENTITLEMENT*, *supra* note 6, at ch.2.

88. MURRAY, *LOSING GROUND*, *supra* note 12, at 161-62.

89. *Id.* at 155, 161-162.

90. Murray, *Redefinition of Rights*, *supra* note 86, at 295.

91. Lawrence Mead, *The Rise of Paternalism*, in *THE NEW PATERNALISM* 1, 4 (Lawrence Mead ed., 1997); MEAD, *supra* note 6, at 241-258. Mead specifies distinct social as opposed to legal duties relating to an individual's interaction with other citizens, including: (1) work; (2) economically supporting obedience in the law; (3) fluency in the English language; (4) obedience of the law; (5) learning sufficient education or skills to be employable. *Id.* at 242-43.

92. Mead, *The Rise of Paternalism*, *supra* note 91, at 2. Mead actively asserts that strict supervision of an individual's conformity should be a condition of all government largesse. He views the goal not as simply punishment and control of behavior ex-post, but as a measure to prevent behavior through supervision and adherence to social obligations; see Joel F. Handler, *Constructing the Political Spectacle: The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 *BROOK. L. REV.* 899, 903-05 (1990).

ety's interest in good behavior is deemed to serve the individual's interest as well.⁹³

According to Mead's argument, public assistance recipients are dependent upon state assistance in the same manner a drug addict is dependent upon his narcotic, and for these reasons, the government is justified in imposing strict, authoritarian, paternalist rules on these dependent individuals.

Mead's ideas about dependency and paternalism are explicitly and deeply informed by the theory that civil society is a social contract or agreement to which citizens are bound. The same seventeenth century philosophers who argued for possessive individualism espoused this social contract theory, but with a different emphasis. They focused on the rights men relinquish, the privileges they obtain, and the obligations they must perform when they agree to enter into civil society. For Locke and Hobbes, for example, it meant relinquishing rights of enforcement and civil war for the protection of private property, liberty, and labor.

According to these theories of dependency, there remains a universal, definable American social compact that includes adherence to certain norms of behavior and morality. Dependent individuals are persons who fail to live up to these obligatory norms.⁹⁴ Such norms might favor sex and childbirth in marriage, privilege work over non-work for certain groups of able-bodied individuals, support a two-parent heterosexual family structure, and favor individual accumulation of wealth and property.⁹⁵ For Mead, the failure of an individual to meet his mutual obligations justifies government imposition of paternalist, behavior-controlling regulation,⁹⁶ while for Murray it justifies elimination of the social safety net altogether.⁹⁷

Theorists who emphasize this moral register of dependency distinguish between independent and dependent individuals based on

93. Mead, *supra* note 91, at 4.

94. MEAD, *BEYOND ENTITLEMENT*, *supra* note 6, at 247 (providing an example of the author using the term "dependent" to refer to individuals who should be subject to compulsion).

95. See generally Mead, *The Rise of Paternalism*, *supra* note 91; Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2110 (codified as amended at 42 U.S.C. § 601 (Supp. 1998) ("PRWORA")), the amended federal welfare law. In the PRWORA, the United States Congress found that "marriage is an essential institution of a successful society which promotes the interests of children"). *Id.*; *United States Statutes at Large*, 104th Cong., 2d Sess. 1996, v.110 pt.3, at 1755.

96. Mead, *The Rise of Paternalism*, *supra* note 91, at 10.

97. Murray, *supra* note 12, at 227-33.

a perceived need to affect how the dependent individual makes her life decisions. For example, Mead and Murray both assume the existence of a set of values to which independent members of society adhere and against which non-conforming individuals are judged as dependent. They also both conclude that society should foster certain kinds of decision-making.

C. Dependence and Relations with the State

Another strand of dependency discourse focuses on the relationship that individuals have with the state. No longer is American society engaged in a war on poverty; rather it is occupied with eliminating state or public dependency. Government welfare policy focuses not simply on changing the level of an individual's income through cash or in-kind assistance, but on mandating that the individual's income come from a source other than the state.⁹⁸ Policy advocates who focus on the source of an individual's income do not necessarily make judgments either about an individual's capacity or moral fibre. Instead, these theorists seem to be concerned with one of two things; either they seek to encourage a social norm that individuals are responsible for privately economically supporting themselves and their families, or they are alarmed by state economic coercion of individuals through state policy that requires individuals to relinquish personal rights in order to obtain economic support from the government.

An early example of the first of these two uses, the dependence/poverty distinction, is seen in Karl Polanyi's description of the Speenhamland Law, which was in effect in England from 1795 to 1834.⁹⁹ The Speenhamland Law was an alternative to the harsh Poor Laws. It provided "subsidies in aid of wages," and was intended to relieve the desperate need and concomitant social unrest brought on by industrialization.¹⁰⁰ According to Polanyi, at the beginning of the industrial revolution, the Speenhamland Law worked to repress the formation of a market in labor because "nobody would work for a wage if he could make a living by doing nothing . . . [; t]he 'right to live' had proved a deathtrap."¹⁰¹ In this way, the effect of the law was apparently opposite than its propo-

98. Michael Morris & John B. Williamson, *Workfare: The Poverty/Dependence Trade-Off*, SOC. POL'Y, Summer 1987, at 13.

99. POLANYI, *supra* note 55, at 78.

100. *Id.* at 78-79; PIVEN & CLOWARD, *supra* note 52, at 30.

101. POLANYI, *supra* note 55, at 78-79.

nents had intended; the law seemed to increase rather than diminish poverty and public dependency.

Under Elizabethan Law the poor were forced to work at whatever wages they could get and only those who could obtain no work were entitled to relief; relief in *aid of wages* [i.e. for the working poor,] was neither intended nor given. Under the Speenhamland Law a man was relieved even if he was in employment, as long as his wages amounted to less than the family income granted to him by the scale. Hence, no laborer had any material interest in satisfying his employer, his income being the same whatever wages he earned; this was different only in case standard wages, *i.e.*, the wages actually paid, exceeded the scale, an occurrence which was not the rule in the countryside since the employer could obtain labor at almost any wages; however little he paid, the subsidy from the rates brought the workers' income up to scale. Within a few years the productivity of labor began to sink to that of pauper labor, thus provided an added reason for employers not to raise wages above the scale. For, once the intensity of labor, the care and efficiency with which it was performed dropped below a definite level, it became indistinguishable from "boondoggling" or the semblance of work maintained for the sake of appearances.¹⁰²

As Polanyi described it, because the worker would earn a lesser amount than he could obtain while on relief, he became a pauper or state dependent. The law sapped him of his drive and of his work ethic and encouraged in him a preference for a relationship of dependence on the state.

Contrary to this description, however, the Speenhamland Law ultimately did not result in a complete end to wage labor, because individuals remained motivated by factors other than wage levels. Indeed, the increase at that time in individuals dependent on state relief could not be attributed to the Speenhamland Law alone. For,

[i]f laborers had been free to combine for the furtherance of their interests, the allowance system might . . . have had a contrary effect on standard wages: for trade union action would have been greatly helped by the relief of the unemployed implied in so liberal an administration of the Poor Law.¹⁰³

In short, the Speenhamland Law interacted with the economic, social, and other legal structures of the time—anti-combination laws,

102. *Id.* at 79.

103. *Id.* at 81.

compulsory work laws, and settlement laws.¹⁰⁴ “Laborers could not organize, they could not refuse work, they could not exploit labor shortages to demand higher wages, and they could not move to new localities to find better working conditions.”¹⁰⁵

“The complicated economics of Speenhamland transcended the comprehension of even the most expert observers of the time; but the conclusion appeared only the more compelling that aid-in-wages must be inherently vicious, since it miraculously injured even those who received it.”¹⁰⁶ Still, the community preferred reliance on private sources of economic support not merely because it was better for the individuals, but because it was better for the progress of capitalism and civilization.¹⁰⁷

In the modern strand of this discourse, commentators also denigrate reliance upon the state for economic support. If an individual relies upon the state to support either herself or those individuals for whom she is responsible, she is in a destructive relationship, she has lost a measure of self-respect. For an individual to be independent, she must not rely upon the state to provide either for herself, her children and spouse, or other immediate family members. These policy-makers focus on strategies to increase the individual’s self-respect by encouraging the person’s ability to maintain these private relationships of economic support.¹⁰⁸ That these norms are present is clear in the law, for these particular relationships of economic support are also, to some extent, mandated and enforceable by recourse to the courts.¹⁰⁹ But these policy makers also focus on other dependent relationships in which good will or moral obligation of family blood is the only basis for provision of economic support. Siblings may support one another if parents are no longer living, parents may rely upon children in their old age, and individuals may support their grandchildren or nieces and nephews, despite having no legal obligation to do so. Law and policy encourage individuals to undertake these relationships of pri-

104. See generally *id.* at 78-83; PIVEN & CLOWARD, *supra* note 52, at 36-38.

105. PIVEN & CLOWARD, *supra* note 52, at 37.

106. POLANYI, *supra* note 55, at 82.

107. *Id.* at 83-85. The interests of society and individuals were co-extensive, so that the individual was expected to submit to the perils of the market “even if it happened to destroy him.” *Id.* at 85.

108. Mary Jo Bane, *Increasing Self-Sufficiency by Reforming Welfare*, in WELFARE REALITIES: FROM RHETORIC TO REFORM, *supra* note 77, at 124-125.

109. *E.g.*, CAL. FAM. CODE § 720 (West 1998) (“Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.”); MASS. GEN. L. ch. 209, § 1 (1994) (“[B]oth spouses shall be liable jointly or severally for debts incurred on account of necessities furnished to either spouse or to a member of their family.”).

vate economic dependency, for example, by allowing the provider to deduct a certain amount of income from his public tax bill for each private dependent relationship.

Policy makers who are concerned about reinforcing these social obligations of economic care focus on dependency as the opposite of economic self-sufficiency.¹¹⁰ Although these policy analysts certainly seek to change individual behavior so that it conforms to their preferred social norms,¹¹¹ they do not overtly cast dependency as a problem of individual morality. For example, Mary Jo Bane and Thomas J. Kane advocate changes in systems of welfare service delivery that promote an institutional culture of competency for the caseworkers as well as a change in recipient behavior.¹¹² Bane and like-minded commentators admit that structural and system-wide influences contribute to an individual's poverty.¹¹³ In addition to providing incentives that encourage desired behaviors, they advocate policy and management decisions to foster client-worker relations that are cooperative and respectful, benefit structures and rules that are understandable, and a system of predictable consequences and actions.¹¹⁴ These policy-makers begin to take on questions about how paternalist policies that treat poor individuals as less capable might contribute to, rather than diminish, dependency. The critical dimension captured by the use of "dependent" to denote this lack of self-sufficiency, however, is the concept that a relationship in which a person relies upon the state is inherently destructive to the person's independence. In contrast, other relations of private dependence, seemingly free from state regulation—relations between family members, spouses, parents, and children—are natural and benign forms of dependence that policy-makers encourage.

A second strand of the discourse that emphasizes an individual's relationship with the state focuses on the power of the state to coerce persons to relinquish individual rights when they depend upon the state for economic support. This concern about the consequences of pervasive economic dependence on the state is elabo-

110. Bane, *supra* note 108, at 124-125.

111. Such measure might include increasing child support payments and making work more desirable.

112. Mary Jo Bane & Thomas J. Kane, *The Context for Welfare Reform*, in *WELFARE REALITIES: FROM RHETORIC TO REFORM*, *supra* note 77, at 2-7; Bane, *supra* note 108, at 125-27.

113. See generally *WELFARE REALITIES: FROM RHETORIC TO REFORM*, *supra* note 77; JENCKS, *supra* note 81; WILSON, *supra* note 81.

114. Bane, *supra* note 108, at 125-127.

rated by legal theorists who focus on entitlements.¹¹⁵ Charles Reich detailed this notion of dependency in his influential 1964 article, *The New Property*.¹¹⁶ Sounding the same themes as the possessive individualists before him,¹¹⁷ Reich wrote a clarion call to libertarians about the threat that economic dependence on the state posed to individual freedom.¹¹⁸ Reich presented a view of all men existing in a world dominated by the state and private, economically powerful conglomerates: a world of utterly dependent individuals and entities.¹¹⁹ In Reich's world, these forces were so pervasive and controlling that the individual needed protection against the excesses of that control to secure her liberties.¹²⁰ In Reich's vision, the coercive power of the State was negative, and invocation of property rights was the only way to retain any level of individual liberty.¹²¹

As with individualist theory, in Reich's theory, property rights act as the principal guardian of "the troubled boundary between individual man and the state."¹²² Reich believed that "the power to control a particular portion of [material] well-being is the very foundation of individuality."¹²³ He viewed property rights as giving individuals such control by creating zones of autonomy into which neither another private party nor the state could intrude.¹²⁴

Property draws a circle around the activities of each private individual or organization. Within that circle, the owner has a greater degree of freedom than without. Outside, he must justify or explain his actions, and show his authority. Within, he is master, and the state must explain and justify any interference Thus, property performs the function of maintaining independence, dignity and pluralism in a society by creating zones within which the majority has to yield to the owner. Whim, caprice, irrationality and "antisocial" activities are given the pro-

115. Reich, *supra* note 13. Compare MEAD, *supra* note 6, at 249-50 (expressing concern about entitlements, but also focusing on the obligations that are or should be attendant to them).

116. Reich, *supra* note 13.

117. *Supra* notes 39-43 and accompanying text.

118. *Id.* It was not, however, strictly libertarian in the sense that Reich did not advocate only for less government intrusion, or dismantling systems of government largesse.

119. *Id.* at 756-60.

120. *Id.* at 760-64.

121. *Id.* at 771-74, 785-87.

122. *Id.* at 733.

123. *Id.*

124. *Id.* at 771.

tection of law; the owner may do what all or most of his neighbors decry.¹²⁵

Since the seventeenth century, sources of individual wealth changed dramatically from traditional forms such as privately held land and personal property to wealth acquired in the form of “government largesse.”¹²⁶ Reich was concerned about individual reliance upon this largesse because it offered no zone of legal protection similar to that offered by traditional private property. For the same reason, Reich was also concerned about government action that had the effect of conferring status upon individuals. He emphasized:

[T]oday more and more of our wealth takes the form of rights or status rather than of tangible goods. An individual’s profession or occupation is a prime example A profession or job is frequently far more valuable than a house or bank account, for a new house can be bought, and a new bank account created, once a profession or job is secure. For the jobless, their status as governmentally assisted or insured persons may be the main source of subsistence To the individual, these new forms [of wealth], such as a profession, job, or right to receive income, are the basis of his various statuses in society, and may therefore be the most meaningful and distinctive wealth he possesses.¹²⁷

These kinds of wealth, intangible status and rights in private and government largesse, were considered a “privilege” in the Hohfeldian framework of jural relations, and thus contingent.¹²⁸ The combination of the growing prevalence of government largesse and the state’s ability to condition or regulate its receipt created dependence. Reich concluded that “the object of the whole system is to enforce ‘the public interest’—the interest of the state or society or the lord paramount—by means of the distribution and use of wealth in such a way as to create and maintain [citizen] dependence” on the state.¹²⁹ By subjugating the individual’s rights to this coercive public interest, this system harkened toward the evils Reich saw as characteristic of collective societies.¹³⁰

Reich thus focused on dependency as a coercive economic relation to the state. Although he acknowledged that the regulatory state was needed to counteract great accumulations of private

125. *Id.*

126. *Id.* at 733.

127. *Id.* at 738-739.

128. See generally Joseph Singer, *supra* note 3; Reich, *supra* note 13, at 740.

129. Reich, *supra* note 13, at 770.

130. *Id.*

wealth accompanying the rise of industry and corporations, it was the extent of state control of individuals that most informed his objection. Reich's new property ideal would create a new zone of independence where now there was dependence on the state.¹³¹ Independence was an individual's ability to engage in non-conformist thought and action, an ability that individuals secured through the vehicle of private property.¹³² Troubled by the new forms of wealth and property, and inequality in its distribution, Reich concluded that it was necessary to expand property rights to include other forms of wealth or status now held by the majority of citizens, including poor ones.¹³³ To protect an area of non-conformity of individual action and to decrease dependence, Reich advocated an expanded view of what should be considered property and a reversion to the liberal purpose of securing individual liberty.

Reich's idea of a new kind of property right was adopted, to a limited extent, in 1970 in *Goldberg v. Kelly*.¹³⁴ In *Goldberg*, the Supreme Court determined that the Social Security Act created an entitlement to public assistance for eligible recipients under the Aid to Families with Dependent Children program. For the first time, individuals could claim rights and procedures in the provision of state assistance. *Goldberg*, however, was the outer limit of the New Property doctrine,¹³⁵ a doctrine that withered before it reached Reich's full vision. It took Congress only twenty-five years to eliminate the entitlement contained in that legislation, clarifying that state assistance remained nothing more than a gratuity upon which only the most destitute and dejected individuals could rely.¹³⁶

D. Dependence and Productivity

Whether and to what extent individuals participate in productive, paid labor is also a central concern of dependence discourse. Themes of labor and work in the images and rhetorical uses of dependency are prominent in the three strands of the discourse that I have so far described. Individualist theory posits labor as neces-

131. *Id.* at 787.

132. *Id.* at 771-74.

133. *Id.* at 787.

134. 397 U.S. 254 (1970).

135. Handler, *supra* note 92, at 899-900.

136. PUB. L. NO. 104-193, 110 Stat. 2113 (codified as amended at 42 U.S.C. § 601 (1996)) (clarifying that individuals have no entitlement to state assistance); Lucy A. Williams, *Welfare and Legal Entitlements: The Social Roots of Poverty*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 575 (3d ed. 1998).

sary to the creation of private property, the institution through which independence is secured.¹³⁷ The positive moral virtue inherent in and produced by work is also evident; individuals who do not work, but are apparently able to do so, are morally deficient. In addition, laboring in the private wage market to support one's dependent family members is normatively preferred to relying upon the state for income.¹³⁸ The connection between work and freedom is so deep in the discourse, however, that I consider the theme of productivity on its own. In the final register of dependence that I identify, an individual's productivity in the wage-labor market is the distinguishing feature of the rhetoric. When commentators and theoreticians invoke work as a means to liberation, they commonly also appeal to any or all of the other three strands of the discourse.¹³⁹

There is a wide consensus in the United States that work is normatively good. Such consensus is unsurprising, for without productive work, we would not be able to live at all, much less at the high standards that we do. Productive labor sustains a community of interests that society shares, and unquestionably, for many individuals, the wealth that one accrues through paid labor is a means to achieve economic stability, nourishment, shelter, and other necessities of life. Work also provides necessary and healthy psychic rewards to many individuals as they gain a feeling of self-worth and challenge. The consensus, however, goes beyond a collective agreement that work is necessary to live. Depending upon an individual's economic class, wage workers as a group enjoyed preferred social status over non-workers.¹⁴⁰ Moreover, for certain

137. MACPHERSON, *supra* note 18, at 3, 200-01; LOCKE, *supra* note 5.

138. See generally MEAD, *supra* note 6.

139. AXINN & STERN, *supra* note 81, at 31-48. Productivity itself is difficult to define, Axinn and Stern identify four dimensions to dependency in this mode: (1) labor market participation; (2) socially useful production, including non-market work; (3) poor who depend on public money, or the "impotent poor"; (4) poor who depend on public money that is not tied to labor market participation. The last of these would categorize individuals who rely on programs such as unemployment or social security as independent, and reserve the category of dependent for individuals who rely upon social assistance programs like food stamps. *Id.* at 41. The authors point out that even with only these four definitions of dependency, approximately forty-six percent of the population would fall into ambiguous categories of dependency. "By some standards, [these individuals] are independent or productive; by others they are dependent." *Id.* at 43.

140. American individualism "foster[ed] the belief that any hard-working virtuous man could support his family in independence and dignity." Mohl, *supra* note 12, at 39. Needy people who did not work were viewed as idle, shallow, or immoral. *Id.*; see MURRAY, *supra* note 12, at 179-80.

members of the community, the responsibility to work in paid labor is part of the social compact and the “American dream.”¹⁴¹ Along with monetary wages, work provides dignity, pride, morality, and independence. Indeed, the dominant societal belief has been that:

[E]conomic individualism—the unshakable conviction held by poor and affluent alike that rags could indeed be converted into riches. The doctrine of self-help through work which distinguished nineteenth century capitalism flourished in its purest and fiercest form in the United States. By contrast with other countries, where some residue remained of earlier Christian teachings that poverty was a blessing that should inspire charity in the rich and meekness in the poor, poverty in the United States came to be regarded as the obvious consequence of sloth and sinfulness. The promise of America was not affluence but independence; not ease, but a chance to work for oneself, to be self-supporting, and to win esteem through hard and honest labor.¹⁴²

What remains unstated in this belief about work is an even higher social preference for capital accumulation and independent wealth, plus a definition of productive labor that discounts the value and status of certain types of work.

In Part I.A. I described Locke’s focus on individual capacity as a defining mark of independence. Locke, however, withheld the label independent from more persons than those obviously without the requisite capacity, such as young children, lunatics, idiots, and madmen.¹⁴³ Indeed, Locke classified the laboring class itself as a group of individuals incapable of the full rational behavior that marks independent men.¹⁴⁴ C.B. Macpherson has argued that Locke did this by reading the class differentials of the seventeenth century into his theory of natural rights.¹⁴⁵ Macpherson explains:

141. “The ‘American dream’—of a rewarding job, a home, and a family and community to take pride in—cannot be conferred by government fiat. It must be earned, as it has been by generations of Americans, through diligence and honesty—in short, by personal responsibility.” James A. Baker III, *Confronting the Matter of Personal Responsibility*, L.A. TIMES, Jul. 10, 1994, at M3. Thus, work provides more than economic gains; it also provides spiritual and personal benefits.

142. PIVEN & CLOWARD, *supra* note 52, at 46 (quoting ROBERT H. BREMNER, *FROM THE DEPTHS: THE DISCOVERY OF POVERTY IN THE UNITED STATES* 16-17 (1956) (internal quotation marks omitted)).

143. LOCKE, *supra* note 5, at § 60.

144. MACPHERSON, *supra* note 18, at 221-22.

145. The existence of class differential exists in twentieth century liberal theory as well. Milton Friedman has explicitly acknowledged these material inequalities:

It was because Locke had always assumed fully rational behaviour to be accumulative behaviour that he could, at the point [in the theory] where labouring and appropriating [property] became separable, find that full rationality lay in appropriating rather than in labouring.¹⁴⁶

Locke's theory expounded how this differential was established.¹⁴⁷ In nature, a man's property was limited to only the amount that he could use before it spoiled.¹⁴⁸ "As much land as a man tills, plants, improves, cultivates, and can use the product of, so much [was] his property."¹⁴⁹ But, this egalitarian measure and distribution of individual property, and with it, liberty, contradicted the existing unequal distribution of wealth. Locke accounted for and legitimized great accumulation of wealth and property in society by reasoning that men who traded for durable things the perishable fruits of their property could accumulate greater property rights without jeopardizing either their right to title or the laws of nature. Rather, it was the waste of products by spoilage that affronted the law of nature, not the accumulation of material durable things beyond one's ability to consume.

He that gathered a hundred bushels of acorns or apples, had thereby a property in them, they were his goods as soon as gathered. He was only to look, that he used them before they spoiled, else he took more than his share and robbed others. And indeed it was a foolish thing, as well as dishonest, to hoard up more than he could make use of. If he gave away a part to any body else, so that it perished not uselessly (sic) in his possession, these he also made use of. And if he also bartered away plums, that would have rotted in a week, for nuts that would last good for his eating a whole year, he did no injury; he wasted not

The heart of the liberal philosophy is a belief in the dignity of the individual, in his freedom to make the most of his own capacities and opportunities according to his own lights, subject only to the proviso that he not interfere with the freedom of other individuals to do the same. This implies a belief in the equality of man in one sense; in their inequality in another The liberal will . . . distinguish sharply between equality of rights and equality of opportunity, on the one hand, and material equality or equality of outcome on the other. He may welcome the fact that a free society in fact tends toward greater material equality than any other yet tried. But he will regard this as a desirable by-product of a free society, not its major justification.

Milton Friedman, *Liberalism and Egalitarianism*, in *POVERTY, ECONOMICS AND SOCIETY* 282 (Helen Ginsburg ed., 1972).

146. MACPHERSON, *supra* note 18, at 236.

147. April L. Cherry, *Social Contract Theory, Welfare Reform, Race, and the Male Sex-Right*, 75 *OR. L. REV.* 1037, 1054-1055 (1996).

148. LOCKE, *supra* note 5, at § 27.

149. *Id.* § 32.

the common stock; destroyed no part of the portion of goods that belonged to others, so long as nothing perished uselessly (sic) in his hands. Again, if he would give his nuts for a piece of metal, pleased with its colour; or exchange his sheep for shells, or wool for a sparkling pebble or a diamond, and keep those by him all his life, he invaded not the right of others, he might heap up as much of these durable things as he pleased; the exceeding of bounds of his just property not lying in the largeness of his possession, but the perishing of any thing uselessly (sic) in it.¹⁵⁰

The exchange of durable things for perishable ones was, according to Locke, by tacit and voluntary consent, a valuable trade for the preservation of man despite the resultant inequality.¹⁵¹ Moreover, there was no provision for redistribution of such accumulated wealth despite the existence of deep inequality. Locke simply did not question unequal status among individuals. Accordingly, he concluded:

[I]t is plain, that men have agreed [by use of money] to disproportionate and unequal possession of the earth, they having, by a tacit and voluntary consent, found out a way how a man may fairly possess more land than he himself can use the product of, by receiving in exchange for the overplus gold and silver, which may be hoarded up without injury to any one; these metals not spoiling or decaying in the hands of the possessor.¹⁵²

As I have said, Locke asserted that every man has “property” over his own person.¹⁵³ Moreover, man has the same “unquestionable property” or dominion over “the labour of his body and the work of his hands”¹⁵⁴ and, the act of mixing a man’s labour with something he removes from the state of nature, is the act of making private property.¹⁵⁵ Individual freedom is dependent on the individual’s accumulation of this property, for within the limits of an individual’s property, the owner is not only protected in his actions from the interference of others but also may direct the activities of other individuals.¹⁵⁶ Labor is central to the individualist theory, central to creation of private property and central to independence.¹⁵⁷

150. *Id.* § 46.

151. *Id.*

152. *Id.* § 50.

153. *Id.* § 27.

154. *Id.*

155. *Id.*

156. *Id.* § 39.

157. *See id.* § 39.

Locke's idea that a man holds a property right in himself and his labor that he could freely alienate was not uncommon in colonial America, nor is it alien today.¹⁵⁸ Since colonial times it has been understood that a master or employer purchased a property interest in another's labor, and in so doing was entitled to retain the product of that labor. Similarly, a man who worked for himself was entitled to keep the product of his labor.¹⁵⁹ The fact that workers in the paid labor market generally had no property other than their labor, and were required to sell it to survive, did not diminish their freedom.¹⁶⁰ The contradiction that property was freedom from domination, but that men were required to sell that property-liberty to survive went unacknowledged.¹⁶¹ The mere fact that one was able to sell one's labor, in contrast to a slave, rendered one a free man.¹⁶²

Only after the onset of industrialization did the modern idea of the free labor contract become completely familiar to American law.¹⁶³ According to this concept, the parties to the employment contract were viewed as equals—each with the same rights and obligations.¹⁶⁴ It meant that

[t]he employed [was] under no greater obligation to the employer than the employer [was] to the employed; and the one [had] no more right to dictate [conduct outside of work] than the other. In the eye of the law, they [were] both freemen—citizens having equal rights, and brethren having one common destiny.¹⁶⁵

But development of this view of the propertyless worker as an equal to the master or employer did not come quickly either at law or by custom. The struggle for women and African Americans to achieve freedom from legally dependent status took even longer. In *The Invention of Free Labor*, Robert Steinfeld documents the development of this concept of free labor that we take as the norm.¹⁶⁶ Steinfeld describes a trajectory commencing at a time when the natural status of all non-propertied laborers was that of a

158. See MACPHERSON, *supra* note 18, at 215.

159. *Id.*

160. STEINFELD, *supra* note 17, at 80. The laborer "freely" entered into the wage-labor agreement.

161. *Id.* at 106-07.

162. *Id.* at 53; MACPHERSON, *supra* note 18, at 219.

163. STEINFELD, *supra* note 17, at 15.

164. *Id.*

165. *Id.*

166. See generally STEINFELD, *supra* note 17.

dependent person.¹⁶⁷ The picture painted by Locke, of laboring men who were less rational than propertied ones, and the rejection of relief in aid of wages and the Speenhamland experiment in England were the backdrop for this transformation.

As Steinfeld describes, until the late eighteenth century, only propertied individuals, usually men, enjoyed the rights and benefits of fully independent citizens.¹⁶⁸ Some of these men labored to maintain their lands and to harvest their crops. Others worked in the sense that they managed their property, slaves, and servants while being subject only to limited regulation of their work efforts. Although they were obligated to provide the likes of bed, board, and medical treatment for those under their care and in their employ, on the whole, they benefited from what regulation of work relationships existed.¹⁶⁹ Detailed regulations encompassed and restricted the work lives of propertyless individuals. These propertyless individuals who “voluntarily” sold their labor to employers were nonetheless commanded to work, under the complete control of their masters, and subject to criminal and corporal penalties for failure to meet conditions set by both their masters and the law.¹⁷⁰

As early as the fourteenth century¹⁷¹ and again in the sixteenth century,¹⁷² England enacted statutes restricting the activities and work of the poor.¹⁷³

Both the employed and the unemployed [wage-laborers] had been the object of much state concern by the Tudor and early Stuart governments, but neither the labouring nor the idle poor had been considered capable of political rights. Puritan individualism, to the extent that it superseded the paternalism of the

167. *Id.* at 56, 80; Patricia Cooper, *A Masculinist Vision of Useful Labor*, 84 KY. L.J. 827, 835 (1996).

168. STEINFELD, *supra* note 17, at 56.

169. *Id.* at 25-26. The masters/owners of labor benefited in many ways, including in their ability to control the lives of their workers both on and off the job, *id.* at 41, having the right to any product or profit from the labor, *id.* at 81, having the ability to use the labor of a servant to satisfy debts. *Id.* at 90.

170. *Id.* at 22-24. For a review of the legal and practical conditions under which servants and laborers toiled in England and the United States, *see generally id.* at 25-54.

171. These provisions were developed by the Ordinance and Statute of Laborers. *Id.* at 22.

172. The newer, modified provisions were enacted as the Statute of Artificers (1562-63). *Id.* at 23.

173. For example, the Statute of Artificers compelled labor in the work of husbandry for all unemployed, non-apprenticed individuals between the ages of twelve and sixty with no visible means of support. If the individual was unmarried, under the age of thirty, and had been trained in a craft, he was compelled to accept work from any person who needed his artistry or mastery. *Id.*

Tudor and early Stuart state, did nothing to raise the estimation of the political capacity of the dependent working class. On the contrary, the Puritan doctrine of the poor, treating poverty as a mark of moral shortcoming, added moral obloquy to the political disregard in which the poor had always been held. The poor might deserve to be helped, but it must be done from a superior moral footing. Objects of solicitude or pity or scorn, and sometimes of fear, the poor were not full members of a moral community.¹⁷⁴

Given the prevalence of these norms, it is unsurprising that dependent status relationships were the norm.¹⁷⁵ Whether under masters, churches, local officials, or workhouse administrators, a poor individual was usually subject to the direction and rule of another person. Artisans on the other hand, and individuals possessing a sufficient stock of animals, or a plot of land that could sustain a family, could plausibly claim to be independent.¹⁷⁶ So long as they had sufficient material ability to maintain themselves, their person and labor were not subject to the control of another.¹⁷⁷

The justification for this regulation was derived from two sources: first, the “set of ancient conceptions about proper order in the domestic household and about the role of the household in the wider polity[,]”¹⁷⁸ and second, the view that labor was “a common resource to which the community had rights”¹⁷⁹ Under the first vision,

[t]he characterization of the household as a hierarchically arranged polity was common [T]hey cast the relationship between a master and his resident servants as one form of the relationship heads of household bore to dependent members of their households. Along with other dependent members of the household, like wives and children, resident servants were understood to be subject to a kind of jurisdiction that a head of household exercised over all household members.¹⁸⁰

This hierarchy was similar to that which I already have described as the common relation between married women and their husbands, and the hierarchy in the greater polity, so that all dependents were considered part of a “household government” and the

174. MACPHERSON, *supra* note 18, at 226-27.

175. FRASER & GORDON, *supra* note 15, at 312; STEINFELD, *supra* note 17, at 56.

176. *Id.* at 40.

177. *Id.*; Cooper, *supra* note 167, at 835.

178. STEINFELD, *supra* note 17, at 55-56.

179. *Id.* at 60.

180. *Id.* at 56.

master "was understood to be like [other rulers] who governed [their] polities."¹⁸¹

A master's jurisdiction over his resident servants flowed in the first instance from his status as head of household, but it also flowed from a decision by the community that right order was served by giving heads of household jurisdiction over those among the laboring poor who were not settled, did not have households of their own, and might otherwise constitute a source of disruption.¹⁸²

It was the propertied master who was independent. He had control over the finances, personal and real property, education and employment, possibilities for self-governance, franchise, and the prerogatives of daily life for the entire household. He could speak and represent his own and his household's interests in the community, he could enter into contracts, and could invoke the power of the courts to enforce his rights against others. All other members of his household: wife, child, servant, and slave, were dependents; they enjoyed only a limited ability, if any, to exercise these rights.¹⁸³

The same strict control of non-resident laborers could not as easily be justified because they maintained their own households. Although they did not control their destinies to the same extent as artisans, at least by the eighteenth century, day laborers were considered "their own masters" when not at work.¹⁸⁴ Although they did not enjoy the full privileges of self-governance accorded the land-owning class because they were without public voice or authority, laborers did have a separate, albeit regulated, personal existence in the community. The regulations under which they were controlled were justified as "expressions of the jurisdiction that the community claimed over labor."¹⁸⁵ In essence, through enforcement of legal restrictions on and compulsions to work, the community granted a portion of its claim over communal labor to private individuals, namely masters, who were thereby entitled to call upon the courts to enforce their claims over the laborers through imprisonment or fines.¹⁸⁶

181. *Id.* at 57.

182. *Id.* at 59.

183. *See id.* at 56.

184. *Id.* at 40.

185. *Id.* at 60.

186. *Id.*

Thus, under conceptions of independence that privilege control over one's person and actions, it cannot be said that these eighteenth century non-propertied workers were independent; they were, by call of the state, subject to the will of their masters. Without property, neither social nor legal norms attributed to workers the autonomy of judgment sufficient to confer independent status. Rather, "in the republican theory behind the American Revolution, independence for the citizen . . . implied economic independence . . . along with, and as the underpinning for, freedom of judgment."¹⁸⁷ Nevertheless, in a limited sense, when contrasted with slaves and indentured servants, laborers were universally conceived of as independent men.¹⁸⁸ Notwithstanding the criminal sanctions that could be imposed upon them or the fact that they were selling their only theoretical claim to freedom—control over their person and labor—the existence of a nominal sense of voluntariness and bargaining power to enter into work relationships was sufficient to denominate these individuals independent.¹⁸⁹

The force of this appearance of voluntariness, however, did not last in the face of the movement to abolish slavery. The category of indentured servitude was the first status relationship to succumb to analogies to slavery, for the terms and conditions of service were unusually harsh.¹⁹⁰ American masters had extensive control over their servants—they could beat them, recapture runaway servants both by self-help and by recourse to authorities, and could assign rights in servants.¹⁹¹

[I]t was only when indentured servitude (voluntarily undertaken) finally came to be redefined as involuntary servitude that the modern concept of free labor could simultaneously emerge as its mutually contrasting, mutually defining opposite term—labor that was not subject to legal compulsion in its performance whether or not it had been voluntarily undertaken in the first place.¹⁹²

Surprisingly, theories of individualism initially did little to contribute to the concept of free labor. The individualist view, which regarded wage workers as dependent because they had sold the right to control their own persons and wills, was compatible with

187. COTT, *supra* note 2, at 110-11.

188. STEINFELD, *supra* note 17, at 53.

189. *Id.* at 99-100.

190. *Id.* at 45-47.

191. *Id.*

192. *Id.* at 53.

the tandem view that society was comprised of autonomous individuals engaged in free transactions for their mutual benefit.¹⁹³ Moreover, in the early stages of liberal thought, Locke explained that every man was by nature free, and poor men consented to their lower rank in civil society.¹⁹⁴ According to at least one commentator, this early liberal thought was more of a justification for accumulation of capital than a case for universal rights of self-governance.¹⁹⁵ The contradiction within individualism between its basic tenet that all men were free and had dominion over their person, and the requirement that laboring men sell the essence of that liberty—their labor—in order to survive was not apparent until the first four decades of the nineteenth century.¹⁹⁶ By that time, “[w]hatever the terms of their employment, whether it was long term or short term and whether it involved residence with the employer or not, no adult who was hired to work for another was considered . . . the legal dependent of his or her employer.”¹⁹⁷

So the transformation was complete. Whereas formerly only propertied white men were fully independent, now all non-enslaved men, propertied or not, were on the same footing; they all were autonomous bargaining individuals. In times of labor shortage, even a laborer could exert power over the wage-labor relationship with a threat of mobility. This mobility and power meant that if a man could work, one was free. “[A]mong workers who rarely voted and whose other forms of resistance had only limited effect, mobility may well have emerged as the principal means of avoiding ‘corrupt’ dependency on their employers—of asserting their independence.”¹⁹⁸

This ideal of free labor was constitutionalized in 1905 in *Lochner v. New York*.¹⁹⁹ In that case, the Supreme Court held unconstitutional a New York statute that limited the working hours of all bak-

193. *Id.* at 80.

194. “[N]o one can be put out of [the state of nature and his right to subsistence], and subjected to the political power of another, without his own consent.” LOCKE, *supra* note 5, at § 95.

195. MACPHERSON, *supra* note 18, at 221. Macpherson posits that by his theory of man’s absolute property in his own labor, and his theory of money and unequal distribution of wealth, Locke justified capital accumulation and “erased the moral disability with which unlimited capitalist appropriation had hitherto been handicapped.” *Id.*

196. STEINFELD, *supra* note 17, at 155.

197. *Id.*

198. *Id.* at 161 (quoting JONATHAN PRUDE, *THE COMING OF INDUSTRIAL ORDER: TOWN AND FACTORY LIFE IN RURAL MASSACHUSETTS 1810-1860*, at 148 (1983)).

199. 198 U.S. 45 (1905).

ers.²⁰⁰ The Court distinguished bakers from underground miners, for whom, seven years earlier in *Holden v. Hardy*, it had upheld working hour restrictions.²⁰¹ One of the Court's primary justifications for its contradictory decisions in these two cases was its view that the miners in the latter case were different in character from other workers; they lacked the capacity to protect themselves in some way and were dependent.²⁰² Similarly, two years after *Lochner*, in *Muller v. Oregon*,²⁰³ the Court justified upholding restrictions on working hours for female laundry workers because

history discloses that woman has always been dependent upon man [S]he has been looked upon in the courts as needing especial care that her rights may be preserved. Education was long denied her, and while now the doors of the school room are opened and her opportunities for acquiring knowledge are great, yet even with that and the consequent increase of capacity for business affairs it is still true that in the struggle for subsistence she is not an equal competitor with her brother.²⁰⁴

She simply lacked sufficient mental and physical capacity to meet the struggle.

Industrialization not only substantially affected common views about women's labor and of the kinds of work that constituted independent labor, but also effected the ascendancy of wage labor over artisan work.²⁰⁵ By the mid-nineteenth century, half of the American non-enslaved labor force worked for someone else,²⁰⁶ and by 1900, that proportion had risen to three-quarters.²⁰⁷ In the context of industrialization and wage reliance, a growing number of men would always work for and be under the control of someone else.²⁰⁸ To reconcile themselves to this dramatic change, "white working men . . . redefined independence to mean wage earning. Using the dualities of independent and dependent in new ways, they could frame their own labor as independent if it were contrasted to dependent labor," including slave labor, white home-

200. *Id.* at 64.

201. 169 U.S. 366 (1898).

202. *Lochner v. New York*, 198 U.S. 45, 54-55 (1905).

203. 208 U.S. 412 (1908).

204. *Muller*, 208 U.S. at 421-422. The Court so held despite acknowledging that in Oregon restrictions on the right of women to contract and hold property by then had been abolished.

205. Cooper, *supra* note 167, at 834.

206. *Id.*

207. *Id.*

208. *Id.*

makers, and the non-working poor.²⁰⁹ Both in legal and popular conceptions, the meaning of dependency was recast so that white male wage work outside the home became the dominant signifier of independence.

Yet even after the idea of free labor solidified in legal and popular rhetoric, the concept of wage slavery and its supposition of dependence was used to undermine the premises of autonomy and independence contained therein. For example, Max Weber argued that the freedom of workers to enter into labor contracts gained them little in the way of actual freedom:

The formal right of the worker to enter into any contract whatsoever with any employer whatsoever does not in practice represent for the employment seeker even the slightest freedom in the determination of his own conditions of work, and it does not guarantee him any influence on this process. It rather means, at least primarily, that the more powerful party in the market, i.e., normally the employer, has the possibility to set the terms, to offer the job "take it or leave it," and, given the normally pressing economic need of the worker, to impose his terms upon him. The result of contractual freedom, then, is in the first place the opening of the opportunity to use, by the clever utilization of property ownership in the market, these resources without legal restraints as a means for the achievement of power over others In this type of coercion the statement "coactus voluit" [it is his wish although coerced] applies with peculiar force just because of the careful avoidance of authoritarian forms. In the labor market, it is left to the "free" discretion of the parties to accept the conditions imposed by those who are economically stronger by virtue of the guaranty of their property²¹⁰

The normative preference for work and the favored social status of wage laborers as independent is further demonstrated by the place labor holds in the social compact. In contemporary discourse, for example, Lawrence Mead focuses on the particular need, socially and legally, to enforce work in low-skilled, low-paid "dirty" jobs.²¹¹ "[F]or these workers, employment must become a duty, enforced by public authority, rather than an expression of self-interest."²¹² In addition, Mead concludes, fulfillment of this

209. *Id.* at 835 (citing DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* 33 (1991)).

210. STEINFELD, *supra* note 17, at 157-158 (quoting MAX WEBER, *ECONOMY AND SOCIETY: AN OUTLINE OF INTERPRETIVE SOCIOLOGY* 2:729-31 (Guenther Roth & Claus Wittich eds., 1978)).

211. MEAD, *supra* note 6, at 13.

212. *Id.* at 69-70.

obligation “would permit the poor a kind of freedom that government benefits alone never can.”²¹³ Fulfillment of one’s obligations under the social contract is tied to independence just as it is tied to work. No matter how society or the individual views the particular job, work is equated with independence. Moreover, theorists who focus on self-sufficiency and who seek to relegate dependence to the private (as opposed to public) domain also invoke the social contract. Individuals have a socially expected personal obligation to support privately certain other individuals, namely, their immediate family members.

The interesting aspect of work and labor in dependency rhetoric is that it is used to support both poles—individualism and social contract theory. That work is the foundation of the individualist American dream and at the same time one of the most basic community-based obligations²¹⁴ perhaps explains the wide normative preference for work and for its role as a signifier of moral virtue.

II. DEPENDENCE IN CONTEMPORARY WELFARE RHETORIC AND REFORM

The legislative history of the recent federal welfare reform, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (“PRWORA”),²¹⁵ is a contemporary example of how certain strands of the dependency rhetoric that I have described continue to have effect. Portions of the House Report introducing the broad policy goals of the final bill use terms such as dependency, pathology, self-sufficiency, freedom through work, responsibility for others, and independence from the state. The Report states:

[T]here is little doubt that the current welfare system is a failure. It traps recipients in a cycle of dependency. It undermines the values of work and family that form the foundation of America’s communities. Most devastating of all, it fails the Nation’s children.

These are the pathologies that the welfare reform incorporated in this reconciliation measure is intended to cure.

The reform proposal saves families by promoting work, discouraging illegitimacy, and strengthening child support enforcement. It converts welfare into a helping hand, rather than a handout, by limiting lifetime welfare benefits. It halts payments to people who should not be on welfare. It grants maximum

213. *Id.* at 70.

214. *Id.* at 242 (discussing the characterization of work as a social obligation).

215. PRWORA, *supra* note 95.

State flexibility to show true compassion by helping those in need achieve the freedom of self-reliance

The welfare system contradicts fundamental American values that ought to be encouraged and rewarded: work, family, personal responsibility, and self-sufficiency. Instead, the system subsidizes dysfunctional behavior.

According to a recent Cato Institute study, the total package of public benefits for low-income persons is, in many cases, substantially more generous than working. Cato notes that welfare pays more than the starting salary for a teacher in 9 States

As welfare discourages work, it encourages long-term dependency 90 percent of those currently receiving welfare will eventually spend more than 2 years on the rolls, and 76 percent will receive welfare for more than 5 years. Thus welfare punishes its intended beneficiaries, isolating them from the economic and social mainstream

The greatest tragedy of the welfare system is how it harms the Nation's children. By promoting illegitimacy, the system breeds a variety of other pathologies scarring children in ways that can affect their entire lives These problems include anti-social behavior, hyperactivity, disobedience, greater peer conflict, and dependency.²¹⁶

Many of the same themes resound in the Republican authored *Contract with America* out of which PRWORA grew.²¹⁷ The Welfare Reform section of the *Contract* begins:

Isn't it time for the government to encourage work rather than rewarding dependency? The Great Society has had the unintended consequence of snaring millions of Americans into the welfare trap. Government programs designed to give a helping hand to the neediest Americans have instead bred illegitimacy, crime, illiteracy, and more poverty. Our *Contract with America* will change this destructive social behavior by reducing illegitimacy, crime, illiteracy, and more poverty. Our *Contract with America* will achieve what some thirty years of massive welfare spending has not been able to accomplish: reduce illegitimacy, require work, and save taxpayers money.²¹⁸

It is difficult not to read these documents and feel their persuasive power. The values that they emphasize are, to a great degree, positive and uncontroversial ones. And one need only witness the suffering of low-income people in our own cities and countryside to

216. H.R. REP. NO. 104-651, at 3-4 (1996), reprinted in 1996 U.S.C.C.A.N. 2183, 2184-2185.

217. NEWT GINGRICH ET AL., *CONTRACT WITH AMERICA* (1994).

218. *Id.* at 65 (emphasis in original).

know that there is something terribly wrong. Why, in a land of abundance, does abject poverty and social isolation remain? The answer, according to these politicians and policy makers, is dependency. They argue that unstable families, promiscuity, out-of-wedlock births, violent crime, illiteracy, anti-social behavior, sloth, and wasted money all are caused by dependency. These social problems are then conflated in the law's and the *Contract's* rhetorical use of that term. This contemporary coda of dependency is the loss of an individual moral compass, an incapacity to make one's own way, inappropriate socialization into moral norms, or a repeated failure to meet personal responsibilities, and to provide for oneself and others by working as a wage-laborer.

Even if there is widespread consensus that crime, illiteracy, sloth, and childbirth outside of marriage should be discouraged, politicians should not use dependency as a simplifying substitute for actual discussion of these complex social issues. Rather than confront our shared responsibility for the maintenance of systems that oppress and contribute to individual desperation, these discursive tactics avoid a discussion of this difficult problem by diverting focus to the individual alone. Are policy concerns about an individual's capacity, morality, and labor—all of which underlie dependency rhetoric—consistent regarding all classes of individuals, or does the construction of a social problem of dependency encode other concerns or biases? An example may clarify the answer to this question. The congressional findings prefacing PRWORA are almost entirely about the problem of out-of-wedlock births.²¹⁹ Subparagraph (7) of the preface states:

[A]n effective strategy to combat teen pregnancy must [be to] address the issue of male responsibility, including statutory rape culpability and prevention. The increase in teen pregnancies among the youngest girls is particularly severe and linked to predatory sexual practices by men who are significantly older.²²⁰

And yet, except for child support enforcement provisions, there is little in PRWORA that addresses the predatory sexual practices of older men, and even those provisions are aimed at providing for the children ex-post, rather than actually addressing male sexual practices. Instead, the predominant target of the law remains the same: young women.²²¹ The repeated goal is the attempt to create

219. PRWORA, *supra* note 95.

220. *Id.* § 101(7).

221. The provisions regarding teen mothers focus on requiring the mother to attend school or job-training programs, and live in an adult-supervised setting. 42 U.S.C.

incentives that relegate relations of economic dependency to the private domain.

During the period of initial implementation of the law at the state level the rhetoric was similar. For example, Rudolph Giuliani, the Mayor of New York City, believed that “[f]rom 1960 to 1994, the work ethic was under attack in New York City.”²²² The Mayor further explained that the city “viewed welfare as a good thing, as a wonderful thing. They romanticized it and embraced a philosophy of dependency, almost as if it’s better to have somebody on welfare than to help somebody to work.”²²³ Indeed, “Giuliani said he is trying to erase that ‘perverted social philosophy’ which robbed the poor of their ambition, and reawaken the respect for work ‘in a deep philosophical and metaphysical sense.’”²²⁴

Giuliani also cited the social contract as underpinning the implementation of the law. One of his priorities

[wa]s to construct a new social-contract that emphasizes everyone’s obligations to contribute. (“In life, you have to give back.”) . . . The contract he seeks is not primarily one between the government and the poor, he said; “it’s also the social contract that people have with each other” through family, friends, neighborhoods, and churches. “Those are the things that need to be rebuilt,” and the government’s main contribution is simply to get welfare out of the way. “It would be very counterproductive if government were even a critical part of it,” the Mayor said, referring to the social contract.²²⁵

Governor Pete Wilson of California was more overt about the moral failings of the dependent poor when he “[denounced] welfare as a haven for ‘idleness and promiscuity’. . . [and proclaimed

§§ 608 (a)(4)-(5). The law also gives states the discretion to impose conditions upon recipients of aid, including that the recipient remain in school, attend parenting or money management classes, or otherwise work to obtain skills necessary to collect child support on behalf of any child for whom aid is sought. *Id.* § 608 (2). There is nothing in the law regarding prevention of unwanted pregnancy or requiring state intervention against “significantly older men” who are guilty of “predatory sexual practices.” PRWORA, § 101(7).

222. Jason DeParle, *What Welfare-to-Work Really Means*, N.Y. TIMES MAG., Dec. 20, 1998, at 50 (quoting Mayor Giuliani).

223. *Id.*

224. *Id.*

225. *Id.* The author notes the contradiction between the two priorities—cutting welfare entirely and leaving individuals to the regulation of the market on the one hand, and providing a public or subsidized job in the heavily interventionist mode of the Works Progress Administration on the other. *Id.*

that t]here's a lot more dignity in any minimum-wage job than sitting on a couch collecting welfare."²²⁶

As I have illustrated, however, it is not only cultural and political conservatives who are concerned about dependency. Libertarians and liberals also criticize individual and family dependence upon government benefits. These commentators focus less on the individual's responsibility for her dependency than on blaming systemic forces such as capitalism, the contingencies of low-wage labor markets, demeaning bureaucratic rules, and racism.²²⁷ Nevertheless, these commentators advocate self-sufficiency, marriage, and work as laudable goals, and do so in the vocabulary of dependency. They believe that government should undertake policies to promote job growth and employment of poor individuals. They believe, however, that such policies can only be effective if they are accompanied by higher basic wage levels and diminished racism in hiring.²²⁸ These liberals and libertarians argue that because African American workers are often perceived as having "attitudes" or as being less compliant, they are hired less frequently.²²⁹ This occurs despite the fact that African American workers may be justifiably dissatisfied with conditions and wage levels.²³⁰ While acknowledging the existence of work acceptability standards among many American workers, still other commentators argue that certain classes of individuals should not be allowed to apply

226. Robert B. Gunnison & Greg Lucas, *Wilson Rails Against Aid Recipients*, S.F. CHRON., Jan. 8, 1997, at A1.

227. See e.g., Ellen Debenport, *Money or Morals for the Poor?*, ST. PETERSBURG TIMES, Apr. 10, 1995, at 1A; Carl T. Rowan, *Racism and Capitalism Fosters Welfare*, HOUSTON CHRON. Feb. 1, 1995, at 20.

228. One anecdote reveals the continuing power of racism in hiring: "Kevin Cunningham was wary about hiring Felicia Fields even at [the subsidized rate of] \$1 an hour. Mr. Cunningham is a gregarious Greenville [Mississippi] insurance agent 'This could be stereotyping on my part,' he said, but he worried her friends might say, 'Hey Felicia works up there at Cunningham's office—she knows where the cash drawer is.' And when Ms. Fields, who is black, arrived for work, Mr. Cunningham, who is white, said he warned her that 'business language isn't Ebonics.'" Jason DeParle, *What About Mississippi?*, N.Y. TIMES, Oct. 16, 1997, at A1; WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* Ch. 5 (1996).

229. DeParle, *supra* note 228.

230. WILSON, *supra* note 228. A study directed by Wayne Cornelius, a political scientist at U.C. San Diego discussing immigrant and native-born workers found that "the American owners of immigrant hiring firms, mostly small businesses—and many themselves launched by immigrant entrepreneurs—generally consider immigrants to be harder workers and more reliable than their U.S. counterparts. Native-born workers, the employers said, typically did not last long in jobs that were often low-paid, without benefits or chance of advancement." Patrick J. McDonnell, *Jobs Exist for Immigrants, Study Finds Labor*, L.A. TIMES, May 4, 1998, at B1.

those standards to their work situations.²³¹ And at least some lawmakers believe that workfare participants should not be entitled to the same workplace protections as other workers.²³²

Whatever the party affiliation of the commentators, the four strands of dependency rhetoric that I have described are readily apparent in current welfare rhetoric and reform. Unlike other cash benefits programs such as unemployment insurance and social security, which each use an individual's tie to the labor market as a determinant of eligibility and benefit level, public welfare programs and their recipients suffer seriously as a result of this rhetoric. The question remains, however, whether the categorizations of dependent and independent that are fostered by this rhetoric are theoretically valid.

III. THE DIALECTIC OF DEPENDENCE AND INDEPENDENCE

I have identified capacity, individual morality and behavior, a relationship with the state, and work and property ownership as four ways in which dependence has been used to distinguish and mark people as subordinate. I also have established that echoes of these four ways of marking dependent status still influence and encode current welfare debate and reform. In this section I focus more directly upon the meaning of dependence and independence in these categorizations: its character and content. How are the categories used by these commentators, legal theorists, social philosophers, and policy makers, and to what effect? What are the contradictions within and among these categories? I make no attempt at an empirical study of the "causes of dependency." Instead my concern is the implications of the categories as they are used; is there any coherence to the invocation of the term dependency?

From my descriptions of the four specific themes and the historical transformation of classes it should be clear that the term "dependent" has had many meanings both in legal and political rhetoric as well as within individual relationships. This mutable meaning is constructed by social, theoretical, economic, and experiential forces. By using the term in her discussion or rhetoric, a given commentator, politician, or judge may be invoking one or several of these meanings. Moreover, depending on her end, she

231. "[F]or these workers, employment must become a duty, enforced by public authority, rather than an expression of self-interest." MEAD, *supra* note 6, at 13.

232. Robert Pear, *G.O.P. in House Moves to Bar Minimum Wage for Workfare*, N.Y. TIMES, June 12, 1997, at B16.

may be appealing to one or several of the implications and ideologies embodied by these themes.

Whatever theme is invoked, the state in which a dependent person exists justifies her subjugation to the will of another individual, entity, or ideal. If the dependent lacks full capacity to exert her free will in her own best interest, she is subject to the control of another individual or to that of the state. If she has the capacity to make such decisions but has forfeited that power through her own lack of judgment, weak morality, or deviant behavior, she is either subject to state control, or is left to fend for herself until she conforms her behavior and obtains the natural benefits of that conformity. If she relies upon the state for economic support or ignores her responsibilities to provide for herself and her dependents through lack of personal productivity, she may be expected to relinquish some of her individual rights or be required to follow strict rules determined by the state. In short, the determination of who is a dependent individual does not rest merely in the fact that dependent individuals are legally or socially subject to the will of another, but in the need that society has to control such individuals because of their behavior or status. Each of these descriptions of dependence confers a socially constructed status upon a person and justifies social or state regulation of that individual; because they are dependents, they must be allowed fewer rights and freedoms.

Conversely, to be categorized as independent, foremost, an individual must not be subject to regulation because of incapacity; she must be a full member of the polity with all rights of self-governance. Secondly, an individual must own substantial private property, must have an entitlement that allows her to exercise autonomy, or must freely labor. An independent individual is a self-regarding person who is "[invulnerable] to the wants and needs of others and [does] not [have] to depend on their good will or solidarity,"²³³ or the good will of the state. In addition, to be fully independent the individual must recognize the social compact of which she is a part, and conform her behavior to prevailing norms.²³⁴ Independence means being a healthy, working, or wealthy adult who conforms her public behavior to acceptable social expectations, but who also has a space, property, in which she may act in non-conforming ways.²³⁵

233. Simon, *supra* note 38, at 1433.

234. *Id.*

235. *Id.*

A. The Changing Determinations of Capacity and Morality

The question of whom we trust to participate in both public and private sphere decisionmaking is one about governance and self-governance. Which classes of people are or should be governed by others in their daily lives? Which classes may to some extent govern themselves and their own destinies? Which classes may participate in the public polity? Which are denied a voice in the community? The answers to these questions have, of course, changed over time. One obvious example, the history of the allocation of the right to vote, reveals how much conceptions of who may govern in the community have changed.

As early as colonial times the vote was allocated only to a limited number of individuals, i.e., white male property owners.²³⁶ As I have noted, men without property, although recognized as independent legal entities in the community, did not enjoy full rights of self-governance or participation.²³⁷ Significantly, for hundreds of years, married women existed in a state of legal coverture, a status which put them, their property, their wages, their individual and community voice, and the enforcement of their rights under the control of their husbands.²³⁸ Only male heads of household were trusted to voice the concerns of their household members in society, just as male legislators were trusted to legislate on their behalf.²³⁹ When female activists began asserting the claim that men were failing adequately to protect the rights of women and families—the female sphere—they couched this claim in terms of governance.²⁴⁰ No longer was dependent status beneficial to woman and society, for men were not fulfilling their representative obligations.

236. See generally Cott, *supra* note 23.

237. *Supra* notes 44-48 and accompanying text.

238. Cott, *supra* note 23, at 1451-53.

239. Ellen Carol DuBois, *Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution 1820-1878*, 74 J. AM. HIST. 836, 842, 849 (1987). For example, suffragist Elizabeth Cady Stanton clearly invoked woman's difference from man and her need for protection from him in the political and law-making arena. Stanton "believed that 'the care and protection' that men give women was 'such as the wolf gives the lamb, the eagle the hare he carries to the eyrie!'" *Id.* at 842 (citation omitted).

240. The Declaration of Sentiments set forth at the Seneca Falls Convention was explicit in its invocation of liberty and self-governance; it was written in parallel form to the Declaration of Independence. THE CONCISE HISTORY OF WOMAN SUFFRAGE: SELECTIONS FROM THE CLASSIC WORK OF STANTON, ANTHONY, GAGE AND HARPER (Mari Jo Buhle & Paul Buhle eds., 1979).

Similarly, African Americans' fight for full access to the franchise lasted for almost a century, and involved battling poll taxes, literacy requirements, and other tests.²⁴¹ Even today, some groups are excluded from exercising the right to vote, and politicians and localities are engaged in maneuvers that will affect ballot access, effect, and distribution.²⁴² In many states, prisoners are prohibited from voting, and in at least some states, convicted felons have the same limitation.²⁴³ Given the large numbers of non-white men who are incarcerated or have such convictions, this prohibition may have the effect of limiting the political voice of those men and their communities. Moreover, even the most accepted basis for distributing the vote—citizenship, a status that seems so concrete—has been manipulated over time.²⁴⁴ For example, until the nineteenth amendment was passed, the right to vote was denied to white native-born women despite their undeniable status as citizens, and various limitations based upon racial identity and birth country have moved in and out of vogue according to popular sentiments.²⁴⁵

Of course, not all questions of governance and capacity reside in the right to vote. Some individuals who may be endowed with the right to vote may yet be constrained or controlled in their actions in other ways by the state or other individuals. This is true for welfare recipients. Although these recipients may have the right to vote, they and their children are under the strict control of the government. The rhetoric employed to increase the level of such con-

241. See e.g., *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 663 (1966) (invalidating poll taxes as unconstitutional and “inconsistent with the Equal Protection Clause”); *Lassiter v. Northampton County Board of Electors*, 360 U.S. 45, 45 (1959) (finding constitutional literacy requirement as prerequisite to voter registration); *Dunn v. Blumstein*, 405 U.S. 330, 330, 348 (1972) (outlawing one-year residency requirement for voting as violative of the Equal Protection Clause, but approving thirty-day requirement for administrative purposes). The Voting Rights Act of 1965 also stated that:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color

42 U.S.C. § 1973(a) (1994).

242. There were and are great political struggles around such measures as the “Motor Voter” law that provided voter registration at local driver’s licensing agency offices, Congressional redistricting, and methods for census taking.

243. *Supra* note 51.

244. See generally Cott, *supra* note 23.

245. *Id.* Cott describes extensive regulations that both excluded foreign-born Asians from ever attaining U.S. citizenship, and penalized native born women who married such foreign-born men.

trol includes invocations of dependency and the individual's inability to self-govern;²⁴⁶ these women simply cannot be trusted to govern themselves or their children. Because the system provides no individualized determination of whether a woman has met expected social norms, the fact that she must rely upon welfare is sufficient justification for the state to require her to document her compliance with a wide array of social responsibilities. In addition, she is subject to economic sanction if she fails either in that documentation or in the substantive requirements.

In contrast, commentators and policy makers do not draw the same conclusions about individuals who are not on welfare. The state cares only to a limited extent whether or not non-recipients conform to social norms.²⁴⁷ For example, unlike recipients who are subject to "learnfare" rules,²⁴⁸ wealthy individuals whose children do not attend school regularly are not economically penalized.²⁴⁹ Nor are such individuals economically punished if they remain unmarried, if they have a child outside marriage, or if they do not work. A similar point was raised by proponents of "mother's aid," a program of state assistance aimed at compensating women for the unpaid labor they performed in raising their children.²⁵⁰ For example, Socialist William Hard "liked to describe mothers as 'employes' (sic) of the community. He opposed conditioning such relief by supervision of recipients: if the state was concerned with inadequate mothering, he insisted, let it supervise all mothers, including those with husbands, the wealthy as well as the poor."²⁵¹

A contemporary example of this differential treatment was the Clinton Administration's proposed tax credit for non-working spouses.²⁵² This proposal allows stay-at-home parents to deduct a certain amount of money from their tax returns; in essence, they

246. See *supra* Section II; MOHL, *supra* note 12, at 39.

247. As more states adopt general and particular parental liability statutes, this may be changing.

248. Learnfare programs penalize the family by cutting the family's aid if a recipient child is absent from school for more than a given number of school days. MEAD, *THE NEW PATERNALISM*, *supra* note 91, at 44; Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 *YALE L.J.* 719, 726-735 (1992).

249. MEAD, *supra* note 91.

250. LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE* 56-57 (1994).

251. *Id.* at 57.

252. Similar measures have been proposed in state legislatures. *Senate OKs \$100 Tax Credit for Stay-at-Home Mothers*, *DESERET NEWS*, Feb. 25, 1999, (Statement of Sen. Robert Muhlstein, R- Mapleton) ("In a very small way, we are saying the state cares that (mothers) take care of their children and stay at home.").

are allowed a cash subsidy. But the proposal does not discuss the moral virtue or parenting ability of these parents; the tax credit is not withdrawn if the child misses too much school, or if the parent is a teenager. It only requires that the parent be married. The policy goal in this case is not to move individuals (women) from relying on tax credits to working, or from economic dependency on tax credits and male breadwinners to self-sufficiency; the policymakers who support this measure do not expect or even desire that the parents who would claim this credit will work. Rather, in the language of rational choice behavior, the state is providing a public monetary incentive for women to remain in a relation of private economic dependency—marriage.²⁵³

The social and legal rhetoric and categorizations about who should govern and who should be governed, have therefore, at one and the same time been over- and under-inclusive; they make no attempt to distinguish among individuals or to provide for real determinations about individual capacity or morality. The moral and capacity justifications for regulation, in fact, may amount to unstated rhetorical proxies for class and racial biases.

There are similar problems of over- and under-inclusiveness in the highly charged debate about whether minor children should be allowed to make claims on their own behalf or against their parents. Should it depend upon their maturity and judgment? Can children be trusted to make certain important life decisions despite their dependent status?²⁵⁴ If they are allowed this measure of self-

253. The amount of money actually saved by this tax credit likely would be very small for a given family and is unlikely to provide a true incentive. Charles Murray, *The Perils of GOP Activism*, WALL ST. J., Feb. 20, 1998, at A18 (according to Murray, a “tax credit of a few thousand dollars for stay-at-home moms will affect the behavior of mothers who (1) have a substantial source of income other than their own earnings, (2) have a tax bill large enough to take advantage of the credit, (3) prefer to stay home with their children, (4) aren’t willing to forgo 100% of their income to do so, but (5) are willing to forego 80% or 90% of their income to do so. Almost all of the forgone government revenue for the stay-at-home tax credit will go to mothers who were going to stay home with their children anyway”); Stephanie Armour, *Should parents who stay home get tax breaks?*, USA TODAY, Apr. 15, 1998 at 8B. The proposal and others like it in reality provide a strong symbolic, class-based counterpoint to the ceaseless rhetoric railing against provision of unconditional cash assistance to poor women; *Apple Pie Vote*, BANGOR DAILY NEWS, Feb. 25, 1998 (reporting on U.S. House of Representatives unanimous vote supporting a resolution that “applauds” parents who stay at home with the kids instead of going off to work).

254. E.g., *In re Long Island Jewish Med. Ctr.*, 557 N.Y.S.2d 239 (1990) (finding that the court must act *parens patriae* where a minor patient petitions court to withhold lifesaving medical treatment because even if the “mature minor” doctrine did apply in New York, this minor child of seventeen plus years held an insufficiently mature understanding of his own religious beliefs or of the fatal consequences to himself); *In re*

governance, should they be able to assert claims against their parents? Similarly, when it comes to criminal responsibility, many commentators and legislatures argue that minors as young as twelve and fourteen should be held to adult standards of maturity of thought and judgment.²⁵⁵ One result is the continued lowering of the age at which juveniles must be prosecuted as if they were adults.²⁵⁶ This in turn eliminates the possibility of individualized determinations about whether these children have actually achieved the independence and awareness of mind described by Locke and that ensures that they have a knowledge of the law and its consequences.

Furthermore, large-scale institutionalization of mentally ill and mentally retarded people has been discontinued as social norms about capacity have changed and society has come to believe that many of these individuals can achieve a measure of autonomy and self-sufficiency.²⁵⁷ Indeed, legal mechanisms such as the Individu-

E.G., 549 N.E.2d 322, 326 (1989) (discussing the case law on age and fact of capacity that shows "that no 'bright line' age restriction of eighteen is tenable in restricting the rights of mature minors, whether the rights be based on constitutional or other grounds[.]" and holding that a court may, by clear and convincing evidence, adjudicate a minor as "mature," and such a minor has a limited right to refuse life-sustaining medical treatment.); *Cardwell v. Bechtol*, 724 S.W.2d 739 (Tenn. 1987) (mature minor has the common law capacity to consent to or decline medical procedures).

255. See Larry A. DiMatteo, *Deconstructing the Myth of "Infancy Law Doctrine": From Incapacity to Accountability*, 21 OHIO N.U. L. REV. 481 (1994); Abraham Abramovsky, *Trying Juveniles as Adults*, N.Y. L.J., June 8, 1998, at 219; Victoria Slind-Flor, *Pressure to Give Juries to Juvies Tried as Adults: More Juveniles Are Getting Pushed into Adult Courts, But Without All the Rights*, 20 NAT'L L.J. Oct. 6, 1997 at A6; M.A. Stapleton, *Priorities Wrong in Federal Get-Tough Approach to Youth Crime*, CHI. DAILY L. BULL., May 13, 1997 at 1.

256. MASS. GEN. L. ANNOTATED ch. 119, §§ 52, 58 (1993), as amended 1996 and 1998, and 18 U.S.C. § 5032 (1985).

257. For example, the Congressional findings that prompted revisions to the Education for All Handicapped Children Act included the following statement:

Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

20 U.S.C. § 1400(c)(1) (1990).

Similarly, the Congressional findings prefacing the Americans with Disabilities Act include findings regarding the isolation and dependency of disabled persons, and an aspiration to change those conditions. 42 U.S.C. § 12101(a)(2)-(9) (1994). "[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." *Id.* § 12101(a)(2). Further, "individuals with disabilities are a discrete an insular minority who have been faced with restrictions and limitations, subjected to a history of pur-

als with Disabilities Education Act²⁵⁸ and the Americans with Disabilities Act²⁵⁹ specifically aim to increase the autonomy of mentally and physically disabled persons who once were classified as dependents by integrating them into as many sectors of society as possible.

Whether a person is determined to have the capacity to act either in his own behalf or as a political actor changes in accordance with social and legal norms. As our social norms of governance and self-governance have changed, so has the discourse of dependence. Even now, questions of capacity remain controversial and centrally tied to the rhetoric of dependency. Although the rhetoric implies a set meaning for capacity and morality, the reality is that these conceptions have an evolving life of their own.

B. Conformity and Autonomy

Although my focus has been on describing dependence rhetoric, I do not want to omit independence, commonly invoked as an opposite and ideal state, from my discussion. As I have described dependence rhetoric, I also have provided alternative meanings to independence. For example, “independence” can be maturity of judgment, morality of character, or a manner of conduct. In the last of these meanings, “independence” has been used by different commentators to mean deeply contradictory things. These competing visions are the essence of the struggle between individual liberty and state power. They are part of the “fundamental contradiction” of American legal theory that I described earlier.²⁶⁰

The concept of individual independence as I have described it from Reich’s position, is probably familiar to most of us: the ability of a person to act in non-conforming ways without interference by the state. This kind of independence is about the freedom to disagree, to pursue alternative lifestyles, to own a vast array of weapons, to do what we want in our own homes, to wear our hair the way we like, to say outrageous things, to read pornography, to teach our children at home, and to do what we want with our property—whether that means hanging our laundry in front of our

poseful unequal treatment, and relegated to a position of political powerlessness in our society.” *Id.* § 12101(a)(7). Therefore, “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals” *Id.* § 12101(a)(8).

258. 20 U.S.C. § 1400 (1994).

259. 42 U.S.C. § 12101 (1994).

260. Singer, *supra* note 3, at 980; Kennedy, *supra* note 3, at 211.

homes or developing our land. As I have said, however, Reich's theory is not strictly libertarian.²⁶¹ It does not espouse complete elimination of state regulation of individual relationships. Reich recognizes inequality of right and instead advocates for increased protection of individual freedom by expanding definitions of property, i.e., the locales in which these freedoms can be pursued.²⁶²

Nevertheless, Reich's vision is a plural one that puts primacy on individual rights at the expense of community rights; it is located at the individualist pole. In the welfare context, for example, it claims that the same paternalist policies whose goals are to *minimize* dependency in fact *cause* it.²⁶³ If an individual is subject to constant scrutiny and regimentation, if she is treated as if she were incapable of rational decisionmaking, if she must sacrifice her individual preferences and protections to survive, then she will become a dependent. This idea is not far removed from the original preference in the U.S. welfare system for cash over in-kind assistance or limited vouchers.²⁶⁴ In a free market system, it is always better to have each individual rank his own preferences, and spend his money accordingly. Giving individuals cash over in-kind assistance promotes this goal and, at least in a limited way, fosters the individual's sense of independence.²⁶⁵

The [Social Security Act] affirmed the dignity and responsibility of recipients by specifying that aid was to be given in the form of money, which the receiver was free to spend as he or she deemed best, rather than as aid in kind, such as orders for groceries or fuel, which too often reflected condescension and unwarranted suspicion in past relief administrations.²⁶⁶

The true individualist has a similar vision of independence, although she accepts inequality as inevitable. Such an individualist might argue that:

There are few presumptions in human relations more dangerous than the idea that one knows what another human being needs better than they do themselves. In politics, this presumption is a warrant to ignore democratic preferences and to trample on freedom. In other realms too, the arrogation of the right by . . .

261. See generally Reich, *supra* note 13.

262. *Id.* at 787.

263. *Id.* at 758.

264. See CAROLYN SHAW BELL, *THE ECONOMICS OF THE GHETTO* 153-56 (1970).

265. *Id.*

266. *Id.* at 154 (quoting Wilbur J. Cohen, *Social Security Objectives and Achievements*, SOC. SECURITY BULL. 2 (Aug. 1995)).

social workers to administer the needs of their clients . . . is in each case a warrant for abuse.²⁶⁷

In the struggle between individual liberty and state power these visions privilege individual autonomy. The state's role should be very limited as should the community's claim on the individual.²⁶⁸

In contrast, paternalists such as Lawrence Mead and Mary Jo Bane reside at the opposite pole embodied by social contract theory.²⁶⁹ They focus on the conformity that is necessary to achieve individual independence. This is not to say that such paternalists believe that there should be no realm, not even within one's own private property, in which individuals should be able to act as they wish. Nor is it to say that they agree upon what the values are that should be fostered, or the rules that should be imposed to change behavior. Rather, paternalists center their theory and policies on the obligations of independent people rather than their rights.²⁷⁰ It is in this respect that paternalists are aligned with social contract theorists. Paternalists seek to identify the obligations of the social contract and enforce them against non-conforming members of the community.²⁷¹ This dimension of independence is about the freedom that comes with predictability of result, fulfillment of expectation, and responsibility.²⁷² Freedom is achieved by giving up certain rights of non-conformity in service to the greater good.²⁷³ This is the strain of independence that, in the struggle between freedom and security, or individual liberty and state power,²⁷⁴ is aligned with the latter—the community's interests.

Interestingly, in this vision of obligation, the individual has a claim upon the community just as the community has one on the individual. The community does not deny that it is obliged to care

267. GORDON, *supra* note 250, at 164 (quoting MICHAEL IGNATIEFF, *THE NEEDS OF STRANGERS* 11 (1985)).

268. *Id.*

269. By calling both Lawrence Mead and Mary Jo Bane paternalists, I do not mean to imply the complete similarity of their underlying political ideologies or policy philosophies. I do, however, understand each of their policy positions to begin with premises of social contract theory and to include substantial government conditions on the actions of recipients of public aid. In contrast to Mead, Bane and Ellwood also seek to change the institutional culture of the welfare delivery system itself. Thus, the obligations of the social contract fall not only on the recipients of aid, but also on the caseworkers (the government), so that the workings of the system itself promotes dignity and respect. See *supra* note 112 and accompanying text.

270. MEAD, *supra* note 6, at 246-49.

271. *Id.* at 246.

272. *Id.* at 256-58.

273. *Id.*

274. Singer, *supra* note 3, at 980.

for its poor or weak members, it simply asserts its own prerogatives to name the conditions of its aid.²⁷⁵ The paternalist would justify this as did Locke, to ensure the survival of the community, and that bastion of individual freedom, property. Failure to enforce this social compact could lead to anarchy. As one commentator noted during the Depression:

Want and fear became the base for a progressive curtailment of man's freedom. Today, as repeatedly throughout history, this basic want and fear have engendered hostile feelings which, in turn, have pitted man against man and prompted him to use his scientific enlightenment in that wholesale destruction of life and property which now threatens not only the realization of his social goals but also his very survival.²⁷⁶

These complex and contradictory visions, by their very existence create problems for the rhetoric of dependence. How far and in which direction should we go in our struggle between freedom and security? If we chose to err on the side of security, how do we determine the content of the social compact? If we favor individualism, how much non-conformity should we tolerate? These questions raise a basic consideration for individuals who use dependency rhetoric in an attempt to shape welfare policy: how can an intellectually honest debate use the rhetoric of dependence and independence when these terms each are used by different commentators and policymakers to justify such a continuum of goals—abolition of welfare; generous welfare entitlements; or welfare conditioned on a wide variety of behavioral and work requirements?

C. The Meaning of Work

As I have described already, a predominant focus of dependency rhetoric is the liberal theoretical emphasis on work as a means to liberation. But conceptions of labor have undergone dramatic transformations over the last three centuries, and even today, the direct correlation between labor and freedom is suspect. While labor may be a means to individual freedom, it is by no means clear, even in contemporary American society, that the two are always causally connected. The mutable political, social, and economic meanings of “dependence” and “independence” throw doubt on the certainty of any one specific meaning. Historically and cur-

275. MEAD, *supra* note 6, at 4.

276. GORDON, *supra* note 250, at 163 (quoting CHARLOTTE TOWLE, SOC. SEC. BD., PUBLIC ASSISTANCE REPORT NO. 8, COMMON HUMAN NEEDS: AN INTERPRETATION FOR STAFF IN PUBLIC ASSISTANCE AGENCIES 1-2 (1945)).

rently, working people are no less theoretically dependent than their non-working counterparts. Furthermore, the fact that an individual does not work does not necessarily mean that she is dependent according to legal and political rhetoric.

As stated, up until the late eighteenth century only propertied individuals enjoyed the rights and benefits of fully independent citizens.²⁷⁷ They were subject only to limited regulation and were expected to provide certain benefits for individuals under their care and in their employ.²⁷⁸ Propertyless individuals—the poor—on the other hand, were subject to detailed regulation of their work lives.²⁷⁹ These propertyless individuals were commanded to work and were subject to criminal and corporal penalties for failure to meet conditions set by both their master and the law. They had no capacity to act as independent men. Only in the nineteenth century was the modern idea of free labor recognized in American law.²⁸⁰ “In the eye of the law, [laborer and employer were] both freemen—citizens having equal rights, and brethren having one common destiny.”²⁸¹

Clearly, both legal and social conceptions of laborers as a dependent class have changed over time based on social, economic, political, and theoretical norms and conditions. This dramatic historical change in popular and legal conception shows that the content of “dependent” is fluid. Indeed, even after the idea of free labor as waged-work performed outside the home by white men was solidified in legal and popular rhetoric, the concept of dependence in the idea of wage-slavery was in turn used to undermine the premises of freedom contained in the free labor concept. Similarly, in modern times, whether an individual might accurately be characterized as independent because of his status as a wage-worker, could vary under the circumstances. Is a mentally retarded grocery bagger, or child ice cream scooper independent? Even if they may have a measure of physical autonomy, individually earn economic support, or have a subjective feeling of independence as a result of their work, the fact that they work is likely insufficient for society to endow them with such a label. In these cases, the individual’s capacity is a more important signifier when determining independence. Of course, it depends upon which usage of dependence we

277. STEINFELD, *supra* note 17, at 4-6; Cott, *supra* note 23, at 1448.

278. STEINFELD, *supra* note 17, at 154.

279. *See generally id.*

280. *Id.* at 15.

281. *Id.*

invoke. These individuals may at the same time be both independent and dependent.

In fact, as the above examples illustrate, these apparently contradictory terms could each be applied to the same individual, or could be applied each to different individuals engaged in the same work. To one individual, wage-work might mean freedom. It might give an individual emotional and intellectual fulfillment by virtue of the tasks that she performs, and it might also give her material fulfillment by virtue of the wages she earns. Moreover, it might give her the stability she seeks through a promise of job security. It might give her a sense of dignity and self-reliance, and status in her community. Such feelings of self-fulfillment, however, would depend upon how she defines independence for herself. Similarly, the status that society attached to this individual as a worker might change depending on current social, political, and legal norms. For example, in the eighteenth century she would have been considered a dependent, whereas, one hundred years later she would have the status of independent.

Work, of course, may not always lead to independence either literally or theoretically. An individual's paid labor might be routinized and intellectually unstimulating, or isolating and demeaning. It might require her to work long or erratic hours that preclude pursuit of greater opportunities for recreation, a rich family life, community involvement, or education. It might be so poorly paid that it provides neither the subsistence necessary to support a family, nor avenues for advancement or skill development. It might be contingent or part-time and be subject to many rules and regulations such as limitations on speech, choice of dress and hairstyle, smoking habits, or personal relationships. Again, however, whether these working conditions constituted freedom or dependence would vary with common norms and the circumstances of the worker. For example, the same part-time work could imbue a sense of independence in an individual who values flexibility in personal scheduling, while it could create a feeling of dependence in another individual who finds that the unpredictability of the job limits her ability to order her life or maintain a reliable source of income. Similarly, regularized work might be freeing to a person who seeks employment that minimizes stress, allows predictability, or is work that she can easily escape when she is not at the office.

Moreover, the subjectivity and social construction of the relationship between independence and work is not reserved for poorly-paid workers. Even highly paid workers might feel aliena-

tion from the workplace and dependent on and at the whim of their employer. Highly paid manufacturing workers for example, are becoming more contingent due to the globalization of the industrial marketplace.²⁸² In the legal profession, attorneys routinely report a sense of being trapped in a profession that values billing over creativity and combativeness over conciliation. Furthermore, many highly paid older workers say that they feel at risk for fear of losing their jobs to more technology savvy but less mature and experienced college recruits. At all wage levels, regardless of an individual's sense of freedom about the situation, market forces include the omnipresent reality of the possibility of being replaced by another cheaper or more efficient worker. This threat of replacement makes it more likely that each worker will opt for the security of remaining with a job, even if it means subjecting himself to the will of the employer rather than pursuing his ideal of independent labor.²⁸³

An individualist might argue that the individual's choice to remain in a job that does not fulfill his ideal of independence is, in fact, his exercise of free choice and serves to prove that the value of freedom is secured. This argument, however, resembles the seventeenth century argument, ultimately rejected by liberal theory, that the indentured servant's freedom was evidenced by her voluntarily entering into the agreement. Of course, that there is neither legal compulsion nor criminal penalty forcing an individual to enter into a modern labor contract distinguishes it from the seventeenth century example. What is present in the modern case, however, is individuals' economic dependence upon the pressures and vagaries of market forces for their sustenance.

Historical evidence that the content of the meaning of independent labor has changed, and the clear contradictions within the theories and realities of modern wage labor show that a person who has engaged in lifelong work is by no means certainly able to claim to have led an independent life. There may be norms that we as a society prefer, that justify and drive us to make the work equals dependence equation in legal and political rhetoric. But it is nothing more than that: a normative preference, albeit probably a good one, that we seek to advance through social policy, legal rules, and political discourse.

282. John R. Reinert, *What is America Doing to its Free Labor Market?*, SAN DIEGO UNION-TRIB., Sept. 24, 1998 at B9.

283. GØSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* 109 (1990).

As much as the claim that a life of work inherently leads to a life of independence fails, so too does the related claim that a life without waged-work is equal to a life of dependency. For example, individuals who are “independently wealthy” and who do not work could be viewed as either dependent or independent. The term “independently wealthy” with all its connotations, itself contradicts the claim that work is necessary for independence. One view of independence actually seems to be *not* having to work—being wealthy without working. And so it has been for centuries.

What is it that makes the wealthy independent? It cannot be the dignity that is associated with work. If it were the fact of work alone that determined one’s independence, then individuals with inherited wealth sufficient for their economic support would be commanded to work or be as stigmatized and unhealthy as the woman on welfare. Consider the following two individuals: 1) a young, single, independently wealthy woman who engages in no productive work; and 2) a young, single, poor woman who receives welfare and who is engaged in the productive work of raising her child. Why is it that the second woman is the dependent one? Is it that she relies upon the state for her subsistence? Is it that she is not living up to her obligations, either to her children or to society, to earn her and their keep? Is it that she is unmarried, weak, or deviant? Certainly, any or all of these could easily be invoked against her in the form of dependency rhetoric. But both the women are in the same position in relation to wage-work—they are not doing it. What is the obvious difference between these women? It seems to be property. So is it property rather than work that leads to independence? Reich certainly believed it to be so.

Property and wealth are about dominion and control, dependence for the controlled and independence for the controller. Property law regulates not relations “between an owner and a thing, but between the owner and other individuals in reference to things.”²⁸⁴ Property rights allow an individual to

exclude others from using the things which [the law] assigns to [him]. If then somebody else wants to use the food, the house, the land, or the plow which the law calls mine, he has to get my consent. To the extent that these things are necessary to the life of my neighbor, the law thus confers on me a power, limited but real, to make him do what I want.²⁸⁵

284. Morris Cohen, *Property and Sovereignty*, 13 CORNELL L.Q. 8, 12 (1927).

285. *Id.*

This idea of domination and control inherent in property law is transported into the wage relationship through the employer's legal proprietary entitlement to the product of her employee's labor. As Morris Cohen so eloquently described it over seventy years ago:

The character of property as sovereign power compelling service and obedience may be obscured for us in a commercial economy by the fiction of the so-called labor contract as a free bargain and by the frequency with which service is rendered indirectly through a money payment. But not only is there actually little freedom to bargain on the part of the steel worker or miner who needs a job, but in some cases the medieval subject had as much power to bargain when he accepted the sovereignty of his lord. Today I do not directly serve my landlord if I wish to live in the city with a roof over my head, but I must work for others to pay him rent with which he obtains the personal services of others. The money needed for purchasing things must for the vast majority be acquired by hard labor and disagreeable service to those to whom the law has accorded dominion over the things necessary for subsistence.

To a philosopher this is of course not at all an argument against private property. It may well be that compulsion in the economic as well as the political realm is necessary for civilized life. But we must not overlook the actual fact that dominion over things is also *imperium* over our fellow human beings.²⁸⁶

Cohen uses the words dominion, compulsion, power, and imperium. The images he evokes are the dependent and independent, the ability of the independent person to "exclude others from their necessities, and thus to compel them to serve him" in labor.²⁸⁷ In this view, it is the ownership of property and accumulated wealth, no matter how it is obtained, not the act of working that produces independence. And it is a person's lack of wealth or property and his need to labor for his subsistence that makes him dependent.

But have we entered a tautology? Does this argument take the issue too far? The liberal basis for property is work. If one works, one can accumulate wealth, and once one accumulates wealth one is independent; thus work does signify independence. The answer to this is that it assumes an equality in the distribution of property and wealth. It assumes that the background rules of economic entitlement operate in a neutral way. But that simply is not reality. Even in the nascent liberal theory of John Locke, there was no

286. *Id.* at 12-13.

287. *Id.* at 18.

equality of property or equality of right. Rather, differences between men rich in property and those poor existed in the state of nature. Accumulation of wealth beyond one's ability to consume was simply justified as natural,²⁸⁸ as if the mere existence of private property necessarily and inherently defined the contours of the rights and duties accompanying its existence. That this natural right ultimately might come into conflict with the right of another man to subsistence never entered the equation.

As Locke asserted, "it [was] plain, that men have agreed [by use of money] to disproportionate and unequal possession of the earth, they having by a tacit and voluntary consent found out a way, how a man may fairly possess more land than he himself can use the product of"²⁸⁹ But it is just as plain that natural law statements such as these are built upon uncritical assumptions about the neutrality of the background rules of economic entitlement. True observations about the actual operation of social and legal rules of economic entitlement does not mean that they are necessary or inevitable; because they *are*, does not mean that they *must be*.

[T]he substantive content and distributive effects of the range of legal entitlements are not matters of indifference, rather they reflect and enact distinct political values. Legal entitlements do not descend from the sky, but are created by human actors who make moral or philosophical decisions, explicitly or implicitly, about who is deserving or undeserving of reward within a given economic structure. . . . Thus the legal entitlements that form the basis of private property allocations and contractual rights are not natural or neutral but chosen, and they play a significant role in determining the prevailing distribution of wealth and income, favoring certain interests and disfavoring others.²⁹⁰

These rules of economic entitlement determine who may accumulate wealth and in what manner; they determine who is free and who is dependent in the legal and economic culture. The argument that these rules ensure greater freedom for all citizens by rewarding entrepreneurship and greater productivity goes only so far as arguing that such rules should be normatively preferred.

Changing the rules to allow for more redistribution of property might lower productivity somewhat, but it might also alleviate the degrading conditions in which the working poor labor, thereby increasing their autonomy—a trade-off that might itself be norma-

288. LOCKE, *supra* note 5, § 46.

289. *Id.* § 50.

290. Williams, *supra* note 136; Handler, *supra* note 92, at 926-27.

tively preferred. Indeed, Charles Reich was on this track when he argued for redefining the meaning of property. But change would have to be more fundamental than Reich's vision. As William Simon argues, expanding the categories of property that could be called entitlements fails to address redistributive concerns.²⁹¹ Reich's theory remains rooted in the same framework he criticizes; instead of redistributing wealth, expanding property rights to cover new forms of wealth only sublimates redistributive goals from the discussion. As Simon says, "[I]f all forms of 'economic status' were to be turned into entitlements, there could be no subsequent distribution[, for in] Reich's analysis, as in classicism, the idea of right serves as a defense *against* redistribution."²⁹² There would simply be more forms of wealth that the government could not redistribute.

What is necessary is an actual substantive change in the content of the rules, not a change in what the rules protect. Thus, it might entail changing the entitlement that employers own the entire product of labor, that individuals control the distribution of their estate at death, or changing property rights so that they include only the rights of use and enjoyment nor rights of alienation.

D. Ways of Being Dependent on the State

The preceding discussion about the role of property in defining independence raises a second point about the role that the state plays in maintaining the status of propertied persons. It is the state that creates a zone of personal autonomy in the form of property rights. In this way, propertied individuals are as dependent upon the state for the maintenance of their status as the poor persons who receive state assistance; there is no theoretical difference between the wealthy man and the poor welfare recipient. If the background rules of economic entitlement can be readily altered by the state, and it is clear that they can, then the lives of property owners are as contingent as the lives of the propertyless. This contingency repeatedly surfaces in changing legal rules that alter the balance of rights and duties. For example, in some states, over time, the content of the rights and obligations of landlords has been transformed;²⁹³ the rights of tenants have increased at the expense of

291. Simon, *supra* note 38, at 1444; Handler, *supra* note 92, at 901-02.

292. Compare Simon, *supra* note 38, at 1444, with Handler, *supra* note 92, at 901-02, 954-55 (criticizing Simon's argument).

293. Maine and New York statutes create a duty on the landlord to provide habitable conditions, without creating a duty upon the tenant to keep them habitable. ME.

landlords. Similarly, until recently, the Supreme Court has allowed the states to diminish individual property rights by their imposition of strict land use regulations.²⁹⁴

The control that the state has over the rules of economic entitlement challenges the very foundation of what it means to be dependent. Just as the state could abolish any entitlement that a poor individual has to access the community coffers for her subsistence or grant a tax-credit for stay-at-home spouses, so too could the state alter the meanings of the vast rules of economic entitlement. This means that propertied individuals derive their rights of subsistence from the state, and they are protected in those rights by the state. If that is so, then the distinction drawn between our wealthy individual and our welfare recipient is a false dichotomy. The wealthy individual's dependence is merely sublimated in the legal, political, and economic discourse in a way that the welfare recipient's is not. Of course, this is a theoretical argument that must confront the facts of life: powerful individuals simply are not threatened by dependency discourse, rather, they help control it. Nevertheless, it is important not to lose sight of the ways in which this sublimation and discourse work in concert.

Just as an independently wealthy person is in some ways dependent, so also may the poor person who relies upon state assistance be independent in at least some respects. As a condition of their relationship with the state, welfare recipients certainly must conform their behavior to a wide variety of rules. Throughout the history of American welfare programs, the government routinely has intruded into the private lives of welfare recipients. Even today, to obtain assistance, a recipient is subject to restrictions on her family planning decisions, the people with whom she lives, and the personal information that she may keep private. She is also required to participate in work, volunteer, or training programs. In this way, recipients certainly are dependent in the way that Charles Reich feared; they are coerced by their need for sustenance into relin-

REV. STAT. ANN. tit. 14, § 6021 (Supp. 1982-83); N.Y. REAL PROP. LAW § 235-6 (Supp. 1981-82); see Michael J. Davis, *Survey of Kansas Law: Real Property*, 41 KAN. L. REV. 669, 669-72 (1993). See generally Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517 (1984).

294. This trend toward allowing such state interference under the Fifth Amendment began in *Pa. Coal Co. v. Mahon*, 260 U.S. 393 (1922), and for many years thereafter was left to the discretion of state courts. The Court, however, has recently increased its oversight of land use regulations. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987).

quishing some measure of their autonomy. Moreover, they are dependent to the extent that the community, through the state, concludes that they are unable to or not trusted to make decisions in their own and their family's best interest. It is the conditions accompanying the receipt of state assistance, rather than the actual economic support she receives from the state, that makes the individual a dependent.

In addition, the economic coercion inherent in a fight for subsistence creates a reality in which, at least for the most destitute, there is no meaningful free choice in the decision to accept the conditions of welfare. It is also true that if recipients of state assistance instead worked in the private sector, they might enjoy some measure of economic stability and freedom and thereby have a greater measure of autonomy. Still, as I have shown, this is not necessarily so. But, what if the individual is given assistance without the demands of personal behavioral conformity? Would she still be a dependent?

Historically, cash instead of vouchers or in-kind charity was thought to be better for the individual because it gave her the autonomy to purchase what her family really needed. Thus, if she were able to raise vegetables in a garden, she might not need to purchase as much food for her family; or if she had a sewing machine, she might be able to supply her family with clothing at a smaller expense. This idea stressed that individuals can more efficiently and accurately assess and meet their own needs. Moreover, these individuals remain in the market for goods.²⁹⁵ In this respect, the continuing primacy of cash assistance in the welfare program continues this emphasis and diminishes a claim that the recipients wholly lack independence.

Giving poor women assistance without concomitant regulation also allows them other kinds of freedom. The most obvious of these is the woman's ability to choose whether to stay home and rear her children or whether to work.²⁹⁶ State assistance might also enable a woman to sustain herself and her child while she attends college or other post-secondary educational institutions. In these ways, state assistance could operate, at least to some extent, to

295. See BELL, *supra* note 264, at 163 (discussing how welfare helps to assure recipients access to the market).

296. Of course, as I have said, in the fight for subsistence, this choice, in fact, may be an illusion. Because of low benefit levels, many women find alternative sources of income to supplement their grants, and thus do not operate solely as home workers as more well-off women do.

level the comparative opportunities facing poor women and children as opposed to women of means. The “luxuries” of being *free* to stay home to raise one’s children or to develop one’s intellect, skills, and marketability would not be choices limited only to certain economic classes. But this change in approach would need to be accompanied by a change in rhetorical stance toward the poor—away from the various negative connotations of dependency.

Moreover, it can hardly be disputed that the effort that millions of women expend to rear their children is work in a real sense. This is true whether or not they work for wages outside the home and whether or not they receive state relief or a tax credit. As I have already described, however, for complicated social and economic reasons, after the onset of industrialization and the rise of corporatist capitalism, the dominant signifier of independence became white, male wage-work outside the home.²⁹⁷ Despite contemporary rhetoric that emphasizes the traditional role of the family and the value of having a non-working parent present in the home, this signifier has not undergone dramatic change. Although the classes of individuals incorporated into this ideal of independence has changed, who counts as an independent worker remains rooted in both the location and type of work that the individual performs: work in the wage labor market outside the home.²⁹⁸ Women’s work rearing children is simply not valued the same way.

As this construct of independent work has changed over time, so too can it change again. Just as social and economic norms constituted the powerful laws that converted all income earned by married women into the property of their husbands, so today do norms endure in defining the value and status of certain types of work. Rather than stigmatizing single women as dependent for their reliance on state assistance instead of a wage-earning male, the choice to rely upon state assistance for the purpose of rearing children could be treated as a valid decision. But, for these individuals to be treated with respect as independent and valuable contributors to the community, both dependence rhetoric and social norms would have to change. Women’s role in rearing healthy and well-adjusted children would have to be recognized and celebrated as an important social and economic addition to the community’s health.²⁹⁹

297. See *supra* notes 205-209 and accompanying text.

298. *Id.*

299. I present this argument more as a theoretical possibility than a real one, to illustrate the social focus and treatment of poor individuals as dependent.

Giving people a social wage may also increase their independence by allowing workers to cease direct competition with each other and increase their ability to unify and to mobilize.³⁰⁰ As Gøsta Esping-Andersen describes it,

[T]here are certain, albeit quite few, principles of social policy common to virtually all kinds of labor movements. One is clearly decommodification from the whip of the marketplace. Without this, collective action itself becomes hardly possible. Workers need a basic command of resources in order to be prevented from acting as strike breakers or from underbidding fellow workers, and in order to be effective and reliable participants in a solidaristic community.³⁰¹

By relying upon state relief, individuals are able to resist the impulse to cross picket lines for longer periods of time, thereby raising the effectiveness of any unified labor campaign. Polanyi, for example, hypothesizes why England's early Speenhamland Law may have had the contrary effect of increasing pauperism rather than decreasing it as intended: anti-combination laws prevented individuals from acting upon any motivation that might have been present to organize to improve working conditions and wages for entire classes of people.³⁰²

[T]he weakness of absolutism and the dominance of a laissez-faire-inspired bourgeoisie in the Anglo-Saxon nations goes a long way in accounting for the 'liberal' regime [S]ocial policy was never neutral, but part of a more general campaign to weaken, or absorb, the socialist impulse and to secure a lasting institutionalization of politically preferable principles of social organization.³⁰³

The discourse I have been describing, with its unstated and stated normative preferences that define dependence and independence, is part of the same campaign. Interestingly, in the United States, only after the most recent welfare reform effort in which millions of recipients were required to work in municipal service jobs did alliances between labor and welfare rights activists emerge.³⁰⁴ Un-

300. ESPING-ANDERSEN, *supra* note 283, at 12. "By eradicating poverty, unemployment, and complete wage dependency, the welfare state increases political capacities and diminishes the social divisions that are barriers to political unity among workers." *Id.*

301. *Id.* at 109.

302. See POLANYI, *supra* note 55, at 81.

303. ESPING-ANDERSEN, *supra* note 283, at 110.

304. Steven Greenhouse, *Petitions Seek Vote on Union for Workfare*, N.Y. TIMES, July 3, 1997, at B1. Municipal unions are hostile to workfare for they "rightly under-

til the scope of welfare work requirements threatened the conditions under which laborers worked, continued stigmatization of welfare recipients and divisive rhetorical terminology that distinguished laborers and their interests from welfare recipients limited the possibility of forming alliances between and among these groups.

CONCLUSION

In raising the foregoing descriptions, criticisms, and questions, I have made claims about both the content and the validity of the rhetoric of dependency as it is used by politicians, policy-makers, and social philosophers of all stripes. I questioned the coherence of using the categories of "dependent" and "independent," of constructing dependency as a social problem, and of using it as a justification for regulating certain classes of individuals while ignoring similar concerns in others. These categories are simply so ambiguous as to be worthless except as a way to mark in the popular consciousness the inferiority of certain classes. How could it be otherwise in a discourse where the word "independent" at once means both individualism and conformity?

Similarly, there is no doubt that conceptions about which individuals and classes of people are "dependent" have changed over time. These changes are the result of and contribute to altering social, economic, political, and theoretical norms and conditions. The dramatic historical change in popular and legal conceptions of dependent classes illustrates that the content of terms like "dependent" are fluid and have a particular social purpose. The continuing categorization of individuals and groups as dependent constructs and maintains certain kinds of social organization and relationships of subjugation. It creates a status and consciousness of inferiority in the social domain as much as it enhances the standing and prestige of the independent class. It reifies an "us and them" distinction from both perspectives. Moreover, the rhetorical uses of dependency that I have described operate as a proxy for unstated biases. Whether these biases are about differences between economic or social class, morality, culture, race, gender, or the structure of government and our responsibilities to each other, the terms dependent and independent are not without normative

stand that welfare recipients armed with brooms are a threat to their members' jobs." Jason DeParle, *supra* note 222, at 50.

power. Depending on who uses the terms and how, the biases therein may be different.

As commentators and theorists continue to use these terms discursively, they block the development of alternative models of relation. In the discourse, the dialectic of dependent and independent forms a one-way relation. The dependent offers nothing, contributes nothing, indeed, cannot “exist or sustain [itself], or perform anything without the will power or aid of someone else[,]”³⁰⁵ the independent. The independent individual, or the community she represents, is the ideal, separate, aloof, in control, and has the answers. The idea that individuals might be interdependent, mutually responsible, or that the same individual might be independent in some ways and dependent in others has no place in the dialectic. The rhetoric poses few commonalities among the opposing individuals. Instead it privileges property, conformity, autonomy, and concern only for the self and one’s immediate family. It prevents the development of a theory of responsibility or concern for anyone else.

305. WEBSTER’S NEW INTERNATIONAL DICTIONARY, *supra* note 7.

