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THE FAMILY IN CIVIL SOCIETY

MARTHA ALBERTSON FINEMAN*

INTRODUCTION

The civil societarians claim the family as their domain, its salvation as their mission. The family is a foundational concept—the “cradle of citizenship”—which teaches “standards of personal conduct that cannot be enforced by law, but which are indispensable traits for democratic civil society.”¹ Problems with the family, therefore, are clearly seen as problems for democracy, justifying legal and political responses. In recent years a number of civil societarian groups have met, held conferences and hearings, and generated position papers and calls for action in an effort to engage the nation in a discussion of civil society.²

I will address two reports which set forth the purported diminished state of civil society and suggest proposals for civic renewal: *A Nation of Spectators: How Civic Disengagement Weakens America and What We Can Do About It*, prepared by the National Commission on Civic Renewal (the “Commission”), and *A Call To Civil Society: Why Democracy Needs Moral Truths*, prepared by the Council on Civil Society (the “Council”).³ There is significant overlap in the membership of both bodies, which may explain the similarity in analysis and in policy recommendations.⁴ Of particular interest is the fact that William Galston is both a member of the Council and the

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1. COUNCIL ON CIVIL SOC’Y, *A CALL TO CIVIL SOCIETY: WHY DEMOCRACY NEEDS MORAL TRUTHS* 7 (1998).

2. The National Commission on Civic Renewal has sponsored a series of scholarly working papers and created an Index of National Civic Health. See NATIONAL COMM’N ON CIVIC RENEWAL, *A NATION OF SPECTATORS: HOW CIVIC DISENGAGEMENT WEAKENS AMERICA AND WHAT WE CAN DO ABOUT IT* (inside cover page) (1998). I am using the terms “civil” and “civic” as interchangeable terms reflecting the idea that individuals live a secular collective or corporate life.

3. See generally COUNCIL ON CIVIL SOC’Y, *supra* note 1; NATIONAL COMM’N ON CIVIC RENEWAL, *supra* note 2.

4. Compare COUNCIL ON CIVIL SOC’Y, *supra* note 1, at 29, with NATIONAL COMM’N ON CIVIC RENEWAL, *supra* note 2, at 65-66.

Executive Director of the Commission.⁵ Professor Galston has been an active and influential advocate for policies encouraging the traditional two-parent family. The reports evidence that he has played a strong conceptual role in both bodies.⁶

Professor Galston's position on the family exemplifies the civil societarian approach. My basic argument is that his emphasis on the decline of the two-parent family, evidenced in the reports of both the Commission and the Council,⁷ operates to eclipse concern with social and economic forces that are truly destructive of families regardless of their form. Of particular concern in this process are the political implications of civil societarian discourse, which is replete with allusions to crisis and family breakdown.⁸ I am also troubled by the way that civil societarians construct arguments using public opinion polls as though the responses to certain questions by a majority of those polled represented some transcendent "truth" about the state of American society.⁹ That "truth" then becomes the justification for legal policy punishing some families and privileging others.

Civil societarians justify coercive action based upon opinion polls that show that the American public agrees with their dire observations about the family.¹⁰ But the term "family" is susceptible to a variety of definitions. In addition to the "traditional" family populated by formally married sexual affiliates and their biological children, family can be understood to include other couples—unmarried sexual affiliates, whether heterosexual or homosexual, with or without children. To some people, family may also mean collections of people related by blood or kinship systems, sexual affiliation not being paramount. Slightly different is the sense of family associated with lines of descent—an intergenerational concept of family.

There are other possible meanings of family, but the point I want

5. See COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 29; NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 65.

6. Professor Galston has also served as an advisor to President Bill Clinton and, as of the date of this publication, is on Al Gore's election team.

7. See generally COUNCIL ON CIVIL SOC'Y, *supra* note 1; NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2.

8. See COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 6, 13; NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 5.

9. See COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 4-6; NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 23-36, 45.

10. See COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 4-6, 19-26 (discussing how the public has responded to certain polls and outlining the Council's recommendations); NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 5 (discussing a study on public attitudes).

to emphasize is that it is by no means clear what definitions respondents have in mind when replying to opinion polls inquiring about "the family." For example, agreement with the statement that breakdown in the family is a major indicator of moral decline may evidence concern with divorce and single motherhood. It may also indicate concern with the breakdown of intergenerational ties evidenced by the fact that adult children no longer care for their aging parents at home, or with a breakdown in family discipline evidenced by the fact that overworked parents (married as well as single) do not discipline their children into civility.

In addition to definitional problems with the concept of family, terms such as "breakdown" chosen by the civil societarians serve an ideological function.¹¹ Using "breakdown" to describe changes in patterns of intimate behavior generates a sense of crisis, transforming demographic information into societal problems. The civil societarians have not merely identified an existing crisis for democracy and called for solutions. The civil societarians have constructed a crisis in morality, as well as for democracy, by turning the evolution of the traditional family form into a primary organizing analytical tool. Marriage becomes more than a legal category. It is reconfigured into public policy and presented as the path to personal and family salvation.¹²

But marriage is nothing more than a legal category. The term itself does not necessarily indicate how individuals are living their lives or performing their societal functions. And it is family functioning, not family form, with which we should be concerned. The question is not what is happening to marriage, but how those members of our society who are dependent are faring and what institutional adjustments are warranted in order to address their needs. By focusing exclusively on family form, these are the questions the civil societarians never ask.

DEFINING THE PROBLEM—THE CIVIL SOCIETARIAN PERSPECTIVE

Upon reading civil society literature one is confronted with a mass of assertions, assumptions and accusations concerning the declining state of the nation, many of them unfootnoted, as though beyond dispute.¹³ Consider the following statement from the

11. See, e.g., NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 5.

12. See COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 19-20.

13. This article will use the Commission's report as the basis for a general criticism of the

Commission's report:

During the past generation, our families have come under intense pressure, and many have crumbled. Neighborhood and community ties have frayed. Many of our streets and public spaces have become unsafe. Our public schools are mediocre for most students, and catastrophic failures for many. Our character-forming institutions are enfeebled. Much of our popular culture is vulgar, violent, and mindless. Much of our public square is coarse and uncivil. Political participation is at depressed levels last seen in the 1920's. Public trust in our leaders and institutions has plunged.¹⁴

The Commission's report suggests that concern with the state of morality in "American society is suppressing satisfaction with the state of the nation . . . weighing down American attitudes as Vietnam, Watergate, double-digit inflation and unemployment once did."¹⁵ This is reflected in the passivity and disengagement of the average person who is seen as lacking confidence in her or his "capacity to make basic moral and civic judgments, to join with our neighbors to do the work of community, to make a difference."¹⁶ In its call for strengthening the forces of civic renewal, the Commission asserts that there are roles for "[i]ndividuals, families, neighborhood and community groups, voluntary associations, faith-based institutions, foundations, corporations, [and] public institutions."¹⁷

Perhaps, as is appropriate in a report of "civic" health, most of the attention in the Commission's report focuses on an individual's responsibility as a citizen.¹⁸ And, as citizens, we are certainly seen to be a much diminished group that

place[s] less value on what we owe others as a matter of moral obligation and common citizenship; less value on personal sacrifice as a moral good; less value on the social importance of respectability and observing the rules; less value on restraint in matters of pleasure and sexuality; and correspondingly greater value on self-expression, self-realization, and personal choice.¹⁹

civil society movement with regard to its positioning and consideration of the family. See NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2. Most of the major players in the civil society debate were associated with the Commission. See *id.* at 65-66.

14. *Id.* at 5.

15. *Id.* (quoting PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, DECONSTRUCTING DISTRUST: HOW AMERICANS VIEW GOVERNMENT 3 (1998)).

16. *Id.* at 6.

17. *Id.* at 10.

18. See *id.*

19. *Id.* at 7 (citing Daniel Yankelovich, *How Changes in the Economy Are Reshaping American Values*, in VALUES AND PUBLIC POLICY 16, 22 (Henry J. Aaron et al. eds., 1994)). This seems to be particularly ironic given that the implications of current economic arrangements on civic health are not seriously considered in the Commission's report. See *infra* text accompanying notes 39-44.

The Commission's final report concludes where it began "with a call to [more responsible, old-fashioned] citizenship."²⁰

A major failing of the self-indulgent citizen described in the report is the rejection of the institution of marriage, behavior which is particularly significant since marriage is central to the civil societarian's concept of "the family."²¹ The family, labeled a "seedbed[] of civic virtue," is viewed as citizen producing.²² "Families are crucial sites for shaping character and virtue, they provide vivid models of how to behave in the world, and they help connect both children and adults to their neighborhoods and communities."²³

The Commission's final report is very clear, however, that the family at the center of civil society is a traditionally populated one—a nuclear family. In fact, the Commission's conclusion about the decline of the family is based solely on statistics measuring the incidence of divorce and nonmarital births.²⁴ The Commission's report is full of assertions about the inferiority of the nonmarital family's child-raising ability. The authors recommend that the nation make a commitment "to the proposition that every child should be raised in an intact two-parent family whenever possible."²⁵ This focus on form to the exclusion of other aspects of family assumes that form determines function. It also provokes law reform proposals seeking to make divorce more difficult and to deter single parenthood.

Further limiting the already narrowly focused vision of the Commission's report is its lack of attention to how changes in nonfamily societal institutions have affected the family and civic health in general. At one point the Commissioners recognized that "[a]lthough civil society is independent of state and market, it is not unaffected by them."²⁶ This insight was limited to a concession that the norms expressed in public law and process "inevitably shape and temper the values and goals" of voluntary associations.²⁷ There is no recognition that policies and practices of both state and market also shape the material circumstances and well-being of citizens (and families), and thereby have a potentially profound effect on the

20. NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 20.

21. *See id.* at 6.

22. COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 7 (stating that the family is one of the twelve "seedbeds of civic virtue").

23. NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 13.

24. *See id.* at 24.

25. *Id.* at 13.

26. *Id.* at 41.

27. *Id.*

development of civil society.²⁸

FAMILY FUNCTION AND FAMILY FORM—COLLAPSING THE DISTINCTION

The Commission constructed an “Index of National Civic Health.”²⁹ This Index, perhaps devised to suggest that there was some scientific nature to its inquiry and fact-finding process, is asserted to measure changes in civic health between 1974 and 1996.³⁰ The Commission established five equally weighted categories as relevant to the assessment of civic health: “political participation, political and social trust, associational membership, family integrity and stability, and crime.”³¹ The “Family Component” contained only two variables or subcategories within it—divorce and nonmarital births, which are each equally weighted at ten percent.³²

This narrow and exclusive focus on family form when addressing the family within civil society is consistent with other polemical writing on the topic. In its report to the nation, the Council on Civil Society expressed concern with the moral state of the nation and identified as the first of three proposed goals “to increase the likelihood that more children will grow up with their two married parents.”³³ The Council found proof of declining morality “primarily in the steady spread of behavior that weakens family life, promotes disrespect for authority and for others, and insults the practice of personal responsibility.”³⁴ The Council’s report drew the civil

28. This second objection gives rise to some confusion in considerations of civil society—it is not always clear who is in and who is outside of civil society. At one point the Commission defines “civil society” as “meaning free markets and private associations,” suggesting that all nongovernmental institutions might be considered civil. *Id.* at 43 n.16. At another point, however, “civil society” is seemingly restricted to “the network of voluntary associations and activities.” *Id.* at 39.

29. *Id.* at 23.

30. *See id.* at 24-25.

31. *Id.* at 23-24. Each of the five categories is weighted 20%.

32. *See id.* at 24. Ten percent is the same weight assigned to variables in other categories, such as voter turnout and other political activities (Political Component) and trust in others and confidence in government (Trust Component). It is more weight than was given to variables such as the rate of youth murderers per youth population—6.7%—or survey-reported crime per population—6.7% (Security Component). *See id.*

33. COUNCIL ON CIVIL SOC’Y, *supra* note 1, at 18.

34. *Id.* at 5. This use of the term “morality” is different than that in the report of the Commission. The Commission’s report opted for morality based not on “any particular denominational creed,” but on “the constitutional faith we share—in the moral principles set forth in the Declaration of Independence, and the public purposes set forth in the Preamble to the Constitution.” NATIONAL COMM’N ON CIVIC RENEWAL, *supra* note 2, at 12. The Council’s report cites as indications of a weakened morality “behavior that threatens family

societarian's typical causal link between nontraditional family forms and social harm.³⁵ Whether in the language of the Council or of the Commission, the "disintegration"³⁶ or "breakdown"³⁷ of the family both evidences and causes further civic decline. Such breakdown is synonymous with the trends in divorce and never-married motherhood.³⁸

It is important to note that this breakdown is viewed as so serious that it justifies the exceptional treatment of the family—treatment outside of the general paradigm for the civil society. Both the Council and the Commission express an image or concept of civil society that focuses on its "voluntary" nature: its groupings and associations are not established and controlled by the state.³⁹ Nonetheless, as is clear from the Council's recommendations, its conception of the family within civil society is a narrowly defined legalistic model based on state-regulated, traditional marriage. Hence, it suggests that no-fault divorce laws be reformed for the purpose of both "lowering the divorce rate and improving the quality of marriage."⁴⁰

Unlike other civil institutions, the family is not perceived to be a voluntary or unregulated institution outside of state control. Quite the contrary, the civil societarians want the family regulated not only at entry into marriage, but also at exit from that institution, with requirements of fault reimposed in some instances, such as through the establishment of a covenant marriage model.⁴¹ The recommendation of the imposition of a system of coercive laws and

cohesiveness," although it also notes that weakening morality was evidenced by "uncivil" behavior and "behavior that violates the norm of personal responsibility." COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 5. Examples of moral decline includes "unwed childbearing, extramarital affairs, [and] easy sex as a normal part of life." *Id.* Uncivil behavior includes "[c]hildren disrespecting adults," "[d]eclining loyalty between employers and employees," and "[t]he absence of common courtesy." *Id.* A pop star announcing a preference for single motherhood is one example of violating the norm of personal responsibility. *See id.*

35. *Id.* at 18. The Council writes that "the steady break-up of the married couple child-raising unit [is] the leading propeller of our overall social deterioration . . ." *Id.*

36. *Id.* at 6.

37. NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 5.

38. *See* COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 18; NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 24.

39. The Council defines "civil society" in part as referring "specifically to relationships and institutions that are neither created nor controlled by the state." COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 6. The Commission indicates that "the institutions of civil society are organic, not mechanical, and can at best be nurtured, not engineered." NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 12. One would assume that they can not be legislated either.

40. COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 19.

41. *See id.* at 19-20.

regulation over the formation and dissolution is unique to marriage in the Council's consideration of the institutions of civil society.⁴²

By contrast, when considering what actions might be appropriate for other civic institutions, the Council recommends lessening governmental controls (that is, pass legislation to allow the media to develop a voluntary "Family Hour" policy without fear of litigation by the government).⁴³ Other institutions are not viewed in need of coercive legislation or ongoing supervision in order to perform their civic responsibilities. Business, labor and economic institutions are "urge[d]" or cajoled into reconsidering priorities.⁴⁴ There are no suggestions for rules and restrictions for monitoring the operational decisions of economic institutions.

REGULATING THE FAMILY—MORAL JUSTIFICATION AND BEYOND

In considering the justification for regulation of the family, it is helpful to untangle moral objections to the non-nuclear family from arguments asserting that there are harmful consequences to children raised in such families.⁴⁵ Morality is prominent in the discourse of those concerned with civil society, but most supplement moral with secular concerns. For example, William Galston⁴⁶ made *A Liberal-Democratic Case for the Two-Parent Family*, a widely quoted article in the *Responsive Community*.⁴⁷ He begins his argument by positing the family as a moral unit that makes an "irreplaceable contribution to the creation of . . . citizens . . . possessing the virtues appropriate to a liberal democratic community."⁴⁸ His tying together of morality and family is followed by a reference to a *Washington Post* article reporting the "results of a nationwide inquiry into the public mood."⁴⁹ Galston used the poll data and the article to conclude that "[t]he

42. In addition to reinstating fault, the Council recommends that federal regulations preventing school districts from discouraging unwed teen childbearing be repealed so that schools are free to adopt disincentives (or incentives) on such behavior. *Id.* at 20. The Council also suggests that preferences in public benefits such as public housing be established for married couples. *Id.*

43. *Id.* at 25.

44. *See id.* at 24-25.

45. Conclusions about popular notions of morality based on opinion surveys may be questioned, particularly if they are the basis for legal reforms with the potential to make people unhappy and less prone to escape sometimes violent and emotionally abusive marriages.

46. *See supra* text accompanying notes 5-6.

47. William A. Galston, *A Liberal-Democratic Case for the Two-Parent Family*, *RESPONSIVE COMMUNITY*, Winter 1990-1991, at 14, 14.

48. *Id.*

49. *Id.* at 15-16.

public believes [that] America is in the grip of 'moral decay.'"⁵⁰ Further, the public's prime explanation of moral decay was reported to be "the breakdown of the family."⁵¹

Galston, apparently buoyed by the concurrence of "[t]he public" in his analysis, deemed its characterization as "hardly the product of an overheated public imagination."⁵² At this point, he cites statistics on divorce and nonmarital motherhood, presumably as an offer of hard evidence for public perceptions.⁵³ There seems something counterintuitive and confusing about this turn in Galston's argument. He has imposed upon his reader the definition of "breakdown" for the public responding to the poll—divorce and single motherhood.⁵⁴ But if his assertion that these statistics illustrate the problem is true, and it is also true that the divorce rate continues to hover around fifty percent⁵⁵ and that never-married motherhood is on the rise,⁵⁶ then a significant number of those responding to this (and other) polls about the state of American moral health must be agreeing that their own behavior is an indication of moral decline—is itself immoral.

I am much less confident that this poll means anything about the nature of the public's opinion.⁵⁷ The map of the public mind that Galston seeks to draw is too uncharted to support his construction of the moral family as exclusively the marital family. In addition, it certainly seems that poll information such as this should not be presented as evidence of the "truth" of moral decay.

Of course, as a liberal political theorist, Galston does not rest his argument on morality alone. He recognizes that coercive rules have the potential to "jeopardize a liberal democracy's dedication to a wide sphere of individual freedom."⁵⁸ He concludes that "[s]tate action must therefore be justified in light of widely shared public

50. *Id.* at 16.

51. *Id.* Galston also notes this position in his book. See WILLIAM A. GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE* 283-87 (1991).

52. Galston, *supra* note 47, at 16.

53. *See id.*

54. *See id.*

55. *See* TERRY LUGAILA, *HOUSEHOLDS, FAMILIES, AND CHILDREN: A 30-YEAR PERSPECTIVE* 8 (U.S. Dep't of Commerce, Current Population Reports P23-181, 1992).

56. *See* ARTHUR J. NORTON & LOUISA F. MILLER, *MARRIAGE, DIVORCE, AND REMARRIAGE IN THE 1990'S*, at 1-4 (U.S. Dep't of Commerce, Current Population Reports P23-180, 1992).

57. *See* THEODORE CAPLOW, *AMERICAN SOCIAL TRENDS* 63 (1991). Caplow questions whether there is even a crisis of the family. Despite the fact that Americans have been told that the family is in crisis, they tend to see their own families as happy and successful. *See id.*

58. Galston, *supra* note 47, at 15.

purposes, and the line separating such public purposes from personal moral preferences must be vigilantly safeguarded.”⁵⁹ Galston undertakes a search for nonmorality-based public purposes for his preference for intact two-parent families, such as economic consequences and nonmonetary or non-economic consequences of single parenting.⁶⁰

Galston identifies the consequences of family breakdown as both economic and non-economic, with the effects on children of particular concern.⁶¹ The economic effects are well documented—single-parent families are poorer than two-parent families.⁶² Galston suggests that “[i]t is no exaggeration to say that *the best anti-poverty program for children is a stable, intact family.*”⁶³ One must wonder if he is unaware of the many poor, working, two-parent families in the United States.⁶⁴ While having two parents may increase the likelihood that a child will not starve, it certainly does not guarantee economic stability. Therefore, to label the intact family as “the best” program to prevent childhood poverty seems glib and inappropriate.

Of course, if the problems confronting children were perceived as largely economic the solution would be obvious—transfer monetary resources to the child-rearing unit from one parent to the other, or from the state to the caretaking parent. Galston identifies other consequences for children living in one-parent homes that are less susceptible to economic measures, however.⁶⁵ He asserts that there is an emerging consensus on the non-economic consequences of divorce, quoting Karl Zinsmeister:

There is a mountain of scientific evidence showing that when families disintegrate, children often end up with intellectual, physical, and emotional scars that persist for life We talk about the drug crisis, the education crisis, and the problems of teen pregnancy and juvenile crime. But all these ills trace back predominantly to one source: broken families.⁶⁶

Galston further elaborates by describing the conclusions of a few studies to support his assertion that “*the disintegrating American*

59. *Id.*

60. *See id.* at 16-17.

61. *See id.*

62. *See id.* at 16.

63. *Id.* at 16-17. Galston continues, “[c]onversely, family disintegration is a major reason why after a decade-long economic expansion—the poverty rate among children is nearly twice as high as it is among elderly Americans.” *Id.* at 17.

64. *See infra* note 128.

65. *See Galston, supra* note 47, at 17.

66. *Id.*

family is at the root of America's declining educational achievement."⁶⁷ According to Galston, one study's lead investigator indicated that "[c]hildren need authoritative rules and stable schedules, which harried single parents often have a hard time supplying."⁶⁸ Quoting the investigator, Galston wrote:

One of the things we found is that children who had regular bedtimes, less TV, hobbies and after-school activities—children who are in households that are orderly and predictable—do better than children who [did] not. I don't think we can escape the conclusion that children need structure and often times the divorce household is a chaotic scene.⁶⁹

Galston explicitly recognizes that his preference for an intact two-parent family does not mean they are always to be preferred or that all single-parent families are "dysfunctional."⁷⁰ I presume he would also recognize that quite often two-parent families are chaotic. His argument is a statistical one directed at shaping social policy. It is also explicitly moral or "frankly normative" argument relying not only on "scholarly evidence, but also with the moral sentiments of most Americans."⁷¹ Speaking for "most Americans," Galston asserts that

[a] primary purpose of the family is to raise children, and for this purpose families with stably married parents are best. *Sharply rising rates of divorce, unwed mothers, and runaway fathers represent abuses of individual freedom, for they are patterns of adult behavior with profoundly negative effects on children.*⁷²

With this intriguing choice of emphasis, Galston joins the moral with the statistical—the negative effects on children turn parental behavior, in regard to marriage, into abuses.⁷³

Galston advocates changes in law and policy, including a "braking mechanism" on divorce and serious efforts at collection of child support.⁷⁴ As minor as those suggestions seem, the logic of his argument is to lay the groundwork for more coercive rules. In Galston's rendition of reality, family form is not only a predictor of economic well-being, but unmarried motherhood is a proxy for poor

67. *Id.* at 18.

68. *Id.* at 17.

69. *Id.*

70. *See id.* at 19. He is also clear that he does not advocate a return to "the single-breadwinner 'traditional' family of the 1950s." *Id.*

71. *Id.* at 20.

72. *Id.* at 21.

73. *See id.*

74. *Id.* at 23-24.

organizational skills and individual immorality.⁷⁵

The purpose of this article is to provide the reader with information about the civil societarians' positions and to criticize what is missing from their analysis. Many other commentators have clarified, elaborated upon, or challenged the empirical or "scientific" findings of the effects of family form on children that are so persuasive to Galston and other two-parent family proponents.⁷⁶ One example of such a challenge is a book by Judith Stacey in which she commented on the process whereby the results of only some studies (those supporting the family disintegration thesis) get publicized and aggressively made part of public policy discourse through think tanks and advocates with access to media.⁷⁷ Furthermore, evidence is conflicting and new studies call into question the conclusions of the civil society advocates that single parenthood is harmful to children.⁷⁸ In one recent example, a large multiethnic study from Cornell University indicated that single motherhood does not necessarily compromise preparedness for school, indicating that what mattered most was the mother's ability and educational level.⁷⁹

The civil societarians' emphasis on family form has provoked responses from the next generation of scholars, indicating that their assertions and assumptions are far from representing a consensus. For example, in an interesting paper examining the causal basis of communitarian family values (and Galston's work in particular), Andrew Lister considers the empirical claims, concludes that the evidence for the effects of family structure is far from clear, and documents the obstacles that stand in the way of gathering such evidence.⁸⁰ Lister pointed out that mere associations, such as that between single-parent families and poorer school performance, do

75. See *id.* at 16-17.

76. See, e.g., JUDITH STACEY, *IN THE NAME OF THE FAMILY: RETHINKING FAMILY VALUES IN THE POSTMODERN AGE* (1996).

77. See *id.* at 59.

78. See, e.g., Henry N. Ricciuti, *Single Parenthood and School Readiness in White, Black, and Hispanic 6- and 7-Year-Olds*, 13 J. FAM. PSYCHOL. 450, 450, 459-63 (1999). These two factors (mother's ability and educational level) were found to be about the same in both of the large samples analyzed of single- and two-parent families. See *id.* at 450, 462.

79. See *id.* at 459-63.

80. Andrew Lister, *A Family Affair: The Causal Basis of Communitarian Family Values*, Speech at the 1999 Annual Meeting of the American Political Science Association (Sept. 2-5, 1999) (on file with the author). Lister considered Judith Stacey's charge about the selection and exaggeration of only some social science information, finding a good deal of evidence of exaggeration. See *id.* Lister stated, however, that the "best research" does seem to indicate that growing up in a single parent family is not good for children. *Id.* Lister has reservations about such "best research," however, and sets forth his analysis of the difficulties with such studies. *Id.*

not tell us very much about causation.⁸¹ Children in two-parent families may graduate from high school at a higher rate, but children living in one-parent households are less likely to have college-educated parents and are more likely to be Black or Hispanic (hence subject to discrimination and/or language barriers).⁸² If such factors are not taken into account, it is impossible to determine how much of the difference in school achievement is due to family structure and how much to other parental characteristics.⁸³ Lister concludes that it is misleading to focus our debate on scientific evidence about the effects of family structure on children's well-being and suggests that we directly consider the moral balancing involved in setting family policy.⁸⁴

In regard to moral issues, feminists raise additional points of contention that are normative in nature, reflecting concern for marriage's historic role in the subordination of women. Iris Marion Young has questioned Galston's exclusive focus on children, noting that a preference for marriage "amounts to calling for mothers to depend on men to keep them out of poverty, and this entails subordination in many cases."⁸⁵ Pepper Schwartz expressed her disagreement with the arguments favoring the two-parent families: "On what grounds could I possibly dissent? How about gender? How about man's inhumanity to woman? How about thousands of years of female sacrifice unnoticed, almost unmentioned? And how about the family as the primary institution of women's subordination and oppression?"⁸⁶

It is important to see the extent of the difference in moral visions between Galston and such commentators. While the proponents of two-parent families seem to believe that parents self-indulgently divorce with little concern for their children's welfare, feminist arguments, such as those above, indicate that there are deeper social problems associated with the institution of marriage other than the fact that people divorce or that some choose to have children and not marry.

81. *See id.*

82. *See id.*

83. *See id.* See generally SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* (1994), for the caveats in Lister's speech referring to the effect of family structure versus other parental characteristics on school achievement.

84. *See* Lister, *supra* note 80.

85. Iris Marion Young, *Mothers, Citizenship, and Independence: A Critique of Pure Family Values*, 105 *ETHICS* 535, 545 (1995).

86. Pepper Schwartz, *Gender and the Liberal Family*, *RESPONSIVE COMMUNITY*, Spring 1991, at 86, 87.

I wholeheartedly agree with the social scientists and feminists who critique the civil societarian perspective. Those who are skeptical about the predictive value of the “science” underlying claims for the superiority of the two-parent family have a basis for that skepticism. Conflicting evidence about the success of single parent families, as well as inconvenient evidence about the shortcomings of traditional families, seems to get lost in the civil societarian’s smooth transition from observing the need for action to help children, to laying blame on parents living in nontraditional family forms.

The feminist critics are also correct to point out that marriage remains a gendered institution—one in which wives, rather than husbands, carry the largest share of the burdens associated with intimacy and child care.⁸⁷ For some women, reproduction outside of the marital family may just be easier than having to cope with the vestiges of patriarchal privilege shaping the expectations and demands of their husbands, in addition to caring for children and working. For others, it is not even a choice in this sense. Further, civil societarians should remember that their vision of the marriage relationship as benign and beneficial is not always the experience of women. Abuse and violence within the institution remains a real concern for many women.⁸⁸

Rather than reiterating and elaborating upon insights already eloquently presented by others, I want to turn to a different set of questions and concerns about the role of the family in civil society debates. Specifically, I want to question the lack of attention to the effects of other societal institutions on the family. My perspective is that those concerned with the health of civil society and our nation should focus on the pressures placed on the institution of the family (however defined) by significant trends or changes in the nonfamily institutions of society, particularly those in the business or market sector. The pressures generated by uncontrolled market institutions are at least as relevant to the health and well-being of children and families as are uncontrolled mothers and fathers. The irresponsibility of the state in not regulating or mediating the excesses of market activities is at least as devastating to a child as the presumed irresponsibility of any unwed or divorced parent. We must count the

87. See Young, *supra* note 85, at 545.

88. See generally the discussion on domestic violence and child custody in KATHERINE T. BARTLETT & ANGELA P. HARRIS, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 570-72 (2d ed. 1998).

costs to the family and, hence, to civil society of increased income disparity,⁸⁹ wage stagnation for middle and lower income wage earners,⁹⁰ and persistent impoverishment for too many of our nation's children.⁹¹

THE UNCONTROLLED MARKET AND THE UNRESPONSIVE STATE

Interestingly, the Council on Civil Society initially identified “growing inequality” as a primary condition endangering “the very possibility of continuing self-governance.”⁹² In fact, the nation's current predicament was cast as “growing inequality, surrounded and partly driven by moral meltdown.”⁹³ The recognition that there is growing inequality, and that it is critically relevant to assessing the decline in civil society, was ultimately (and quickly) overshadowed by the Council's identification of morality as the paramount concern. Once again, survey data proved valuable in shifting the discussion to morality. The Council cited an opinion poll finding that “[b]y a margin of 59 percent to 27 percent, Americans believe that ‘lack of morality’ is a greater problem in the United States than ‘lack of economic opportunity.’”⁹⁴

Whatever the Americans answering the survey might have meant in giving their responses, the Council on Civil Society followed the civil societarian traditional litany—the problem is moral meltdown and that can be traced to the broken “cradle of citizenship”: the family.⁹⁵ The implications and effects of inequality were left unexplored.

But I think there is a strong argument to be made that growing inequality does have implications for civil society and should be central in the debates. In order to begin that argument, it is productive to map the growth in inequality on the same grid as the Commission on Civic Renewal used in constructing its Index of

89. See DANIEL H. WEINBERG, A BRIEF LOOK AT POSTWAR U.S. INCOME INEQUALITY 1 (U.S. Dep't of Commerce, Current Population Reports P60-191, 1996); Rodger Doyle, *Income Inequality in the U.S.*, SCI. AM., June 1999, at 26, 26-27.

90. See URIE BRONFENBRENNER ET AL., THE STATE OF AMERICANS: THIS GENERATION AND THE NEXT 56-57 (1996).

91. See Eugene M. Lewit et al., *Children and Poverty: Analysis and Recommendations*, FUTURE OF CHILDREN: CHILDREN & POVERTY, Summer/Fall 1997, at 4, 5, 7.

92. COUNCIL ON CIVIL SOC'Y, *supra* note 1, at 4. Perhaps this attention to inequality reflects the fact that one of the Council's sponsors is the University of Chicago Divinity School.

93. *Id.* at 5.

94. *Id.*

95. *Id.* at 7.

National Civic Health. The Commission selected the period from 1974 to 1996 as the relevant time frame for measurement of those things it considered relevant—falling political participation, decline of political and social trust, falling membership in organizations, and youth crime rates.⁹⁶

During that same period of time, there has been significant, growing inequality in income distribution in the United States, as well as a general decline in wages for many Americans.⁹⁷ Further, there has been a contraction of responsibility for provision of basic social goods, such as insurance by market institutions, and a withdrawal of entitlements to federal welfare benefits.⁹⁸ These changes have had a tremendous impact on the well-being of families and children. In fact, inequality may be more central to understanding the other designated indicators of decline than either the rising divorce rate or the increase in never-married motherhood (factors that the Commission identified as the relevant variables in the Family Component of its Index).⁹⁹

INCOME INEQUALITY AND WAGE STAGNATION

Prior to the early 1970s, the United States was becoming “progressively more egalitarian.”¹⁰⁰ Since that time, however, the reverse has been true, with income inequality “reaching its 1947 level in 1982 and increasing further since then.”¹⁰¹ The Gini Index measures income concentration “ranges from 0.0, when every family (household) has the same income, to 1.0, when one family (household) has all the income,” thus projecting “how far a given income distribution is from equality.”¹⁰² The increase in income inequality was 22.4% from 1968 to 1994.¹⁰³ Another way to state the same phenomena is to observe that in 1968, the household at the ninety-fifth percentile had 6.0 times the income of the household at the twentieth percentile, while in 1994, that had jumped to 8.2 times

96. See NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 24.

97. See BRONFENBRENNER ET AL., *supra* note 90, at 56-57; WEINBERG, *supra* note 89, at 1; Doyle, *supra* note 89, at 26-27.

98. See Kathryn Larin & Elizabeth McNichol, *Pulling Apart: A State-by-State Analysis of Income Trends* (visited Dec. 16, 1997) <<http://www.cbpp.org/pa-4.htm>>.

99. See NATIONAL COMM'N ON CIVIC RENEWAL, *supra* note 2, at 24.

100. Doyle, *supra* note 89, at 26.

101. WEINBERG, *supra* note 89, at 1.

102. *Id.* at 1 n.1.

103. See *id.* at 1.

the income.¹⁰⁴

There are varied reasons contributing to this increase in inequality. Of particular interest are those associated with business practices and those resulting from state and national governmental policies. In regard to market institutions, commonly mentioned factors contributing to inequality include the globalization of trade, the decline of trade unions, the drop in good-paying manufacturing jobs, and the growing earnings advantage of better-educated workers.¹⁰⁵ Governmental policies, particularly the lowered tax rates introduced by the Reagan administration, are also typically targeted as contributing to inequality.¹⁰⁶ Income inequality is greater in the United States than in Europe, where globalization and technology also affected the distribution of income.¹⁰⁷ European countries have stronger labor union movements and more welfare state benefits, which moderated the growth of inequality.¹⁰⁸

In addition and related to income inequality is the fact that, as a whole, wages have decreased since 1973. In his book, *The State of Americans: This Generation and the Next*, Urie Bronfenbrenner reports that between 1973 and 1994, weekly wages decreased 18.8% and hourly wages decreased 13.5%, while hourly compensation increased slightly by 7.6%.¹⁰⁹ Family income has been falling slowly since the 1970s; between 1973 and 1992, a family's inflation-adjusted median income has decreased by 1.5% overall.¹¹⁰ Relative incomes for the poorest are decreasing, and even the richest 5% in the country only saw their incomes rise by 1.16% between 1973 and 1992 as an average annual percent change.¹¹¹

Education and change in the nature of jobs explain the high-density income disparity.¹¹² "In 1979, the average college graduate earned 38 percent more than the average high school graduate."¹¹³ In

104. See *id.* at 2. "A parallel way to look at this change examines" the growth in average household income in each quintile—~~X~~from \$73,754 in 1968 to . . . \$105,945 in 1994" (44%) for the top quintile but only from \$7202 to \$7762 (7%) for those in the bottom quintile. *Id.*

105. See Doyle, *supra* note 89, at 26-27.

106. See *id.* at 27.

107. See *id.*

108. See *id.*

109. BRONFENBRENNER ET AL., *supra* note 90, at 56.

110. See *id.* at 58.

111. See *id.* at 61.

112. Poverty may be increasing because of the change from blue-collar to white-collar jobs that took place between the 1970s and 1980s, a change from which workers have not completely recovered. See CAPLOW, *supra* note 57, at 87.

113. U.S. Dep't of Labor, *Futurework: Trends and Challenges for Work in the 21st Century*,

1999, the average college graduate earned seventy-one percent more than the average high school graduate, thus increasing income disparity.¹¹⁴ Even in industries where there is growth, such as high-technology, there are very few or no opportunities for the low-skilled factory worker, who is increasingly sliding toward poverty.¹¹⁵ Yet a college education is not guaranteed to all who could benefit in the United States because education is more expensive, and therefore less accessible, than it is in other post-industrial countries.

In addition, organizations that traditionally fought for higher wages, such as labor unions, are no longer as powerful as several decades ago.¹¹⁶ Seventeen percent of workers were unionized in 1987, compared to twenty-five percent in 1975.¹¹⁷ In addition, unionization predominantly exists in only three industries: government, transportation, and utilities.¹¹⁸ Statistics such as these suggest that lower wages and less economic stability are the problem for the American family, not family structure.

INEQUALITY AND THE FAMILY

What happens to families (regardless of form) whose economic well-being is threatened? Families are entering poverty at larger rates. In 1977, 7.7% of families were under the poverty line.¹¹⁹ In 1993, 11.4% of the families were below the poverty line.¹²⁰ Even in an era of strong economic growth, poverty persists.¹²¹ Of particular concern are the children. "In recent years, about one in five American children" (twelve to fourteen million) have lived in families with cash income flow below the poverty line.¹²² "The United States is the only Western industrialized nation that does not have some

Executive Summary (visited Oct. 15, 1999) <<http://www.dol.gov/dol/asp/public/futurework/execsum.htm>>.

114. *See id.*

115. *See id.*

116. *See* CAPLOW, *supra* note 57, at 90.

117. *See id.*

118. *See id.*

119. *See* BRONFENBRENNER ET AL., *supra* note 90, at 66.

120. *See id.*

121. A recent article in the *New York Times* detailed how the poverty rate in New York City persisted despite the strongest economy in years. Nearly one in four New York City residents had incomes below the poverty threshold in 1998. *See* Nina Bernstein, *Poverty Rate Persists in City Despite Boom: It Is Double the Average for U.S., Analysis Finds*, N.Y. TIMES, Oct. 7, 1999, at B1.

122. *See* Jeanne Brooks-Gunn & Greg J. Duncan, *The Effects of Poverty on Children*, FUTURE OF CHILDREN: CHILDREN & POVERTY, Summer/Fall 1997, at 55, 55.

form of universal cash benefit for families raising children.”¹²³ In addition, child poverty rates are higher in the United States than in sixteen other industrialized countries.¹²⁴ There are both short and long-term consequences for children. Evidence supports the conclusion that family income can substantially influence child and adolescent well-being, specifically their physical health, cognitive ability, school achievement, emotional and behavioral outcomes, and teenage out-of-wedlock childbearing.¹²⁵

Even in families well above the poverty line, falling economic fortunes create a scramble to stay ahead. Wage and job instability produces stress, encourages longer hours, and necessitates the participation of more family members in the workplace. In this regard, it is interesting that although families are entering poverty at increasing rates, more married women with young children are entering the labor force.¹²⁶ In 1970, thirty percent of married women with young children were in the labor force.¹²⁷ In 1987, fifty-seven percent of married women with young children were in the labor force, and that number has continued to increase.¹²⁸

Reporting on a study by Ellen Galinsky of the Families and Work Institute, the *Washington Post* indicated that children’s interaction with their parents is affected by parental job-related stress.¹²⁹ Further, economic necessity means that both parents are working longer hours—over the last two decades American fathers’ time at work increased by 3.1 hours per week while mothers added 5.2 hours.¹³⁰ “Employed fathers with children younger than 18 now work an average of 50.9 hours per week; working mothers, 41.4

123. Lewit et al., *supra* note 91, at 14.

124. *See id.* at 11.

125. *See* Brooks-Gunn & Duncan, *supra* note 122, at 57. This report collects and assesses the available research in regard to each of these dimensions on the well-being of children in poverty. The authors conclude that the evidence supports the conclusion that income can substantially influence children’s well-being, finding that the associations between income and child outcomes are more complex and varied than suggested in simple tables. “Family income seems to be more strongly related to children’s ability and achievement-related outcomes than to emotional outcomes. In addition, the effects are particularly pronounced for children who live below the poverty line for multiple years and for children who live in extreme poverty” *Id.* at 67-68.

126. *See* CAPLOW, *supra* note 57, at 58-59.

127. *See id.* at 59.

128. *See id.* Even two parent families are experiencing poverty, so revering the two-parent family as an ideal economic unit is not the answer.

129. Kirstin Downey Grimsley & Jacqueline L. Salmon, *For Working Parents, Mixed News at Home; Children Praise Them but Note Stress*, WASH. POST, Sept. 27, 1999, at A1.

130. *See id.*

hours.”¹³¹ “Americans . . . surpass every other industrialized nation in time spent on the job . . . putting in the equivalent of two weeks more per year than the Japanese.”¹³² In addition to having a negative effect on parent-child interaction, this increase in hours and the stress it generates affects the marital relationship¹³³ and leaves little time or energy for participation in voluntary civic activities. Perhaps the real danger to civic society is the runaway nature of contemporary American capitalism and the inequities it has generated.

THE ROLE OF GOVERNMENTAL POLICIES

It is also important to note that “federal and state policies have, in many cases, accelerated rather than moderated” the trend toward greater income inequality.¹³⁴ Policy decisions affecting both benefit programs and tax systems have tended to widen existing gaps in distribution of income.¹³⁵

Enactment of a higher minimum wage could help to reverse or moderate the decline in wages.¹³⁶ Bouts of unemployment tend to plague workers at the lower end of the pay scale resulting in the decrease of incomes.¹³⁷ Unemployment insurance, as part of the governmental safety net for workers, has become less effective in recent years.¹³⁸ A smaller share of unemployed workers now receive benefits.¹³⁹ In 1995, just one in three was covered. By contrast, prior to 1980 the percent covered exceeded forty percent.¹⁴⁰

Income support programs have also suffered. Over the period from the late-1970s to the mid-1990s, benefits provided through Aid For Families With Dependent Children (“AFDC”) fell in the

131. *Id.*

132. *Id.*

133. A recent study by Cornell sociologist, Phyllis Moen, reports that couples who feel burdened by their working hours, with very demanding jobs and a conflict between work and personal life, report lowest quality of life among working couples surveyed. *See Working Couples Burdened by Time at Work Say Their Lives Are Beset by Stress, Conflict and Overload, Cornell Sociologist Reports*, CORNELL U. NEWS, Jan. 22, 1999 (visited Mar. 6, 2000) <<http://www.news.cornell.edu/releases/Jan99/AAAS.couples.strategies.html>>.

134. Larin & McNichol, *supra* note 98.

135. *See id.*

136. *See id.*

137. *See id.*

138. *See id.*

139. *See id.*

140. *See id.* The reason for the shrinkage is both the decline of manufacturing jobs and the changes in policies on the part of national and state governments. *See id.*

too exhausted and busy to participate.¹⁵⁰ Ehrenberg, referencing William Julius Wilson, further notes that there seems to be an association between lack of work and the disappearing civil society.¹⁵¹

AN ALTERNATIVE VISION—THE FAMILY AS A “PUBLIC” INSTITUTION

The real danger of the civil societarian’s narrow focus on family form is that it will deflect attention away from the more serious problems that the current political and economic contexts present for the family. Many different types of families succeed very well at their societal task. What does seem clear, however, is that a certain level of resources are necessary to accomplish that task and that, in recent years, these resources have become less available to many families. This is not the fault of the families, but is the result of changes in attitude and scope of governmental safeguards, as well as market practices. How should society respond to these changes? Focusing on family form will not even lead us to the right questions to begin to make coherent policy that will help our families.

In recent work, I have been rethinking the arrangement between family and state by articulating a theory of collective responsibility for dependency. The objective is to make an argument for the redistribution of responsibility for dependency among what I call the “coercive institutions” of family, state, and market.¹⁵² Our current (and historic) stated national ideology glorifies self-sufficiency and independence, both for the individual and for the family. Within this ideology, the primary responsibility for the developmental or physiological dependence of children and some elderly, disabled or ill persons, what I have previously labeled “inevitable dependency,” is placed on the family.¹⁵³ Dependency, which is seen, at least partially, in many other systems as a collective responsibility, is privatized in our system through the institution of the family. In our late capitalist system, the state is perceived as having a role only in the case of family default. In such instances, this state might provide highly stigmatized assistance (welfare) for those “deviant” families unable to

150. *See id.*

151. *See id.* at 247.

152. I use the term “coercive” to distinguish these highly regulated, legally defined institutions from more voluntary social structures such as philanthropy, religion, or charity.

153. *See* MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 161-63 (1995).

majority of states, typically forty percent for a family of three.¹⁴¹ Things did get worse, however. The Personal Responsibility and Work Opportunities Act of 1996 allows the elimination of benefits for families who do not conform to training and work requirements, as well as sets time limits on the eligibility for assistance.¹⁴² In *Children and Poverty: Analysis and Recommendations*, the Center for the Future of Children reports that child poverty rates for the United States are higher than rates in sixteen other countries and concludes that 1996 "reform" jeopardizes the safety net for poor children by replacing AFDC with Temporary Assistance for Needy Families, a new program whose benefits are time-limited, and by reducing food stamp benefits for families with children.¹⁴³

Tax policy also has played a role in widening income disparity. During the 1990s many states made their tax systems less progressive.¹⁴⁴ Tax reductions in recent years have been targeted toward higher-income families.¹⁴⁵ The major taxes paid by upper-income families are personal income taxes and capital gains, which have both been lowered in the past several years.¹⁴⁶ But states have not reversed the increases in sales and excise taxes, which are the most burdensome taxes for lower-income families.¹⁴⁷

ECONOMICS AND CIVIL SOCIETY

Stagnant wages and income inequality are major factors contributing to a diminished American dream.¹⁴⁸ The experience of inequality must certainly contribute to suspicion and mistrust on the part of those who see others getting further and further ahead. Inability to provide one's children with minimal goods and services can lead to frustration and despair. John Ehrenberg, in his new book on the civil society, comments on the series of articles by Sara Rimer in the *New York Times* in which she investigated the effects of the "downsizing of America" on community life.¹⁴⁹ Rimer found people

141. *See id.*

142. *See id.*

143. *See* Lewit et al., *supra* note 91, at 13.

144. *See* Larin & McNichol, *supra* note 98.

145. *See id.*

146. *See id.*

147. *See id.*

148. *See* Richard K. Caputo, *Economic Well-Being in a Youth Cohort*, *FAM. SOC'Y: J. CONTEMP. HUM. SERVICES*, Jan. 1, 1998, at 83.

149. JOHN EHRENBURG, *CIVIL SOCIETY: THE CRITICAL HISTORY OF AN IDEA* 246 (1999).

provide for their members' needs.¹⁵⁴ Market institutions have few, if any, direct responsibility for the family, even for the families of their own workers.

My argument is that a more appropriate and equitable scheme would more evenly distribute the burdens for inevitable dependency, with the market as well as the state assuming some up-front share of the economic and social costs (the subsidy) inherent in the reproduction of society. There is also a need for structural changes and institutional accommodation of the demands of caretaking. I articulate this claim as a "right," based on the argument that caretaking is societal-preserving and perpetuating work. Dependency work produces things of benefit to society in general. It is the labor that generates citizens and workers, consumers and voters. As things are now structured, the costs of doing dependency work are hidden in the family where, due to gendered role divisions, they are borne primarily by women. Further, this caretaking labor, which is performed for the good of the society, has individual costs for caretakers who often find themselves sacrificing career development, forgoing economic opportunities, and becoming derivatively dependent upon others for resources in order to accomplish their tasks.¹⁵⁵

- How should the need for resources for caretaking be satisfied so caretakers can act independently, make decisions, and fulfill societal expectations in ways that best respond to their individual circumstances?
- Should caretakers be primarily dependent on the family in this regard?
- Given the tenuous status of marriage in this society (where the divorce rate continues to hover around fifty percent¹⁵⁶ and women are expected to be wage earners as well as wives and mothers)¹⁵⁷ how can we continue to have a traditional model of the family served up by politicians as the solution for poverty?

154. For a fuller account of this theory, see M. L. A. Fineman, *Cracking Our Foundational Myths: Independence, Autonomy and Self-Sufficiency*, AM. U. J. GENDER & L. (forthcoming, manuscript on file with the author). Note here also, with the end of entitlement for families in need represented by welfare reform, the state "might" respond.

155. See *id.* for an extended discussion of derivative dependency and its effects.

156. See LUGALIA, *supra* note 55, at 8.

157. See CAPLOW, *supra* note 57, at 59 (showing the increase of married women with young children in the workforce).

- Should not the richest country in the history of the world have a family policy that goes beyond marriage as the solution for dependency?
- Specifically, does not the family as it exists today require substantial assistance from other societal institutions?
- Is it fair that the market and the state (which are totally dependent on caretaking labor and in no way self-sufficient or independent from caretaking) escape responsibility for dependency and continue to be freeloaders (or free riders) on the backs of caretakers and families?
- Is not it time to redistribute some responsibility for dependency and mandate that the state and market bear their fair share of the burden?

These are the questions to which I would urge the civil societarians turn their attention. The problem with society is not that marriage is in trouble. The real crisis is that we expect marriage to be able to compensate for the inequality created by our other institutions.