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THE SECOND COMING OF CARE

KATHRYN ABRAMS*

Lucie White opens a narrative of hope with a moment of ambivalence.¹ A new conversation about care has emerged among feminist legal scholars, and White is unsure about its prospects. A decade of anti-essentialist critiques, global economic changes, and gay-lesbian reconceptualizations of care, sexuality, and gender, have made it possible to approach the topic from less unitary, more encompassing perspectives. But the “polarities of modernist rationality” threaten to reorient feminist discussion around the same dichotomies—work/care, self/other, man/woman, sameness/difference—that stalled the debate over care in its last incarnation. White’s idea is to disrupt this emerging polarization by moving the debate from the legal conceptual domain to the domain of ethnographic description. Her narrative about the effect of caregiving on the lives of Head Start mothers frames the debate in new terms, and shows the care of others to be a vehicle for empowering oneself.

In this Commentary, I reflect on White’s work in two ways. In the first part of the Commentary, I offer a contrasting perspective on the re-emergence of care. I argue that the first wave of feminist legal arguments about care were marred not only by their depiction of care as a moral or cognitive attribute reflecting women’s essence, but by their failure to conduce readily to viable remedial strategies. Care-based characterizations did not conform to the most successful forms of antidiscrimination claims, such as rights-based claims for equality. Perhaps more importantly, the kinds of normative or remedial claims that followed most readily from a care focus—accommodation of nondominant life patterns or reconceptualization of certain areas of doctrine according to care-based norms—were often undermined by a feminization and devaluation of care within dominant institutions and norms, a devaluation that was rarely analyzed within early care

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1. See Lucie E. White, *Raced Histories, Mother Friendships, and the Power of Care: Conversations with Women in Project Head Start*, 76 CHI.-KENT L. REV. 1569 (2001).

theories themselves. The second coming of care reflects a promising improvement on this flawed position: care is no longer framed as an attribute supporting an essentialist characterization of women. It is now recognized as a complex set of practices that are structured, supported, and incentivized by a range of institutional decisions and social norms, and that differentiate and position women in relation to each other. Moreover, the marginalized position of care and caregivers, and the relation of this marginality to patterns of gender oppression, have been carefully articulated as part of the feminist discourse on the topic. The new remedial arguments derived from an emphasis on care thus acknowledge and respond to the possibility of care's devaluation. Yet these second-generation arguments remain challenging to translate into conventional claims for legal intervention: they still elude rights-based arguments of comparability and, understood in their broadest implications, they require major restructuring of institutional relationships.

Lucie White's account of Head Start, as I argue in the second part of the Commentary, may help us vindicate the promise of this second phase of care discourse, by broadening our thinking about the relation of law to the activities of care. White's account of care is interestingly transitional: it regards care as having a moral dimension, but also views it as a practice that is contextually organized and potentially transformative for those involved. Similarly, it straddles and problematizes some of the very dichotomies—care and work, self and others—of which White warns. Caregiving, in her article, occurs in an institutional setting that many participants recognize as a place of work; and the process of making oneself regularly present to another, that White identifies as the heart of care, ultimately enables the caregiver to exercise agency in her own life and greater power in the social world. Perhaps most importantly, White describes the emergence of care as *facilitated by legal structures*: in this case the federal regulations that require Head Start centers to promote the education and development of parents of Head Start children. Her example thus suggests a new set of possible relations between law and those human activities, including care, that are the focus of feminist thought.

I. TWO MOMENTS IN CARE ARGUMENTATION

A. *Early Arguments about Care*

In its first incarnation, the feminist legal focus on care was part of a larger project of characterizing women, differentiating them from men, and challenging the institutional structures to which women had gained access both as participants and as interpreters. Carol Gilligan may have offered her pathbreaking analysis² to challenge the unitary conceptual structure of developmental psychology. But, as taken up in law, Gilligan's thesis represented a way of articulating those attributes of women that were specific to the sex, rather than inherent in the universal legal subject (a subject who was formally unmarked, but, to feminists, increasingly recognizable as male). Care was an emanation from women, an expression of their essence that was not, in this early period, analyzed in its concrete particulars. Women's orientation toward care was manifested in a series of paradigmatic settings: nurturing a child,³ placing concern for others above concern for oneself,⁴ performing tasks collaboratively rather than competitively or individualistically,⁵ and analyzing problems relationally rather than hierarchically or in zero-sum fashion.⁶ But these settings were presented generically—the child to be nurtured had no particularized identity—and they were removed from their broader social context: that is, feminists rarely focused their attention on how these expressions of care were perceived or valued by dominant institutions or actors in society.

These features of early accounts of care ultimately created difficulties for their feminist legal proponents. The essentialism of first-generation arguments about care was the most frequent target, although this objection took various forms. Some feminists observed that this ostensibly far-reaching characterization did not apply to them: they did not have children; they did not count care or sacrifice

2. See CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 1-4, 24-63 (1982).

3. See Lucinda M. Finley, *Transcending Equality Theory: A Way Out of the Maternity and the Workplace Debate*, 86 COLUM. L. REV. 1118 (1986).

4. See Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3 (1988).

5. See Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985) (describing women lawyers working together, over food, on a brief).

6. See GILLIGAN, *supra* note 2, at 25-39 (discussing cognitive processes associated with male and female subjects, Jake and Amy).

for others among the central activities of their lives; they did not experience in their daily lives the relational thinking or the warm, soft-focus glow of collaborative connection that leading theories of care ascribed them. The acontextuality of many discussions of care also fueled an anti-essentialist critique. Black feminists since Sojourner Truth had suggested that the dichotomy between care and work had never applied to the lives of women of color or working-class white women, whose caregiving activities were not permitted to be the predominant focus of their lives.⁷ Other feminists offered a similar critique of the object-relations psychological theory that served to ground an account of women as nurturing, relational beings with permeable personal boundaries. "Black women's or Chicana's raising of their children is informed by a kind of awareness and wariness about the world that goes beyond an awareness of 'male dominance' or 'gender role expectations,'" wrote Elizabeth V. Spelman.⁸

Because mothering may be informed by a woman's knowledge of more than one form of dominance, the development of gender occurs in a context in which one learns to be a very particular girl or boy, and not just simply a girl or boy. If we look at biographical and autobiographical literature by and about women of various races and classes, we get a much more complicated picture than Chodorow's account gives us of the world in which mothers mother.⁹

A less-discussed difficulty with early accounts of care is that they failed to translate readily into effective strategies for legal reform. This was true in part because some versions of the feminist focus on care had no obvious legal entailments. When women's "difference" was characterized as a relational approach to cognition or problem-solving, for example, it was not clear what changes the law should introduce. More importantly, where legal feminists did derive remedial responses from a care-based view, these responses often failed to achieve the desired results. Remedial responses based on early arguments about care frequently took one of two forms: they

7. See BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* (1981) (offering Sojourner Truth and her famous message as emblematic of the often-unthinking marginalization of African American women, particularly in cultural and other feminist accounts drawing on the ideology of "separate spheres"); see also ALICE KESSLER-HARRIS, *WOMEN HAVE ALWAYS WORKED: A HISTORICAL OVERVIEW* (1981) (arguing that for many women of color or working-class women, caregiving activities never replaced the responsibility to perform market work).

8. ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 98 (1988).

9. *Id.* at 97.

sought institutional accommodation of women's "differences" (e.g., workplace accommodation of women's patterns of caregiving for their children), or they sought to use the care-based morality ascribed to women to revise particular bodies of doctrinal law (e.g., imposing a duty to rescue in the area of tort). Advocates who chose to emphasize women's difference had to forego the comparability-based equality analysis that had proven most effective in the realm of anti-discrimination law.¹⁰ Moreover, both legal efforts to secure accommodation—themselves a viable, though not a primary, move within anti-discrimination law—and efforts to reconstruct doctrine along new normative lines faced a second, more serious difficulty. Accommodation and doctrinal reorientation are most likely to succeed where there is generalized social approval—or at least fully-recognized ambivalence—about the norms to be accommodated. Neither of these conditions obtained in most remedial contexts involving care-based norms. While caregiving and relational thinking have often received lip-service from dominant groups—a remnant perhaps of the formal veneration of the separate, domestic sphere—they are systematically feminized and, as such, have frequently been devalued. And they are particularly likely to be devalued in the context of a masculinized institution or body of analysis, where other sets of norms hold sway. Thus the types of innovations proposed by feminist advocates of difference were often marginalized within the very institutions into which they were introduced: the incompletely integrated and often devalued "mommy track" is a prime example. Early accounts of care had few analytic resources for dealing with this problem: while they featured elaborate arguments about the nature and sources of women's orientation toward caregiving, they often left the question of the social valuation of this orientation undiscussed or untheorized.¹¹ Thus the marginalization of the very approaches intended to be the instruments of women's vindication was neither anticipated nor successfully addressed in these early accounts.¹²

10. These arguments, which originated in race-based anti-discrimination claims, often took the form: "X group has the opportunity to do A. Y group is comparable to X group. Therefore Y group should have the opportunity to do A."

11. There are obviously exceptions to this proposition. Carol Gilligan, for example, notes the impatience of developmental psychological researchers with the responses given by young girls reflecting Gilligan's "different" or relational voice, and the impact this impatience often had on their subjects. See GILLIGAN, *supra* note 2, at 27-32. But societal devaluation of women's difference is far less salient or fully theorized as a theme than the contours of that difference itself.

12. Even one of the most sophisticated difference-based theories, the "equality as acceptance" approach of Christine Littleton, which explicitly recognized the devaluation of the

The systematic accounts of androcentrism that might have analyzed and predicted such outcomes were in fact emerging on the feminist legal landscape. Yet they were frequently incorporated in larger theories that shifted feminist attention from questions of care. The dominance theory of Catharine MacKinnon,¹³ which achieved almost unparalleled prominence in the late 1980s, is a good example.¹⁴ MacKinnon paired equality and difference feminisms—previously thought to be opposing visions—as two sides of the same coin: both framed questions of equality as questions of ontology (“is X group the same or different?”) rather than politics; and both were premised on an unarticulated assumption that man was the measure of all things.¹⁵ Of care-based accounts in particular, MacKinnon argued that women learned to value care because caring for men was what they were valued for, and to emphasize women’s orientation toward care without emphasizing the context of constraining social construction in which it emerged was an “insult to [women’s] possibilities.”¹⁶ Yet having contained and critiqued the “differences” approach, MacKinnon juxtaposed to it her “dominance” view, in which women’s inequality and differentiation are the product of their systematic sexualized domination by men. The dominance approach succeeded not only in curtailing discussion of care-based difference, but in shifting the substantive focus from questions such as workplace accommodation of childrearing, to issues such as sexual harassment, rape, and pornography, in which the sexualized domination and terrorization of women was most immediately evident.

feminine as part of the phenomenon of sex and gender-based discrimination, fails to glimpse this difficulty. See Christine A. Littleton, *Equality and Feminist Legal Theory*, 48 U. PITT. L. REV. 1043 (1987). Littleton advocates interpretation of the equality norm as entailing equality across differences, meaning, for example, that there should be equal workplace treatment of different life patterns with respect to parenting. What Littleton does not appear to anticipate is that the devaluation of the feminine that she accurately diagnoses is likely to distort the equal accommodation of women’s life patterns, even when such accommodation is legally required, producing phenomena like the “mommy track” in which the equality of the separate track is undermined by the devaluation of the work performed by those on and, indeed, the reasons for creating, the separate track.

13. See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987) [hereinafter MACKINNON, *FEMINISM UNMODIFIED*]; CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989).

14. For an example of a feminist theory of androcentrism, outside the field of law, that does not reflect MacKinnon’s unitary focus on sexualized dominance, see SANDRA LIPSITZ BEM, *THE LENSES OF GENDER: TRANSFORMING THE DEBATE ON SEXUAL INEQUALITY* (1993).

15. See MACKINNON, *FEMINISM UNMODIFIED*, *supra* note 13, at 34.

16. *Id.* at 39.

Yet while the claims and critiques of dominance theory were preoccupying feminist legal scholars, feminist scholars in other fields were shifting emphases and addressing defects in earlier arguments about care. Theorists such as philosopher Sara Ruddick¹⁷ characterized care not as an emanation from or essence of women, but as a practice in which many women and some men engaged, that formed particular habits of mind and orientations toward others through the activities of nurturance of and concern for particular others. Other scholars, such as political theorist Joan Tronto,¹⁸ worked to concretize and situate care, by describing systematic ways in which various categories of caregivers had been marginalized. Each of these efforts helped to shape the new understandings through which a concern with care would re-emerge among legal feminists.

B. *The Second Coming of Care*

By the mid 1990s a concern with care began to resurface among feminist legal scholars. This focus coincided with growing analytic and practical doubts about dominance feminism as a fully adequate vehicle for addressing women's oppression. Not only had the dominance approach been problematized as essentialist¹⁹ and as understating women's potential for agency,²⁰ but its persistent focus on sexuality was also challenged as inadequate to address a range of issues that reflected the gendering and the oppression of women,²¹ foremost among them the care of children and other dependents.

17. See SARA RUDDICK, *MATERNAL THINKING: TOWARD A POLITICS OF PEACE* (1989).

18. See JOAN C. TRONTO, *MORAL BOUNDARIES: A POLITICAL ARGUMENT FOR AN ETHIC OF CARE* (1993).

19. See, e.g., Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990).

20. This has been analyzed as a problem that risks undermining both women's resistance, see, e.g., Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 *COLUM. L. REV.* 304 (1995); Martha Mahoney, *Victimization or Oppression? Women's Lives, Violence, and Agency*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE: THE DISCOVERY OF DOMESTIC ABUSE* 59 (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994), and women's understanding of their implication in social processes such as the construction of race, see, e.g., Martha R. Mahoney, *Whiteness and Women*, in *Practice and Theory: A Reply to Catharine MacKinnon*, 5 *YALE J.L. & FEMINISM* 217 (1993) [hereinafter Mahoney, *Whiteness and Women*].

21. See JOAN WILLIAMS, *UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT* (2000) (critiquing restricted scope of dominance focus); Mahoney, *Whiteness and Women*, *supra* note 20, at 239 (noting insights gained by shifting the frame of feminist inquiry from sexuality-based contexts to questions such as housework and the availability of credit).

These questions, and the new orientation toward care that they reflected, were provocatively framed and reintroduced by Martha Fineman in her book, *The Neutered Mother*.²² Fineman looked at mothering as a complex, socially constructed practice that provided a window into women's "gendered lives."²³ Whether performed by biological men or biological women, "mothering" is concerned with the care of dependents, a practice that Fineman—resisting both the dichotomization of care and work and the naturalization of care—has labeled "dependency work." *The Neutered Mother* explores the ways in which dependency work is socially devalued and institutionally undersupported through the conceptualization of the family around the "sexual dyad" rather than the "mother-child (or dependency) dyad."²⁴ In *The Neutered Mother*, and in subsequent work,²⁵ Fineman has investigated the ways in which that work is differentially constructed and subsidized for different groups of women, and erased or undersupported by government policy, workplace regulations, and operations of the market.

The new approach to care initiated by Fineman's work is evident in many of the contributions to this Symposium. The question is not, as it has been in the past: What is the orientation toward care (manifested by women) and how does it compare to the orientations (toward logical hierarchies, toward autonomous pursuit of individualized goals, etc.) reflected in dominant culture, particular institutions, or specific bodies of legal doctrine? The critical questions have proliferated, and they assume a complex, contextually differentiated practice, that can be shaped by many different institutional and social influences and represented and understood from many different perspectives. Feminists engaged in the most recent round of theorizing about care are more likely to ask: What kinds of activities or commitments comprise the practices of caregiving? How do these differ in different contexts? By whom is it done? And for whom is this caregiving performed? How is it represented or subsidized or incentivized? And by whom? And why? How might it be performed, represented, subsidized,

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

23. See *id.* at 47-48.

24. See *id.* at 226-36.

25. See, e.g., Martha Albertson Fineman, *Contract and Care*, 76 CHI.-KENT L. REV. 1403 (2001); Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER SOC. POL'Y & L. 13 (2000).

incentivized, and combined with other life activities, differently than it is now?

These emerging approaches to the interrogation and exploration of care ameliorate many of the defects of the earlier feminist discussions. The elaborate contextualization of more recent work mitigates claims of essentialism: these investigations do not seem to assume a normative caregiver, and they reflect the distinctive circumstances of many groups of women.²⁶ The extension of feminist investigation beyond the dependency work of biological women also short circuits earlier debates over whether and how it makes sense to talk about a woman's essence. Moreover, because dependency work is not an emanation from women or a manifestation of innate being, but is rather a variable practice subject to multiple vectors of social formation, the ways in which it is represented, devalued, and undersupported are rendered explicit and fully theorized in most of these accounts. This not only provides a previously absent element of context; it also assists in the remedial enterprise, because theorists can anticipate and resist efforts to marginalize or undermine interventions grounded in nondominant understandings of care or dependency. An explanation of the ways that state agencies are likely to misconstrue the kinship networks often deployed in the raising of African American children, for example, forms an explicit part of Dorothy Roberts's argument, in her contribution to this Symposium.²⁷

Yet notwithstanding this last gain, the path to remedial implementation of the emerging feminist perspectives promises to be rocky. The pluralization and radical contextualization of different accounts of care will make analogically grounded rights claiming even more difficult. Perhaps more important, arguments such as those of Fineman or Roberts, require largescale restructurings of social institutions. When caregiving ceases to be an emanation that must be accommodated and becomes a range of practices that must be rendered visible, subsidized, legitimated, and deployed as a basis for restructuring existing institutions, the transformation required fully to support these practices is profound. Fineman, straightforwardly

26. Katherine Franke has recently argued, however, that while these accounts may not assume a normative caregiver, they do assume that caregiving is normative and erase or marginalize the experiences of women who are not involved in dependency work, and do not conceptualize sex, even in part, as a vehicle for reproduction. See Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 183-97 (2001) (critiquing "repronormativity" of feminist work focusing on dependency).

27. See Dorothy E. Roberts, *Kinship Care and the Price of State Support for Children*, 76 CHI.-KENT L. REV. 1619, 1632-33 (2001).

acknowledging the magnitude of the undertaking, has focused on initial steps, such as the removal of state sanction from the institution of marriage or the commencement of a national dialogue on the undersubsidization and erasure of dependency work. If the emerging feminist engagement about care is not to be sidelined, once again, by its uncomfortable fit with conventional, often incremental approaches to legal change, feminists will have to challenge mainstream understandings about the role of law in producing progressive social change at the same time as they challenge dominant understandings about dependency work. In this task, the work of Lucie White may play a useful, instigating role.

II. CARE AND THE ENABLING STRUCTURES OF LAW

In *Raced Histories, Mother-Friendships, and the Power of Care*,²⁸ White offers an evocative, and sometimes puzzling, account of the ways that a particular kind of care operates in the lives of women involved with Project Head Start. She describes two lives that are transformed by the caregiving of another. Care here connotes not simply the physical aspects of dependency work, but what White describes as “presence”—a careful witnessing and gradual comprehension of the life of another, which produces encouragement through steady, accepting, often unspoken companionship. But, more interestingly, she describes one life as being changed not simply by the receiving but by the giving of this kind of care. E.M., a Head Start parent volunteer, is empowered to reconsider and separate from an abusive relationship with her husband, through her caring for two children, in particular a traumatized young girl, whom she draws back to the beginnings of an engagement with the world by the same steady presence that the head teacher, J.G., demonstrates toward E.M. herself. This form of caregiving, in short, not only enriches the life of another, but permits E.M. to understand the need for action and the possibility of agency in her own life.

White’s account is emblematic of many things we might learn about care, particularly in relation to what she calls the “polarities” of the earlier care debates. Caregiving has a far broader domain than is frequently assumed or described. White’s narrative concerns relations that take place in the context of work (paid work for some and unpaid work for others, but not a domestic or familial relation in

28. White, *supra* note 1.

any case). None of the caring relationships she describes involve a parent and her own child, and one pivotal relationship is between two adult peers (albeit momentarily in a teacher-student relationship). More centrally, caregiving does not involve a unidirectional relationship in which one only gives to others. Caregiving in White's Head Start context is enabling: it is a way of strengthening and nurturing oneself so that empowerment and resistance is possible.

It is an interesting feature of White's account that it is more suggestive or evocative of possibilities than it is indicative of recurrent (even contextually recurrent) patterns in the giving of care. This quality may be traceable in some respects to the particularized, ethnographic character of White's inquiry. But, paradoxically, it is also traceable to an almost anachronistically essentialist aspect of White's account. Care as "presence" occurs in a particularized setting, to be sure; but it also seems to be present as almost an emanation from the women involved. We learn surprisingly little about how this "presence" emerges—a feature that makes it reminiscent of the spiritual transformation of Head Start's typical "change" story²⁹ or of early accounts of care—with the exception of one detail that, importantly, gestures toward a new understanding.

White tells us that these "mother-friendships" and other caring relationships emerged in the context of a set of Head Start regulations, which required that local projects administer programs for the education and assistance of Head Start parents. She describes Head Start's world as "literally brought into being by law,"³⁰ but, on reflection, offers a more qualified view. "[T]he rigid processes of modernist public law," she notes, "are not very good at creating lifeworlds. . . . What is it about Head Start's law, unlike that of many other social programs, that has made it into a place where some low-income women feel safe, cared for, and respected?"³¹ The answer is multifaceted and interestingly contingent. White explains:

Head Start's legal blueprint is unusual among *child* welfare programs because of its explicit emphasis on the well-being and development of the *parents* of Head Start children. . . . Head Start centers are legally required to permit parents to come into their children's classrooms as observers or volunteers. Parents must be offered educational and enrichment activities, such as nutrition and literacy classes. They must be included, as elected representatives, in each Head Start center's governing policy council. And qualified

29. *Id.* at 1575.

30. *Id.* at 1572.

31. *Id.*

parent volunteers must be given priority for staff positions. Among these requirements, the [preference for parents in hiring for staff positions] appears to be especially important . . . because teachers who started out as parent volunteers seem to be especially likely to form intense mentoring relationships with younger Head Start mothers. . . .

. . . Such relationships are more likely to take off in programs in which parent involvement is valued and supported beyond what the law minimally requires. The law gives each Head Start grantee great latitude to define its own priorities and custom-design its day-to-day practices. Some local programs, like the Los Angeles Head Start that I studied, consider the development of *adults* a key objective. Such programs sometimes supplement their federal dollars with funds specifically targeted to adults' well-being and needs. These programs are likely to draw and keep teachers with the life experience, therapeutic know-how, and long-term commitment it takes to sustain . . . cross-generational relationships . . .

Yet even in programs that prioritize women's well-being, there is no guarantee that any particular woman will get drawn into a sustained relationship that enables significant change. Researchers . . . have identified some of the features of individual women's life histories, like the absence of severe trauma or a positive relationship with a parent or caretaker, that increase the chance that these women will be open to such relationships. Yet, our most contextualized models of human development still leave much about the interplay between the person, her evolving relationships, and the social context unaccounted for.³²

It is important to note what White is, and is not, saying here. Legal regulations requiring attention to adult development, plus center-specific institutional practices that prioritize assistance to adult women, plus life experience or personal characteristics among participants that encourage the formation of close nurturing connections, help some teachers to establish and some parent volunteers to accept mentoring relationships in which the form of care White describes might emerge. The role of law is not singular, nor is it directly or predictably productive of the effects described. "[T]he process of change," White stresses, "is ultimately embedded in the mystery that marks our potential as living beings."³³ One might better describe the role of law as making possible—or increasing "the chance that life-enhancing movement" will occur.³⁴ But whether and how such possibilities come to fruition depends on a range of factors

32. *Id.* at 1572-73 (citations omitted).

33. *Id.* at 1573-74.

34. *Id.* at 1574.

beyond the law, which implicate variations in context and in the subjectivities of the actors involved.

This seems to me to be a fruitful and potentially broadening concept of the role of law in producing social change, which feminists might pursue not only in relation to care, but in relation to other norms such as agency or desire that they have more recently sought to vindicate.³⁵ Law has too often been conceived as a means of prohibiting or bringing single-handedly into being particular arrangements or behaviors. This conception is plausible when formal equal opportunity, or equal treatment within a particular institution, is that goal that reformers seek. But applying this conception to a project as vast as legitimating and supporting dependency work can set feminist legal reformers up for failure, or frame remediation as a daunting enterprise. This conception of law as single-handedly productive also seems limited, and even crude, in the context of a norm like care or desire that can emerge in so many ways, and in light of what feminist and related theories have taught us about the complex social formation of subjectivity. To view law as enabling is not to deny its very concrete contributing role: law can enable by removing constraints and, more importantly, by establishing material conditions, shaping expectations, or creating entitlements. But it may be best, in certain of the contexts on which feminists have begun to focus, to view law simply as making *possible* (in both senses of that word) certain practices, responses, or explorations. This approach not only makes possible a broader, more plural view of legal normativity; but it also acknowledges the limits of law in the face of baffling, and ultimately enlivening human complexity.

35. Cf. Franke, *supra* note 26, at 208 (arguing that we should understand feminist legal theory as “a set of legal analyses, frames, and supports that erect the enabling conditions for sexual pleasure”).

