The State’s Relations: What the Institution of Family Tells Us about Governance

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Abstract

The authors examine family as an institution of governance in American welfare provision in nineteenth-century poor laws and the twenty-first-century earned income tax credit. Their study demonstrates family’s important role achieving public policy aims, illustrates the extent to which governments have relied on nongovernmental actors, describes the tools they use, and shows how citizens’ relationship to the state is translated back through nongovernmental institutions. Called upon in the task of governing, family—the hallmark of the private sphere—illustrates the mechanisms that governments use and the extent of governing authority necessary to get actors to comply with policy aims.

Keywords

governance, welfare policy, institutions, family

The job of governments is to govern—to do the work associated with carrying out public policy. To combat criminal behavior, state, local, and federal governments erect an agency to house police, and those police are the agents that directly enforce criminal law. But they do not do this work alone (Peters and Pierre 1998; Rhodes 1996). State governments directly contract out prison services to for-profit providers, and governments indirectly tap other professionals to aid in their job of enforcing criminal law. For example, doctors are required by law to report drug abuse, while teachers are required to report child abuse. Though the enlistment of direct contracting is familiar and extending it to other actors who work in civic positions is not too far a stretch, we may not expect to see the same types of actions closer to home in the very fabric of our personal lives. Yet, parents are not immune from the same instrumentalism when they are counted on to police families in the logic of governing through crime (Simon 2007) or as “chief law enforcers” in graduated driver licensing laws, which extend the probationary period for teen drivers and restrict the hours and number of passengers in the car (Hirshey 2007).

Nongovernmental actors are routinely enlisted to play roles as bureaucratic agents, the key administrators in scores of policies. Medicare directly contracts most of its paperwork processing to third-party providers. More indirectly, hospitals not only provide care for low-income or indigent clients but are an important means by which low-income Americans become enrolled in Medicaid and state children’s health insurance programs (Patterson and Cox 2001). Public and nonprofit schools run the federally subsidized National School Lunch Program in which schools are reimbursed for providing free or reduced cost meals that meet federal guidelines to eligible children. In addition, parents are fundamental in the success of school voucher programs. William Howell (2004, 225) explains, “Families must locate an appropriate private school for their child, apply for admission, find transportation between school and home, and supplement the vouchers with private funds.” At bottom, governments “govern” with the help of a host of institutions: directly by contracting with third-party providers for specific services (for-profit prisons, Medicare paperwork); indirectly by marshalling the institutional resources of actors whose aims are other than the particular governmental objective (doctors and teachers enforcing criminal law and schools and hospitals administering public programs); and “privately” through relationships that are—and seem—beyond the purview of public policy making.

These examples lay bare the difference between theories of how governing works and the actual practice it entails. Although it is apparent that governing relies on a score of nongovernmental agents, scholars neglect the entire range of institutions that policy makers may enlist to carry out policy goals. Hence, scholarship to

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date remains thin on the extent to which governments rely on nongovernmental actors, the institutional capacities necessary to do so, and the effects this has on an institution and the individuals of which it is comprised. The simple observation that even parents are called upon in the task of governing—to enforce criminal law and administer public policy—leads us to ask more specifically about the mechanisms that governments use to tap into these resources and the extent of authority they employ to get these actors to comply.

We ask, How does government get families to do its work? Governments do not set the terms of contract with families the way the federal government does when it contracts with Department of Defense suppliers or states with prisons. Family is not a public institution, like public school teachers, that can be saddled with extra responsibilities. So, how does government reach families? How does it make them accountable? What authority can it muster over a family to ensure compliance? Ultimately, what does understanding this particular institution tell us about governance in America more generally?

In this article, we view family as an institution—like other institutions—with capacities that can be marshaled for public policy goals. Unlike other institutions (such as prisons, hospitals, or schools) family is often characterized as the hallmark of the private realm. When referring to family we are not imagining or reproducing the traditional nuclear family or any other particular family unit. Rather, we think of family broadly as a dynamic institution and a legal construct that largely rests on kin relationships. Though individual American families have leeway in defining their own relationships, the government’s categorization by family relations and utilization of its organizational capacities drives our study.

By studying carefully the relationship between this seemingly private actor and governing structures, we demonstrate family’s important role in achieving public policy aims, illustrate the extent to which governments have relied on nongovernmental actors to achieve public aims, describe the tools they use, and show how citizens’ relationship to the state is translated back through these nongovernmental institutions. Ultimately, by looking at family, this study suggests that we can capture the relationship between governments and citizens through a host of social institutions that are utilized to achieve public policy goals. Further, we can interrogate the presence of state authority in private institutions that are engaged in governance.

I. Family as an Institution

It might seem apparent that family is part of government. After all, scholars of government have studied the family as an agent of political socialization; as shaping the behavior of elites or citizens; as a recipient of social welfare policies; and, for some theorists, as the basis of political society. Feminist scholars have laid the groundwork for the political importance of family by showing the policy fallout along lines of gender or status within the family (Fineman 1995; Macedo and Young 2003; Mink 1995; Smith 2007; Tronto 1993; Young 1990). Yet the incorporation of family in political science neglects family’s institutional role carrying out government policy (but see Novkov 2008). Family is likely to be seen at the base of society or at the receiving end of a policy, but seldom is it acknowledged as instrumental in achieving governmental objectives.

Even historians, who have demonstrated the role of nongovernmental institutions within or as supplemental to government programs, and public administration scholars, who have traced the networks of actors—governmental and nongovernmental—in government policy, neglect family among those nongovernmental institutions. Whether looking at corporate innovation with group insurance or public investment in industrial development, historians convey entities like corporations strategically providing services for their own advantage, but they do not explain the role that such practices play in routine operation of government (Klein 2003; Stevens 1988). They do not account for those institutions that are enlisted in the work of government, as opposed to those institutions that strategically take advantage of opportunities to benefit from public–private partnerships.

Public administration scholars, who have been much more explicit about the changing face of government more generally (Kettl 2000; Peters and Pierre 1998; Rhodes 1996), explain, “Instead of the centralized hierarchical agencies delivering standardized services . . . what exists in most spheres of policy is a dense mosaic of policy tools, many of them placing public agencies in complex, interdependent relationships with a host of third-party providers” (Salamon 2002, 3). In other words, public actors and institutions are still important in achieving policy goals, but we might better be able to capture how they work by thinking in terms of what public administration researchers define as “governance.” In governance, the state “loses the capacity for direct control and replaces that faculty with a capacity for influence” (Peters and Pierre 1998, 226). Thinking in terms of governance tears down the traditional boundary between public and private sector and instead addresses how formal partnerships are formed and maintained. Public administration literature, which readily discusses third parties involved in achieving public aims, thinks about the relationship between governmental and nongovernmental institutions, but it does not extend beyond
traditional (and direct) relationships, like prisons or Medicare. Rather, it restricts itself to looking at how governments leverage the resources of other levels of government, public–private partnerships, nonprofits, and private companies through a host of policy tools or instruments like contracts, grants, loans, or vouchers (Goldsmith and Eggers 2004; Hooghe and Marks 2003; Howlett 2000; Kettl 1993; Lynn, Heinrich, and Hill 2001; Peters and Saboie 1995; Salamon 2002).

Political scientists, too, have examined the numerous institutions on which governments rely and have demonstrated that the administrative state is not merely a political actor, or more accurately, the only political actor in American policy provision. Kimberley Johnson (2006) and Paul Manna (2006) show the federal government’s reliance on other levels of the federal system to carry out public policy. Christopher Howard (1997) unearthed public programs in the tax code that make up the “hidden” welfare state. Jacob Hacker (2002) and Marie Gottschalk (2000) shed light on the role of employer-provided health care in taking care of Americans in the “private” and “subterranean” welfare state. Companions have looked at use of transnational resources by governments to expand the possible resources beyond national borders (Keck and Sikkink 1998; Slaughter 2004). To this list of nongovernmental or nonfederal institutions important in carrying out policy, we could add family. However, it is not clear to what degree family is an institution like these other institutions. American families do not contract with the government the way that private companies and nonprofits do, and they are not tapped in their professional roles as doctors and teachers are. Further, there are good reasons to believe that studying the instruments that governments use to marshal this private actor would offer insights beyond what adding to a proliferation in state types—the “private sector welfare system,” the “proto welfare state,” the “hidden” “shadow” or “subterranean” state—might do. Showing how governments leverage this private institution may offer insights into the fundamental basis of government authority across the gamut of institutions discussed in governance literature.

In this article, we illuminate the role of family by revisiting a familiar state operation—welfare provision. The role of government in welfare states is an important area of governance research, and—for all the attention that welfare receives in political science—family is most likely to be taken for granted. That is, with welfare we are able to see a quintessential state function as well as (often) a discussion of families as the recipients of aid. Yet when we take another look to locate the family within the process of provision, we are able to offer insights about the nature and extent of governing authority in the United States.

II. Commonalities in Welfare Provision

Focusing on welfare allows us to carve off one more tractable policy realm and to look at its administration, provides the opportunity to simultaneously reflect on how welfare provision developed in America as well as how scholars think about welfare, and offers us the opportunity to see how governing relationships with families have changed over time. Studies of the development of welfare provision often track advances such as Mother’s Aid, culminating in Aid to Families with Dependent Children (AFDC). This focus reproduces the notion of the administrative state as the expected form of welfare provision. However, if we look beyond the state—at how governments leverage private actors—we see more clearly how welfare provision was in place before the growth of the administrative state and is maintained beyond it.

We draw our cases, then, one each from the nineteenth and twenty-first centuries. Nineteenth-century welfare provision was found directly in state, county, and municipal provisions of almshouses, outdoor relief, and the overseers of the poor and indirectly by family obligations maintained by the rules of the common law. Late-twentieth-century policy, in part, counted on parents to distribute the family funds of the earned income tax credit (EITC). These two methods of provision in these two periods would seem to have little in common: the first is governance by law, in localities, before the formation of a strong national state; the second is governance by policy, at the federal level, and after a developed national state. Indeed, the two provide a most different case design, where similarities across cases may be attributable to features of governing rather than to any specific time period (Gerring 2007). Yet, we find that for all the differences, four common features emerge: family categories are important to maintaining the policy, family acts a mediating institution between the elite policy, and everyday citizens, government is invested in creating and maintaining family-status relations, and family’s institutional relationship with government changes over time. Ultimately, the presence of family is constant even as the nature of its relationship varies. In the section below, we discuss each of these in turn. In the third part of the article we analyze what these findings mean in terms of governance more broadly.

Family Categories Are Present

Across both cases, we find conclusive evidence that family categories are a fundamental part of how each operates. In
the nineteenth-century common-law and twenty-first-century tax code, families were crucial for determining welfare eligibility.

**Nineteenth century.** Colonies were entrusted with the duty to maintain good social order, and they often delegated regulatory tasks to municipalities, and so localism was the most notable feature of early public poor relief (Kelso 1922, 92). The local site of welfare was in keeping with the locus of governance and citizenship in the early years of the American republic, which had a minimal federal state. At these lower levels of government, citizens had most of their encounters with government power (Novak 2003). These encounters were steady and close.

With localities responsible for the execution and funding of relief in the early republic, the actual provisions for welfare encouraged a race to the bottom; no locality would want to appear to be too welcoming, as it would invite the underserved poor from surrounding towns. Town leaders wanted to be sure that they were only serving members of the community (Herndon 2001). The logic is captured in a Massachusetts case in which two towns disputed which town had to provide for the indigent—the town in which one legally resided or where one actually resided:

> Great inconvenience and mischief would happen to those towns which make suitable provision for their poor; for to avoid such portion of labor as may lawfully be required of them, paupers would be apt to wander to neighboring towns and get supplied without labor, and the discipline and economical arrangements which are necessary to keep the expenses of towns within reasonable bounds, would often be frustrated.²

Municipalities relied on systems of surveillance and differentiated status in order to identify membership and obligation. Because towns were expected to finance poor relief programs, they were careful to make sure that the poor were “their poor” (Kelso 1922, 49). A town could determine “its poor” by deciding which individuals were entitled to legal settlement, which in turn required a method to identify who was a member and who one’s relations were. Common-law domestic relations provided those classifications, as illustrated in Pennsylvania and Massachusetts law. In eighteenth-century Pennsylvania, settlement could be acquired if an unmarried person arrived in a town as a servant or apprentice and remained in service for one year. Settlement could also be acquired by paying taxes for one year, leasing a tenement or plantation of a certain amount, or giving sufficient security (*A Compilation of the Poor Laws* 1971). Those who did not meet the requirements of settlement were assumed to pose a burden on the town and could be turned away by the overseers of the poor through the practice of “warning out” (Benton 1911; Herndon 2001).

Importantly, settlement followed the family, not the place of residence. As a Massachusetts court reviewed,

> The general principle is, that every person, who is by law incapable of gaining a settlement in his own right, shall have the settlement of that person, on whom he depends for support. . . . On this ground it is, that minor children have the settlement of their fathers, and *femes covert*, that of their husbands.³

Once one was deemed a member of a family and the community, the surveillance only continued, now aided by the systems of differentiated status already in place in the common law. Knowing an individual’s relations allowed the municipality to locate an appropriate, nonpublic, source of relief.

The family, then, was the first site of poor relief. Adopting the English Poor Law, Pennsylvania required that any father, grandfather, mother, grandmother, or (grown) child was responsible for care of the poor (*A Compilation of the Poor Laws* 1971, 5). Children whose parents could not care for them would be placed out as apprentices (*A Compilation of the Poor Laws* 1971, 6). Those remaining would be eligible for poor relief, whether the practice of outdoor relief, whereby the recipient could receive benefits but remain living at home, or workhouses or almshouses, where the poor were sent to live.

**Twenty-first century.** The twenty-first century tax code is worlds apart from the nineteenth-century common law on many accords. But even here we find the importance of family categories for determining filing status, tax brackets, and eligibility for credits and deductions.⁴ As support waned for New Deal expenditure programs, national policy makers put their energy not so much into dismantling welfare provision but rather into reconfiguring it. Tax expenditures, or credits and deductions that reduce tax burdens given for particular types of behavior, use “the mechanics of the income tax as the method of paying the subsidies” (Surrey 1973, 6) and have grown exponentially over the past forty years. These expenditures, often thought of as loopholes, are an important part of American welfare provision (Howard 1997 and 2002). They subsidize education, child care, and housing expenses.

In 1996, when federal policy makers “ended welfare as we know it,” they shifted the low-income population to a number of other programs. One particularly important program has been the EITC, a refundable credit that allows individuals to receive more money back from the federal government than they paid in income taxes (recipients still pay regressive payroll taxes).
More Americans are claiming more credit dollars from the EITC than they did for AFDC/TANF (Temporary Assistance for Needy Families) in every year since 1993 (see Figure 1 in the supplemental materials available at http://prq.sagepub.com/supplemental/). Ending welfare as we know it has meant the end to a public commitment to mothers to stay home and take care of their children, and it has meant channeling resources instead in a way that conceals the income transfers to low-income Americans as “welfare.” It has also meant relying on families to administer these hidden programs.

If we think about the tax code as providing welfare, we must also reevaluate the relevant actors responsible carrying out program goals. When we do, we find that supposedly private actors are important for carrying out public welfare. The government is able to provide for the welfare of its citizens through incentives and inducements that rely on family relations. Family status not only confers the benefits of public assistance to particular individuals—and restricts it from others—but also requires family members to act in particular ways for the benefit of others. Though the fixity of common-law status relations is a thing of the past, remnants of status remain in the relation between the family and the state. The government still expects the family to fulfill obligations. But rather than fix behavior by law, as we saw in the common law above, the government encourages behavior by policy inducements. As the EITC illustrates, one’s status as a taxpayer and family member determines the level of benefits one receives and, in turn, the responsibility of taxpayers to care for the well-being of dependents. (Strach 2007)

**Family Functions as a Mediating Institution**

The family is not just a part of policies as a recipient; it is there as an institutional resource marshaled by governments (local in the nineteenth-century common law and federal in the twenty-first-century tax code). In other words, citizens experience welfare governance through their individual families.

**Nineteenth century.** When colonies and, later, states and localities sought to provide for welfare, these legally established status relations proved to be useful sites for administration. Within the family, the existing rules of common-law domestic relations established, in their provisions and in their logic, a system of assistance for family members and sanctions for those who failed to uphold their obligations. The privileges of the husband were, at the same time, part of his obligation to provide a home, support his wife and children, and protect them from injury and insult (Peck 1921, 28). The obligation of the husband to provide material goods and to assume personal and financial liability served as a proto-welfare arrangement.

The government ensured that its citizens were taken care of, that creditors could identify their due, and that homes remained fairly stable by designing the rules of domestic relations. Domestic relations could be employed to secure caretaking and economic stability.

The clearest case of household welfare provision lay in the husband’s obligation to provide necessities for dependents in his household. Because of the subordinate position and reduced rights of the other members of the household, the husband was obligated to provide lodging, food, clothing, washing, and medical care commensurate with his station in life for his wife and family. This obligation arose from the wife’s inability to own property, but as treatise writer James Schouler (1882, 129-30) pointed out, “the common law assigns, as the true legal reason, that she may not become a burden to the community.” In short, a husband provided for his wife so that the government did not have to. If he failed to meet his obligation, he would be sanctioned by a change in status. Deemed an idle and disorderly person, he could be denied the privilege of head of household and the benefits of poor relief (Schouler 1882, 130).

The more practical route, however, was to hold a husband liable for a wife who became a burden to the government. In Ohio in 1841, a wife who fled her home citing her husband’s cruelty received poor relief from a neighboring town. While towns usually did not charge paupers for services rendered, the town did in this case, identifying the husband as liable to support his wife.5 A Massachusetts court ruled, “If the overseers of the poor relieve the wants of the wife, whose husband has a legal settlement in another town, an action lies at common law for the town, whose overseers furnished the relief.”6 It was in the interest of towns to maintain marital relations, even where the marriages had, for all practical purposes, failed. Heads of households were the administrators and providers of benefits, and localities had an incentive to uphold their obligations.

Women also provided services in this relationship. A married woman’s duty under the common law was to provide housework, do family shopping, maintain the family budget, and nurse family members. Localities counted on family members to uphold their part in the labor contract so that the local government did not have to provide those services.

**Twenty-first century.** In much the same fashion that localities rely on families to uphold their part in the labor contract, so, too, the tax code calls on families to act in particular ways that mediate the need for more intensive direct social service provision. Family is essential in EITC welfare provision to determine both who qualifies and how much they receive because, ultimately, families
are expected to convert tax incentives into care for children. This is reflected in the higher benefits to families with children. In 2008, single individuals who received the credit had to earn less than $12,880 to qualify. Yet, a parent with one child could make upwards of $36,995 and still qualify (Internal Revenue Service 2009b). A single person may receive at most $438. By contrast, a single person with one child may claim a maximum of $2,917 (Internal Revenue Service 2009b). The addition of a single child adds more than $24,000 to the income that a taxpayer may make and still claim the EITC. The generosity of the credit for taxpayers with children “encourages” parents to channel resources to their dependents. Policy makers are able to target children’s needs, from health care to housing, through their parents’ status as taxpayers.

The EITC functions because the tax code more generally relies on and reinforces particular status relationships. As more and more scholars turn to the tax code to understand twenty-first-century public policy, it is important to recognize the very real nineteenth-century common-law traditions that allow it to function. Individual taxation is far less about individuals than their status as members of particular domestic relationships. One’s family status determines one’s taxpaying status (married, head of household, single) and the incentives granted to act on behalf of dependent citizens—especially children. With status comes lower tax rates, more exemptions that reduce the total income subject to taxation, and generous tax credits such as the dependent care credit, education credits, and the EITC.

In the end, the tax code encourages heads of households to act in ways sanctioned and encouraged by government, such as saving for education or caring for elderly relatives. Family in the tax code, like other policy areas and other points in time, both rewards beneficiaries and holds them responsible for others. Though relying on family status in order to determine filing rates, exemptions, and credits makes the tax code more complicated and potentially unfair to those taxpayers who essentially subsidize American families, they remain popular. In fact, 76% of respondents in a 2003 poll thought it fair that two families with the same income pay different amounts in taxes because one family has more dependent children.7

Nineteenth century. Even as marriage represents personal love and choice, it is an institution that is employed to produce and maintain public order (Cott 2000). Though it might seem evident that a husband would take care of his family and that a wife would offer services to her husband and family, each acting out of love, affection, and filial duty, these natural tendencies should not be mistaken for the naturalness of the obligations of the domestic relations. The rules regulating the domestic relations indicate that they were constructed to manipulate any “natural” tendencies toward service to the state (Locke 1959; Locke 1988; Pateman 1988).

In his 1882 legal treatise, James Schouler points out the public purposes that can be derived from the premise that marriage and family are “natural” relations. In carrying out his own desire to provide for his family, a man helps “civilization” by alleviating the need for the government to provide. The natural affection of the family provided a site in which the government could organize behavior, assure the meeting of obligations, and naturalize behavior so that it continued to appear that the practices emerged from affection rather than law.

Evidence of the nonnatural component of domestic relations is readily apparent in the common-law master–servant relation. This was the early form of the employer–employee relation and, as such, was the least familial of the domestic relations. Nevertheless, the contract between master and servant established a status relation in which the servant was subordinate to the master and set the terms under which the master was responsible for a servant’s behavior and minimal welfare. The master–servant relation, therefore, assumed the relations of dependence and welfare of the other, kin-based domestic relations.

The master’s liability for his servant did not arise from their mutual agreement but from the rules of the relation once they contracted to enter into it (Blackstone 1765/1979, 581). A master was obligated to provide safe machinery for the workers and to pay wages according to the contract, and he was prevented from improper discharge of the servant (Rodgers 1899, 751).8 Because the master held a right to his servant’s services, he could moderately correct his apprentice or servant and could justify an assault in defense of his servant (Blackstone 1765/1979, 416-17). In turn, the master was answerable for his servant’s actions when the servant was carrying out the master’s instructions (Kent 1867, 259). Schouler (1882, 665) saw in the master–servant relationship the obligation of the master to provide minimal necessities for the servant, health care excluded. By affixing status and respective obligations, the law could shape the mobility of laborers, their training, and their behavior on the job. The government could avoid passing regulatory laws by shunting off workplace safety and care of workers onto
the employers. The government could shape the conditions of labor while assigning employers the job of administering them.

Further, if the rules of the marital relation were natural, then there would be no need for law. The domestic relations established a regime of domestic hierarchy and privilege for men. Because the parties to the marital contract could not fix the terms of the relation, the legal rules remained in place, but men and women found ways to exercise agency within those limits. Hendrik Hartog (2000) shows the resistance of men and women in the marital relation, and Ruth Herndon (2001) shows the resistance of women to settlement laws, which disproportionately excluded women with young children. These findings of resistance indicate that lived arrangements did not fall out according to the common-law rules of the domestic relations, and relations that sprang organically from a couple’s talents and agreements question the natural ordering of the patriarchal family.

Finally, the “naturalness” of family erodes most clearly when looking at divorce laws. The availability of divorce “derived its symbolic punch from its capacity to undermine the contract of marriage” (Basch 1999, 3). Though divorce was a legal possibility and an apparent threat to social order, married women who had been financially dependent upon their husbands during the marriage could expect alimony only if the husband was at fault (Page 1850, 266). The cultural insecurity wrought by divorce occasioned an antidivorce sentiment and a fault divorce system in the 1870s that would not be reformed until the 1960s. Hence, the legal possibilities of marriage and divorce reform did not offer an escape from status relations of the household.

Twenty-first century. Though it seems “natural” that the government takes family status into account when determining tax rates, exemptions, and expenditures, the tax code functioned until 1948 based solely on individual income—with little reference to household status. Americans support lower tax rates and special exemptions for status holders, but Congress did not originally intend to reward family households through the tax code. Differentiation—and privileging—of family came three decades after the national income tax during World War II, when the tax code became a more important source of federal revenue (Bittker 1975; Kornhauser 1993). As enacted, the individual rather than the family or the household was the basic unit of taxation.

The complex and contradictory definitions of status categories further demonstrate that family status is not “natural,” nor is it a mere reflection of legal principles and social practice. The tax code neither relies on existing formal legal definition of familial relationships nor does it allow individuals to self-identify their relationships. Instead, policy makers have maintained a vision of family life in the tax code that takes into account legal status as well as financial dependence in order to accomplish a host of policy goals (providing additional funds for low-income Americans but limiting the number and kind of taxpayers who qualify). For example, the Internal Revenue Code determines marital status not only by legal status but by whether or not couples live apart from one another, maintain separate households, and are financially independent.9 Most taxpayers’ dependents are “qualifying children” that must meet “un-natural” relationship, age, and dependency requirements.10

Citizens’ Relations with Government

As Suzanne Mettler and Joe Soss have shown, citizens’ experience of government is colored by public programs. Here we see that when families act as mediating institutions citizens are not only—as we more commonly think of them—active advocates for their causes or recipients of services. Their membership in institutions like family mean they also become a functional part of policy administration. In the nineteenth century, family was used to provide welfare by policing the behavior of its members. In the twenty-first century, families are expected to be far more bureaucratized.

Nineteenth century. Welfare provision of the nineteenth century was able to utilize the family because the common law had provided the rules for citizen behavior in domestic relations. The husband–wife relation especially secured a system of respective obligations of family members. When a man and woman married under the common law, they contracted into a relationship of status in which each took on a new status—husband or wife—with attendant obligations. Furthermore, the wife assumed the position of feme-covert, with her legal identity covered by her husband’s. A husband was bound to provide necessaries for his wife. If she was injured, she could bring no action without her husband’s concurrence. Responsible for her behavior, the husband had the power to issue moderate correction (Blackstone 1765/1979, 430-32).

In the nineteenth century, as American states began to reform the rules of domestic relations, allowing women to own their property and keep their own earnings (Basch 1982; Rabkin 1980), common-law status functioned to maintain order and prevent unnecessary welfare claims. Indeed, the common-law scheme existed alongside civil law reforms (Schouler 1870, 10). As such, the United States was able to retain status and its obligations to both categorize citizens and elicit behavior.

Individuals could not change the terms of the status relationships that they entered. A husband was bound to provide necessities for his wife. If he did not, she could
make purchases and hold the husband responsible.\textsuperscript{11} If her husband could not afford to pay the debt, then she might apply for poor relief, but this would require that she claim settlement in a town, and settlement depended upon status relations. In one Connecticut case, a mother supported five sons who could not find work in town. She sent her minor son off on his own to work elsewhere. He left and later married. Still unable to support himself, he and his wife agreed that he would move in with his brother. His wife sought poor relief from the town in which she lived. The court, however, located the town of her settlement to her husband, which was still with his mother. Despite the mutual verbal agreements between mother and child and husband and wife, the court followed the common-law rules of status rather than mutual agreements of the parties involved.\textsuperscript{12}

The terms of the status relation thus dictated obligations toward family members and categorization by the government. While an individual could decide to enter into a marital relation, once that decision was made and contract complete, the individual faced both the privileges and obligations determined by that status.

\textit{Twenty-first century.} The shift from a guaranteed federal commitment in AFDC to alternative aid in the EITC has changed the way that welfare is provided in the United States. It has altered the relationship between the state and American families, and it has colored the way we think of public aid. Unlike AFDC/TANF, where families serve as welfare providers and recipients, under the EITC they are clients and caseworkers. Parents and grandparents are called upon to know the provisions of the tax code, to correctly determine what they may and may not qualify for, and to fill out their returns in a timely manner. They are overseen in their endeavors (and held responsible for their mistakes) by the Internal Revenue Service.

Giving recipients the responsibility of being both client and caseworker has had both positive and negative consequences. On the positive side, it has meant reduced direct surveillance in families’ lives. Rather than intrusive questions and home visits, individual taxpayers are able to shield their private lives from direct scrutiny.\textsuperscript{13} The EITC, by contrast, requires much less interaction with intrusive government administrators. Further, as part of the tax code, the EITC may be seen as a tax reduction—something desired and taken by all who qualify—rather than as charity.

At the same time, however, being both client and caseworker has its fair share of problems. Parents and families are not trained caseworkers, and they do not have the specialized knowledge required to navigate a very complex tax code. Yet, expenditures, especially the EITC, for all of their popularity, increase the complexity of an already confusing tax code (\textit{National Survey of Americans’ Views on Taxes} 2003). Tax credits appear at face value to be economical. The Internal Revenue Service spends only $0.40 per $100 collected for all taxes including the EITC, a program in which 22.4 million taxpayers claimed $43.7 billion (Treasury Inspector General for Tax Administration 2008). By passing the responsibility of implementing the program from government bureaucrats to parents acting as administrators, federal policy makers have shifted the costs from traditional administration to taxpayer compliance. Taxpayers must take responsibility for understanding the complexities of the tax code. In 2000, 44 percent of the paper returns and 82 percent of electronic returns that claimed the EITC were filed by paid preparers and EITC recipients spent an estimated $994 million for this assistance.\textsuperscript{14} Not surprisingly, data show those with the greatest ability to pay also have the most knowledge of the code (Blendon et al. 2003, 30).

Congress was forced to enact changes in the tax code, not merely to better meet the needs of families as recipients but also to meet the needs of families as administrators. Unlike trained bureaucrats, mothers and fathers filling out their tax returns make many mistakes. Indeed, 16 percent of 2008 tax returns had errors in the EITC (Internal Revenue Service 2009a). The federal response has been greater surveillance in the lives of EITC claimants compared to non-EITC claimants. Taxpayers who make a mistake due to “reckless disregard” face a two-year ban on claiming the credit and a ten-year ban for outright fraud.

\textbf{III. Discussion}

Family as an institution of classification and administration (rather than just as a recipient) is an important part of American welfare history. Across two very different time periods (the nineteenth century and the twenty-first century) and two very different government institutional arenas (courts and the tax code), family emerges in critical points of provision. As an institution, family determines eligibility for both poor relief and tax benefits, provides state-mandated care through responsibilities enforced by the common law, and interprets and administers complex tax incentives. Though both governing authority and family life have changed dramatically over time, it is striking how similar the fundamental importance family as an institution is for both.

This study shows how intimately the American government relies on an entirely different set of administrators than what we have learned from studies of the executive branch or from the new governance literature. Indeed, in this case, spouses or parents, rather than government employees or even for-profit service providers, are the
street-level bureaucrats responsible for enforcing the law. This comparison offers important insights about the extent to which governments rely on nongovernmental institutions, the capacities that must be in place to do so, and the effects the institution has on American residents and citizens.

**Authority.** Governments deliberately utilized family to provide for the health and well-being of American citizens. They could not provide poor relief through the courts without status relations that relied on family privileges and responsibilities, just as the contemporary tax code cannot now function without family—household as the basic unit of individual income taxation. Familial relationships and duties that we see in the common law and in the tax code are not merely “natural” but required, encouraged, and enforced by government institutions.

Our study of family reveals that the fundamental basis of governance is not a particular instrument or set of institutions (e.g., a contract with prisons or an incentive to hospitals) but the authority governments must wield even when these other institutions are carrying out its work. By looking at what is arguably the most private of all institutions, we show that governments marshal authority to utilize nongovernmental institutional capacities. The state lent its authority to ensure that family categories and obligations remained in place. Even when family members have chosen to opt out of their status, the state can require of them the obligations they owe one another, either by the coercive power of law or the incentive structure of policy.

This recognition of authority acknowledges the presence of law in seemingly private institutions. Under the common law, a marriage was a contract with three parties—the couple to be married and the state—with the state setting the terms of the marital relation. Yet, even with the significant amount of authority under the common law, governments still did not erase the boundaries of privacy. Husbands and wives have proven clever in particularizing their experience and manipulating legal rules as a form of evasion (Hartog 2000). Courts have turned to family as a hallmark of privacy.15 Hence, we are not making any ontological claims about privacy. Instead, we are recovering the points of connection between the government and family, illuminating their relationship and the periods in which that relationship becomes significant for government and employable for public purposes. The recognition of authority, then, speaks less to oppressive governmental control than it does to the interest of government to maintain family as an institution.

**Relationships.** Our findings on family suggest that the ways in which governments muster authority is more extensive than previously acknowledged. Governments not only rely on nongovernmental institutions but must also exercise authority over the relationships that are the basis of these institutions. Recent scholarship that has brought the concept of governance back en vogue offers a promising start to understanding the fundamental nature of governing in America. The collective body of scholarship might further benefit from combining questions of authority that are important in political science with the established literature on the tools or instruments of government in public administration to think more broadly about the extent and consequence of governance.

If we think about governance beyond formal contracts with a preconceived set of institutions, we could get potentially much bigger purchase out of the concept. Indeed, if deployed systematically, governance could help us see not only the “private,” “hidden,” or “subter- ranean” welfare state at the national or local level but the relationships that permit and allow such provision to take place. By looking at relationships, we can see that governmental capacity depends on direct government provision (as in Social Security), on direct contracting with third-party providers (prisons and Medicare) on indirect provision through established public relationships (doctors and hospitals or teachers and schools), and on indirect provision through the seemingly private relationships citizens have in their families but also potentially as members of communities and of organizations. These relationships are not natural and preexisting. To achieve their objectives, governments do not just partner with or rely upon third-party actors, but they must lay the foundations by creating, maintaining, or reinforcing the relationships at the center of these institutions. When relationships, as the lines that connect government to a host of other institutions, become the central focus of scholarly studies, who defines these relationships, what weight is given to them, how they affect citizens, and what governments and states must do to maintain them become the key threads in any story.

Though family is a particular institution, the relationship between government and other institutions can likewise be located across time and policy areas. Employment law, like family, was governed in the nineteenth century under the master–servant relation of the common law until this feudal relation was liberalized in the New Deal (Orren 1991). Employment regulation may have undergone a shift from common-law rules to administrative control, but the old common-law practices of master and servant did not fully disappear as a resource of government. Today, the health care system relies extensively on private employers to provide benefits to their employees (Gottschalk 2000; Hacker 2002). Thus, who is an employee of a particular company has taken on new meaning. The federal government has specific—and
extensive—definitions of employees built into the Social Security, Medicare, and tax codes. Employers, meanwhile, have shifted from employees to contract workers who perform nonessential functions, saving them the trouble and expense of paying such taxes. The process of categorization and obligation continues. Government is involved in maintaining categories, even when it looks like it has stepped aside.

Implications for citizenship. Our study of family in welfare over time shows that citizens do not merely stand on two sides of the state—as recipients on the output side or as participants on the input side—but fundamentally as part of governing through their membership and participation in family. Ultimately, citizens’ experience of government and policy are shaped by the privileges and responsibilities that governments invest in a host of institutions (work, churches, social organizations) on which governments rely. To be a citizen, one has a relationship not only with government but with these other nongovernmental institutions. The importance of this fact should not be understated (Marshall 1950). For when those social goods and services are policed and provided through nongovernmental institutions, all of the attenuating inequalities between and within institutions become incorporated as well.

In the case of family, the heads of households in the common law are expected to police the behavior or their members and, in the tax code, to know and utilize the provisions and exercise them correctly. But unlike the state police authority, and unlike bureaucrats who are often painfully exact in applying the exact same criteria for each case, there are differences in the resources individual families have access to and in the exercise of those responsibilities within families. For example, the tax code gives incentives to help lower income families with their expenses. But there is no guarantee that the money will actually be spent on the children for whom they are targeted. Likewise, the code provides incentives to send students to college. But any particular middle-class family may choose not to send their children to college or may choose only to apply them to particular favored children.

Further, tying health care to workers’ status for only some industries meant that discrepancies between employers—or the unions in particular industries—kept certain groups of American citizens in second-class status. For example, in the 1950s as employer-provided health care expanded, unionized industries found themselves with the best and most complete health benefits. Yet many women and black workers were shut out of these private benefits (Klein 2003). Michael Brown (1999, 189) explains that black workers’ “access to middle class social benefits was undermined by discrimination in labor and housing markets, segregated, inferior education, and changing economic fortunes. Black women were doubly disadvantaged.” Relying on social institutions to carry out public policy has meant that existing social inequalities and discrimination are not “merely” social but become part and parcel of American public policy and citizenship.

V. Conclusion

This study of a single institution—family—at two very different times in two distinct governmental arenas suggests a host of important questions that can and ought to be addressed when we take the role of nongovernmental institutions—and in particular the relationships that allow them to function—seriously. In the discussion above, we touched on how the insights we gleaned from the case of family might be applied more generally to institutional structures like employment. In this conclusion, we offer some thoughts about how the insights developed here might be more generally applicable to other areas of research both to explore new topics and to shed light on scholarly areas that are already developed.

First, this study suggests that there is still much work to be done. We still need to map out carefully the role of family more systematically across welfare policies and in other policy areas. In addition, we could engage in the same exercise with other private and quasi-private institutions like social clubs, churches, and work. The theoretical and empirical gain from these studies would help us understand more explicitly what governmental authority looks like, how it is used, and how its incorporation in policing and administering public policies affects citizens who are members.

Second, our study demonstrates that family is neither so different from other institutions that we ought to treat it as just an outlier nor so similar that we ought to add it to the growing list of institutions that are important in public provisions (including corporations, nonprofits, public–private partnerships). Instead, we can use this insight to think about how institutions are incorporated into the fabric of American governance. Here, a host of new scholarly insights and questions about patterns of institutional incorporation arise about which institutions are used to accomplish what policy goals and why. For example, to prevent or limit obesity, policy makers could outlaw obesity outright. We could track developments in obesity measures until this private matter becomes a public issue (Kersh and Monroe 2002). Governments, however, are already tapping a set of existing institutions: media (regulating messages), restaurants (requiring nutritional information), schools (requiring nutritional lunches), or family (educating parents by limiting what can be purchased on programs like Women, Infants, and
Children). We might ask, When do obesity policies rely on schools, media, restaurants, or families? Is it due to the strategic choices of policy makers or to the institutional capacity of these organizations? Or do particular institutions develop capacity (as in the case of corporations with health care) first and then government steps in and to codify these things as privileges and responsibilities? Would we be more likely to see particular kinds of institutions in particular kinds of programs (e.g., welfare as opposed to national defense), or would we expect to see differences based on the location of the policy (e.g., federal government or even geographic location)? If we think about how a government works when it wishes to enact policies, we can ask more nuanced and rich questions about how it relies on a host of institutions—whether these institutions are deemed governmental or not.

Third, our attention to relationships can shed new light on existing questions in political science research, such as the mechanisms of gender inequity. Political scientists have already drawn attention to the gendered effects of welfare policy (Mink 1995; Smith 2007). Our attention to government–family networks shows how governments rely on relationships with families, maintain these relationships, and build the foundation for welfare provision upon them. The burden for women, then, is institutionalized and reinforced both within a social organization (family, work, religion) and a political one (the state). Over time, the shift from common-law status to contract under the administrative state was not complete. Status and subjugation remained. Feminist scholars, for example, have pointed out that the New Deal welfare state occasioned the modernization of the feudal status regime with a replacement of citizenship based on gender rather than on marital status (Mettler 1998). Even today, though the gender aspect is less pronounced, family status draws upon many of the same assumptions about the capacities of spouses, parents, and caretakers.

Likewise, we could return to existing questions about the relationship between the state, civil society, and seemingly private lives. Under certain frameworks, the transition from New Deal welfare policies to policies like the EITC might look like a shift to privatization. But looking at relationships, which make governance possible, illuminates the presence of the state in this transition. Over time, shifts from legal and local to bureaucratic and federal to leveraging the resources of other policy areas, signal a transition in who does the work rather than whether or not is provided. Shifting administration to a nongovernmental actor does not include a transfer of responsibility. Governments are still responsible, and governments can wield their coercive power to define and enforce its provisions.

Whether looking prospectively at questions yet to be asked or retrospectively at areas that have been studied in greater detail, the ultimate benefit of our work is that we can capture how government acts, who acts on its behalf, and how these relationships change over time. This is a return to theoretical work important to political science. Ultimately, by evaluating the relationship between governmental and nongovernmental institutions, it is a call for a truly “new” institutionalism.

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Notes

1. For a review of this literature, see Strach (2007, 5-6).
3. The Inhabitants of Dedham v. The Inhabitants of Natick 16 Mass. 135 (1819).
4. This discussion draws on work from Strach (2007). Throughout this article, we provide relative measures of the “cost” of expenditures. However, because expenditures are deductions from revenue that might have been collected, they are technically not spending in the same way that direct expenditures are.
7. Only 23% thought it unfair (National Survey of Americans’ Views on Taxes 2003). 
8. Like the welfare provisions of the time, common-law rules for workers’ protection were notoriously unsound (see Orren 1991; Tomlins 1993).
10. 26 USCS § 152 (2005).
14. Though not necessarily more accurately (see Internal Revenue Service 2003).
16. For example, on Social Security, see 20 CFR § 404.1003-1039 for the specific definition of employee.
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