

Unpaid Care, Paid Work and Austerity: A Research Note

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Introduction

Since coming to power in 2010 the need to pursue austerity measures has been used by the UK's Coalition Government to justify deregulating the labour market and making radical changes to the tax and benefits systems aimed at reducing the welfare bill alongside severe cuts to public services. As well as the direct effect on women's employment through reduced protection for those who already work in low paid, precarious jobs and the loss of employment for many public sector workers, such reforms risk upsetting the finely-tuned arrangements on which those who provide unpaid care alongside paid work depend. The centrality of state involvement in improving women's lives on their own terms, which has been identified as a 'key plank of second wave feminism' (Conley 2012, 16), means that important advances in gender equality are seriously threatened by the coalition's (and other European government's) immutable commitment to austerity. The cumulative effect of policies enacted under this banner represents a retrograde step in the achievement of gender equality generally which is epitomised by the profound impact on the ability of unpaid carers, the vast majority of whom are women, to undertake their care responsibilities within a secure and stable environment. Yet the inevitability of such measures as an unavoidable means of deficit reduction, which very quickly became part of the political vernacular following the formation of the Coalition Government in May 2010, is contested (Clarke and Newman 2012, 300-303). Furthermore, even if the need to reconstitute the social contract as a means of instilling economic stability is accepted, the appropriate response could have considered a range of different

choices and utilised a more inclusive decision-making process with more emphasis on meaningful consultation and public consent in place of the exclusive route taken by what is, after all, a Coalition government.

In this research note I consider the impact of recent reforms on the reconciliation of paid employment and the provision of care. My objective is to bring together a range of sources which provide evidence of the particular effects of the austerity agenda on women's, and thus carers', lives and to contrast this evidence with some of the political rhetoric surrounding austerity by quoting directly from speeches made by key members of the government. Through this approach I will provide a critique of the current reforms which questions the conceptualisation of unpaid care within the austerity agenda and the characterisation, articulated by government and reinforced by the media, of those who rely on welfare support as a means of providing for themselves and their dependents as irresponsible and feckless. I conclude by considering the identification of an appropriate feminist response to the austerity agenda which, as well as questioning the very foundations on which that agenda is founded should guard against the reduction in and reversal of gains made in gender equality on the grounds of political ideology.

Notions of Responsibility and Interconnectedness

Although based ostensibly on rational economic reasoning and underpinned by the values of "freedom, fairness and responsibility" and the idea that "we are all in this together, and we will get through this together" (Cameron. 2010), the austerity

agenda and the many policy initiatives perpetrated in its name can be seen to provide a sharp contrast with notions of solidarity, shared responsibility and interconnectedness. Evident in the political rhetoric is a lack of concern and respect for relationships based on care, whether for children or adults. The circumstances within which such relationships are formed are diverse and certainly reach far beyond the traditional confines of the 'nuclear family' or its extended form to encompass relationships forged on bonds of friendship, neighbourhood and community.

My analysis focuses on the impacts of austerity on those individuals who combine unpaid care with paid work. This is not because I am seeking to exclude carers who do not or cannot undertake paid work alongside their care commitments or that I consider them as less worthy subjects of labour law than those who undertake paid work but rather because I want to explore the government's attempts to rebalance the relationship between paid work and welfare. I argue that this specific seam of policy is predicated on a particular ideology that relies on a number of assumptions about the nature and purpose of care. Such assumptions, although neutral on their face, are actually deeply gendered and perpetuate a certain world view that is both ideologically damaging for carers - and by implication women - and those for whom they care and which can be shown to breach current equality legislation. However, simply arguing that current measures pursued in the name of austerity amount to sex discrimination is not enough if we want to rebalance women's and men's relationship with unpaid care and paid work whilst ensuring that the former acquires a political value commensurate with its social and economic contribution. Such an endeavour requires the current conceptualisation of care which underpins the legal and policy

frameworks relevant to labour law, taxation and welfare to be reformulated to take account of what a relationship of care actually entail on the part of the carer, extending from its affective dimension - by which we are all bound together in mutual ties of love and affection - to its less profound, more mundane but equally crucial and demanding task-centred dimension usefully categorised as 'body work', which incorporates the cleaning, the feeding, the assistance with bodily functions and the administration of medication.

The task of seeking to reconceptualise care within political consciousness and resulting policy is certainly not a new endeavour for feminists who, from the early days of the first wave sought to embed notions of solidarity and interdependence as key values which underpinned the movement's central political ideals and which were evidenced by our lifestyle choices. I will return to the question of how feminism should respond to what has been identified as a neoliberal subversion of its ideals (Fraser 2013) towards the end of the paper. First, I will consider the range of measures that are having a particularly damaging effect on carers. The focus is on the direct withdrawal or reduction of legal protections and also those measures that have an indirect impact on care arrangements generally.

Careless Carers

Despite the Prime Minister's assurance that cuts to public expenditure will be made "...in a way that protects the poorest and most vulnerable in our society; in a way that unites our country rather than divides it; in a way that demonstrates that we're all

in this together..” (Cameron 2010), changes to labour market regulation and the welfare system enacted in the name of austerity have been shown to have a disproportionate impact on certain groups. Those who have been particularly affected include individuals with disabilities (both children and adults), families with children, particularly lone parent families¹, and women aged between 50 and 64 (The Observer. 2012). All of these groups, and the disadvantages suffered by them, are inextricably linked with the unpaid provision of care be it for a dependent child, elder or disabled adult. This impact comes on top of existing disadvantage: women experience a full-time pay gap of 14.9% (Office for National Statistics 2011); 64% of low paid workers are women (Lawton and Cooke 2008); the costs of childcare in the UK are amongst the highest in the world, severely limiting women’s choices to take up paid work (The Daycare Trust 2012: 7- 8).

In seeking to explore the effects of austerity measures on individual carers it is necessary to consider changes to the law, such as the direct withdrawal or reduction of legal protections, as well as amendments to the wider policy environment including the provision of services and the welfare and benefits system. Such a broad approach is required because, for those on low incomes with substantial care commitments, the acquisition of the minimum level of income necessary to survive often depends on accessing a complex web of provisions because of the way state services (including for those who work outside of the home) are organised. In other words, it is not the ‘fault’ of the carer who finds herself having to rely on benefits and associated services in order to enable her to maintain a certain amount of hours of

¹ 92% of lone parent households are headed by women according to the Office for National Statistics (2008). (Social Trends 39, ONS (2008).

paid work and provide adequate care for her dependant(s), but rather the result of a long process of political engagement with the question of how to include (or accommodate) the requirements of care and labour market participation. If charted alongside the lifecycle, these impacts can be seen to affect carers at each stage.

Childhood – Parenthood

Research undertaken by the Institute for Fiscal Studies has shown that low income families with children and pensioners, who benefited most from the redistributive effect of the previous Labour government's tax and benefits policies, will be most negatively affected by the austerity measures introduced between 2010 and 2014 (Institute for Fiscal Studies 2012) . Cuts to the welfare budget amounting to £18billion mean that median income for families with children is forecast to fall during this period substantially more than overall median income, and child poverty rates are forecast to increase. Families with children will see a particularly large drop in their incomes between 2010 and 2015. Those hit especially hard include large families, those with young children and those in private rented accommodation. The reforms to the tax and benefits system (including the introduction of a benefit cap, cuts to tax credits and Local Housing Allowance) are a key driver of these changes to income. Although these reforms strengthen the incentive for those without children to do paid work, they can be shown to weaken the incentive on average for those with children to do paid work.

Women in Middle-Age

In March 2012 House of Commons researchers analysed the effects of austerity measures on men and women (The Guardian 2012). The figures, based on Treasury data, show that of the £14.9bn raised from the government's five spending reviews

since 2010, £11.1bn had come from women despite the fact that women earn less than men on average. Changes to tax credits, child benefit and public sector pensions were largely to blame for women bearing the brunt of austerity measures. Middle-aged women are by far the worst hit by the recession and spending cuts because of the high levels of unpaid care performed by the 'sandwich generation' – those who come to parenthood later than previous generations and acquire caring responsibilities for aging parents whilst raising young children. This group is also facing an increase in the state pension age and is more likely to be affected by job losses: between 2010 and 2012 unemployment among women aged 50 - 64 rose by 39% in contrast to a 5% increase for all persons over 16 (The Observer 2012). This is thought to be partly attributable to women giving up work to care for others including grandchildren due to the rising costs of care. In addition, those who care for elders and others are doing more to fill gaps left by increases in social care and the withdrawal of public services. Changes to carers' benefits will have a marked effect on women who are significantly more likely to provide care for adults than men, most commonly between the ages of 45 to 74. That group already suffers from a gender pay gap of 10% (for 50 to 59 year olds) and are less likely to be in a senior position than men as just 8% of women in their 50s are in managerial positions, compared with 16% of men. The Government's own equality impact assessment (carried out retrospectively) found that changes to carers' benefits will disproportionately affect women as nearly three-quarters of claimants of Carer's Allowance are women (DWP 2010a).

Women in Old-Age

The costs of care are not only felt by carers at the actual time of the care commitment but can leave a long lasting legacy of poverty and hardship. Although

state pensions have been largely protected from the deepest of the austerity cuts, many female pensioners are less likely to have access to private pension schemes than men. Women's average personal pensions are only 62% of the average for men (Hills et al 2010). In addition, women live longer than men often spending the later years of their lives living alone or caring for others. Such women are often reliant on public services and will suffer as cuts are made to such provision: the 2010 Comprehensive Spending Review announced £34bn in cuts to funding for public services by 2012-13.

Women 'Filling the Gaps'

The Fawcett Society, the UK's leading campaigning organisation for women's equality and rights, is concerned that as services that assist those with caring roles and provide for those in need of care are cut, women will by default be the ones to 'pick up the tab' and fill the gaps left in provision (Fawcett Society 2012).

Withdrawing such vital support risks adding to women's unpaid and informal caring roles and further entrenching the already unequal distribution of labour. The knock-on effect will be to limit women's opportunities to work and to engage fully in public and political life.

In addition, changes to the benefits system through the introduction of Universal Credit (UC) in October 2013 are likely to act as a disincentive from engaging in paid work for some women. UC is intended to simplify social security, reduce fraud and error and cut costs in benefit administration as well as increase work incentives (DWP 2010b). It combines and replaces working tax credit, child tax credit, housing benefit, income support, income-based jobseeker's allowance and income-related

employment and support allowance with a single means-tested benefit administered by the DWP to those both in and out of work. UC has been designed primarily with the aim of improving work incentives for the household, as opposed to individuals, and it prioritises work incentives for “first earners” over “second earners”. This approach is likely to disincentivise women in low income jobs from engaging in paid work and may actively discourage mothers in couples from seeking paid employment where their partner is already working or seeking work. As the government’s own impact assessment states,

“It is possible that, in some families, second earners may choose to reduce or rebalance their hours or leave work. In these cases, the improved ability of the main earner to support his or her family will increase the options available for families to strike their preferred work/life balance” (DWP 2011: 23).

As well as undermining the principle that work should pay for all individuals, this reinforces the highly regressive male breadwinner/female carer model.

Labour Market Deregulation

Some of the reforms undertaken in the name of the austerity have a deregulatory effect whereby levels of employment protection are reduced as a means of increasing labour market flexibility and thus stimulating private sector growth. The obvious example here is the increase of the unfair dismissal qualifying period from one year to two years in April 2012 which has been rationalised as a means of protecting businesses from ‘vexatious claims’, removing red tape and enabling job creation and is part of the coalition government’s overarching deregulatory strategy

which originates from the consultation document, 'Resolving Workplace Disputes' (BIS 2011: 50, 51). Announcing the new policy at the 2011 Conservative Party conference, Chancellor George Osborne stated,

“We respect the right of those who have spent their whole lives building a small business not to see that achievement destroyed by a vexatious appeal to an employment tribunal. So we’re now going to make it much less risky for businesses to hire people.” (Osborne, 2011).

Osborne’s assertions – that employment tribunals are awash with spurious claims which destroy businesses and deter employers from hiring - are strongly contested, particularly by those concerned with the reduction in access to justice for already vulnerable workers (Busby et al 2013). The two year qualifying period is not new as it was previously part of the UK’s regime until it was reduced to one year in 1999 following a legal challenge on the grounds of indirect sex discrimination in which it was argued that, due to family formation and associated labour market factors, less women were able to comply with the requirement than men.² It is unclear how the current Government has justified this reform in the absence of any equality impact assessment and it remains to be seen whether another challenge will be mounted.

In addition some of the more progressive provisions of the Equality Act 2010 will not now be implemented. Section 14 which would have offered protection from dual discrimination – that is on the basis of two protected characteristics - has been shelved as has the extension of protection against third party harassment under s.

² R v Secretary of State Ex. P Seymour-Smith (No.2) [2000] IRLR 263 HL

40 on the grounds that these provisions would cost businesses over £350 million per year (HM Treasury 2011). The former provision,³ although limited in its application - why stop at two characteristics? - would have been an important starting point for the incorporation of intersectionality within the UK's anti-discrimination law framework which could have gone some way in recognising the relationship between poverty, social exclusion and discrimination among certain groups: The Fawcett Society has estimated that 40% of ethnic minority women currently live in poverty in the UK (The Fawcett Society 2009).

In other developments, the right to obtain further information in discrimination cases through the questionnaire procedure has been repealed by the ERRA and the Government has announced that it will not implement the secondary legislation required to give effect to the mandatory gender pay reporting measures provided for by section 78 of the Equality Act which would have obligated employers in the private and voluntary sectors to disclose information relating to equal pay. In addition, the socio-economic duty which would have required public authorities to take account of disadvantage and inequality – including on the grounds of gender – in the formulation of all policy under Part 1 of the Act has been dropped from the legislative agenda. The aptly named Deregulation Bill, which is currently in draft stage, contains proposals to remove the right for tribunals to make wider recommendations in discrimination cases and the Equality and Human Rights Commission which has already seen a reduction in its budget from £70 million in 2007 to core funding of £17 million by 2015 with a 70% reduction in staff, is the

³ Which was repealed by the Enterprise and Regulatory Reform Act 2013 (ERRA) which received Royal Assent on 25th April 2013.

subject of an ongoing review (Department for Culture Media and Sport. 2013), as is the Public Sector Equality Duty, which is discussed below.

Economic Necessity or Political Ideology?

In the face of overwhelming evidence that the choices made by the Government in its pursuance of austerity are having a disproportionate effect on (female) carers who are already economically and socially disadvantaged, why is the Government continuing to make such choices? The answer is undoubtedly ideologically grounded and tells us something deeply worrying about contemporary society and its socio-political environment that, if not reversed, will lead to a real crisis for carers and those they care for and which risks reversing some important gains made in gender equality. The Coalition Government's stance is undoubtedly part of a wider political agenda that is grounded in the pursuit of neo-liberal goals. This agenda is not necessarily party-political – many of the current policies are rooted in the previous Labour administration's 'third way' agenda, although the almost exclusive focus on reducing public expenditure is distinctly Conservative. However, all of this *is* a matter of political choice, according to Amartya Sen, who calls it the 'ill-chosen cult of austerity' (Sen 2012).

The 'hard' economic agenda supposedly grounded in rational, cool headed decision-making makes a stark contrast with care's obvious association with emotion, vulnerability, need and human frailty. Such 'facts of life' are hidden and unacknowledged in neoliberal policy-making which has as its ideals autonomy, and

independence. This contrast between *independence* and *interdependence*, with the former seen as the ideal and the latter either denied or denigrated, explains and in some ways justifies the lack of attention and recognition afforded to carers under the current political agenda. This view of the world is particularly pertinent during times of apparent austerity when the rational must override the emotional and anything superfluous must be denied. This point is illustrated by the coalition government's handling of the Equality Act and its abandonment of the Act's more progressive provisions such as dual discrimination and the socio-economic duty referred to by (then) Equalities Minister Theresa May as 'ridiculous', 'simplistic' and 'politically motivated' (May 2010). May's dismissive tone infers that her own Government's actions in this respect are based on a sophisticated and detailed decision-making process which was not ideological and somehow above politics.

In announcing the decision not to implement the socio-economic duty in November 2010, May said that the government's emphasis would be on ensuring "equality of opportunity" rather than "equality of outcome".

"Even as we increase equality of opportunity, some people will always do better than others...I do not believe in a world where everybody gets the same out of life, regardless of what they put in. That is why no government should try to ensure equal outcomes for everyone." (May 2010)

Under this view, equality considerations are only acceptable when they can be conceptualised and contained within some broader normative and operational framework within which everyone has the same opportunities to participate and contribute (or "put in"). What such an approach fails to take into account is the

institutional inequalities that cut across the protected characteristics provided for under the Act and which contribute to the entrenched and, often invisible social exclusion that can result.

The socio-economic duty would have been helpful in to uproot and render visible exclusion as it would have required public authorities to take account of disadvantage and inequality in the formulation of all policy. The decision not to implement this provision can be said to have conveniently enabled the Government to avoid scrutiny of its own policies' impact on different socio-economic groups. However, despite this disappointing outcome, there are still ways in which legal challenges can be mounted as a means of questioning the underlying rationale and processes utilised in policy enacted in the name of 'austerity'.

Challenging from Within

The public sector equality duty (PSED) provided under s.149 of the Equality Act requires public authorities to pay "due regard" to the need to eliminate discrimination and to advance equality of opportunity between women and men. To comply, public authorities (including central government departments) must consider the impact of their current and proposed policies and practices across all protected characteristics. To be meaningful, assessment should explicitly recognise the relative context and "starting positions" of comparable social groups. If the exercise reveals that a policy might widen inequality, decision-makers are then able to consider taking mitigating action to remove or alleviate the harm.

The PSED, potentially useful as it is, actually represents a pared-down version of its predecessor the Gender Equality Duty (GED) which was introduced in 2007⁴ and was hailed at the time by the Equal Opportunities Commission as the biggest advance in women's equality since the 1970s (EOC 2006). The GED constituted one of three specific duties enacted between 2001 and 2007 – the other two covering race and disability – which were subsequently merged and extended to age, sexual orientation, religion and belief and pregnancy and maternity.⁵ On its consolidation and reconstitution as the PSED, the GED lost its specific gender focus and became an institutional requirement rather than a proactive and promotional tool (Conley 2013: 17-18). Brought under the GED, the Fawcett Society's application for a judicial review of the 2010 emergency Budget reached the high court for a permission hearing on 6th December 2010. In its claim the Society argued that 72% of the £8.1bn spending cuts, which included a cap on housing benefit and a rise in VAT, would be borne by women and therefore the cuts had a "disproportionate" impact on women to which the government had neglected to demonstrate due regard due to its failure to conduct an equality impact assessment of the budget as required under legislation. Although granted a permission hearing, the Society's request for full judicial review was ultimately turned down despite the fact that the government's lawyers had earlier conceded that it had not carried out equality assessments before the Budget in certain areas, including the public sector pay freeze and benefit cuts which they admitted was "regrettable". Mr Justice Ouseley dismissed the case as "unarguable - or academic" - as there had been too long a delay in the court application and there was now no prospect of the court declaring

⁴ Under section s.76A which was inserted into the Sex Discrimination Act 1975.

⁵ Section 149 of the Equality Act 2010.

the Budget unlawful, he said. However, his judgment did confirm that the GED applied to budget and policy-setting processes at the highest level. In his summing up of the case, Mr Justice Ouseley confirmed that “the preparation and presentation of measures outlined in national budgets are subject to equality law”.⁶

This point was further articulated in the most recent challenge to an austerity measure⁷ in which it was successfully argued before the Court of Appeal that the equality impact assessment required under the PSED had been inadequate in the government’s decision to close the Independent Living Fund (ILF) from 2015 and devolve responsibility for administering such funding to local authorities. The ILF is a government-funded trust which helps about 18,000 disabled people with the highest support needs to live independently, by topping up their local authority-funded support. Its aim is to combat social exclusion on the grounds of disability.

In giving his judgment, Elias LJ noted that,

“Any government, particularly in a time of austerity, is obliged to take invidious decisions which may exceptionally bear harshly on some of the most disadvantaged in society. The PSED does not curb government’s powers to take such decisions, but it does require government to confront the anticipated consequences in a conscientious and deliberate way in so far as they impact upon the equality objectives for those with the characteristics identified in section 149(7) of the Equality Act 2010.” (para 74).

⁶ *Fawcett Society v HM Treasury* (2010) EWHC 3522.

⁷ *Bracking and Others v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345, judgment 6th November 2013.

Cases such as *Bracking* illustrate how political decision-making can be challenged on the basis that it arises from ideological rather than purely economic or fiscal grounds. However, whilst equality impact assessments are undoubtedly helpful in casting a spotlight on disproportionate impact, they do not necessarily reveal the effect that many policy decisions taken on the grounds of austerity, such as the non-implementation of certain aspects of the Equality Act, will have on carers because the provision of care is not legally recognised as a protected characteristic under the Act. Furthermore, such actions are essentially based on specific provisions of primary and secondary legislation which itself can be amended, repealed or replaced and which is thus vulnerable to political expediency. This point is clearly illustrated by the watering down of the GED in its reformulation as part of the PSED and the government's current review of the latter as part of its 'red tape challenge spotlight on equalities' (see <https://www.gov.uk/government/policy-advisory-groups/review-of-public-sector-equality-duty-steering-group>). As Hazel Conley has argued, the dismantling of the equality provisions "without a plan for replacement measures might be considered itself an act of institutional discrimination. (Conley 2013: 19)

A Future Feminist Agenda

In a recent contribution to the Guardian's "Comment is Free", Nancy Fraser decried the contemporary use of the feminist critique of sexism as "justification for new forms of inequality and exploitation." (Fraser 2013). In Fraser's analysis, rather than continuing to question and challenge the very foundations on which capitalism is founded, second wave feminism has directly contributed to the successful

entrenchment of neo-liberal individualism as the ideal paradigm.⁸ In evidence, Fraser draws on three examples which challenge the core values and beliefs around which feminists were once united. First, she cites the shift within feminist debates from critiques of the 'family wage' to the promotion of the two-earner family as a (false) form of female empowerment. Second, she argues that a focus on identity politics has resulted in the neglect of social equality as the primary focus of attention for devising ways of improving women's lives. Thirdly, Fraser identifies an unquestioning rejection of the state as a central player in poverty reduction in favour of projects which encourage and enable small-scale lending ('microcredit') to those who live in impoverished conditions in developing countries.

The backdrop to this shift in feminist consciousness from the rejection to the acceptance of capitalism has been a shift in the character of capitalism itself from the "state managed capitalism of the post war era" to a new form of capitalism "disorganised", globalising, neoliberal". The effect of this new settlement between second wave feminism and mainstream contemporary politics has been to re-orientate the former in favour of neoliberal individualism which enables "a perspective aimed originally at democratising state power in order to empower citizens" to be 'used to legitimise marketization and state retrenchment'. Fraser's analysis makes sobering reading for those of us seeking to develop an appropriate gendered response to the 'cult' or 'alchemy' of austerity. There is a lot to be done to reverse the effects of the austerity agenda and to challenge the lack of consent and (passive) cooperation that enabled it to take hold in the first place. Measures evoked

⁸ Fraser's recent work has been criticised for homogenising second-wave feminism and not being sufficiently attentive to the differences between different feminisms in different political and geographical contexts, see, for example, (Bhandar 2013)

in the name of austerity rely on a particularly one-sided view of the organisation of social and economic life which, if it is to be expanded to take account of reproduction requires a revaluation of all those activities currently or potentially regulated by labour law including unpaid care. A useful step in this direction would be the establishment of a clearly defined and legally recognised social identity for carers which would highlight and rectify existing inequalities and produce sustainable improvements in the lives of carers and those for whom they care even in these so-called “times of austerity”. However the overarching “bigger” project of “reclaiming the mantle of participatory democracy as a means of strengthening the public powers needed to constrain capital for the sake of justice” (Fraser 2013) requires two potential – and inter-related - forms of action. First, as Clarke and Newman argue, “The Coalition’s separation of the economic from the moral has left them vulnerable to counter-claims that economics should be moral” (Clarke and Newman 2012: 313). In harnessing the discomfort and discontent induced by deepening social inequalities, we need to recognise and articulate the detachment that has occurred under neoliberalism between the economic practices enacted in our name (but without our consent) through austerity policies and their moral economy. Secondly, hard-won rights to equality which are threatened by the shifting sands of political and economic affiliations will only be stabilised and further developed once they are constitutionally guaranteed – a difficult task but one which has some currency in international law’s recognition and guarantee of certain basic standards as human rights. Both of these activities require a reinvigoration of our collective consciousness, our interconnectedness. Fraser’s call for feminism to reclaim and reinvigorate its ‘solidaristic scenario’ offers a way in which we might cease to engage

with and, rather, seek to challenge neoliberal capitalism and is a call which we ignore at our peril.

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