The Combined Impact of PRWORA, FMLA, IRC, FRD, DPPA, and BAPCPA on Single Mothers and Their Children

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THE COMBINED IMPACT OF PRWORA, FMLA, IRC, FRD, DPPA, AND BAPCPA ON SINGLE MOTHERS AND THEIR CHILDREN

PAMELA GERSHUNY*

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INTRODUCTION

Over the last fifteen years, six United States legal frameworks, including: 1) the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 2) the Family and Medical Leave Act of 1993 (FMLA), 3) the federal asset building policies of the tax code with respect to home mortgage interest, retirement accounts, 529 Qualified Tuition Programs, and Child Tax Credits, 4) inadequate prevention of gender/pregnancy/family responsibilities discrimination (FRD), 5) the Deadbeat Parents Punishment Act of 1998 (DDPA) with its attendant state rules and sanctions, and 6) the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005.


2. 29 U.S.C. § 2601 (2006); see Pamela Gershuny, Family Values First When Federal Laws Collide: A Proposal to Create a Public Policy Exception to the Employment-At-Will Doctrine Based Upon Mandatory Parenting Duty, 21 Wis. Women’s L.J. 195, 195–96, 201 (2006) (documenting the gaps in FMLA coverage that mothers experience); Nicole Buonocore Porter, Why Care About Caregivers? Using Communitarian Theory to Justify Protection of “Real” Workers, 58 U. Kan. L. Rev. 355, 377–80 (2010); see also ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS MOTHERS AND FATHERS ARE GOING BROKE 88 (2003) (discussing FMLA’s inadequacies for single mothers). Single mother bankruptcies have increased 600 percent over the last twenty years. Id. at 105. The single mother filing for bankruptcy has a college education and falls into the high wage earning category presented in this paper. Id. at 106. Her child support payments are not assigned to the government in exchange for the limited support of PRWORA work-first welfare. See id.


have negatively impacted single mothers’ ability to save for retirement and raise healthy children. The recession, ending in 2009, caused the loss of 7.3 million jobs, 4.1% of economic output, and 21% of Americans’ net worth. The cumulative harm of the economic downturns and six different areas of U.S. state and federal law has a negative impact on single mother families throughout their prime earning years and, consequently, in retirement. Future income is directly linked to educational opportunities. The financial limitations on single mother families restrict their ability to invest in their children’s education, causing an unending circle of limited earnings and education.

I. DEFINING SINGLE MOTHERS IN 2011

For purposes of this article, single mothers are custodial parents of children under eighteen. It is estimated that 50% to 60% of all U.S. children live in a single parent home at some point, the vast majority of these parents being mothers. This paper divides single mothers into two categories: high-wage earners with annual before-tax incomes of $45,800 and low-wage earners. Both high wage earners and low wage earners have in common the fact that they are working three jobs simultaneously.

First, as single mothers, they must work outside their homes to supply the necessities of life; food, shelter, health care, etc. Second, they work inside their homes raising children, cooking, cleaning, and supervising homework. Third, they must dedicate time, money, and energy that could be better spent with their children or at their paid

7. Sara Murray, Slump Over, Pain Persists, WALL ST. J., Sept. 21, 2010, http://online.wsj.com/article/SB10001424052748703989304575503691644231892.html. According to the National Bureau of Economic Research Business Cycle Dating Committee, the longest recession since the Great Depression ended in June 2009, but slow growth and unemployment have been forecast to remain until 2013. Id.
8. See infra Appendix B.
employment either collecting the $31 billion\(^\text{13}\) of child support they are collectively owed if they are high wage earners\(^\text{14}\) or, if they are low wage earners who have assigned their child support benefits to the government,\(^\text{15}\) meeting with caseworkers and complying with all of

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14. See Lindsey, supra note 3, at 117. Lindsey outlines the difficult process:
   1. [The mother] must acquire the services of an attorney. Given the expense of retaining competent legal help, she must weigh the prospect of draining her limited resources in the present against the possibility of receiving child support in the future.
   2. She will have to find time to meet the attorney. Although this may seem trivial, it can amount to a considerable burden to a woman already overburdened with a job, child care responsibilities, and maintaining a household.
   3. She will have to provide all necessary documentation proving nonpayment, taking care to observe any technical requirements of the court designed to safeguard the rights of the father.
   4. She will have to assist in locating the father who may have gone to another state. In order to do this, she may require the services of a private investigator.
   5. She is required to identify the father and assist in establishing paternity.
   6. The mother will find herself having to assume an adversarial stance toward the father. She could well aggravate an already tense and difficult relationship, thereby significantly undermining any hope of reconciliation and accord. She is also putting herself at odds with the man who is the father of her children. She may worry about jeopardizing custody agreements.

   Even if she is able to do all of these things and gets the father into court and the court orders him to pay child support, there is no assurance that he will ever do so. If he does not pay, she can, if she wishes, turn to local civil authorities for help in forcing the issue. However, the amount of manpower and resources devoted to this endeavor is significant. Even with this enormous legal effort, the results are hardly encouraging; because the costs [to her] of such enforcement frequently amount to more than the amount of child support that the mother and her children would be entitled to in the first place.

Id. (footnote omitted).

the requirements for social safety net programs. The time demands of these three jobs are enormous. Single mothers and their children are stigmatized by Ann Coulter, who calls “the children of divorce . . . future strippers” and criminals. The performance of this group of parents during the recent economic downturn, despite multiple legal strangleholds and a systemic lack of government investment in their families, suggests that revisions in the total gamut of tax laws, family laws, and employment laws that negatively impact this overachieving sector will result in increased business profitability, decreased crime rates, and, consequently, lower taxes. This article proposes legal changes that include reforming the tax structure, reinstating the Downey-Hyde Amendment, creating public policy exceptions to the employment-at-will doctrine based upon mandatory parenting duties, mandating living wages in night shift employment, reforming Social Security to include women’s biological differences and caregiving, and implementing flexicurity. The first section of this article examines how single mothers have developed into an important and unique segment of the workforce over the last fifty years. The second section discusses the new socio-economic realities: the government’s unequal investments in human capital that sustain income inequality, the increasing level of income volatility for both high and low wage earners, and the shift from a manufacturing to a service sector economy as competition from Brazil, Russia, India, and China grows. The third section argues that single mothers do not “cause” poor outcomes for their children; rather, a review of the current state of medical knowledge on the protective effect of mothers for children demonstrates that the mother’s presence prevents far

16. See, e.g., ALEJANDRA MARCHEVSKY & JEANNE THEOHARIS, NOT WORKING: LATINA IMMIGRANTS, LOW-WAGE JOBS, AND THE FAILURE OF WELFARE REFORM 11, 186, 189 (2006) (chronicling the struggle of undocumented immigrant mothers whose children qualify for Temporary Aid for Needy Families (TANF) in Los Angeles). Often blaming themselves, the women work at night for wages, take care of their children and housework during the day, and sleep as little as three hours a night, sacrificing their health and well-being in their drive to be good mothers and help their children get A’s in school. Id. at 186. Often, the demands of the TANF social workers may be impossible to meet. The mothers work constantly, unaware of the systemic racism and classism discussed in this article and by Thomas Kleven in Systemic Classism, Systemic Racism: Are Social and Racial Justice Achievable in the United States?, 8 CONN. PUB. INT. L.J. 37, 43 (2009). These authors posit that, statistically, single mothers, and consequently their children, will consistently fall into the underclass because of their low asset accumulation, despite their earning ability. See id.


18. See infra Part III; see also Kleven, supra note 16, at 37, 39–52 (outlining the systemic classism and racism supported by institutional structures to disadvantage the working class).
worse outcomes for her children. The fourth section examines a new “normal” and the changes TANF (Temporary Assistance for Needy Families) delivered. The fifth section concludes that the government should invest equally in all children and protect this capable segment of the labor force’s income security in retirement.

II. SINGLE MOTHERS DEVELOPED INTO AN IMPORTANT AND UNIQUE SEGMENT OF THE WORKFORCE OVER THE LAST FIFTY YEARS

For a very long time, women had limited control over their family size for many reasons. Mothers took care of the home and children, and the value of their unpaid labor flowed to their spouses as a benefit. In the event of divorce, mothers who had left the workforce to stay home with children, or had never worked outside the home, were not able to enter the workforce at a high salary. Then, a scant forty-five years ago, cultural shifts in American society opened the doors for women to education and employment. Women born in this era, who are about fifty years old today, reached their childbearing years with reproductive control options not available to their mothers and grandmothers. These pioneers rushed though the newly opened doors into universities and jobs, changing the face of the U.S. labor market and the structure of the American family. The increase in

19. See, e.g., STEPHANIE COONTZ, THE WAY WE NEVER WERE: AMERICAN FAMILIES AND THE NOSTALGIA TRAP 6–10 (1992) (presenting the types and expectations of American families throughout history and noting the social, often limited, norms women were expected to follow).


22. Id. (describing how birth control pills, after approval by the federal government in 1960, achieved incredible popularity).

23. Gershuny, supra note 2, at 197 (“The percentage of women in the workforce between the ages of twenty-five and fifty-four increased from 19% in 1900 to 74% in 1993... The structure of U.S. families has also changed. Only one quarter of U.S. families are ‘traditional,’ that is, married parents with children. In 64% of families that include married couples with children under eighteen, both parents work. By 1996, only 16.7% of U.S. families followed the traditional model of a working husband and a stay-at-home wife. With one of two marriages ending in divorce, the concept of contemporary U.S. employees must
participation in the workforce for women in their fifties is dramatic, increasing approximately 175% between 1984 and 2004.24

The number of women in the workforce with college degrees has tripled.25 Despite their ability to delay childbearing long enough to obtain college degrees, women do not achieve the same return on their investment in education as men, partly because of the wage gap.26 The lifetime difference in earnings between women and men is enormous. Over her lifetime, the average female high school graduate loses $700,000 to the wage gap.27 College graduates lose an average of $1.2 million, and women with graduate degrees lose $2 million.28 Additionally, over 80% of women experience the distinct change in status that accompanies becoming a mother.29 Unable to compete in the job market by working the same number of hours as childless women and men, the choice to become a mother exposes them to the risks of job discrimination,30 bankruptcy,31 and poverty.32 include those from single-parent/single-income families as well as those from dual-parent/dual-income families.” (footnotes omitted)).


25. See WOMEN IN THE LABOR FORCE, supra note 9, at 1, 21–22 (stating that among women in the labor market between the ages of 25 and 64, 36% in 2008 had a college diploma compared to 11% in 1970); see also Catherine Rampell, Women Now a Majority in American Workplaces, N.Y. TIMES, Feb. 6, 2010, at A10 (“For the first time in recorded history, women outnumber men on the nation’s payrolls”).

26. See The Wage Gap Over Time: In Real Dollars, Women See a Continuing Gap, NAT’L COMMITTEE ON PAY EQUITY, http://www.pay-equity.org/info-time.html (last updated Sept. 2011) (providing gender-based wage gap data spanning from 1960 to 2008). Although women’s earnings have not caught up to men’s, their earnings as a proportion of men’s earnings have grown over time. Id. In 1979, women working full time earned just under 60% of what men did; in 2008, women’s earnings were almost 80% of men’s. Id. This study provides only a partial picture of the wage gap, as it does not include the earnings of part-time workers. See id.

27. Id.

28. Id.

29. Fast Facts: Mothers in the United States, NAT’L ORG. FOR WOMEN, http://www.now.org/issues/mothers/facts.html (last visited Mar. 30, 2012); see also Rachel Arnow-Richman, Incenting Flexibility: The Relationship Between Public Law and Voluntary Action in Enhancing Work/Life Balance, 42 CONN. L. REV. 1081, 1100 (2010) (stating that the stereotype of maternal low work capacity manifests as “actual discrimination”); Williams & Segal, supra note 4, at 90–91 (discussing stereotype studies that report “career women” are considered highly competent but “housewives” are considered not as competent (internal quotation marks omitted)). Williams and Segal comment that “[o]nce a woman’s status as a mother becomes salient[,] . . . she may begin to be perceived as a low-competence caregiver rather than as a high-competence business woman.” Id. at 90 (footnote omitted).

30. See JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 65 (2000) (arguing that masculine work norms lead to female work discrimination).

31. See Lawless & Warren, supra note 6, at 13.

The increased risks of job discrimination, bankruptcy, and poverty seem counterintuitive given the increase in the number of well-educated women and their increased participation in the paid labor market. Seventy percent of all mothers are in the labor force. Full-time working mothers across all races "earn only sixty percent of the wages earned by fathers who work full-time." Recent studies show that workplace discrimination against mothers, now called "maternal wall bias," is the strongest and most blatant form of gender discrimination in today’s workplace. The best known study found that "[m]others are 79% less likely to be hired, 100% less likely to be promoted, offered $11,000 less in salary . . . and held to higher performance and punctuality standards than women with identical resumes but no children."
Women consistently “have the highest rates of poverty.” Compared to all women and men, single mothers are the overwhelming majority of full-time employees earning an average of $15,000 per year or less. Women, regardless of parental status, “comprise more than ninety percent of long-term low-wage earners.” The fact that they are long-term low-wage earners indicates that they cannot escape this status easily. In some cases, they lack the funds to invest in themselves to improve their positions. Studies have found that almost “forty percent of poor, working women could afford to stop receiving welfare benefits if they were to receive pay equity increases to bring their wages in line with those of male coworkers.”

Not only are single mothers’ household incomes reduced by the wage gap in paid employment, they are also reduced by the non-payment of child support. Child support represents nearly 50% of a single mother’s household income in some cases, yet in 2010, $110 billion of child support was owed to 15.9 million mothers and 17.5 million children. Single mothers are working an average of 27.4 hours or more each week outside the home, as well as taking care of children at home, in an existence of overwork, exhaustion, and poverty that lasts until they die. Significant impediments to receiving full value

40. See id. (noting that 17% of all women are in this category compared to 1% of men); see also U.S. CENSUS BUREAU, AMERICA’S FAMILIES AND LIVING ARRANGEMENTS: 2007, at 11 (2009), available at http://www.census.gov/population/www/socdemo/hh-fam/p20-561.pdf (stating that 25% of single mother families have incomes below $15,000).
41. Baker, supra note 32, at 89 (footnote omitted).
42. See BARBARA EHRENREICH, BAIT AND SWITCH: THE (FUTILE) PURSUIT OF THE AMERICAN DREAM 180–89 (2005) (revealing impediments to working one’s way up the economic escalator of the American Dream). For example, after seven months, with career coaching, wardrobe, transportation, and monetary investment, a 40-year-old female job applicant was offered two positions: AFLAC and Mary Kay cosmetics. Id. at 180–81, 188. Both positions required an initial investment of $1,900 and had no health insurance, office, or benefits other than commission. Id. at 188–89.
43. See, e.g., DAVID K. SHIPLER, THE WORKING POOR: INVISIBLE IN AMERICA 52 (2004) (documenting a woman’s unsuccessful attempts to get a job because she could not afford dentures and had no teeth, hence no bright, “tooth-filled” American smile).
45. U.S. CENSUS BUREAU, supra note 9, at 1. Child support represented a higher proportion of income for some lower-income women. For example, among women with custody who live below the poverty level and receive full payments, the average child support received represents about one half of their average income. Id.
47. See VICKY LOVELL, INST. FOR WOMEN’S POLICY RESEARCH, 40-HOUR WORK PROPOSAL SIGNIFICANTLY RAISES MOTHERS’ EMPLOYMENT STANDARD 6 (2003), available at
for their workforce participation in their prime earning years exist in the form of gender and family responsibility based job discrimination, income gaps, and unpaid child support. These long-term reductions in their income become particularly acute as women age because of their longer average life expectancies. Elderly women outnumber elderly men at every age. Generally, at age sixty-five, women outnumber men by a ratio of three to two. At age eighty-five, women outnumber men by a ratio of five to two. The poverty rate among elderly divorced, widowed and never-married women in 1999 was 17.3% and about 20% specifically for divorced women, compared to 4% for married women.

The cumulative effects of becoming a single mother—whether parenthood occurs before marriage, after marriage, or without marriage, including the effects of the regressive tax structure, the wage gap, job discrimination, and the unpaid primary caregiving responsibilities for children, older relatives and spouses—hit hardest in old age. In 2030, the aggregate shortfall in adequate income for older retired Americans at age sixty-five and older, when women will outnumber men three to two (if current trends continue), is forecast to reach $500 billion. Jack VanDerhei, Professor of Economics at Temple University, estimates that “[a]bout 13.4 million women—more than a third of the women born during the baby boom years, from 1946 to 1964—are likely to be single when they retire.” Furthermore, in 2001, single women households had a median net worth of only $27,850, yet married couple households were worth $140,000, and single men households were worth $46,990. Among single women, a mere 35% had retirement accounts such as 401(k)s or I.R.A.s, much

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49. See id. (“Men generally have higher death rates than women at every age.”).
50. Id.
51. Id.
55. Id.
less than the 63% of married couples and 42% of single men that do have them.\textsuperscript{56} Additionally, a minuscule number—only 8%—of unmarried women have “traditional pensions.”\textsuperscript{57}

The consequences in retirement for single mothers are “decreased mobility, . . . lower-cost, inferior types of housing, like [any remaining single-room occupancy] hotels,” or homelessness, “forgo[ing] prescription drugs, and eat[ing] less or more poorly.”\textsuperscript{58} According to the AFL-CIO, “[i]n 2006, 43.4\% of all elderly unmarried females receiving Social Security benefits relied on Social Security for 90\% or more of their income.”\textsuperscript{59} The Wider Opportunities for Women Group reports:

\begin{quote}
[D]ue to pay equity issues, the occupational segregation of women in low-wage jobs, and their cycling in and out of the workforce due to caregiving responsibilities, women often find themselves with a Social Security record that provides inadequate income. The average annual Social Security income for all women provides a single elder homeowner without a mortgage less than 70\% of the income required to achieve economic security. If she is required to rent, her average annual Social Security income will provide only 53\% of the income required to achieve economic security.\textsuperscript{60}
\end{quote}

A conservative estimate of monthly expenses for a single elderly person is estimated and summarized as:

\begin{center}
\begin{tabular}{l c}
Housing w/o mortgage & $349 \\
Food & $206 \\
Transport & $276 \\
Health care & $220 \\
Misc & $210 \\
Total & $1,261 per month \\
& $15,134 per year\textsuperscript{61}
\end{tabular}
\end{center}

\textsuperscript{56.} Id. \\
\textsuperscript{57.} Id. \\
\textsuperscript{58.} Id. \\

\textsuperscript{61.} Single Women’s Retirement, supra note 60, at 1.
III. NEW SOCIO-ECONOMIC REALITIES

A. Current Government Tax Laws and Investments in Education Sustain Income Inequality in the Era of the Wealthy Class

Government investment in the labor force begins very early. In wealthy families, it is well over $660,000 per child if the calculation includes the thirty year potential of the home mortgage interest deduction, the eighteen year potential contributions to 529 college savings plans, the eighteen year potential of the Child Tax Credit, the unlimited time provided for favorable capital gains tax treatment, retirement account savings tax deductions, estate tax treatment, and the increased funding for non-minority schools. By comparison, government support for working class children is approximately $40,000 per child if a five year limited TANF contribution of $15,000 and the average government funding for public schools in lower income neighborhoods are included. Those numbers do not take into account the regressive nature of the sales tax, which burdens lower income families more than upper income families. In part, due to a regressive tax structure including changes to the taxation of estates since 2001 and inequitable public school funding, the U.S. is supporting and enforcing an “Era of the Wealthy Class” at the cost of the majority of the population.

Beginning with elementary schools, government investment in education reproduces the current structure, a structure where...

64. See Info Sheet 1: How Regressive Taxes Affect Different Income Levels, IRS, http://www.irs.gov/app/understandingTaxes/whys/thm03/les02/media/is1_thm03_les02.pdf (last visited Mar. 30, 2012) (showing how regressive taxes seem fair on face value but actually are proportionally higher for the poor through numerical examples).
65. See LINDSEY, supra note 3, at 34, 41–42 (discussing the creation of the American wealthy class in the late twentieth century). For additional discussion of this topic, including political barriers to change, see Kleven, supra note 16, at 43.
66. See Miles Corak et al., Economic Mobility, Family Background, and the Well-Being of Children in the United States and Canada 42, 44 (Inst. for the Study of Labor, Discussion Paper No. 4814, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1570432 (stating that in Canada, where school funding is not linked to local property taxes, but to province-wide income tax, children are better educated). “Canada is up to three times more mobile than the United States. Or another way of putting it, up to three times as much inequality is passed across the generations in the United States than in Canada.” Id. at 42; see also Kozol, supra note 63, at 19 (2005) (noting that three quarters of African-American and Hispanic children attend schools that are mostly composed of minority students and that another 25% attend schools with 99–100% minority students, or “apartheid schools”).
poverty is intractable\textsuperscript{67} and the wealthiest grow even wealthier.\textsuperscript{68} Jonathan Kozol says:

> In a nation in which fairness was respected, children of the poorest and least educated mothers would receive the most extensive and most costly preschool preparation, not the least and cheapest, because children in these families need it so much more than those whose educated parents can deliver the same benefits of early learning to them in their homes.\textsuperscript{69}

Kozol objects to the notion that eight-year-olds from impoverished homes should be held accountable for their performance on standardized tests when children from wealthy homes have seven years of preparation for the test.\textsuperscript{70} Even President George W. Bush commented that “an equal society [should start with] equally excellent schools.”\textsuperscript{71} The investment per pupil difference between white and minority children ranges from $25,000 to $50,000 per child.\textsuperscript{72} Given the difference in investment by government in minority children compared to white children and the absence of financial resources available to single mothers to invest in their own children,\textsuperscript{73} even if they had the money to invest in excellent preschools for their children, they might lack the reading ability to help their children grow.\textsuperscript{74} The disparity between standardized tests scores and high school graduation rates for minority students and white students differ.\textsuperscript{75}

With respect to higher level education, preferential admissions for legacies at Ivy League colleges advantage the “Wealthy Class.”\textsuperscript{76}

\begin{thebibliography}{76}
\bibitem{67} See Warren \& Tyagi, supra note 2, at 100.
\bibitem{69} Kozol, supra note 63, at 54.
\bibitem{70} \textit{Id.} at 53–54.
\bibitem{71} \textit{Id.} at 58–59 (internal quotation marks omitted). George W. Bush, however, was also concerned that we put too much gas in the “engine” by spending too much money in predominantly minority schools, despite having attended an expensive $30,000 per year prep school himself. \textit{Id.} at 59.
\bibitem{72} \textit{Id.} at 60.
\bibitem{73} One in two African-American and Hispanic single mothers is likely to be poor. \textit{Children in Poverty}, CHILD TRENDS DATABANK, http://www.childtrendsdb.org/?q=node/221 (last updated Sept. 2011).
\bibitem{75} Kozol, supra note 63, at 281–82. Minority children in the twelfth grade often have similar standardized test scores as white children in seventh grade. \textit{Id.}
\bibitem{76} Chad Coffman et al., \textit{An Empirical Analysis of the Impact of Legacy Preferences on Alumni Giving at Top Universities}, in \textit{Affirmative Action for the Rich: Legacy Preferences in College Admissions} 101, 115 (Richard D. Kahlenberg ed., 2010).
\end{thebibliography}
The “Wealthy Class” also receives preferential treatment from the U.S. government through tax deductions for higher education that can last as long as eighteen years and be as much as $300,000 per child. The U.S. government invests substantial amounts of money in the children of the wealthiest families through the 529 tax deductions while it encourages them to achieve college degrees. In effect, 529 account holders are subsidized as their funds grow tax free. There are no income restrictions. For example, if parents set aside $5,000 per year for five years, the government does not receive $11,900 in taxes. According to some studies, the median net worth of 529 account holders is $281,200. The government’s investment in the wealthy child and the wealthy child’s family, therefore, is sometimes as much as $150,000. Only the wealthiest of parents are able to contribute $5,000 per year to a 529 account.

More than half of African-American and Latino children are raised with less than $35,000 per year annual income. Fewer than one in seventeen children from households with an annual income under $35,000 will earn a college degree. In households with incomes over $75,000 per year, in which 40% of white and Asian children live, children “are five times more likely to go to college.” SAT scores are not indicative of a person’s innate intelligence, nor are they predictive of academic success, but are a reflection of household income. The SAT not only restricts access for African-American and Latino children, but also blocks easy access to college for children from poor and low-income families. Children in the wealthiest homes benefit even more because of government investment in the home mortgage interest deduction.

77. LINDSEY, supra note 3, at 146.
78. See id. at 145–46 (allowing huge tax free investment if the family can afford to put the money in the accounts with high interest rates).
80. LINDSEY, supra note 3, at 146.
81. Id.
82. Id. at 147. If parents set aside $5,000 per year for 21 years, the government forgoes $150,000 in taxes. Id.
83. Id. at 9.
84. Id. at 155.
85. Id.
86. LINDSEY, supra note 3, at 155.
87. See id. at 30.
88. Id. at 27–30 (showing that the SAT exam does not predict academic excellence in college).
89. 26 U.S.C. § 163 (2006); see Brian H. Jenn, The Case For Tax Credits, 61 TAX LAW. 549, 556 (2008) (using the example of the mortgage interest deduction for two taxpayers with equal mortgage interest expense but different tax rates to show that the deductions are inequitable); see also STANLEY S. SURREY, PATHWAYS TO TAX REFORM: THE CONCEPT
For children born into a home with a million dollar mortgage, the government provides an additional $450,000 for the family through tax benefits.\footnote{LINDSEY, supra note 3, at 110–11.} The government invests $3,250 each year in families whose mortgage is $200,000,\footnote{Id. at 110.} an amount far greater than the PRWORA benefit for a single mother with two children, which terminates after five years.\footnote{42 U.S.C. § 608(a)(7) (2009).} By comparison, if a single working mother had a mortgage of $50,000, the government would invest $812 each year.\footnote{LINDSEY, supra note 3, at 111.} Eighty percent of home mortgage interest deduction benefits goes to the wealthiest Americans; the benefit for the bottom 60% of earners is less than 5%.\footnote{Id. at 112.} In 2008, the government invested $89 billion, primarily in the wealthiest households, through the home mortgage interest deduction.\footnote{Id. at 112–13.} Over the following five years, that investment was projected to grow to $500 billion.\footnote{Id. at 111.} Capping the home mortgage interest deduction at $97,000 would reduce the government’s investment in wealthy children, whose parents are already able to invest in them.\footnote{See id. (showing that most deductions are taken by those who already have assets to use to invest in their children).} The home mortgage interest deduction is available on both a primary and secondary residence.\footnote{26 U.S.C. § 163 (2006).} A wealthy family with a multi-million dollar ocean front home on La Jolla, California, could receive a second home mortgage interest deduction on their vacation home in Park City, Utah.

An additional method the government uses to invest in wealthy children is through the Child Tax Credit.\footnote{26 U.S.C. § 1 (2006); LINDSEY, supra note 3, at 111.} Each year, the government invests $32 billion primarily in wealthier families’ children through the Child Tax Credit.\footnote{LINDSEY, supra note 3, at 111.} Government resources flow to the highest earners at the expense of single mothers.\footnote{Id. at 109.} For example, a working single mother, earning $5.85 per hour, earns less than $12,000 annually, which is the minimum income needed to receive the credit;\footnote{Id. at 111.} therefore, she receives no benefit from the credit. If a family’s income is $75,000 per year, however, the benefit is $1,000 per child.\footnote{Id. at 109.
Children in 28% of Hispanic families and 19% of African-American families, and yet only 9% of white families, receive no investment.\textsuperscript{104}

The highest earners and the most consistently employed taxpayers at all ages in their lives are individuals who have attained the highest levels of education. For individuals in the twenty-five to sixty-four age group, annual earnings range from $25,894 for those who do not have a high school education to $78,919 for the fortunate 10.5% of the population who earn an advanced degree.\textsuperscript{105} Between the ages of twenty-five to sixty-four, roughly 90% of the American population will earn $25,894–$57,026 annually.\textsuperscript{106} Appendix B, the chart of education attainment and annual earnings from age sixty-five and over, shows that educational attainment has a consistently positive effect on income.\textsuperscript{107}

While the Child Tax Credit is phased out at $75,000 Adjusted Gross Income (AGI) for an individual and $110,000 AGI for a married couple,\textsuperscript{108} an AGI of $110,000 is in the top 10% of AGI for all taxpayers in the U.S. An AGI of $380,000 puts a taxpayer in the top 1% in the U.S. Ninety percent of all taxpayers will have an AGI under $113,799.\textsuperscript{109}

<table>
<thead>
<tr>
<th>Individual Returns\textsuperscript{110}</th>
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<tr>
<td><strong>Top one-percent Adjusted Gross Income (AGI) break (TY 2008)</strong></td>
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<tr>
<td><strong>Top ten-percent AGI break (TY 2008)</strong></td>
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<tr>
<td><strong>Bottom ten-percent AGI break (TY 2008)</strong></td>
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<td><strong>Median AGI (TY 2008)</strong></td>
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An individual with an AGI of $75,000 or $110,000, has an actual annual income that is higher than $75,000 or $110,000 because AGI is calculated after reducing the actual income for a multitude of deductions.\textsuperscript{111} The data for the 400 taxpayers with the highest

\begin{itemize}
  \item \textsuperscript{104} Id.
  \item \textsuperscript{105} See infra Appendix B.
  \item \textsuperscript{106} See infra Appendix B.
  \item \textsuperscript{107} See infra Appendix B.
  \item \textsuperscript{108} Ten Facts About the Child Tax Credit, IRS (Feb. 10, 2011), http://www.irs.gov/newsroom/article/0,,id=106182,00.html.
  \item \textsuperscript{110} Id.
  \item \textsuperscript{111} AGI is defined as gross income minus adjustments to income. Definition of Adjusted Gross Income, IRS, http://www.irs.gov/irs/article/0,,id=234371,00.html (last updated Jan. 13, 2011). 
\end{itemize}
AGI show similar reductions. In fact, even if two individuals from the minority of Americans with college degrees were married, their AGI would likely be below the $110,000 upper limit. Since 70% of the U.S. population does not have a college degree, most employed individuals, married or single, will have adjusted gross incomes below the upper Child Tax Credit AGI cutoff limits.

The United States Department of Agriculture (USDA) reports on how much parents spend annually on children:

For the higher income group of single-parent families (2007 before-tax income of $45,800 and over), estimates of child-rearing expenses were about the same as those for two-parent households in the before-tax income group of more than $77,100: total expenses for the younger child up to age 18 were $298,860 for single-parent families versus $298,680 for husband-wife families in 2007 dollars.

The USDA, however, ignores child care before school age, college tuition, and forgone salary. The report goes on to state that “the average income of single-parent households was much lower. Therefore, child-rearing expenses in the higher income group of single-parent families consume a larger proportion of income than they do in husband-wife families.”

The U.S. government invests again in wealthy families and their children through tax breaks for retirement savings. These tax benefits are the government’s largest tax expenditure, but they provide little benefit or incentive to most lower-income women because they either pay no income taxes or are in the 10% or 15% tax brackets. This system is inefficient because it uses tax dollars to encourage people who already have the money to put their money into tax-beneficial accounts, thus rewarding people who are already saving.


113. See infra Appendix B.


116. Id. at 12–13 (discussing possible expenditures not included in the calculations).

117. Id. at 9.


120. Id.

121. Id.
B. Increasing Levels of Income Volatility for High and Low Wage Earners

Single mother bankruptcies have increased by 600% in the last twenty years.122 Single mothers filing Chapter 7 are 60% more likely to have a college education, a decent job, and own a home.123 Yet, they have a higher rate of bankruptcies than any other group, 30 per 1,000 compared to 14 per 1,000.124 The dramatic increase in bankruptcy filing occurs despite the fact that more single mothers are educated and employed.125

Neither high earning mothers, those who have not applied for TANF, nor low earning single mothers are able to build a comfortable retirement nest egg. Hand in hand with the risk of divorce comes an increased risk of fathers defaulting on child support.126 The default rate on car loans is less than 3%,127 the default rate on past due support payments is about 92%.128 The total amount of past due child support owed is over $100 billion.129 Each year, another $10 to $20 billion increases the past due amount.130 The number of women and children covered by support orders are fifteen million and seventeen million respectively.131 Roughly half of those single mothers are low earning, i.e., they have had to apply for government assistance, and half are high earning.132 Of the $100 billion owed, one half is therefore owed to the government in exchange for TANF benefits, and the other half, $50 billion, is owed to 7.5 million mothers caring for 8.5 million children.133 The amount of unpaid support continues to grow

122. WARREN & TYAGI, supra note 2, at 105.
123. Id. at 106–07.
124. Id. at 105–06; see also JACOB S. HACKER, THE GREAT RISK SHIFT: THE ASSAULT ON AMERICAN JOBS, FAMILIES, HEALTH CARE, AND RETIREMENT AND HOW YOU CAN FIGHT BACK 13 (2006) (stating that total bankruptcy filings in 2005 exceeded two million households, compared to 290,000 in 1980).
126. LINDSEY, supra note 3, at 136.
128. See infra Appendix A (showing that of about $106 billion due in child support, $8 billion was collected).
129. LINDSEY, supra note 3, at 115; see infra Appendix A.
130. See, e.g., LINDSEY, supra note 3, at 115 (reporting that in 2005, only $24.8 billion of the $38 billion due was collected).
131. See infra Appendix A.
132. See note 170 and accompanying text.
133. See infra Appendix A.
each year, along with the number of child support orders. Two-thirds of non-custodial fathers do not pay support and have “no apparent financial reason” for nonpayment. About 2.5 million fathers who do not pay support are poor.

One of the many obstacles to organizing single mothers, who are already working three jobs, for political change is the complete divide between childless women and mothers. Younger, childless women can compete in the workplace just as well as men. They may not experience employment discrimination until they become mothers. Over-confidence bias suggests that childless young women will not believe that unequal treatment even exists for mothers, or if it does, they will underestimate the risk that this negative event (discrimination) will happen to them. If these women forgo having children, they decrease their chances of going bankrupt by 66%. They also improve their odds of having a comfortable retirement. If they have children, they will experience the utter vulnerability of not earning income, due to the fact that in the limited cases where the FMLA does apply, it does not mandate paid leave.

C. Competition with Emerging Superpowers Brazil, Russia, India and China

Compared to other developed nations, the U.S. lags behind in social safety net support for single mothers, children, and women in general. The loss of jobs in the manufacturing sector (which were abundant and well paying during the industrial era) during the transition to the information age has changed the competition for jobs in the U.S. to include the emerging superpowers of Brazil, Russia, India, and China.


136. Id. at 420.


139. WARREN & TYAGI, supra note 2, at 242 n.11.


> In general, women have never fared as well as men in the problem of dividing the cooperative surplus from economic or social relationships. In 1980 the United Nations estimated that although women did two-thirds of the world’s work, they earned only one-tenth of the world’s income and owned only one-hundredth of the world’s property.\footnote{Kenneth G. Dau-Schmidt, Dividing the Surplus: Will Globalization Give Women a Larger or Smaller Share of the Benefits of Cooperative Production?, 4 IND. J. GLOBAL LEGAL STUD. 51, 53 (1996) (footnote omitted).}

> The same gender issues present in the U.S. are present in the developing BRIC nations with respect to employment: wage gaps, pregnancy discrimination, sexual harassment, lack of access to courts, and gender discrimination in hiring and with respect to the terms and conditions of employment.\footnote{See Dina Francesca Haynes, Lessons From Bosnia’s Arizona Market: Harm to Women in a Neoliberalized Postconflict Reconstruction Process, 158 U. PA. L. REV. 1779, 1794–95 (2010); Avani Mehta Sood, Gender-Justice Through Public Interest Litigation: Case Studies from India, 41 VAND. J. TRANSNAT’L L. 833, 853–54 (2008); Jamie Burnett, Note, Women’s Employment Rights in China: Creating Harmony for Women in the Workforce, 17 IND. J. GLOBAL LEGAL STUD. 289, 298 (2010).} In addition to these ills, conditions for women in developing nations include lack of control over their reproductive lives, child marriages, kidnapping, and sexual trafficking.\footnote{Haynes, supra note 144, at 1794–95; Sood, supra note 144, at 853–54; Burnett, supra note 144, at 298.}

IV. BIOLOGY OF MOTHERS AND CHILDREN

The protective developmental value of early nurturing care from mothers cannot be overstated. The relationship between single mother families and poor outcomes for children is too often and too easily misstated. Advances in genetic and biological research are certain to have important implications for the development of employment law and the protection of the mother-infant bond in the next ten years. Under TANF rules, mothers who work during the day are separated from their children during the critical developmental years, birth to age three.\footnote{Brain Development, ZERO TO THREE, http://www.zerotothree.org/child-development/brain-development/ (last visited Mar. 30, 2012).} This section provides an overview of the latest
research on brain scans in the area of mother and infant relationships from birth to age three, child abuse, and violence.

Both biological and adoptive mothers differ from fathers in their connections with children not only because of the mother’s ability to grow a fetus in her uterus and breast-feed, but also because the mother’s limbic brain system differs, as revealed through single photon emission computed tomography (SPECT) scans of the brain.147 For biological mothers who nurse their children, the protective effects of breast-feeding are well documented.148 The overwhelming importance of attachment theory is also well documented.149 It is women’s unique

147. DANIEL G. AMEN, CHANGE YOUR BRAIN, CHANGE YOUR LIFE 42 (1998). Dr. Amen writes that “females, on average, have a larger deep limbic system than males.” Id. This system allows women to be “more in touch with their feelings, . . . better able to express their feelings[,] . . . [and] have an increased ability to bond and be connected to others.” Id. Dr. Amen asserts that this is “why women are the primary caretakers of children [and why] there is no society on earth where men are primary caretakers of children.” Id.; see also Owen D. Jones et al., Brain Imaging For Legal Thinkers: A Guide for the Perplexed, 2009 STAN. TECH. L. REV. 5 passim, http://stlr.stanford.edu/pdf/jones-brain-imaging.pdf (providing a comprehensive overview of brain scan technology).


biology that enables them to give birth. Mothers' ability to provide love, however, also involves their brains.

Scientific testimony about SPECT scans has been considered as evidence in death penalty cases and employment disability cases. SPECT scans are considered reliable and admissible evidence in litigation. SPECT scans are also revealing important information about the effect of childhood neglect and abuse on the children's brains and subsequent violent behavior. Many capital defendants

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150. See, e.g., Boyd v. Bert Bell/Pete Rozelle NFL Players Retirement Plan, 410 F.3d 1173, 1177 (9th Cir. 2005) (documenting use of SPECT to monitor head trauma). In 2005, the Ninth Circuit Court of Appeals reviewed a district court’s grant of summary judgment in favor of the NFL Players Retirement Plan and the NFL Players Supplemental Disability Plan (Plans) in a lawsuit filed by former Minnesota Viking Brent Boyd for disability benefits. Id. at 1174. Boyd claimed that he suffered organic brain problems after he was knocked unconscious in a preseason football game in August 1980 and that his “constant flu-like feeling, fatigue, headaches, queasiness, forgetfulness, intermittent blurred vision, difficulty reading, lack of concentration, learning difficulty, memory loss, dizziness and light-headedness” qualified him for total and permanent disability benefits under the Plans. Id. at 1175. As part of the lawsuit, Boyd was subjected to nearly two days of neuropsychological testing. Id. at 1177. Some of the physicians agreed with Boyd that his single photon emission computed tomography (SPECT) scan showed “decreased brain activity ‘consistent with head trauma’ ” and that he was disabled due to his August 1980 brain injury. Id.; see also Kearney v. Standard Ins. Co., 175 F.3d 1084, 1092 (9th Cir. 1999) (describing an instance in which a physician recommended a brain scan to clarify the disability insurance claimant’s diagnosis of possible metabolic disturbance, early Alzheimer’s disease, episode of ischemia, or embolus to the brain).


152. See Debra Niehoff, Invisible Scars: The Neurobiological Consequences of Child Abuse 56 DEPAUL L. REV. 847, 877 (2007) (“The biological consequences of abuse do not obviate personal responsibility, but we are responsible as well. If we want to improve the welfare of children, reduce the burden of stress-induced health problems, and break the cycle of violence, we must commit to protecting children from abuse and neglect—the ‘environmental pathogens’ that threaten the integrity of their developing nervous systems.”). Niehoff has also found:

Structural and functional imaging studies have demonstrated that the experience of abuse disrupts the normal development of the cerebral cortex. For example, using a spectroscopic technique that measures the relative concentration of N-acetyl aspartate and creatinine (a measure correlated with the density and integrity of neurons), Professor Michael De Bellis and his colleagues found evidence of neuronal loss and dysfunction in the prefrontal cortex and, specifically, in the anterior cingulate area of children and adolescents with PTSD subsequent to abuse. Research also suggests that child abuse may interfere with the critical process of lateralization, in which the left and right sides of the cortex become specialized for particular functions. Speech and language comprehension, for example, are localized in the left
“experience neuropathological organic impairment or ‘underdeveloped brains’ that reveal deficits in neuropsychological and cognitive assessment.”

John Fabian explains that “neuropsychological impairment is developmental in nature.” He also links criminal behavior to IQ levels, which are tied to childhood socialization. He states:

Research has revealed that perhaps the most common characteristics of delinquency and adult criminal behavior is low IQ, especially verbal IQ deficit, as those with verbal shortage often rely on physical modes of self-expression. IQ is a measure of neuropsychological health and represents executive functioning including sustained attention, concentration, social judgment, language processing, abstract reasoning, planning, and initiating purposeful behavior. Normal auditory verbal memory and verbal abstract reasoning skills influence the success of a child’s socialization and are essential to the development of self-control for inhibiting childhood behaviors.

hemisphere, while prosody (the ability to understand the emotional and contextual aspects of language) is the province of the right hemisphere. In right-handed children, the left or dominant hemisphere is more developed than the right. A study that employed electroencephalography to compare left and right brain development in a group of right-handed, physically and sexually abused children found that the right hemisphere was more developed than the left. More accurately, the right hemisphere resembled that of children with no history of abuse, while the development of the left hemisphere was significantly delayed.

Id. at 864–65 (footnotes omitted). This is not the extent of harms from abuse. Niehoff further suggests that abuse has an effect on violence. She states:

[T]he most troubling consequence of abuse, however, is the increased incidence of criminal behavior, including acts of violence, among individuals with a history of childhood abuse. A widely cited prospective study by Professors Cathy Widom and Michael Maxfield compared more than 900 children with a history of substantiated abuse or neglect with a control group that was matched with abuse victims by age, race, sex, and social class. The study found that abused individuals were 1.8 times more likely than the control group to be arrested for a juvenile offense, 1.5 times more likely to be arrested as an adult, and 1.35 times more likely to be arrested for a violent crime. A total of 21% of the study subjects who had been physically abused as children were arrested for violent offenses, compared to 14% of the matched controls. An unexpected result was that neglect had almost as great an effect on subsequent behavior as the experience of physical abuse, in that 20% of those who experienced neglect were arrested for a violent crime. Sadly, the victims of individuals with histories of abuse are often their own children. Studies of this “cycle of abuse” estimate that approximately one-third of abused children become abusive parents themselves.

Id. at 848 (footnotes omitted).

154. Id.
155. Id. (footnotes omitted).
Vocabulary growth from birth to age three is critical to achieving academic success.\textsuperscript{156} Exposure to words varies from 176 words per hour in families on welfare to 487 words per hour in wealthier families.\textsuperscript{157} The difference in the number of words learned in one year is significant—a difference of three million words compared to eleven million words.\textsuperscript{158} In wealthier families, mothers stay home with children at these ages; however, the impact of TANF requiring mothers to work, or to apply for jobs until they receive a placement,\textsuperscript{159} all while raising children, heightens the risk of underdeveloped verbal ability upon entering kindergarten.

In addition to brain scans’ identification of limbic system differences, developmental differences, and lack of activity in regions that can “brake” aggressive behavior, genetic research has identified a gene that predisposes individuals to aggression, the “warrior gene.”\textsuperscript{160} Yet, even if two biological and genetic risk factors for violence combine in an individual, a nurturing mother-infant bond makes a difference in a child’s success or failure.\textsuperscript{161} It appears that the third risk factor, child abuse, is the tipping point.\textsuperscript{162}

\textsuperscript{156} See Lindsey, supra note 3, at 21 (noting the connection between larger vocabulary and a higher IQ).
\textsuperscript{157} Id.
\textsuperscript{158} Id.
\textsuperscript{161} Id. Dr. Fallon, a neuroscientist, has the warrior gene, a brain scan showing inactivity in his orbital cortex, and is descended from the ax-murderer, Lizzy Borden. Id. He credits his peaceful life to the fact that he was not abused as a child. Id.; see also Nathan Szajnberg, Comment to Melvin Konner, How Childhood Has Evolved, CHRON. HIGHER EDUC. (May 15, 2010, 04:49 AM), http://chronicle.com/article/How-Childhood-Has-Evolved/65401/ (“Our 30-year study beginning in infancy . . . begins to articulate the enduring effects of the first five years. At 30 years of age, mothering style in the first year shows effects only upon level of psychological defenses (that is, an internalized mental construct). Mothering style does not (statistically) predict general level of emotional or behavioral functioning, SES, or psychiatric illness. Further, psychological traumata in childhood[,] . . . serious threat to separation or loss[,] does affect outcome at thirty. That is, mothering style in the first year does not necessarily buffer a child from two or more traumata prior to puberty. On the other hand, for two-thirds of our sample, mothering style did influence life course predictably—for better and worse. In the one third who were exceptions (those functioning far better, those far worse in adulthood than predicted), we found clear alternative attachment figures (and/or self-soothing activities within the first five years for those who did better; chronic strain trauma or discrete traumata for those who fell from infancy’s ‘grace’) to explain these deviations.” (citing Henry Massie & Nathan Szainberg, Lives Across Time, Growing Up: Paths to Emotional Health and Emotional Illness from Birth to 30 in 76 People (2009))).
\textsuperscript{162} See Hagerty, supra note 160.
Mothers arriving in the 1990s workforce were just in time to experience the decline in employer-provided retirement pensions, employer provided medical benefits, employer provided medical benefits upon retirement, job security, and labor unions. When these new employees were in high school and college, their teachers and professors did not prepare them for the shift of American manufacturing overseas because it had not yet occurred.  

The single mother entering the workforce in 1985 would experience dramatic changes in TANF, pregnancy discrimination, family responsibilities discrimination, child support enforcement failure, and the FMLA.

A. New Norms

The economic conditions of the last two years threw an unexpected curve ball into the middle of the legal changes Congress and the Supreme Court made expanding women’s opportunities in life beyond their front porch. Between 2007 and 2009, thanks to a sudden economic downturn, the unemployment rate skyrocketed from 4.7% in 2007 to more than 10% in 2010. The actual unemployment rate may be even higher because millions of jobless workers were not counted in the civilian labor force statistics; even though they wanted to be employed, they had been unemployed for so long that they had stopped actively searching for work. If they were included in the civilian labor force, the unemployment rate would have risen to 18.8%. In part, the rising and lasting nature of the unemployment rate is due to structural changes as the nation shifts from a manufacturing economy to a service economy.

The American philosophy of placing risk on individuals, rather than on government or employers, even when market events entirely beyond the individual’s control are overwhelming, has been used to justify enormous risk shifting from institutions to individual

163. Ward, supra note 142, at 1, 3.
165. Id.
166. Id.; see also Study Finds Economic Shifts, Recession Erode Job Prospects in Many Industries, Daily Lab. Rpt. (BNA), No. 162, Aug. 25, 2009 (explaining employment growth projections are bleak for many low- and middle-skilled workers who lack skills for the new jobs that will be created, and forecasting that the prospects for reindustrialization of the U.S. economy “seem grim” (internal quotation marks omitted)).
employees. Employees are increasingly expected to take care of their own health insurance and to manage their own retirement funds. This risk shifting occurs at a time when the risk of divorce has risen 40%, the risk of lacking health insurance coverage has risen 49%, the risk of a wage earner missing work to care for a sick child or elderly family member has risen 1,000%, the risk of a wage-earner missing work due to illness or disability has risen 100%, and the risk of involuntary job loss has increased from 2.5% to 3.2% for a single income family and risen from 4.9% to 6.3% in a dual income family. Job loss leads to bankruptcy in dual income families. While bankruptcy rates have climbed in dual income families, they have skyrocketed for single mothers.

One of the biggest shifts is the fact that single mothers are not the source of an emergency secondary income that can be reduced or eliminated by a family. In single mother families, the mother is the primary breadwinner. These families with single mother heads of household occur throughout earning levels, from the highest to the lowest ends of the spectrum. The benefits of their earnings flow directly to their children and so do the consequences; firing, laying off, wage reductions, reduced hours, and lack of health insurance all flow from mother to children. By definition, in single mother head of household families, across all races and income levels, white, African-American, and Hispanic, there are no male providers that can cover the rent or mortgage if the mother loses her job. Single mothers must work to feed children, provide shelter, and pay for medical care, heat, and all the necessities of life. Single mothers must now also focus on asset accumulation to tide the family through periods of unemployment, in addition to the time and effort they spend nurturing their children.

The shifting of “normal” in the U.S. has occurred in a very short space of time.

168. Hacker, supra note 124, at 8.
169. Id. at 8.
170. Warren & Tyagi, supra note 2, at 82, 88. The authors’ estimates of a single mother’s income assume that child support is actually paid as agreed and ignore the fact that only 7% of child support orders are actually paid to single mothers as agreed, leaving $50 billion in unpaid support owed to mothers and $50 billion in unpaid support owed to the government. Mothers are required to assign their rights to child support to the government in exchange for participation in TANF. Total child support arrearages due as of 2008 was $105,548,155,058. See infra Appendix A. The Federal Office of Child Support Enforcement has previously estimated that half of all child support arrearages are owed to the government rather than to families. Office of Child Support Enforcement (CSE) FY 2002 Preliminary Data Report, U.S. Department Health & Hum. Services, (2003), http://www.acf.hhs.gov/programs/cse/pubs/2003/reports/prelim_datareport/ (last visited Mar. 30, 2012) [hereinafter 2002 Child Support Enforcement].
171. Warren & Tyagi, supra note 2, at 83.
172. Id. at 105.
In the past:

- Fathers in the workforce supported their wives and children\textsuperscript{173}
- Married mothers only worked in emergency situations
- Divorced mother employees receiving alimony or child support while working only experienced a fall in discretionary income from 46% to 19%, which still left something for emergencies\textsuperscript{174}
- Mothers receiving AFDC did not have mandatory work requirements and had health care coverage for themselves and their children under Medicaid
- Mothers who re-entered the workforce after caring for children received lower salaries and reduced Social Security benefits

The new norms:

- Women are about 47% of the workforce\textsuperscript{175}
- Mothers are in the workforce in greater numbers than women without children
- Mothers often work in part-time service industries without benefits
- Single mothers work in greater percentages and for longer hours than married mothers\textsuperscript{176}
- Both high and low wage single mothers are supporting children through paid employment
- Half of all U.S. children live in homes headed by single mothers at some point in their lives
- College educated single mother employees file bankruptcy more than any other group
- In the event of divorce, single working mothers will experience a drop in discretionary income from 25% to 4%, leaving them unable to cover unplanned expenses from income alone\textsuperscript{177}

\textsuperscript{173} COONTZ, supra note 19, at 10–11.
\textsuperscript{174} WARREN & TYAGI, supra note 2, at 111.
\textsuperscript{175} WOMEN IN THE LABOR FORCE, supra note 9, at 1.
\textsuperscript{176} Corak et al., supra note 66, at 26–27. In the United States single mothers are more likely to be working than married mothers, 80% and 67% respectively. Id. at 27. “In Canada, these proportions are almost exactly reversed.” Id. About 50% of single mothers work more than 40 hours per week in the United States, almost double the Canadian proportion. Id. at 26–27.
\textsuperscript{177} WARREN & TYAGI, supra note 2, at 111.
• Low wage earning single mothers have a reduced social safety net.\(^{178}\)
• Increased risks of job loss for all employees
• Increasing income inequality.\(^{179}\)
• Increasing class rigidity
• Unequal access to education
• Lack of unpaid and paid leave despite longer hours at work.\(^{180}\)
• A shift from a manufacturing economy to a service economy

B. Changes in TANF

Welfare reform had multiple goals. One was to promote marriage.\(^{181}\) Research, however, does not show that TANF has promoted marriage.\(^{182}\) One of the reasons that TANF did not accomplish the objective is the fact that domestic violence rates continue to cause women and children painful and expensive injuries.\(^{183}\) The data from

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179. Crain, supra note 164, at 366. The unemployment rate was highest, 31% for households earning $12,500 or less, and 4% for households earning $100,000–$150,000. Id. From 1979 until 2003, the average income of the upper class doubled, compared to an increase of 15% for the middle class. Hacker, supra note 124, at 12. Single mothers are always highly represented in lower wage earning categories.
182. Id. at 10, 14, 21. Shamir examines the extent to which welfare defamiliarizes and commodifies single mothers, high wage earning and low wage earning women. In part, she concludes that commodification of women does not change the distribution of work at home. Id. at 18.
183. Justice Department statistics show that approximately 25% of women who are murdered are murdered by a spouse or ex-spouse (the data does not distinguish between current and ex-), and if one adds in murders by boyfriends (including ex-), the percentage goes up to 40–45%. See Matthew R. Durose et al., Dep’t of Justice, Family Violence Statistics: Including Statistics on Strangers and Acquaintances 17 tbl. 3.1 (2005), available at http://www.bjs.gov/content/pub/pdf/fvs10.pdf. The study is based on 2002 data, for which information on 9,102 out of 16,204 murders was available. Id. at 21. According to the U.S. Department of Justice, between 1998 and 2002, 49% of the almost 3.5 million violent crimes committed against family members were crimes against spouses. Id. at 1. Eighty-four percent of spouse abuse victims were females, and 86% of victims of dating partner abuse were female. Id. Additionally, Kirstie Danielson found that 56% of women who experience any partner violence are diagnosed with a psychiatric disorder. Kirstie K. Danielson et al., Comorbidity Between Abuse of an Adult and DSM-III-R Mental Disorders:
the U.S. Department of Justice shows that thirty percent of women in the U.S. “who [have] married or lived with a man” are physically assaulted by their intimate partners, including their husbands. 184 In a nation where these statistics exist, promoting marriage may not make sense. 185 When mothers are victims of domestic violence, their children also suffer. 186 TANF recipients experience extremely high levels of domestic violence during their lifetime. 187

The financial benefit of remaining a single head of household tax filer conflicts with TANF’s goal of promoting marriage. While not all TANF recipients earn income, those single mothers who can claim the Earned Income Tax Credit (EITC) will be financially better off if they do not marry the father of their child. 188 The maximum available tax credit is significantly higher for two single parent filers than for two married joint filers.


186. A recent study of low-income preschool children in Michigan found that nearly half (46.7%) of the children in the study had been exposed to at least one incident of mild or severe violence in the family. Sandra Graham-Bermann & Julie Seng, Violence Exposure and Traumatic Stress Symptoms as Additional Predictors of Health Problems in High-Risk Children, 146 J. PEDIATRICS 349, 349–51 (2005). Children who had been exposed to violence suffered symptoms of post-traumatic stress disorder, such as bed-wetting or nightmares, and were at greater risk than their peers of having allergies, asthma, gastrointestinal problems, headaches and flu. Id. at 351–52.

187. Domestic Violence Statistics, supra note 183. The source further states:

Studies consistently show that at least 50 to 60 percent of women receiving public benefits have experienced physical abuse by an intimate partner at some point during their adult lives, compared to 22 percent of the general population: some studies indicate rates as high as 82 percent. A significant number of women receiving public benefits also report a history [of] physical and sexual abuse in childhood, and as many as 30 percent of women on public benefits report abuse in a current relationship.

Id. (citing Richard Tolman & Jody Raphael, A Review of the Research on Welfare and Domestic Violence, 56 J. SOC. ISSUES 655, 660–61 (2000)). Refusing to marry partners with this level of misogynist behavior is the only rational choice, no matter how orange the carrot. See also SHARMILA LAWRENCE, NAT’L CTR. FOR CHILDREN IN POVERTY, DOMESTIC VIOLENCE AND WELFARE POLICY: RESEARCH FINDINGS THAT CAN INFORM POLICIES ON MARRIAGE AND CHILD WELL-BEING 2 (2002); ELEANOR LYON, WELFARE, POVERTY AND ABUSED WOMEN: NEW RESEARCH AND ITS IMPLICATIONS 1 (2000).

188. 26 U.S.C. § 32(b)(2)(A)–(B) (2006). Joint returns only have a slight increase in phaseout amounts, making it an advantage to file as single.
Research also shows that during the 1970s single earner couples and dual earner couples had the same risk of divorce.\textsuperscript{189} During the 1990s, a dual earner’s risk of divorce was more than 40%.\textsuperscript{190} Perhaps the better strategy to decrease the risk of divorce and promote marriage would be to decrease the financial, physical, and emotional demands on women in the five years following the birth of a child, rather than separating them from their children.\textsuperscript{191} Although single mothers who experience the greatest financial stress after divorce are those who have been in high income families and married many years before divorce,\textsuperscript{192} fully one quarter of all divorced mothers from twenty-six to thirty-five years old experience catastrophic income losses, bringing their households to 150% of the poverty line.\textsuperscript{193}

If TANF’s goal is to reduce the government’s financial responsibility for unmarried poor mothers’ childbearing, a better solution is to establish National Child Savings Accounts.\textsuperscript{194} In comparison to teenage girls from affluent families, poor teenage girls are nearly six times more likely to become pregnant because they have no resources or opportunities to move into productive adulthood.\textsuperscript{195} Wealthy families with sufficient asset bases are able to invest in their children upon graduation from high school, helping them through college and into gainful employment, even carrying them through periods of unemployment in adulthood.\textsuperscript{196} If an asset base was established through the Social Security system to provide each child with $20,000 to be spent on college, training, and medical expenses upon graduation from high school, in addition to reducing the government’s responsibility for children, equal opportunity could be restored.\textsuperscript{197}

About one half of the $100 billion of past due child support is owed to single mothers and the other $50 billion is owed to the government.\textsuperscript{198} Single mothers who are not receiving TANF are therefore owed $50 billion that could shelter them from poverty in retirement. Prior to the passage of TANF in 1996, low wage earning single mothers could count on government assistance for financial

\textsuperscript{189} Warren & Tyagi, supra note 2, at 85.
\textsuperscript{190} Id.
\textsuperscript{192} Hacker, supra note 124, at 105–06.
\textsuperscript{193} Id. at 106.
\textsuperscript{194} See Lindsey, supra note 3, at 138–39, 143 (explaining the need for children to have financial resources to self sustain once they graduate from high school).
\textsuperscript{195} Id. at 143.
\textsuperscript{196} Id. at 142.
\textsuperscript{197} Id. at 138–40.
\textsuperscript{198} See supra note 170 and accompanying text.
help during their children’s earliest and most vulnerable years. Hispanic and African-American women, on average, earn less than white and Asian women. Hispanic women are overrepresented in service occupations, which pay less. In 2008, 5.4% of women were unemployed, but rates varied by race and ethnicity: Asian women had the lowest unemployment rate at 3.7%, followed by white women at 4.9%, then Hispanic women at 7.7%, and finally black women at 8.9%. The median weekly earnings of women who worked full time in wage and salary jobs was $638 in 2008. These earnings were approximately 80% of men’s median weekly earnings ($798) during the same period. Asian and white women, who earned $753 and $654 respectively, earned substantially higher wages than their black and Hispanic counterparts, who earned $554 and $501 respectively. Women’s earnings ratios as compared to men’s were higher among the black (89%) and Hispanic (90%) population than among the white (79%) and Asian (78%) population.

Welfare reform can be counted a failure if its goal was to help single mothers become upwardly mobile and earn sufficient wages to fully support their children into productive employment. Single mothers’ wages remained stagnant and to make matters worse, the children have lost the presence, comfort, and company of their mothers. In a final blow, reform ended health insurance for a majority of women and children covered under AFDC.

201. Id.
202. Id.
203. Id. at 2.
204. Id.
205. Id.
to the steep cost of removing mothers from children during the years from zero to three, the cost of moving from welfare to work is lost health insurance.

If the reform’s goal was to lower the cost of this particular government program, it was a huge success. Between 1996 and 2001, the number of women and children receiving assistance decreased from 12.2 million to 5.3 million.210 Of the seven million women and children who stopped receiving assistance, about 28% were not working and of those almost 50% were earning below poverty wages.211 Former welfare recipients earn about $8,000 annually.212 When Barbara Ehrenreich left her comfortable middle class lifestyle to work the type of physically demanding jobs available to single immigrant mothers migrating from welfare to work, she was not able to make ends meet even though she was advantaged by owning a working car, her skin color, and the fact that she was not a caregiver to a single child.213

Reform meant the end of benefits for legal immigrants, especially Latinas, who were meant to receive benefits. Legal immigrant families’ receipt of food stamps dropped by 50% and their receipt of TANF money dropped by 60%.214 Despite the fact that they work and participate in assistance programs at lower rates than citizen families, legal immigrant families are poorer and left assistance programs at higher rates than citizen families after reform.215 In short, legal immigrant women and children suffered more hunger after reform than before.

VI. SOLUTIONS

The final question this paper asks is why, given the enormity of market and regulatory death grips on single mothers, aren’t 100% of the children of single mothers in prison? How is it possible for Lance Armstrong, whose mother was a fast food server and single mother,216 Governor Deval Patrick, who grew up in the projects of

211. W ARREN & TYAGI, supra note 2, at 10–11.
215. Id.
inner city Chicago, Michael Phelps, and two recent U.S. Presidents to emerge from fatherless families? Statistics on failed children and shoddy scholarship on causal relationships to single mother families abound. Part of the answer is that mothers have preserved their time with their children by sacrificing time with each other, time in their communities, time spent doing housework, time for themselves, and time sleeping. It is the absence (and unquestionably, the total exhaustion) of the mother, not her presence, which is problematic for children. In order to rescue these children, policy makers must make the following six changes.

A. Invest by Enacting Living Wage Ordinances on a Local Level and Support Night Shift Employment

A living wage is not available to most single mothers in minimum wage positions, nor is a full-time job with health-care benefits. Authors disagree on whether increasing employment earnings would improve an individual’s ability to survive. Some argue that increasing to a living wage of $30,000 per year or $14.00 per hour would help the working poor. Some economists argue that increasing the minimum to $9.50 will not help because it will only increase the wages of second

219. See, e.g., COULTER, supra note 17, at 37 (claiming that “the damage of single parenthood [on children] is . . . blindingly obvious”).
and third earners in a family that is already above poverty level.\(^{223}\)

This argument could not be advanced if living wages were available for night shift employment at the very least, because parents who care for children during the day would benefit, rather than second and third wage earners. If single mothers working night shift employment received an increase in wages, a corresponding raise in the EITC would occur.\(^{224}\)

**B. Implement Flexicurity\(^{225}\)**

With the impact of job loss flowing directly from mother to child, job loss is a serious blow, not just to mothers, but to the next generation. Some states, including Georgia, have begun to combine job retraining with unemployment benefits.\(^ {226}\) Meaningful job training has not been available through programs like GAIN and TANF.\(^ {227}\) This safety net is especially important when a single mother’s job is eliminated for reasons beyond her control. The doubling of the unemployment rate over the past two years to 10.2% overall and to 12.9% for single mothers\(^ {228}\) makes flexicurity even more important for mothers and children.

**C. Enact the Downey-Hyde Amendment**

The Downey-Hyde Amendment proposed paying single mothers the money they were owed by absent fathers.\(^ {229}\) The combined hits

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\(^{223}\) See Joseph S. Sabia & Richard V. Burkhauser, *Minimum Wages and Poverty: Will a $9.50 Federal Minimum Wage Really Help the Working Poor?*, 76 S. ECON. J. 592, 593 (2010) (arguing that the proposed $9.50 increase is not well targeted to individuals living below the poverty line).

\(^{224}\) Lisa A. Gennetian et al., *Meeting the Basic Needs of Children: Does Income Matter?* 9 (Nat’l Poverty Ctr. Working Papers Series, No. 09-11, 2009), available at http://npc.umich.edu/publications/u/working_paper09-11.pdf. An increase from $5.15 to $7.25 causes an increase in wages of $4,200, a $1,140 increase in EITC, and a decrease in food stamp benefits. Id. A $1,000 increase in family income has been linked to a 6% rise in math and reading test scores for children in these families. Id. at 17.

\(^{225}\) See Crain, supra note 164, at 379–80 (describing flexicurity as a policy focused on both flexibility in employment and worker mobility).

\(^{226}\) Id. at 380–81 (describing the “Georgia Works” program).


of the wage gap, the $50 billion in unpaid child support, and the maternal wall have severely limited single mothers’ earnings and their ability to invest in themselves. The first and most important investment to make in this new sector of the labor market is to pay child support to the women who are sacrificing their retirement savings to raise healthy, educated, productive citizens. Single mothers who have not assigned their right to receive child support to the government in exchange for TANF benefits have spent $50 billion of their own earnings raising children. When fathers stepped back, these seven million women stepped forward in the labor force to provide for 8.5 million children. Under the current legislative scheme, these mothers must hire attorneys to collect unpaid support.

The governments of Austria, Belgium, Denmark, Finland, France, Germany, Norway, Sweden, the United Kingdom, Australia, and New Zealand all provide child support to mothers and collect it from fathers. In contrast, the United States requires single mothers, all of whom must work under welfare reform, to collect the money themselves or go without.

Ten years ago, Professor Williams said, “Our political culture is resistant to providing public funds or public provision of anything at all. . . . These are political facts of life.” If past behavior is any predictor of future behavior, the mothers who receive the support money they are owed will invest it in their children’s college educations, homes in good school districts, and medical care for themselves so they do not become a burden upon the children they raised. If past behavior is a good predictor of future behavior, the Downey-Hyde Amendment is a far better investment than the Troubled Asset Relief Program (TARP) that left “zombie banks” and their management unscathed despite culpable behavior.

Placing the burden of collecting the unpaid support on the shoulders of mothers instead of the government is unreasonable in the face of the failure of powerful state and federal governments to enforce


232. WILLIAMS, supra note 30, at 237.

child support orders. The amount of effort required of any single mother to enforce a child support order in the United States is an additional full-time job, after child care and full-time employment.234 This further limits the mother’s ability to invest in herself and disadvantages her in the workforce.

D. Create Public Policy Exceptions to the Employment-at-Will Doctrine

The courts in every state should adopt the mandatory parenting duty public policy exception.235 Both statutory and common law requirements have lessened the harsh impact of the traditional employment-at-will doctrine.236 In view of the circumstances facing single mothers today, the common law cause of action, wrongful discharge in violation of public policy, should be extended narrowly to apply to “instances where an employee engages in a mandatory parenting duty.”237 Without this extension, which is already well established in unemployment law, parents are forced to choose between leaving their children home alone or being fired. The risks inherent in leaving unattended children in cars or at home while parents work are obvious. Likewise, the loss of income and health insurance benefits attendant to employment termination is clear. The less obvious deprivation occurs when parents’ work-first government welfare benefits are lost because of TANF.238

E. Revise the Tax Code

Shifting the tax structure from regressive to progressive is mandatory if the United States is to remedy the ills of income inequality by investing in middle and lower income children, the future workforce.239 The U.S. has far fewer public policies that help families manage competing demands of the home and the workplace and far lower income taxes than industrialized nations like Denmark, Finland,

234. See LINDSEY, supra note 3, at 117 (listing the numerous steps a woman must take to secure child support).
235. Gershuny, supra note 2, at 220.
236. Id. at 196.
237. Id.
238. Id. at 195–96.
239. See Maxine Eichner, Families, Human Dignity, and State Support for Caretaking: Why the United States’ Failure to Ameliorate the Work-Family Conflict Is a Dereliction of the Government’s Basic Responsibilities, 88 N.C. L. REV. 1593, 1623–25 (2010) (arguing for a “supportive state model” that provides support while allowing for personal autonomy (internal quotation marks omitted)).
Norway, Sweden, France, Belgium, and Canada. The Earned Income Tax Credit (EITC) provides no help to 41% of PRWORA leavers.

F. Reform Social Security to Include Women’s Biology and Caregiving

It is entirely possible to reform social security benefit calculations to include a three year caregiving period after the birth or adoption of a child so that mothers who choose to stay home with infants are not penalized later in life. Elderly single mothers are more dependent on Social Security for their income in retirement than men. The single mothers who retire faced a multitude of disadvantages during their working years created by a multitude of legal impediments to their economic success. In the same years that created an enormously wealthy upper class, laws in the United States destroyed single mothers’ incomes and their ability to save for retirement. Child support orders are not effectively enforced to this day, destroying mothers’ ability to invest in themselves and improve their earnings.

Punishing single mothers who were unable to save for retirement because of legal impediments beyond their control is irrational. The income inequality means that tax favored retirement accounts did not help low earning single mothers or their children, but did create additional wealth for the already privileged and fostered their unequal access to education.

240. Id. at 1625; see also Lisalyn Jacobs & Timothy Casey, Statement of Legal Momentum for Committee on Ways and Means January 24, 2007 Hearing on the Economic and Societal Costs of Poverty, LEGAL MOMENTUM, 2 (Jan. 24, 2007), http://www.legalmomentum.org/assets/pdfs/legalmomentumstatement1-2007-1.pdf (detailing the significant difference in spending on social welfare programs in the U.S. compared to various countries in Europe).


242. See, e.g., Kingson & O’Grady-LeShane, supra note 138, at 230 (calling for social security reform and noting that many women with children under the age of three are forced to work part-time).


244. For example, sexual harassment at work was not illegal until 1991. Anita Bernstein, Treating Sexual Harassment with Respect, 111 HARV. L. REV. 445, 462, 492–93 (1997).

245. 2010 Child Support Enforcement, supra note 46.

246. See Pratt, supra note 243, at 1113.
accounts; the bottom 20% of the accounts hold a median value of $4,500, compared to a whopping $130,000 median for the top 20%. In their old age, single mothers will be dependent on continued government provision of social security. Attempts to reduce social security benefits will impact their ability to buy food, medical care, housing, dental care, and transportation. The projected shortfall in funding for social security could be eliminated three times over by ending all of the tax cuts—not just those for the top 1%. The shortfall in Medicare, three times the size of the shortfall in Social Security, could be remedied by increasing the payroll tax.

Part of the problem single mothers face in retirement is the minimal, if any, contributions their employers make if they even offer a retirement benefit. In the U.S., employee contributions get a 50% match from most companies, up to a certain level. When an employee contributes to a retirement account or fund in an amount up to 6% of their pay, only 4% of employers match this contribution 100%, and only a third of employers make any automatic or defined matching contribution. Other developed nations contribute 7.5% of pay, twice the U.S. average. Security Exchange Commission (SEC) disclosure rules on CEO compensation packages show that their median pension benefits in 2007 were $6,106,986, almost 30% greater than the year before. CEO deferred compensation plan balances also rose by approximately 50% from the previous year to $4,517,488.

CONCLUSION

The American philosophies of “personal responsibility” and “family values” need to be integrated. The American hero, Horatio Alger, does not give birth or provide care for an infant. He is the “ideal worker,” the workplace norm that Professor Williams so eloquently protests. For the last 150 years, jobs have been designed

247. Id. at 1094.
248. Id. 1094–95.
249. See id. at 1115–16.
250. See id.
251. Id. at 1122.
252. Pratt, supra note 243, at 1122.
253. Id.
254. Id. at 1123.
255. Id.
257. Williams, supra note 4, at 31.
around this male, ideal worker who takes no time off for childbearing, child-rearing, or anything else.258 In short, jobs have been designed around men’s bodies and men’s traditional life patterns in an era when women were not educated, not employable, and not participating in public life.259

Family values elevate love for all of the members of one’s family, from the youngest to the oldest, regardless of gender, skin color, sexual preference, and national origin, over personal enrichment.260 Good families do not exclude children from eating just because of their skin color. Good democracies and good families do not give presents to 1% of their children as others watch with tears in their eyes and anger in their hearts. These are the actions of third world nations.261

Expanding these conflicting values from the family within the U.S. to the international community is Professor Crain’s contrast of dominant principles of the U.S. labor market and those of European nations. Crain argues that Americans esteem:

deferece to managerial property rights, devaluation of labor as a mere commodity, and individual rather than collective responsibility. In countries that see work as a fundamental right, it follows logically that both government and employers owe a responsibility to workers when the right is withdrawn or compromised by market events. By contrast, the American system places responsibility predominantly on the shoulders of individual workers, with only peripheral and short-term support through the unemployment insurance system provided for those who, through no fault of their own, lose jobs.262

Forget retirement benefits, Horatio Alger can shoulder the risk of saving for retirement alone. No need for nationalized health insurance, Horatio Alger can take care of himself, so the risk of illness is shifted to the shoulders of the individual who can delight in the government’s investment in his Harvard legacy education and the government’s investment in his family’s accumulation of assets if

258. Id.
259. Id.
261. See, e.g., MICHAEL LEWIS, BOOMERANG: TRAVELS IN THE NEW THIRD WORLD xii (2011) (describing the transfer of wealth from sovereign democratic governments into private hands, leaving government deficits that are equal to GNP).
262. Crain, supra note 164, at 381 (footnotes omitted).
he is born into wealth. The American single mother, however, is not Horatio Alger. The combined negative effect of her government’s law impacts her children’s future. The combined impact of the laws discussed in this paper has a negative impact on these women and children and a boomerang effect on everyone in the U.S. because it is unsustainable. The only sustainable choice is to invest equally in developing human capital.

The European system exalts family values over individual responsibility for outcomes; the American system does not. Combining Professors Crain’s and William’s perspectives on mothers and labor would reveal the limitations of the 150-year-old “ideal American” and writes a new job description for her based on her biology and socio-economic changes.  

“True equality requires new norms that take into account the characteristics—both social and biological—of women” and, by association, mothers and children. If there is a public opinion war on the topic of single mothers, it seems the majority of Americans are not swayed by publications of questionable scholarship that ignore the impact of poverty, domestic violence, and unpaid child support on single mothers’ ability to raise healthy children. Most Americans know about childhood disadvantages, like malnutrition or dangerous neighborhoods, inadequate schools, the expense of college, insecure employment, and high medical expenses and favor government intervention. Sixty-six percent of Americans favor welfare benefits for the children of single teenage mothers, reductions in income inequality and an end to the “Era of the Wealthy Class.”

Despite the support of the “silent majority” for reform, a well funded lobbying effort that can promote legislative reforms in the tax system, in Social Security, in the child support system, and in employment law may never emerge. The predictable outcome as

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263. Pratt, supra note 243, at 1128.  
264. Crain, supra note 164, at 381; Porter, supra note 2, at 406 n.357.  
265. Crain, supra note 164, at 381; Williams & Segal, supra note 4, at 84–85.  
266. Williams & Segal, supra note 4, at 85 (footnote omitted).  
269. Page & Jacobs, supra note 267, at 71, 89.  
270. Id. at 72.  
271. See Kleven, supra note 16, at 53–54 (positing that the money needed to run and succeed in office is often lacking in minority populations, so they will rarely get to office to make changes).
underfunded state governments face budget shortfalls that negatively impact their ability to provide medicare to elderly women.\textsuperscript{272} is that the nation will tolerate more suffering among older women who rely on Social Security for 90\% of their income, blaming them for their poverty in retirement and ignoring the insurmountable obstacles presented by an entire legal system that supports the nation’s wealthiest citizens at the expense of aging mothers and their children.\textsuperscript{273}

\textsuperscript{272} Jaffe, supra note 53, at 3.

\textsuperscript{273} See Pratt, supra note 243, at 1112. The United States had the highest poverty rate for female headed households out of 22 countries, 30.9\% compared with an average of 10.5\%. Jacobs & Casey, supra note 240, at 2. According to various political figures, the future of Social Security is grim. Senator Alan Simpson said that Social Security is like “a milk cow with 250 million tits.” Dana Milbank, America Has a Cow over Alan Simpson’s Candor on Deficits, WASH. POST, Sept. 5, 2010, http://www.washingtonpost.com/wp-dyn/content/article/2010/09/03/AR2010090302961.html. Senate nominee from Alaska, Joe Miller stated, “[W]e’ve got to transition out of the Social Security arrangement.” Id. Kentucky Senate nominee Rand Paul described it as a “Ponzi scheme” from which people should “opt out.” Id. Colorado Senate nominee Ken Buck called Social Security a “horrible, bad policy.” Id. Finally, Nevada nominee Sharron Angle, announced her preference for “phas[ing] Medicare and Social Security out in favor of something privatized.” Id.
## Appendix A

### Current and Past Due Child Support Owed

Table 1: Statistical Program Status, FY 2008

<table>
<thead>
<tr>
<th>States</th>
<th>Total Caseload</th>
<th>Cases Open at the End of the Year</th>
<th>Cases Open with No Jurisdiction</th>
<th>Cases with Orders Established</th>
<th>Number of Orders Established</th>
<th>Cases with Collections</th>
<th>Total Number of Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>225,438</td>
<td>225,438</td>
<td>N/A</td>
<td>180,563</td>
<td>19,218</td>
<td>193,567</td>
<td>207,881</td>
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<tr>
<td>Alaska</td>
<td>44,554</td>
<td>44,554</td>
<td>N/A</td>
<td>41,538</td>
<td>1,550</td>
<td>32,124</td>
<td>44,732</td>
</tr>
<tr>
<td>Arizona</td>
<td>212,023</td>
<td>204,988</td>
<td>7,035</td>
<td>162,755</td>
<td>8,884</td>
<td>112,057</td>
<td>230,790</td>
</tr>
<tr>
<td>Arkansas</td>
<td>121,761</td>
<td>121,761</td>
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<td>122,138</td>
<td>5,225</td>
<td>82,749</td>
<td>155,394</td>
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<tr>
<td>California</td>
<td>1,628,030</td>
<td>1,628,030</td>
<td>701</td>
<td>1,305,281</td>
<td>99,733</td>
<td>750,453</td>
<td>1,811,310</td>
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<tr>
<td>Colorado</td>
<td>140,763</td>
<td>140,763</td>
<td>23</td>
<td>122,810</td>
<td>7,877</td>
<td>108,483</td>
<td>146,987</td>
</tr>
<tr>
<td>Connecticut</td>
<td>194,222</td>
<td>193,464</td>
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<td>130,288</td>
<td>7,502</td>
<td>95,788</td>
<td>183,028</td>
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<tr>
<td>Delaware</td>
<td>67,869</td>
<td>67,869</td>
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<td>45,767</td>
<td>3,075</td>
<td>28,827</td>
<td>70,909</td>
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<td>Dist. of Col.</td>
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<td>63,203</td>
<td>N/A</td>
<td>34,633</td>
<td>2,629</td>
<td>20,707</td>
<td>60,485</td>
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<tr>
<td>Florida</td>
<td>792,233</td>
<td>792,233</td>
<td>164</td>
<td>584,953</td>
<td>49,354</td>
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<td>Georgia</td>
<td>398,965</td>
<td>398,962</td>
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<td>333,079</td>
<td>23,543</td>
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<td>372,030</td>
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<td>Guam</td>
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<td>8,694</td>
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<td>1,081</td>
<td>9,066</td>
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<td>Hawaii</td>
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<td>3,161</td>
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<td>Idaho</td>
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<td>119,915</td>
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<td>98,494</td>
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<td>345,457</td>
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<td>281,492</td>
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Note: No assumption is made regarding data reliability.

N.A. = Not Available.

Source: OCSB-157. lines 1 and 3  line 1  line 3  line 2  line 17  line 18  line 4

<table>
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<th>States</th>
<th>Total Caseload</th>
<th>Cases Open at the End of the Year</th>
<th>Cases Open with No Jurisdiction</th>
<th>Cases with Orders Established</th>
<th>Number of Orders Established</th>
<th>Cases with Collections</th>
<th>Total Number of Children</th>
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<td>954,483</td>
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<td>255,004</td>
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<td>247,950</td>
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<td>208,097</td>
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<td>183,840</td>
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<td>550,970</td>
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<td>351,966</td>
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<td>293,598</td>
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Table 2: Current and Arrears Collections Due and Distributed, FY 2008\(^{274}\)

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<th>States</th>
<th>Amount of Current Support Due</th>
<th>Amount of Support Collected and Distributed as Current Support</th>
<th>Amount of Arrears Due for All Fiscal Years</th>
<th>Amount of Support Collected and Distributed as Arrears</th>
</tr>
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<td>$2,801,235,462</td>
<td>$112,620,411</td>
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<td>45,011,784</td>
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<td>90,879,717</td>
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<td>95,814,841</td>
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<td>24,267,387</td>
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</table>

Note: No assumption is made regarding data reliability.

\(^{274}\) 2008 Child Support Enforcement, supra note 13.
<table>
<thead>
<tr>
<th>States</th>
<th>Amount of Current Support Due</th>
<th>Amount of Support Collected and Distributed as Current Support</th>
<th>Amount of Arrearages Due for All Fiscal Years</th>
<th>Amount of Support Collected as Arrears</th>
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<td>447,672,202</td>
<td>2,063,604,791</td>
<td>178,962,905</td>
</tr>
<tr>
<td>Washington</td>
<td>749,730,207</td>
<td>437,706,202</td>
<td>1,765,659,355</td>
<td>201,529,009</td>
</tr>
<tr>
<td>West Virginia</td>
<td>208,320,241</td>
<td>126,973,898</td>
<td>561,458,588</td>
<td>45,768,759</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>650,900,049</td>
<td>488,220,734</td>
<td>2,375,549,278</td>
<td>135,718,254</td>
</tr>
<tr>
<td>Wyoming</td>
<td>63,843,648</td>
<td>45,170,000</td>
<td>167,529,383</td>
<td>23,307,418</td>
</tr>
<tr>
<td><strong>TOTALS</strong></td>
<td><strong>$31,419,969,769</strong></td>
<td><strong>$19,498,906,857</strong></td>
<td><strong>$105,648,106</strong></td>
<td><strong>$8,281,141</strong></td>
</tr>
</tbody>
</table>
## APPENDIX B

### 26–64 Years of Age

<table>
<thead>
<tr>
<th>Highest Educational Attainment</th>
<th>Average Earnings if Working 50 Weeks and 35 or More Hours/Week</th>
</tr>
</thead>
<tbody>
<tr>
<td>13% Without a High School Diploma</td>
<td>$25,894</td>
</tr>
<tr>
<td>28.4% High School</td>
<td>$34,197</td>
</tr>
<tr>
<td>29.3% Some College, Associate's Degree</td>
<td>$41,611</td>
</tr>
<tr>
<td>18.9% Bachelor's Degree</td>
<td>$57,026</td>
</tr>
<tr>
<td>10.5% Master's, Professional, Doctorate Degrees</td>
<td>$78,919</td>
</tr>
</tbody>
</table>

### Without College Degrees

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Employed</th>
<th>Employed All Year</th>
<th>Annual Income</th>
<th>Employed Part Time or Partial Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Without HS Degree</td>
<td>20,787,748</td>
<td>13,407,300</td>
<td>7,366,344</td>
<td>57%</td>
<td>$24,804</td>
</tr>
<tr>
<td>HS Graduate</td>
<td>45,408,238</td>
<td>35,418,442</td>
<td>24,066,377</td>
<td>53%</td>
<td>$34,197</td>
</tr>
<tr>
<td>Some College, Associate's Degree</td>
<td>45,740,032</td>
<td>30,201,439</td>
<td>25,711,950</td>
<td>57%</td>
<td>$41,611</td>
</tr>
<tr>
<td>TOTALS</td>
<td>112,945,038</td>
<td>88,027,181</td>
<td>58,877,677</td>
<td>52%</td>
<td>$36,454</td>
</tr>
</tbody>
</table>

### With College Degrees

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Employed</th>
<th>Employed All Year</th>
<th>Annual Income</th>
<th>Employed Part Time or Partial Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bachelor Degree</td>
<td>30,138,179</td>
<td>20,521,598</td>
<td>16,686,671</td>
<td>62%</td>
<td>$85,025</td>
</tr>
<tr>
<td>Advanced Degree</td>
<td>16,780,323</td>
<td>15,172,912</td>
<td>10,398,651</td>
<td>62%</td>
<td>$78,919</td>
</tr>
<tr>
<td>TOTALS</td>
<td>46,918,502</td>
<td>44,813,510</td>
<td>20,081,422</td>
<td>62%</td>
<td>$84,854</td>
</tr>
</tbody>
</table>

---

### 65 Years of Age and Over

<table>
<thead>
<tr>
<th></th>
<th>Total</th>
<th>Annual Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Without HS Degree</td>
<td>7,323,000</td>
<td>$19,385</td>
</tr>
<tr>
<td>HS Graduate</td>
<td>11,529,000</td>
<td>$28,469</td>
</tr>
<tr>
<td>Some College</td>
<td>4,143,000</td>
<td>$29,602</td>
</tr>
<tr>
<td>Bachelor's Degree</td>
<td>4,675,000</td>
<td>$41,147</td>
</tr>
<tr>
<td>Master's Degree</td>
<td>2,539,000</td>
<td>$45,138</td>
</tr>
<tr>
<td>Professional Degree</td>
<td>490,000</td>
<td>$95,440</td>
</tr>
<tr>
<td>Doctorate Degree</td>
<td>541,000</td>
<td>$95,585</td>
</tr>
</tbody>
</table>

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