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Promoting the General Welfare: Legal Reform to Lift Women and Children in the United States Out of Poverty

*Jill C. Engle**

I. INTRODUCTION

It is no secret that women have long been economically disadvantaged in the United States. During the nation's first century, laws sanctioned female subjugation.¹ Most notably, the United States legal system adopted the English common law principle of "coverture" whereby wives lacked legal status of their own and were instead "covered" by their "baron and lord" husbands.² William Blackstone rationalized that "even the [disabilities], which the wife lies under, are for the [most] part intended for her protection and benefit. So great a favourite is the female [sex] of the laws of England."³ Like Blackstone, people in the United States often mischaracterized the financial barriers for women as affectionately protectionist.⁴ These mischaracterizations were perpetuated not just by English common law, but also by state statutes in the United States and even by early United States Supreme Court decisions, such as *Bradwell v.*

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1. 2 FREDERICK POLLOCK & FREDERIC WILLIAM MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I 405-06* (S.F.C. Milsom ed., 1968) (1898) (describing the legal disabilities of married women, most importantly losing rights to real and personal property to husbands upon marriage and being unable to contract).

2. Claudia Zaher, *When a Woman's Marital Status Determined her Legal Status: A Research Guide on the Common Law Doctrine of Coverture*, 94 *LAW LIBR. J.* 459, 460 (2002).

3. 1 WILLIAM BLACKSTONE, *COMMENTARIES* 445 (1765).

4. See, e.g., Zaher, *supra* note 2, at 460-61 (citing Danaya C. Wright, *DeMannville v. DeMannville: Rethinking the Birth of Custody Law Under Patriarchy*, 17 *LAW & HIST. REV.* 247, 304 (1990) (explaining the common law doctrine of coverture that governed married women in the early United States, stating that "[u]nder coverture, a wife simply had no legal existence"; and further explaining the "separate spheres" doctrine that persisted through the nineteenth century which relegated women to home-based duties and denied them any public or economic status both socially and legally).

Illinois.⁵ Upholding an Illinois statute banning women from the practice of law, the Court relied on the inferior status of women at common law to support the dubious conclusion that “[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.”⁶

Notwithstanding that grim pronouncement, the legal landscape for women improved incrementally, and in fact had already begun to change when the Court decided *Bradwell* in 1873.⁷ Starting in the 1860s, most states enacted legislation giving women the power to contract and own property even after marriage.⁸ Subsequent feminist legal advancements included the passage of the Nineteenth Amendment in 1920, which made voting rights gender neutral.⁹ Late in the twentieth century, Congress passed landmark federal employment legislation, including the Pregnancy Discrimination Act¹⁰ and the Family and Medical Leave Act.¹¹ The Court eventually overturned *Bradwell* in *Reed v. Reed*, although not for nearly a century.¹²

Perhaps most salient for this discussion is the Equal Pay Act of 1963, legislation in which Congress intended to guarantee equal pay for equal work regardless of gender.¹³ Despite numerous legal reforms, the financial security of women in the United States remains severely compromised. Even

5. See generally *Bradwell v. Illinois*, 83 U.S. 130 (1873) (holding the right to obtain a license to practice law is not guaranteed by the Fourteenth Amendment to all citizens of the United States).

6. *Id.* at 141.

7. *Id.* at 130.

8. See generally NORMA BASCH, *IN THE EYES OF THE LAW: WOMEN, MARRIAGE AND PROPERTY IN NINETEENTH CENTURY NEW YORK* 28 (1982) (explaining that beginning in the mid-1800s, married women’s property acts were enacted in most states, giving women various rights in contract and property).

9. U.S. CONST. amend. XIX (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex”).

10. Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (codified as amended at 42 U.S.C. § 2000e(k) (2006)).

11. Family and Medical Leave Act of 1993, Pub. L. No. 103-3, 107 Stat. 6 (codified as amended at 29 U.S.C. §§ 2601 *et seq.* (2006)).

12. See generally *Reed v. Reed*, 404 U.S. 71, 77 (1971) (holding the Idaho Probate Code, which specified that “males must be preferred to females” in appointing administrators of estates, violated the Equal Protection Clause of the Fourteenth Amendment).

13. Equal Pay Act of 1963, Pub. L. No. 88-38, 77 Stat. 56 (codified as amended at 29 U.S.C. § 206(d) (2012)). See also Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, 123 Stat. 5 (codified as amended in scattered sections of 29 U.S.C., 42 U.S.C.) (clarifying that wage discrimination on the basis of gender is unlawful).

the Equal Pay Act of 1963 has its limitations, considering that female workers in the United States, many in low-paying careers, earn about 20% less than their male counterparts.¹⁴ This and numerous other markers illustrate the economic crisis facing millions of women and their children in the United States.¹⁵ Nearly 40% of single mothers and their children subsist below the poverty level.¹⁶ Motherhood itself is in fact a negative economic indicator.¹⁷ The “maternal wall” is a well-documented but little publicized phenomenon where women’s earning power decreases once they begin having children.¹⁸ Women with children earn less as a group than their male counterparts, but also earn less than their female childless counterparts.¹⁹ Mothers are also more likely to work part-time, which adds another layer to

14. See BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, *MEDIAN WEEKLY EARNINGS OF FULL-TIME WAGE AND SALARY WORKERS BY DETAILED OCCUPATION AND SEX* (2010), available at <ftp://ftp.bls.gov/pub/special.requests/lf/aa2010/pdf/cpsaat39.pdf> (showing that median weekly earnings for women were \$669 while those of men were \$824); see also Bureau of Labor Statistics, *The Editor’s Desk, Women’s Earnings as a Percentage of Men’s, 2008*, U.S. DEP’T LAB. (Oct. 14, 2009), http://www.bls.gov/opub/ted/2009/ted_20091014.htm.

15. See, e.g., Nat’l Poverty Ctr., *Poverty Facts: Poverty in the United States: Frequently Asked Questions*, <http://npc.umich.edu/poverty/> (last visited Oct. 8, 2012) (explaining that “[p]overty rates are highest for families headed by single women In 2010, 31.6 percent of households headed by single women were poor, while 15.8 percent of households headed by single men and 6.2 percent of married-couple households lived in poverty” and that “[c]hildren represent a disproportionate share of the poor in the United States; they are 24 percent of the total population, but 36 percent of the poor population. In 2010, 16.4 million children, or 22.0 percent, were poor”).

16. Heidi Sheirholz, *New 2008 Poverty, Income Data Reveal Only Tip of the Recession Iceberg*, ECON. POL’Y INST. (Sept. 10, 2009), http://www.epi.org/publications/entry/income_picture_20090910 (explaining that “37.2% of all families headed by single mothers were living in poverty” in 2008 and predicting that the number would rise to 46.4% by 2010).

17. See generally Michelle J. Budig & Paula England, *The Wage Penalty for Motherhood*, 66 AM. SOC. REV. 204 (2001) (discussing how motherhood is associated with lower pay); Wenjui Han & Jane Waldfogel, *Child Care Costs and Women’s Employment: A Comparison of Single and Married Mothers with Pre-School-Age Children*, 82 SOC. SCI. Q. 552 (2001) (discussing the differences in wages between women with children, women without children, and men); Heather Joshi et al., *The Wages of Motherhood: Better or Worse?*, 23 CAMBRIDGE J. ECON. 543 (1999) (discussing the effect of childcare costs on single and married mothers); Jane Waldfogel, *The Effects on Children on Women’s Wages*, 72 AM. SOC. REV. 209 (1997) (explaining the myriad of economic disadvantages that motherhood carries, such as an increase in the gender wage gap and standard of living decrease due to child care costs).

18. Joan C. Williams, *Keynote Address: Want Gender Equity? Die Childless at Thirty*, 27 WOMEN’S RTS. L. REP. 3, 3–4, 6–7 (2006) [hereinafter Williams, *Keynote*].

19. Katherine Seligman, *The Motherhood Movement: Can a Group Like MomsRising Finally Foment Policy Change in American by Harnessing a Citizen Army of Mothers?*, S.F. CHRON., May 20, 2007, <http://www.sfgate.com/magazine/article/The-Motherhood-Movement-Can-a-group-like-2574122.php>.

their economic disadvantage.²⁰ The situation is bleakest for women and children of color, demonstrated most starkly by poverty rates for African-American and Hispanic children, hovering around 40% higher than those of Caucasian children.²¹ The disadvantage continues even into the golden years, with women sixty-five and older being twice as likely as men to live in poverty.²²

This Article examines the increasingly dire economic circumstances of poor women and children in the United States, emphasizing the disproportionate effects on minorities and domestic abuse victims. It also explains how the law can help resolve this crisis. Part II describes the dreadful economic state of women and children in the United States, examining both cause and effect and highlighting the strong predictors of divorce and domestic violence. Part III explains the role of federally-funded programs and budget strategies in eradicating the problem. Finally, Part IV calls for radical legal reform to nationalize an alimony system as an economic safety net for divorcing women and their children.

II. WOMEN'S DISADVANTAGED ECONOMIC STATUS IN THE UNITED STATES: THE CURRENT CRISIS, INCLUDING THE FINANCIAL DOWNTURN POST-2007

Since late 2007, the United States has been embroiled in a "Great Recession."²³ Despite the nominal "recovery" period, millions in the United States still struggle economically. Chicago economist Diane Swonk described the economic status of the United States in 2011 as an experience akin to "recovering from a massive heart attack: People are alive, but they

20. See Williams, *Keynote*, *supra* note 18, at 3–4.

21. Sheirholz, *supra* note 16, at 2 (stating that "[i]n 2008, over one-third (33.9%) of all black children and nearly one-third (30.6%) of all Hispanic children were living in poverty"); see also NAT'L WOMEN'S LAW CTR., *POVERTY AMONG WOMEN AND FAMILIES, 2000-2009: GREAT RECESSION BRINGS HIGHEST RATE IN 15 YEARS 3* (2010), available at <http://www.nwlc.org/sites/default/files/pdfs/povertyamongwomenandfamilies2009revnewgraphs.pdf> [hereinafter *POVERTY AMONG WOMEN AND FAMILIES*] (stating that "[p]overty rates were particularly high [in 2009], at more than one in five, among Black (24.6 percent), Hispanic (23.8 percent), and Native American (24.7 percent) women"); NAT'L WOMEN'S LAW CTR., *FACT SHEET: CLOSING THE WAGE GAP IS ESPECIALLY IMPORTANT FOR WOMEN OF COLOR IN DIFFICULT TIMES 1–3* (2012), available at <http://www.nwlc.org/sites/default/files/pdfs/womenofcolorfactsheet.pdf> (explaining why the wage gap is much higher for African-American and Hispanic women).

22. NAT'L WOMEN'S LAW CTR., *WOMEN AND SOCIAL SECURITY: KEY FACTS 2* (2011), available at <http://www.nwlc.org/sites/default/files/pdfs/womenandsocialsecuritykeyfacts-may2011.pdf>.

23. WHITE HOUSE NAT'L ECON. COUNCIL, *JOBS AND ECONOMIC SECURITY FOR AMERICA'S WOMEN 9* (2010), available at <http://www.whitehouse.gov/sites/default/files/Jobs-and-Economic-Security-for-Americas-Women.pdf>.

are not doing well”²⁴ The percentage of women in the United States living in poverty grew from 13.0% in 2008 to 13.9% in 2009, the most dramatic one-year increase since 1980.²⁵ For children, this problem is even worse: in one year the child poverty rate increased from 19.0% in 2008 to 20.7% in 2009.²⁶ The National Women’s Law Center aptly calls these increases “alarming.”²⁷ By many accounts, the recession has negatively impacted women and children—particularly women and children of color—in disproportionate and devastating ways.²⁸ Part III discusses the specific effects, but first this Article examines more comprehensively the evidence of the unacceptable economic state of millions of women and children in the United States. This Part also details numerous causes of the problem; in some instances, the “evidence of” and “causes for” are difficult to separate—presenting a chicken-and-egg conundrum. Rather than getting bogged down in that debate, this Part aims to discuss all of the relevant factors, some serving as both causes and effects depending on the context.

A. Unemployment and the Wage Gap: Two Sides of the Same Coin

Women suffer from a financial disadvantage in both unemployed and working sectors. Consider first unemployment, the most striking result of the recession.²⁹ Poverty has increased since 2007 in large part because

24. Alejandra Cancino, *For Many Families Across Chicago, Recession’s Grip Hasn’t Eased*, CHI. TRIB., June 1, 2011, http://articles.chicagotribune.com/2011-06-01/business/ct-biz-0602-chicago-families-20110601_1_seasonal-jobs-retail-job-private-sector.

25. POVERTY AMONG WOMEN AND FAMILIES, *supra* note 21, at 1.

26. *Id.*

27. *Id.*

28. WHITE HOUSE NAT’L ECON. COUNCIL, *supra* note 23, at 9 (explaining that “substantial job losses have occurred in industries where women comprise a disproportionate percentage of the workforce, such as in retail trade, leisure and hospitality, and financial activities” and that “[t]he recession was the hardest on those with the least ability to weather the storm. Women who are single heads of households had an unemployment rate of 13.6 percent during the recession, their highest unemployment rate in over 25 years”); *see also* THE OPPORTUNITY AGENDA, THE STATE OF OPPORTUNITY IN AMERICA 2010, at 1 (2010), *available at* http://opportunityagenda.org/files/field_file/State%20of%20Opportunity%202010%20Update.pdf (citing the increases in poverty from 2007 to 2008 and describing the “race and ethnicity poverty gap”); *see generally* Julia B. Isaacs, *Child Poverty During the Great Recession: Predicting State Child Poverty Rates for 2010* (Jan. 2011) (unpublished paper) (on file with the University of Wisconsin-Madison Institute for Research on Poverty), *available at* <http://www.irp.wisc.edu/publications/dps/pdfs/dp138911.pdf> (explaining that child poverty rates have risen during the recession, as is typical in times of economic downturn and rising unemployment).

29. James C. Cooper, *Recession Nightmare: From Unemployed to Unemployable*, FISCAL TIMES (Oct. 10, 2011), <http://www.thefiscaltimes.com/Columns/2011/10/10/Recession-Nightmare->

unemployment has increased.³⁰ The current unemployment crisis is the most severe one that the United States has seen in decades.³¹ According to the Bureau of Labor Statistics, job openings fell dramatically during the recession³² and unemployment has risen to historic proportions, above 9.5% in 2010 and stagnating at 8.9% in 2011.³³ This crisis has had a disproportionate effect on women and children.³⁴

Unemployment rates are higher for women than men, higher for single women—many of whom are raising families—than married women, and highest yet for Hispanic and African-American women.³⁵ Unemployment is nearly twice as common for single mothers than married men.³⁶ The corresponding rise in child poverty during times of increased unemployment is striking, with one researcher finding a 0.39 percentage point rise in child poverty for every percentage point increase in the unemployment rate.³⁷ Empirical evidence confirms that women of color and their children are the most vulnerable.³⁸ For example, nearly twice as many female African-

From-Unemployed-to-Unemployable.aspx#page1 (characterizing “[l]ong-term unemployment” as “the defining feature of the Great Recession”).

30. See POVERTY AMONG WOMEN AND FAMILIES, *supra* note 21, at 1 (asserting that “[t]he dramatic spike in poverty [in 2009] reflects the surge in job losses that began with the onset of the ‘Great Recession’ in December 2007 and accelerated rapidly during 2009”).

31. *Id.*

32. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, JOB OPENINGS AND LABOR TURNOVER SURVEY: HIGHLIGHTS 6 (2012), available at http://www.bls.gov/web/jolts/jlt_labstatgraphs.pdf [hereinafter JOB OPENINGS AND LABOR TURNOVER SURVEY: HIGHLIGHTS] (pointing out that “[j]ob openings in the private sector decreased steeply during the recession”).

33. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, HOUSEHOLD DATA: ANNUAL AVERAGES: 1. EMPLOYMENT STATUS OF THE CIVILIAN NON-INSTITUTIONAL POPULATION, 1941 TO DATE 2 (2012), available at <http://www.bls.gov/cps/cpsaat01.pdf>.

34. WOMEN’S ECON. SEC. CAMPAIGN, AIMING HIGHER: REMOVING BARRIERS TO EDUCATION, TRAINING AND JOBS FOR LOW-INCOME WOMEN 3 (2010), available at <http://womensfundingnetwork.org/sites/wfnet.org/files/WESC/Aiming-Higher-Jobs-Education-Training.pdf> (citing BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, EMPLOYMENT SITUATION (2012), available at <http://bls.gov/news.release/pdf/empstat.pdf>).

35. WOMEN’S ECON. SEC. CAMPAIGN, *supra* note 34.

36. ASHLEY ENGLISH, HEIDI HARTMANN & ARIANE HEGEWISCH, INST. FOR WOMEN’S POLICY RESEARCH, UNEMPLOYMENT AMONG SINGLE MOTHER FAMILIES (2009), available at <http://www.iwpr.org/publications/pubs/unemployment-among-single-mother-families>.

37. Isaacs, *supra* note 28, at 9 (citing R.M. Blank, *Economic Change and the Structure of Opportunity for Less-Skilled Workers*, in CHANGING POVERTY, CHANGING POLICIES (M. Cancian & Sheldon H. Danziger eds., 2009)).

38. MARIKO CHANG & C. NICOLE MASON, WOMEN OF COLOR POLICY NETWORK, AT ROPE’S END: SINGLE WOMEN MOTHERS, WEALTH AND ASSETS IN THE U.S. 6–7 (2010), available at <http://wagner.nyu.edu/wocpn/publications/files/AtRopesEnd.pdf>.

American and Latina heads of households lived in poverty as their Caucasian counterparts in 2009.³⁹

Millions of working women are suffering as well. The wage gap is insidious and, coupled with many women's disproportionate share of child care, inextricably linked to female poverty.⁴⁰ In fact, many poor women are actually part of the workforce, but earning paltry wages.⁴¹ This is striking when compared to males, who on average earn around 20% more than females—the most fundamental statistic illustrating the wage gap.⁴² Even at full-time hours, a minimum wage job puts a worker below the poverty level.⁴³ This illustrates a long-term problem in the employment sector, one that predated the recession, with over 18% of the United States private sector workforce—regardless of gender—earning poverty or sub-poverty level wages in 2006.⁴⁴ In 2005, the Economic Policy Institute reported that over 29% of working families in the United States were living on budgets that barely covered their housing, child care, health care, food, transportation, and taxes.⁴⁵ The numbers were much higher for single-headed households—as much as 92% for single parents with three children.⁴⁶ Since women comprise the majority of single parents, they bear the lion's share of the economic pain.⁴⁷ The fundamental wage gap and the resulting female

39. *Id.*

40. ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD* 88 (2001).

41. Elizabeth A. Mulroy, *Women and Housing Affordability in the United States*, in *WOMEN AND HOUSING: AN INTERNATIONAL ANALYSIS* 55 (Patricia Kennett & Chan Kam Wah eds., 2011).

42. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, *BLS SPOTLIGHT ON STATISTICS: WOMEN AT WORK* 7 (2011), available at http://www.bls.gov/spotlight/2011/women/pdf/women_bls_spotlight.pdf [hereinafter *BLS SPOTLIGHT ON STATISTICS: WOMEN AT WORK*].

43. Peter B. Edelman, *Changing the Subject: From Welfare to Poverty to a Living Income*, 4 *NW. J.L. & SOC. POL'Y* 14, 21 (2009); see also Doug Hall, *Increasing the Minimum Wage Is Smart for Families*, *ECON. POL'Y INST.* (May 19, 2011), http://www.epi.org/publication/increasing_the_minimum_wage_is_smart_for_families_and_the_economy/ (explaining that “[a] worker employed full-time at minimum wage earns \$15,080, nearly \$3,500 less than the federal poverty level for a family of three”).

44. Paul Osterman, *Improving Job Quality: Policies Aimed at the Demand Side of the Low-Wage Labor Market*, in *IN A FUTURE OF GOOD JOBS?: AMERICA'S CHALLENGE IN THE GLOBAL ECONOMY* 205 (Timothy J. Bartik & Susan N. Houseman eds., 2008), available at http://research.upjohn.org/cgi/viewcontent.cgi?article=1017&context=up_bookchapters.

45. Sylvia A. Allegretto, *Basic Family Budgets: Working Families' Incomes Often Fail to Meet Living Expenses Around the U.S.*, *ECON. POL'Y INST.* (Aug. 30, 2005), <http://www.epi.org/publication/bp165/>.

46. *Id.*

47. VICKY LOVELL, HEIDI HARTMANN & CLAUDIA WILLIAMS, *WOMEN AT GREATER RISK OF ECONOMIC INSECURITY: A GENDER ANALYSIS OF THE ROCKEFELLER FOUNDATION'S AMERICAN*

poverty is just an outer layer to this widespread problem. A related phenomenon is the low-wage nature of female-dominated occupations, a term developed to reflect the fact that women comprise more than 75% of the labor force in these types of jobs.⁴⁸ Unfortunately, most female-dominated job sectors offer relatively low wages compared to job sectors dominated by men.⁴⁹ In numerous professions, mostly those that employ primarily women, the wage gap between men and women is even higher than the 20% average wage gap.⁵⁰ The wage gap also widens considerably when examined for racial inequality.⁵¹ For example, on average, African-American women earn only 62% and Hispanic women earn only 53% of the income of Caucasian, non-Hispanic males.⁵²

Similarly, the reality that more women work part-time than men exacerbates the problem. Women comprise almost half of the United States workforce, which is reflective of gender distribution, but they make up 60% of those working part-time.⁵³ Part-time work carries distinct financial disadvantages—including an average 21% lower hourly wage.⁵⁴ Consistent with the trend, it is not just women overall but mothers specifically who comprise a large portion of the part-time workforce.⁵⁵

Working mothers make up a significant portion of the aggregate United

WORKER SURVEY 3 (2008), available at <http://www.iwpr.org/publications/pubs/women-at-greater-risk-of-economic-insecurity-a-gender-analysis-of-the-rockefeller-foundation2019s-american-worker-survey> (follow “Free Download” hyperlink).

48. ARIANE HEGEWISCH ET AL., *SEPARATE AND NOT EQUAL? GENDER SEGREGATION IN THE LABOR MARKET AND THE GENDER WAGE GAP* 8 (2010), available at <http://www.iwpr.org/publications/pubs/separate-and-not-equal-gender-segregation-in-the-labor-market-and-the-gender-wage-gap>.

49. *Id.*

50. NAT’L WOMEN’S LAW CTR., *36 CENTS SHORT—WAGE GAP IN SALES AND RELATED OCCUPATIONS HIGHEST OF ANY SECTOR* (2011), available at http://www.nwlc.org/sites/default/files/pdfs/retail_wage_gap_fact_sheet_draft_1.20.11.pdf; see also BLS SPOTLIGHT ON STATISTICS WOMEN AT WORK, *supra* note 42, at 1,7.

51. POVERTY AMONG WOMEN AND FAMILIES, *supra* note 21, at 10.

52. *Id.*

53. BUREAU OF LABOR STATISTICS, U.S. DEP’T OF LABOR, PUB. NO. 23 ANNUAL AVERAGES-HOUSEHOLD DATA: CURRENT POPULATION SURVEY 39 (2010), available at <ftp://ftp.bls.gov/pub/special.requests/lf/aa2010/pdf/cpsaat23.pdf>.

54. Joan Williams, *What Depresses Women? The Choices They Have*, HUFFINGTON POST (Sept. 22, 2009, 1:01 PM), http://huffingtonpost.com/joan-williams/what-depresses-women-the_b_292699.html.

55. Williams, *Keynote*, *supra* note 18, at 3–4.

States workforce,⁵⁶ and many are economically disadvantaged by an often overlooked “motherhood penalty.”⁵⁷ Scholars have analyzed the effects of the motherhood penalty on factors that are not directly tied to wages, such as promotions and lack of flexible time systems in the workplace, but the most cogent example relates to earnings.⁵⁸ Mothers earn 27% less than their male counterparts, while childless women earn only 10% less than these men.⁵⁹ These earning disparities have ripple effects on the children of working mothers. Households headed by women have startlingly lower median incomes than married couple households with predictable racial disparities as well.⁶⁰ The annual median income for Asian and Caucasian married couple households is around \$80,000, while that of African-American and Hispanic female-headed households is around \$27,000.⁶¹

B. Divorce: A Slippery Slope into Poverty for Former Wives

Poverty itself has many causes, but divorce is one of the most predictable causes of economic distress for women and children in the United States. An oft-cited but controversial study published in 1985 by Lenore Weitzman concluded that, in California, the standard of living for wives declined 73% following divorce, while that of husbands improved by 42%.⁶² Subsequent studies by other researchers indicate the post-divorce standard of living gap is smaller, but still show a significant decline for women and an improvement for men.⁶³ National and state lawmakers have

56. LIZ WEISS & PAGE GARDNER, CTR. FOR AM. PROGRESS, ADVANCING THE ECONOMIC SECURITY OF UNMARRIED WOMEN: OVERVIEW OF LAWS AND LEGISLATION IN THE 111TH CONGRESS 3 (2010), available at http://www.americanprogress.org/issues/2010/03/pdf/unmarried_women.pdf (“Most women today work to support themselves and their families Nearly 80 percent of prime-age (25 to 54) unmarried women are in the labor force Unmarried women workers are often the sole breadwinner for their households and families, and many have children, elderly parents or other relatives to support financially and through caregiving.”).

57. Williams, *Keynote*, *supra* note 18, at 3.

58. CRITTENDEN, *supra* note 40, at 19; Williams, *Keynote*, *supra* note 18, at 9–11.

59. Seligman, *supra* note 19, at 16.

60. CHANG & MASON, *supra* note 38, at 14–15.

61. *Id.* at 14 fig.7.

62. LENORE J. WEITZMAN, THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA 339 (1985).

63. See, e.g., James B. McLindon, *Separate But Unequal: The Economic Disaster of Divorce for Women and Children*, 21 FAM. L.Q. 351, 391 (1987) (explaining that “men emerge from their divorces in far better economic shape than their wives do,” after examining Weitzman’s data as well as analogous studies from Ohio and Vermont). But see RICHARD R. PETERSON, WOMEN, WORK,

made numerous attempts in recent history to systemically protect financially vulnerable individuals and promote financial equity.⁶⁴ At the federal level, Congress passed an act to bolster enforcement of child support obligations across state lines and included safeguards to ensure that states follow its guidelines.⁶⁵ In Pennsylvania, the Divorce Code serves as an example of state legislation that promotes financial health for families even upon their dissolution, pronouncing that the State's "policy . . . [is] to [e]ffectuate economic justice"⁶⁶ Still, women and children generally end up poorer after divorce than men.⁶⁷

The effects on children are especially troubling. Margaret F. Brinig, an Associate Dean, Family Law Professor at the University of Notre Dame Law School, and member of the American Law Institute, explained that "[c]hildren [of divorce] may lose out for a number of reasons. They tend to be poorer than those from intact families, and will in all probability suffer a variety of psychological and social problems."⁶⁸ Their mothers are much

AND DIVORCE 106 (1989) (showing a 30% to 40% decrease for women after divorce which can eventually be in the 5% to 20% range); Saul D. Hoffman & Greg J. Duncan, *What are the Economic Consequences of Divorce?*, 25 *DEMOGRAPHY* 641, 643 (1988) (estimating the decrease for women at 33%); Richard R. Peterson, *A Re-Evaluation of the Economic Consequences of Divorce*, 61 *AM. SOC. REV.* 528, 534 (1996) (examining Weitzman's data and instead concluding that men's standard of living improved by 10% and women's declined by 27%); see also NAT'L WOMEN'S LAW CTR., *supra* note 22, at 2 (citing U.S. government data which shows that women over sixty-five living alone have a poverty rate of 17%, while the rate for men over sixty-five living alone is 12%—the data could include individuals living alone due to widowhood or never having married as well as divorce); HEIDI HARTMANN, INST. FOR WOMEN'S POLICY RESEARCH, *FACT SHEET: WOMEN AND ENTITLEMENTS* (2009), available at <http://www.iwpr.org/publications/pubs/women-and-entitlements> (follow "Free Download" hyperlink).

64. See, e.g., 23 PA. CONS. STAT. § 3102(a)(6) (2008) (purporting that it "is the policy of the Commonwealth to [e]ffectuate economic justice between parties who are divorced or separated and grant or withhold alimony according to the actual need and ability to pay of the parties and insure a fair and just determination and settlement of their property rights"); UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 159 (2005 & Supp. 2008) (first promulgated in 1992 to replace the Uniform Reciprocal Enforcement of Support Act, and required for receipt of state funding under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 666, commonly known as the "Welfare Reform Act").

65. UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 159 (2005 & Supp. 2008).

66. 23 PA. CONS. STAT. § 3102(a)(6) (2008).

67. MARGARET F. BRINIG, *FROM CONTRACT TO COVENANT: BEYOND THE LAW AND ECONOMICS OF THE FAMILY* 148–49 (2000).

68. *Id.* at 174 (citing BARBARA DAFOE WHITEHEAD, *THE DIVORCE CULTURE* 94 (1997) (citing ALLEN M. PARKMAN, *NO-FAULT DIVORCE: WHAT WENT WRONG?* (1992)) (explaining that "[i]n his *No-Fault Divorce: What Went Wrong?* Allen Parkman notes that much of what makes modern economic divisions at divorce unfair to women is a failure by courts and legislatures to take the concept of human capital into account").

more likely to be unemployed, due to the recession.⁶⁹ The unemployment rate for single mothers was much higher than the record-high national average during the recession—13.6% for single mothers compared to rates stagnating around 9% overall.⁷⁰ Even if courts grant mothers child support, data shows less than half of children actually receive the full amount.⁷¹ They are also less likely to live in stable housing, because only one-third of single mothers are homeowners.⁷² By comparison, homeownership among two-parent families is much more common (69%).⁷³ As explained below in Part IV, policymakers can help stem the tide by making alimony (which has declined considerably since the advent of no-fault divorce in the 1970s)⁷⁴ automatic upon divorce for lower-earning wives.

It is not just a tiny class of single mothers and their children suffering from economic ills. Consider that in the late 2000s, 40% of births were out of wedlock.⁷⁵ While many single mothers were never married (47%),⁷⁶ the majority of them experienced divorce.⁷⁷ Millions of women are raising children as single parents, yet they remain the most financially vulnerable

69. WHITE HOUSE NAT'L ECON. COUNCIL, *supra* note 23 (citations omitted); *see also* JOB OPENINGS AND LABOR TURNOVER SURVEY: HIGHLIGHTS, *supra* note 32 (discussing the nationwide unemployment rate during the recession).

70. WHITE HOUSE NAT'L ECON. COUNCIL, *supra* note 23, at 8 (citations omitted).

71. CHANG & MASON, *supra* note 38, at 19 (citing TIMOTHY S. GRALL, U.S. DEP'T OF COMMERCE, CUSTODIAL MOTHERS AND FATHERS AND THEIR CHILD SUPPORT: 2007, at 8 (2009), available at <http://www.census.gov/prod/2009pubs/p60-237.pdf>).

72. *Id.* at 24 (citing Brian K. Bucks et al., *Changes in U.S. Family Finances from 2004 to 2007: Evidence from the Survey of Consumer Finances*, 95 FED. RES. BULL., A1 (2009)).

73. *Id.*

74. *See, e.g.*, Robert E. McGraw, Gloria J. Sterin & Joseph M. Davis, *A Case Study of Divorce Law Reform and Its Aftermath*, 20 J. FAM. L. 443, 473 (1981–1982) (explaining that alimony declined dramatically in Ohio after the State changed its divorce laws in the 1970s).

75. STEPHANIE J. VENTURA, NAT'L CTR. FOR HEALTH STATISTICS, U.S. DEPT. OF HEALTH AND HUMAN SERVS., NCHS DATA BRIEF NO. 18: CHANGING PATTERNS OF NONMARITAL CHILDBEARING IN THE UNITED STATES 5 (2009), available at <http://www.cdc.gov/nchs/data/databriefs/db18.pdf> (discussing data from 2007); *see also* Jason DeParle & Sabrina Tavernise, *For Women Under 30, Most Births Occur Outside Marriage*, N.Y. TIMES, Feb. 17, 2012, http://www.nytimes.com/2012/02/18/us/for-women-under-30-most-births-occur-outside-marriage.html?_r=2&pagewanted=all (stating that over half of births to women under age thirty are non-marital).

76. MARK MATHER, POPULATION REFERENCE BUREAU, U.S. CHILDREN IN SINGLE MOTHER FAMILIES (2010), available at <http://www.prb.org/pdf10/single-motherfamilies.pdf> (discussing data from 2009).

77. *Id.*

demographic in the United States.⁷⁸ Roughly half of children in the United States living with a single mother live in poverty.⁷⁹ Because women are so much more likely to be children's primary, residential caretakers than men, the financial state of women impacts the financial state of their children.⁸⁰

For example, a 2009 *New York Times* article describes the influx of child support modification requests since the recession in New York City, Milwaukee, and Las Vegas.⁸¹ The article explains the extent of the recession's impact from the perspective of judges and others working in child support courts.⁸² A magistrate judge described the effects by stating, "[i]t's not a trickle-down—it's a direct route," explaining that this occurrence is especially true for poor families as "[e]verybody who relies on the father gets hit."⁸³ The article cites an increased reliance on public benefits like welfare and food stamps in the wake of the child support declines.⁸⁴

Empirical data has shown that mothers sacrifice buying their children necessities because they perceive them as unaffordable and are 50% more likely than fathers to engage in such decision-making.⁸⁵ Single mothers, particularly Latinas and African-American women, struggle more than men or married women to save money and avoid debt.⁸⁶ Women raising children alone are five hundred times more likely to file for personal bankruptcy than

78. Pamela J. Smock, Wendy D. Manning & Sanjiv Gupta, *The Effects of Marriage and Divorce on Women's Economic Well-Being*, 64 AM. SOC. REV. 794, 810 (1999).

79. WEISS & GARDNER, *supra* note 56, at 24.

80. Laura M. Padilla, *Gendered Shades of Property: A Status Check on Gender, Race & Property*, 5 J. GENDER RACE & JUST. 361, 378 (2002) (citations omitted) (explaining that "former husbands are more likely to see their income (relative to their household's needs) increase than are former wives, who usually retain custody of children from the marriage").

81. Julie Bosman, *Fighting Over Child Support After the Pink Slip Arrives*, N.Y. TIMES, Mar. 29, 2009, <http://www.nytimes.com/2009/03/29/nyregion/29support.html?pagewanted=all>.

82. *Id.* ("The same story echo[ing] a dozen times through Room E8 of Manhattan Family Court in a single day: fathers, pinched by the recession, pleading for a reduction in child support. . . . To explain why they can no longer pay as much per month, the parents, typically fathers, cite layoffs, cutbacks in work hours and the loss of homes to foreclosure. Presented with documentation of falling incomes and rising expenses, judges often have little choice but to grant the downward adjustments, even in the face of protests from mothers struggling to support children.").

83. *Id.*

84. *Id.*

85. LOVELL, HARTMANN & WILLIAMS, *supra* note 47, at 4.

86. CHANG & MASON, *supra* note 38, at 13.

a member of the general population—divorce often plays a role.⁸⁷ If the reforms outlined in this Article can improve the financial status of women, then the financial status of their children will likely improve as well.⁸⁸

This problem is not unique to the United States; governments in the international community have increasingly recognized it, and have paid attention to the public remedies. In 2004, the *European Journal of Population* published study results concluding that women in Europe are more economically disadvantaged after divorce as compared to men, across country lines and other demographic indicators.⁸⁹ Notably, the study concluded that “welfare state arrangements temper the economic consequences of divorce for women.”⁹⁰ The study also concluded that “[i]ncome-related arrangements”—in other words, welfare assistance that increases the women’s actual post-divorce incomes—“reduce[s] the economic strains of divorce most, [followed by] employment-related arrangements.”⁹¹ Although the intended audience for that study was likely European policymakers, the study results are instructive for United States policymakers in two important ways.⁹² First, the results demonstrate how

87. Kristin Brandser Kalsem, *Bankruptcy Reform and the Financial Well-Being of Women: How Intersectionality Matters in Money Matters*, 71 BROOK. L. REV. 1181, 1213 (2006) (quoting Senator Paul Wellstone in 146 CONG. REC. S11684 (daily ed. Dec. 7, 2000) (statement of Sen. Wellstone)).

88. See, e.g., RACHEL GARSHICK KLEIT ET AL., CONCEPTUALIZING POVERTY REDUCTION, UNIV. OF WASHINGTON EVANS SCHOOL OF PUBLIC AFFAIRS COMMUNITY VITALITY PROJECT 1, 11, 15 (2011) (explaining that “[a]sset accumulation and wealth generation rests upon three pillars—productive savings, resilience to economic shocks, and economic security and opportunity” and recommending provision of “income supports” to low income workers and “minimum wage increases”). This Article advocates both minimum wage increases and income support (which are analogous to increases in alimony through nationalizing the alimony system). See *infra* Parts III.C., IV.C.

89. Wilfred Uunk, *The Economic Consequences of Divorce for Women in the European Union: The Impact of Welfare State Arrangements*, 20 EUR. J. POPULATION 251 (2004).

90. *Id.*

91. *Id.* Uunk’s inquiry into “employment-related arrangements” focused on whether the women were actually employed post-divorce, which he found had a less significant impact on the women’s financial security than their income itself, which often included welfare income. *Id.*

92. *Id.* at 278 (explaining that the study has “shown that women in the European Union differ in the income changes they experience at divorce. Most women suffer economically from divorce, yet the income decline is larger in some countries than in others. Median income declines are weakest in Southern European countries (Greece, Italy, Spain, and Portugal) and Scandinavian countries (Denmark and Finland), and strongest in Austria, France, Luxembourg, and the United Kingdom. For household size and needs corrected household income measures show a median income decline for European women of 24% from one year before marital separation to one year after marital separation. This seems large, but it has to be noted that the extent of change depends on the exact income measure used and the equivalence scale applied. Depending on these measures,

extensively the economic disadvantage of women following divorce permeates modern culture in the Westernized world, not just in the United States.⁹³ Second, they show the clear nexus between income-related support measures and the eradication of this problem.⁹⁴ The current welfare system in this country—the “income” component—is highly unlikely to increase.⁹⁵ Policymakers can, however, realistically implement legal reform to maximize the efficiency of income distribution on the private side for divorcing individuals.⁹⁶ Alimony and spousal support are heavily regulated in most states by statute, judicial discretion, or both.⁹⁷ Therefore, organizing the determination and enforcement of alimony is not outside the natural reach of the legal system, but is in fact a logical next step.

C. The Domestic Violence and Female Poverty Nexus

Because women represent about 85% of intimate partner abuse victims, domestic violence is another contributing factor to the financial disadvantage of women.⁹⁸ Although estimates of the prevalence of domestic abuse vary in their results, methodology, and credibility,⁹⁹ the most recent comprehensive

longitudinal research for the United States has shown income declines ranging from 7 to over 30% . . .”).

93. *Id.*

94. *Id.* at 251.

95. See, e.g., Marc Levy, *Pa. to End Program that “Saved My Life,” Man Says*, S.F. CHRON, June 25, 2012, <http://www.sfgate.com/news/article/Pa-to-end-program-that-saved-my-life-man-says-3659804.php> (explaining that Pennsylvania’s Governor sponsored legislation that ended a state welfare program that had provided cash assistance to thousands of poor, disabled individuals); Chris Megerian, *California Lawmakers Again Waging Political Warfare Over Welfare*, L.A. TIMES, June 24, 2012, <http://articles.latimes.com/2012/jun/24/local/la-me-0624-welfare-20120624> (describing welfare cuts pending in the California legislature and the overall national trend of decreasing welfare).

96. See, e.g., Ira Ellman, *Why Making Family Law is Hard*, 35 ARIZ. ST. L.J. 699, 707, 709–13 (2003) (discussing the interplay between poverty, marriage, and divorce, the economic disadvantages to divorcing wives, and explaining why that was a significant reason the *American Law Institute Principles*—of which he was a principal author—recommend treating alimony as a cognizable claim in all dissolutions where there is a disparity in earning capacity).

97. Laura W. Morgan, *Current Trends in Alimony Law: Where Are We Now?*, 34 FAMILY ADVOCATE (ABA SECTION OF FAMILY LAW) 8, 9 (2012), available at http://www.americanbar.org/publications/gpsolo_creport/2012/april_2012/current_trends_alimony_law.html.

98. CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, NCJ 197838, INTIMATE PARTNER VIOLENCE, 1993–2001 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv01.pdf>.

99. *Measuring Intimate Partner (Domestic) Violence*, NAT’L INST. OF JUST. (May 12, 2010), <http://www.nij.gov/topics/crime/intimate-partner-violence/measuring.htm>.

federal government study estimated that 500,000 women are victimized by stalking and 1.5 million women are abused each year.¹⁰⁰ The extent of the problem is sobering, and the attendant consequences even more so.

Surviving abuse pushes women into poverty due to health complications, homelessness, and unemployment.¹⁰¹ In 2003, the Centers for Disease Control estimated that victims of intimate partner violence in the United States lost almost 8 million days of work.¹⁰² Reductions in days worked generally lead to reductions in pay, leaving victims even more stressed about their life options.¹⁰³ Specific indicators of this phenomenon range from injuries necessitating medical treatment or recovery during a woman's normal working hours to the avoidance of work resulting from more subtle emotional abuse.¹⁰⁴ For example, some abusers use psychological tactics to keep their partners from working in order to maintain economic control over them.¹⁰⁵ For these and other related reasons, domestic violence is particularly prevalent among poor women.¹⁰⁶ Many

100. PATRICIA TJADEN & NANCY THOENNES, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, EXTENT, NATURE AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 14 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

101. ALEXANDRA CAWTHORNE, CTR. FOR AM. PROGRESS, THE STRAIGHT FACTS ON WOMEN IN POVERTY 2 (2008), available at www.americanprogress.org/issues/women/report/2008/10/08/5103/the-straight-facts-on-women-in-poverty/.

102. NAT'L CTRS. FOR INJURY PREVENTION & CONTROL, DEP'T OF HEALTH & HUMAN SERVS., COSTS OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN IN THE UNITED STATES 1 (2003), available at http://www.cdc.gov/ncipc/pub-res/ipv_cost/ipvbook-final-feb18.pdf.

103. *Id.* at 2.

104. JILL DAVIES, NAT'L RES. CTR. ON DOMESTIC VIOLENCE, POLICY BLUEPRINT ON DOMESTIC VIOLENCE AND POVERTY 6-7 (2002), available at http://www.vawnet.org/Assoc_Files_VAWnet/BCS15_BP.pdf.

105. *Id.*; see also Laurie Pompa, *The Family Violence Option in Texas: Why it is Failing to Aid Domestic Violence Victims on Welfare and What to Do About It*, 16 TEX. J. WOMEN & L. 241, 244 (2007) (listing the following anecdote from a victim: "[w]ell, my husband doesn't let me work. He doesn't let me . . . I mean, I had to give in, to stay silent . . . so that they [the children] don't listen to more violence. So that they don't hear any more screaming, any more arguing . . . I paid no attention to him. I went to work. My brother would take me to work. When I came back from work, ohhh, he had broken all my things. Everything, everything . . . He had broken everything, because I had gone to work then.").

106. Anna Marie Smith, *The Sexual Regulation Dimension of Contemporary Welfare Law: A Fifty State Overview*, 8 MICH. J. GENDER & L. 121, 154 (2002) (explaining that there is an "over-representation of battered women within low-income [communities] and within the [welfare] population," and that "between fifteen and fifty-six percent of [female] welfare recipients reported that they had been subjected to domestic violence within the preceding twelve months"); see also Ruth A. Brandwein, *Family Violence, Women and Welfare*, in BATTERED WOMEN, CHILDREN AND WELFARE REFORM: THE TIES THAT BIND 3-6 (Ruth A. Brandwein ed., 1999) (discussing the nexus

women stay in abusive relationships, because they perceive themselves as being, or actually are at the time, incapable of economically supporting themselves and their children.¹⁰⁷

Difficulty maintaining employment also contributes to homelessness among domestic violence victims and their children.¹⁰⁸ In 2010, a survey of mayors in the United States listed domestic violence as the fourth leading cause of homelessness for families with children and the only non-economic causal factor in the top five.¹⁰⁹ Faced with few options for a home of their own, many abuse victims reconcile with their batterers to secure the housing that they and their children need.¹¹⁰ Sadly, poverty is a predictor for domestic violence just as domestic violence is a predictor for poverty. If a woman's annual household income is less than \$10,000, she is four times more likely to suffer intimate partner abuse than women living in higher income households.¹¹¹ Welfare recipients are ten times more likely than other women to be battered, and rates of female welfare recipients abused by their partners are between 50% and 60%.¹¹² These statistics beg the question,

between poverty and intimate partner violence).

107. Pompa, *supra* note 105, at 242.

108. U.S. CONFERENCE OF MAYORS, HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES: A 27-CITY SURVEY 2 (2010), available at <http://www.usmayors.org/pressreleases/uploads/2010HungerHomelessnessReportfinalDec212010.pdf>; Eliza Hearst, Note, *The Housing Crisis for Victims of Domestic Violence: Disparate Impact Claims and Other Housing Protection for Victims of Domestic Violence*, 10 GEO. J. POVERTY LAW & POL'Y 131, 132-33 (2003).

109. U.S. CONFERENCE OF MAYORS, *supra* note 108, at 17 (explaining that the top four factors were unemployment, lack of affordable housing, poverty, and low-paying jobs).

110. Meris L. Bergquist, *Women and the Law Today: After the Violence: Using Fair Housing Laws to Keep Women and Children Safe at Home*, VT. B. J., Spring 2008, at 46, 48.

111. Patricia Cole & Sarah M. Bucl, *Safety and Financial Security for Battered Women: Necessary Steps for Transitioning From Welfare to Work*, 7 GEO. J. ON POVERTY L. & POL'Y 307, 312 (2000); see also Jody Raphael, *Battering Through the Lens of Class*, 11 AM. U. J. GENDER SOC. POL'Y & L. 367, 367 (2003) (stating that "[t]he National Crime Victimization Survey finds that households with less than \$7,000 in annual income suffer five times the amount of domestic violence as do households with income above \$50,000. Those with incomes between \$7500 and \$25,000 experience nearly three times the amount of domestic violence as those with incomes above \$50,000").

112. Richard M. Tolman & Jody Raphael, *A Review of Research on Welfare and Domestic Violence*, 56 J. SOC. ISSUES 655, 660 (2000); see also M. A. ALLARD ET AL., MCCORMACK INST. CTR. FOR SOC. POLICY, IN HARM'S WAY? DOMESTIC VIOLENCE, AFDC RECEIPT, AND WELFARE REFORM IN MASSACHUSETTS 15 (1997), available at http://www.umb.edu/editor_uploads/images/centers_institutes/center_social_policy/In_Harms_Way_Domestic_Violence_AFDC_Receipt_and_Welfare_Reform_in_Massachusetts.pdf (showing high incidences of intimate partner violence among welfare recipients); Richard M. Tolman & Daniel Rosen, *Domestic Violence in the Lives of Women Receiving Welfare: Mental Health, Health and Economic Well-Being*, 7 VIOLENCE AGAINST WOMEN 141, 146 (2001) (reporting a 51% incidence of domestic violence among female welfare

whether the welfare reform measures of the last fifteen years have had any effect on the problems of domestic violence and female poverty.

The welfare system today is a product of tremendous changes instituted in 1996 by Congress with the Personal Responsibility and Work Opportunity Reconciliation Act (“welfare reform” or “the Act”).¹¹³ Welfare reform in the United States completely overhauled the welfare system that had existed in essentially the same form¹¹⁴ for sixty years.¹¹⁵ Even the name for welfare changed, quite intentionally, from Aid to Families with Dependent Children to Temporary Assistance for Needy Families (TANF).¹¹⁶ The legislative intent, at least of those in the majority who pushed the Act through both chambers, was to shift the paradigm of welfare from an entitlement (Aid) to a last resort, stop-gap measure (Temporary Assistance) for the poorest individuals in the United States.¹¹⁷ Welfare reform also instituted numerous substantive changes that have been particularly burdensome for victims of intimate partner violence.¹¹⁸

Welfare recipients are now subject to the rigid rules of TANF constraining access to welfare benefits, the most obvious of which include

recipients in Michigan).

113. Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104–193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.).

114. Muncer Ahmad, *The Second Annual Peter M. Cicchino Awards for Outstanding Advocacy in Public Interest: Serving Market Needs, Not People’s Needs: The Indignity of Welfare Reform*, 10 AM. U. J. GENDER SOC. POL’Y & L. 27, 28 (2001).

115. Social Security Act of 1935, Pub. L. No. 74–271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301–1397 (2000)) (creating the first welfare program, then called “Aid to Dependent Children,” which was later renamed “Aid to Families With Dependent Children”).

116. See Joshua Guetzkow, *Beyond Deservingness: Congressional Discourse on Poverty, 1964–1996*, 629 ANNALS OF AM. ACAD. POL. & SOC. SCI. 173, 191 (2010) (describing the change in rhetoric accompanying welfare reform that included use of new terms like “self-sufficiency” and the critical implementation of time limits, which encapsulates the “temporary” nature of the new welfare benefits); U.S. Dep’t of Health & Human Servs., *Summary: Final Rule: Temporary Assistance for Needy Families (TANF) Program*, OFF. FAM. ASSISTANCE (April 12, 1999), <http://www.acf.hhs.gov/programs/ofa/law-reg/finalrule/exsumcl.htm> (explaining that “TANF is a block grant program designed to make dramatic reforms to the nation’s welfare system by moving recipients into work and turning welfare into a program of temporary assistance. TANF replaced the national welfare program known as Aid to Families with Dependent Children (AFDC) . . .”) (emphasis added).

117. Ralph Henry, *Domestic Violence and the Failures of Welfare Reform: The Role for Work Leave Legislation*, 20 WIS. WOMEN’S L.J. 67, 75–76 (2005).

118. See generally Maria L. Imperial, *Self-Sufficiency and Safety: Welfare Reform for Victims of Domestic Violence*, 5 GEO. J. ON FIGHTING POVERTY 3, 5 (1997) (outlining the history of welfare reform).

term limits and return to work requirements.¹¹⁹ The term limits mandate that no individual (or their family) may receive TANF funds for more than five years during their lifetime.¹²⁰ The federal act allows states to make these term limits even more restrictive by decreasing the lifetime term, which some states, such as Ohio and Texas, have done with aplomb.¹²¹ The federal law also imposes the return to work requirements mentioned above by mandating that states demonstrate how they are directing welfare recipients to engage in work-related activity within two years or whenever each recipient is work-ready.¹²² As with term limits, states can make return to work rules more stringent.¹²³ In some states, these rules are so strict that they require immediate participation in job-related tasks.¹²⁴

If a welfare recipient fails to meet these requirements, she can receive financial sanctions up to and including removal from welfare.¹²⁵ Domestic violence victims, however, can find it particularly difficult to comply with the requirements.¹²⁶ The return-to-work rules are unrealistic for victims for

119. Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, 42 U.S.C. § 608 (2000).

120. 42 U.S.C. § 608(a)(7)(A) (“A State to which a grant is made under § 603 of this title shall not use any part of the grant to provide assistance to a family that includes an adult who has received assistance under any State program funded under this part attributable to funds provided by the Federal Government, for 60 months (whether or not consecutive) after the date the State program funded under this part commences.”).

121. See L. Jerome Gallaher et al., *One Year After Federal Welfare Reform: A Description of State Temporary Assistance for Needy Families (TANF) Decisions as of October 1997*, URB. INST. (May 1, 1998), www.urban.org/publications/307472.html (explaining that Ohio has a thirty-six-month limit, and that Texas has a staggered scale ranging from twelve to thirty-six months based on an individual’s job and educational history).

122. Marie Cohen, *Welfare Reform Acad., Working Paper No. 1, Mandatory Work-Related Activities for Welfare Recipients: The Next Step in Welfare Reform 7* (Welfare Reform Academy Working Paper No. 1, 2001), available at http://www.welfareacademy.org/pubs/welfare/mandatory_work.pdf. But see Jim Abrams, *House Republicans Win Approval for Bill to Overturn Administration Welfare Plan*, STAR TRIB., Sept. 20, 2012, <http://www.startribune.com/politics/national/170572186.html?refer=y> (describing the Obama Administration’s letter to state governors in July 2012 enabling them to relax their welfare return-to-work requirements under certain circumstances and Congressional Republicans’ current plan to pass legislation overriding the Administration’s action).

123. Cole & Buel, *supra* note 111, at 311.

124. See *id.* (listing several states with stricter return to work rules than the PRWORA mandates, including Wisconsin that dictates that recipients “immediately” engage in work-related activity).

125. *Id.* at 314.

126. See, e.g., Pompa, *supra* note 105, at 248 (arguing that “[a] victim may be dealing with harassment from her batterer or in-patient treatment for substance abuse, mental illness or other conditions caused by the domestic abuse, that make it difficult for her to meet these work

the same reasons explained earlier in this Part about the difficulty of maintaining employment for battered women.¹²⁷ Furthermore, domestic abuse victims are more likely to have personal complications that get in the way of their compliance with the return to work rules as well as the term limits.¹²⁸ A battered woman's attempts to comply with the welfare rules can compromise her personal safety and the safety of her children.¹²⁹

After intensive lobbying from domestic violence victim advocates, Congress recognized the difficulties that victims applying for welfare face.¹³⁰ The safety net they built into the TANF system for victims, however, is optional for states—not mandatory.¹³¹ Notably, state governments have made impressive legislative progress without the mandate, and all of them have either adopted the “Family Violence Option” (FVO) or enacted other similar measures.¹³² States can exercise FVO by granting waivers of certain requirements, such as term limits and return to work requirements to victims of domestic violence;¹³³ this is the good news. The bad news is that despite the existence of FVO or similar structures nationwide, data shows that many victims are unable to utilize the domestic violence exemptions, because they do not get connected to the right office, person, or paperwork.¹³⁴ For example, a New York study conducted in 2000 showed that a small fraction of victims were referred to domestic violence liaisons for help, and of those

requirements. Thus, in some situations, the TANF work requirements force victims to choose between well-being and continued support”).

127. *Id.*; see *supra* notes 98–112 and accompanying text.

128. See Cole & Buel, *supra* note 111, at 311.

129. See, e.g., Raphael, *supra* note 111, at 369 (citing various empirical and anecdotal data showing that batterers impede their victims' capability to work through abuse and other means of sabotage).

130. Henry, *supra* note 117, at 78.

131. 42 U.S.C. § 602(a)(7)(A)(iii) (2012); NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, SHORTCHANGING SURVIVORS: THE FAMILY VIOLENCE OPTION FOR TANF BENEFITS 13 (2009), available at http://www.nlchp.org/content/pubs/Shortchanging_Survivors_Report_20092.pdf.

132. *Id.* at 4 (citing OFFICE OF FAMILY ASSISTANCE, U.S. DEP'T OF HEALTH & HUMAN SERVS., TEMPORARY ASSISTANCE TO NEEDY FAMILIES PROGRAM, EIGHTH ANNUAL REPORT TO CONGRESS, XII, 44–45 (June 01, 2009), <http://www.acf.hhs.gov/programs/ofa/data-reports/annualreport8/ar8index.htm>).

133. 42 U.S.C. § 602(a)(7)(A)(iii) (2012) (allowing states to exempt victims from “time limits . . . residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving assistance under this part to escape domestic violence or unfairly penalize such individuals who are or have been victimized by such violence”).

134. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 131, at 14–15.

that were only-one third received a waiver under FVO.¹³⁵ The prevalence of impersonal online and telephone application systems at welfare offices exacerbates the problem,¹³⁶ as does a lack of well-designed screening tools and abuse sensitivity training for welfare office screeners.¹³⁷

This is an elaborate example of the failure of Congress and the States to solve a problem for which they are expending funds to address. Despite welfare reforms allegedly smarter funding for the war on poverty, the prevalence of women living in poverty persists.¹³⁸ The financial disadvantage of women in the United States overall is widespread and, despite numerous efforts to combat it, has deepened in recent years.¹³⁹ The impoverishment of women is not a problem unique to the United States, but the gender-based poverty gap spans farther in the United States than in any other Western nation.¹⁴⁰ Is there any way out of this rabbit hole? In Part III, this Article argues that there is, and that the United States legal system is well-equipped to build the scaffolding to facilitate a collective climb up and out.¹⁴¹

III. FEDERAL BUDGET REFORM AND MYTH-BUSTING

This Part discusses the possible changes to the federal budget to reduce female and child poverty, changes which if implemented in close temporal proximity to alimony reform could be even more effective. Part III.A explains why the present time is appropriate for such reform. Part III.B points out the misconceptions that people in the United States hold about federal spending. Part III.C discusses raising the federal minimum wage. Finally, Part III.D outlines the specific federal programs that, if adequately funded, will enhance the other poverty reduction strategies advocated in this Article.

135. MARCELLENE E. HEARN, NOW LEGAL DEF. & EDUC. FUND, DANGEROUS INDIFFERENCE: NEW YORK CITY'S FAILURE TO IMPLEMENT THE FAMILY VIOLENCE OPTION 4-6 (2000), available at <http://action.legalmomentum.org/site/DocServer/dangindif.pdf?docID=298>.

136. Pompa, *supra* note 105, at 252.

137. NAT'L LAW CTR. ON HOMELESSNESS & POVERTY, *supra* note 131, at 15-19.

138. JANE M. HENRICI ET AL., INST. FOR WOMEN'S POLICY RES., WOMEN IN POVERTY DURING THE GREAT RECESSION 7 (2010), available at <http://www.iwpr.org/publications/pubs/women-in-poverty-during-the-great-recession>.

139. Sheirholz, *supra* note 16, at 3.

140. CAWTHORNE, *supra* note 101, at 1-2.

141. See *infra* Part III.

A. Paradigms Are Ripe for the Shifting

A public awareness component is critical to any poverty reduction strategy. The necessary changes are largely legislative in nature, and since legislators answer to constituents, public support is crucial.¹⁴² Since the mainstream media is currently awash with the narrative of financial inequity and instability, from a temporal perspective, this post-recession “recovery” era offers an unprecedented opportunity to tap into a preexisting public awareness of general economic insecurity nationwide.¹⁴³ By contrast, less than a decade ago, journalist Barbara Ehrenreich spent several months as an undercover low-wage laborer, immersed in poverty and studying its effects.¹⁴⁴ Ehrenreich opined that “the affluent rarely see the poor or, if they do catch sight of them in some public space, rarely know what they’re seeing, since—thanks to consignment stores and, yes, Wal-Mart—the poor are usually able to disguise themselves as members of the more comfortable classes.”¹⁴⁵ Ehrenreich noted that, at that time, politics “favor[ed] what almost look[ed] like a ‘conspiracy of silence’ on the subject of poverty. . . . The Democrats [were] not eager to find flaws in the period of ‘unprecedented prosperity’ they take credit for; the Republicans . . . lost interest” in the wake of welfare reform.¹⁴⁶ Yet even during that time of relative prosperity, the observer-turned-advocate urged that the daily lives of the working poor in the United States “are not part of a sustainable lifestyle, even a lifestyle of chronic deprivation and relentless low-level punishment. They are, by almost any standard of subsistence, emergency situations. And that is how we should see the poverty of so many millions of low-wage Americans—as a state of emergency.”¹⁴⁷

142. Paul Burstein, *Public Opinion, Demonstrations, and the Passage of Antidiscrimination Legislation*, 43 PUB. OPINION Q., 157, 158–59 (1979) (explaining that Congressional members tend not to act on bold social change legislation unless it is clear that a majority of their constituents support it).

143. See, e.g., Tami Luhby, *More than 1 in 5 Americans Are Economically Insecure*, CNN MONEY (Nov. 28, 2011, 6:00 PM), http://money.cnn.com/2011/11/28/news/economy/americans_insecurity/index.htm (describing the growing economic insecurity in this country); see also *Many Above US Poverty Line Struggle to Make Ends Meet*, REUTERS (Nov. 22, 2011, 1:22 PM), <http://www.reuters.com/article/2011/11/22/usa-economy-insecurity-idUSN1E7AL15720111122> (citing a survey conducted by a poverty reduction advocacy group, whose leader claimed “[t]his is a wake-up call for Congress”).

144. See generally BARBARA EHRENREICH, *NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA* (2001).

145. *Id.* at 216 (describing the social myth of the “disappearing poor”).

146. *Id.* at 217.

147. *Id.* at 214 (“[T]he non-poor . . . think of poverty as a sustainable condition—austere,

The emergency, largely ignored and left to fester, has morphed into a social catastrophe. The economy has weakened almost to the point of collapse.¹⁴⁸ Political movements to raise awareness about economic disparity like the “Occupy” movements of 2011 and 2012 are often met with apathy at best and violence at worst from the respondent local governments.¹⁴⁹ How, then, can a public awareness campaign do anything but fuel despair? Managing the narrative to stress the positive outcomes that reform can bring is a key element to success.¹⁵⁰ For example, a sense of justice and hope is at the heart of the philosophy of one leading economist in the field, Amartya Sen, a Harvard professor who won the Nobel Prize in Economics in 1998.¹⁵¹ Sen has extensively researched poverty reduction strategies and advocates promoting the “capabilities” of the poor, or what they can possibly achieve.¹⁵² Sen believes that this approach should inform public policy, because the poor are hindered by fewer freedoms and choices due to their material poverty.¹⁵³ Advocates must stress the capabilities of the poor in the United States when presenting these measures to lawmakers and to the

perhaps, but they get by somehow, don't they? They are 'always with us.' What is harder for the non-poor to see is acute distress: The lunch that consists of Doritos or hot dog rolls, leading to faintness before the end of the shift. The 'home' that is also a car or a van. The illness or injury that must be 'worked through,' with gritted teeth, because there's no sick pay or health insurance and the loss of one day's pay will mean no groceries for the next.”)

148. Martin Crutsinger, *Bernanke: Returns to Capitol Hill After Warning that Budget Impasse Could Lead to Recession*, CANADIAN BUS., July 18, 2012, <http://www.canadianbusiness.com/article/91307--bernanke-us-economy-weakens-recession-likely-if-economy-goes-over-fiscal-cliff>.

149. See, e.g., Sam Quinones & Abby Sewell, *Occupy L.A.: LAPD Too Violent, Some Protestors Allege*, L.A. TIMES (Nov. 30, 2011, 9:11 AM), <http://latimesblogs.latimes.com/lanow/2011/11/some-occupy-protesters-allege-violence.html>. But see Lynn Thompson, *Seattle Council Asks City to Look at Its Investments*, SEATTLE TIMES, Nov. 14, 2011, http://seattletimes.nwsourc.com/html/localnews/2016769488_occupy15m.html (explaining that the Seattle City Council announced its official support of the Occupy movement).

150. See Amartya Sen, *Dialogue Capabilities, Lists, and Public Reason: Continuing the Conversation*, 10 FEMINIST ECON. 77, 80 (2004) [hereinafter *Dialogue Capabilities, Lists, and Public Reason*] (asserting that “even with given social conditions, *public discussion and reasoning* can lead to a better understanding of the role, reach, and the significance of particular capabilities”) (emphasis added).

151. See *id.*; see also Amartya Sen, *Autobiography*, NOBELPRIZE.ORG, http://www.nobelprize.org/nobel_prizes/economics/laureates/1998/sen-autobio.html (last visited Oct. 09, 2012) (describing his study of poverty and explaining his approach as “initially motivated by a desire to overcome [a former mentor's] pessimistic picture by going beyond his limited informational base,” and explaining that his “work on social justice based on individual freedoms and capabilities was similarly motivated by an aspiration to learn from, but go beyond, [a different mentor's] elegant theory of justice”).

152. *Dialogue Capabilities, Lists, and Public Reason*, *supra* note 150, at 77–80.

153. *Id.*

public.¹⁵⁴ Furthermore, the narrative presented to the public must be multilayered enough to acknowledge and combat certain critical misconceptions.¹⁵⁵

B. Public Perception of Federal Budget Issues Is Skewed

Opponents of public poverty reduction measures, like those described in this Article, argue that the Federal Government simply cannot afford to spend funds on such programs.¹⁵⁶ However, numerous economists recognize that these claims are simply unfounded.¹⁵⁷ For example, in 2011, President of the Economic Policy Institute Lawrence Mishel wrote about the myth that the overall wealth in the United States, and thus the available public revenues, is dissipating.¹⁵⁸ Mishel stressed that “[w]hile the recession has led to job loss and shrinking incomes in recent years, the economy has produced substantial gains in *average* incomes and wealth over the last three decades, and economists agree that we can expect comparable growth over the next three decades as well.”¹⁵⁹ Mishel explained that the wealthy have actually experienced increased growth in their personal finances, while the lower classes have not.¹⁶⁰ His article concludes with the admonition that the Government has a clear choice about whether and how to deal with this as a revenue concern.¹⁶¹ He states, “[b]ecause incomes will grow substantially in the coming decades, the decisions about what governments can afford to do

154. *See id.* at 80.

155. *See* TODD POST, BREAD FOR THE WORLD INST., PUB. NO. 6, BRIEFING PAPER: SETTING A GOAL TO END POVERTY AND HUNGER IN THE UNITED STATES 3 (2009), available at <http://www.bread.org/institute/papers/briefing-paper-6.pdf> (discussing the need for “broader societal responsibilities” and a different “fram[ing of] the challenge of overcoming poverty”).

156. *See, e.g.*, Michael D. Tanner, *More Welfare, More Poverty*, CATO INST., <http://www.cato.org/publications/commentary/more-welfare-more-poverty> (last visited Dec. 13, 2012) (arguing that spending on welfare programs should be eradicated because poverty has persisted despite the spending of the last few decades).

157. *See, e.g.*, PAUL KRUGMAN, END THIS DEPRESSION NOW! 233–38 (2012); LAWRENCE MISHEL, ECON. POLICY INST., BRIEFING PAPER NO. 310, WE’RE NOT BROKE NOR WILL WE BE: POLICY CHOICES WILL DETERMINE WHETHER RISING NATIONAL INCOME LEADS TO A PROSPEROUS MIDDLE CLASS 1 (2011), available at http://www.epi.org/publication/were_not_broke_nor_will_we_be/; Bruce Bartlett, *Government Spending and the Economy*, N.Y. TIMES ECONOMIX BLOG (July 17, 2012), <http://economix.blogs.nytimes.com/2012/07/17/government-spending-and-the-economy/>.

158. MISHEL, *supra* note 157.

159. *Id.* at 1 (emphasis added).

160. *Id.* at 2.

161. *Id.* at 12.

hinge on the national policy choices that shape what portion of *increased* incomes will be taxed and spent.”¹⁶²

Bruce Bartlett, former economic advisor to President Ronald Reagan, frequently comments on the question of taxing and spending choices faced by federal lawmakers and the hyperbole surrounding it.¹⁶³ In a 2011 blog post, Bartlett cited empirical evidence demonstrating that tax cuts on the wealthy are the primary causal factor of the national debt increase since 2001.¹⁶⁴ Bartlett characterizes statements from members of Congress as disingenuous, such as the comments made by Senator John Kyl who said in a May 16, 2011 floor speech that “CBO [Congressional Budget Office] figures demonstrate that under any of the [GOP] budgets offered . . . we will be back to historic average levels of tax collection in just the next few years Revenues are not the problem. They are going to be back where they always have been.”¹⁶⁵ Bartlett points out that “what [Senator] Kyl neglected to mention is that the CBO is required to assume that all laws presently on the books will be followed to the letter. Therefore, it assumes . . . that all of the Bush tax cuts will expire at the end of next year.”¹⁶⁶ This would raise revenues significantly and would in fact close the

162. *Id.* at 2. Mishel asserts the following:

Despite the rhetoric, it is clear that ‘we’ as a nation are *not broke* one must recognize that the growth has been very unequal: households at the top of the scale have seen much faster growth in their incomes and wealth accumulation than have those in the middle or bottom of the distribution.

Id. at 1–2

163. Bruce Bartlett, *Republican Bait and Switch on Taxes*, STAN COLLENDER’S CAPITAL GAINS & GAMES, BRUCE BARTLETT’S BLOG (June 6, 2011), <http://capitalgainsandgames.com/blog/bruce-bartlett/2263/republican-bait-and-switch-taxes> [hereinafter *Republican Bait and Switch on Taxes*]; Bruce Bartlett, N.Y. TIMES, <http://www.nytimes.com/ref/business/economy/bruce-bartlett-bio.html> (last visited Jan. 25, 2013).

164. *Republican Bait and Switch on Taxes*, *supra* note 163 (“Since 2001, the national debt has increased \$11.8 trillion. This resulted from a \$6.2 trillion decline in revenues and a \$5.7 trillion increase in spending. Of the revenue decline, \$2.8 trillion resulted from legislated tax cuts and \$3.4 trillion from economic and technical factors. On the spending side, almost all of the increase was legislated, with \$2.4 trillion of it coming between 2001 and 2008. Despite the significant contribution of tax cuts to the national debt, Republicans argue that higher revenues are off the table”); see also Andrew Fieldhouse, *The Bush Tax Cuts Disproportionately Benefitted the Wealthy*, ECON. POL’Y INST. (June 4, 2011), http://www.epi.org/publication/the_bush_tax_cuts_disproportionately_benefitted_the_wealthy/ (“[T]he economic impact of cutting capital gains rates and lowering the top marginal tax rates never materialized for working families. Inflation-adjusted median weekly earnings fell by 2.3% during the 2002–07 economic expansion, which holds the distinction for being the worst economic expansion since World War II.”).

165. *Republican Bait and Switch on Taxes*, *supra* note 163.

166. *Id.*

gap on the revenue decline described above.¹⁶⁷ The rub, of course, is that Senator Kyl is part of a powerful faction in Congress that continues to fight for the extension—not the expiration—of the Bush tax cuts in December 2012.¹⁶⁸

But most United States citizens are in the dark when it comes to these realities of the federal budget and fiscal policies. The economic stimulus of 2008, for example, is greatly misunderstood, with very little public awareness of its actual purpose or effects.¹⁶⁹ A 2010 Pew Research Poll revealed extensive public confusion and ignorance on issues related to taxes, the economy, and the federal budget.¹⁷⁰ For example, four in ten respondents said that tax cuts should be prioritized over reducing the federal deficit.¹⁷¹ A majority of respondents also said that the government’s financial policies have mostly benefitted the wealthy, along with corporations and financial institutions.¹⁷² As one analyst from the Pew Center explained, the two findings considered together are quite curious:

Given that the overwhelming proportion of taxes, other than Social Security and Medicare payroll tax deductions, are paid by the same

167. *Id.* (pointing out that the CBO says revenue would increase by \$5.6 trillion over the next decade if we just ended the Bush tax cuts and “allow[] scheduled tax increases now in law to take effect”); see also Andrew Fieldhouse, *House 18% Spending Cap is as Bad and Infeasible a Policy as the Senate’s*, ECON. POL’Y INST. (June 3, 2011), http://www.epi.org/publication/house_18_spending_cap_is_as_bad_and_infeasible_a_policy_as_the_senates/ (“Tax cuts increase spending because larger deficits require more borrowing and subsequent debt service costs. . . . Assuming all the Bush tax cuts are extended and current policy for the alternative minimum tax is continued, revenue will average 18.3% of GDP over 2017–21. . . . The federal government simply cannot operate at around 18% of the economy.”).

168. *Republican Bait and Switch on Taxes*, *supra* note 163 (arguing further that “[partisan advocacy] groups . . . which enforce party discipline on Republicans on tax issues, can be depended upon to proclaim that failure to support another extension of the Bush tax cuts will constitute the biggest tax increase in history. [A] . . . press release from [an advocacy group warned] ‘One Month to Go Until the Largest Tax Hikes in History.’”).

169. Joshua Aizenman & Gurnain Kaur Pasricha, *The Net Fiscal Expenditure Stimulus in the U.S., 2008–2009: Less than What You Might Think, and Less than the Fiscal Stimuli of Most OECD Countries*, 8 *ECONOMISTS’ VOICE* 5 (2009), http://economics.ucsc.edu/research/downloads/The_Net_Fiscal_Expenditure_US_EV.pdf (stating that the stimulus was actually minimal in its net effect and in large part simply made up for the “negative state and local stimuli associated with the collapsing tax revenue and the limited borrowing capacity of the states This observation is pertinent in explaining the anaemic reaction of the overall U.S. economy to the allegedly ‘big federal fiscal stimulus.’”).

170. Jodie Allen, *Polls Show Americans’ Confused View of Stimulus, Taxes, Deficit*, U.S. NEWS & WORLD REP. (July 26, 2010), <http://www.usnews.com/opinion/blogs/jodie-allen/2010/07/26/Polls-Show-Americans-Confused-View-of-Stimulus-Taxes-Deficit>.

171. *Id.*

172. *Id.*

upper-income classes who, in the judgment of most Americans, have benefited most from the [recent federal] economic policies . . . and that a Pew poll last year found a 61 percent majority supported raising taxes on those with incomes above \$200,000.¹⁷³

A 2010 Harris poll found even higher support for tax increases.¹⁷⁴ The Harris poll also found that while respondents favor spending cuts to paying higher taxes *themselves*, they are misinformed about which spending cuts will affect the budget deficit.¹⁷⁵

Tax policy is one of this country's most divisive public policy issues. While some would argue that this is a result of "dueling economists" with plenty of them lining up on both sides of the issue with opinions,¹⁷⁶ this Article contends that the biggest problem is that the public discourse is actually fraught with misinformation. The myth of "Reaganomics" and lowering taxes is a classic example.¹⁷⁷ Opponents of taxing and spending to

173. *Id.*

174. Press Release, Harris Interactive, Spending Cuts Are Preferred to Higher Taxes to Reduce Deficit in the U.S., Great Britain, France, Italy, Spain and Germany (July 14, 2010), *available at* <http://www.harrisinteractive.com/NewsRoom/HarrisPolls/FinancialTimes/tabid/449/ctl/ReadCustom%20Default/mid/1512/ArticleId/438/Default.aspx> (showing that 71% of respondents said they agree that government should make the rich contribute more than the less well off, e.g. by paying more taxes).

175. *Id.* (showing that most respondents listed "aid to developing countries" as the area that should bear the largest cuts, despite the fact that foreign aid is a mere 1% of the federal budget); *see also* Bruce Bartlett, *Have We Reached the Limit to the Welfare State?*, STAN COLLENDER'S CAPITAL GAINS & GAMES, BRUCE BARTLETT'S BLOG (July 14, 2010), <http://capitalgainsandgames.com/blog/bruce-bartlett/1853/have-we-reached-limit-welfare-state> (explaining that "Americans continue to have unrealistic expectations about how easy it will be to balance the budget without cuts in programs that affect them. This suggests that if forced to choose between spending cuts that affect them and higher taxes that don't affect them, the latter could quickly become the dominant position.").

176. *See, e.g.*, KRUGMAN, *supra* note, at 157, 211–16 (arguing that more government spending would strengthen the economy); Tanner, *supra* note 156 (arguing that welfare spending has proven to be a waste of resources); *see also* Robert Gavora, *U.S. Conservative Economists: Spend Cuts Can Solve Fiscal Crisis*, MARKET NEWS INT'L (July 18, 2011), <https://mninews.deutsche-boerse.com/content/us-conservative-economists-spend-cuts-can-solve-fiscal-crisis> (quoting economists Dan Mitchell of the Cato Institute and Kevin Williamson of the *National Review* for the position that government spending harms the economy and advocating federal spending cuts).

177. *See, e.g.*, Brian Montopoli, *Ronald Reagan Myth Doesn't Square with Reality*, CBS NEWS: POLITICAL HOT SHEET (Feb. 4, 2011), http://www.cbsnews.com/8301-503544_162-20030729-503544.html (explaining that "Reagan is perhaps most often invoked by those who cast him as having held the line against tax increases. Americans for Tax Reform President Grover Norquist, for example, often points to Reagan when calling for lower taxes and spending cuts; he says, by contrast, 'tax hikes are what politicians do when they don't have the determination or the competence to govern.' Conservatives also hail Reagan as a budget cutter willing to make hard

help the poor often cite President Ronald Reagan as their economic policy guru.¹⁷⁸ However, in 1967, as Governor of California, President Reagan actually endorsed the single most expansive governor-proposed tax increase ever.¹⁷⁹ That tax increase package passed in the face of California's extreme budget crisis.¹⁸⁰ Again, in 1970, President Reagan proposed a tax hike of \$1.1 billion.¹⁸¹ Both tax increases included an income tax increase on the top wage-earners and a corporate tax increase boost.¹⁸² As Bruce Bartlett now notes, California "state revenues tripled from \$2.9 billion in the 1966–1967 fiscal year to \$8.6 billion in the 1974–1975 fiscal year, Reagan's last."¹⁸³ After he was elected President, Reagan again endorsed large-scale tax increases due to alarming budget deficits and a sluggish economy.¹⁸⁴ His first tax increase, the Tax Equity and Fiscal Responsibility Act of 1982, raised taxes by almost 1% of the GDP and "was probably the largest peacetime tax increase in American history."¹⁸⁵ Increasing taxes on the wealthy is not a sin, and it is essential that policymakers fight to ensure that the Bush tax cuts do expire at the close of 2012.¹⁸⁶ Consequently, the revenue boost may initiate economic recovery and help to avoid any further increase in the number of women and children living in poverty.

C. Real Stimulus: Raise the Minimum Wage

Policymakers have debated the minimum wage for decades, and although opposition to raising it will always exist, public support for raising it is currently quite strong. A 2011 survey by the Public Religion Research Institute revealed overwhelming support for raising the minimum wage to

choices to keep spending in line.”).

178. *Id.*

179. Bruce Bartlett, *Reagan's Forgotten Tax Record*, 130 TAX NOTES 965, 965 (2011), [hereinafter Bartlett, *Forgotten Tax Record*], available at <http://capitalgainsandgames.com/blog/bruce-bartlett/2154/reagans-forgotten-tax-record>.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.* at 966.

184. *Id.*

185. Bartlett, *Forgotten Tax Record*, *supra* note 179, at 966.

186. See generally Rick Ungar, *The Truth About the Bush Tax Cuts and Job Growth*, FORBES, July 17, 2012, <http://www.forbes.com/sites/rickungar/2012/07/17/the-truth-about-the-bush-tax-cuts-and-job-growth/>.

\$10.00 per hour.¹⁸⁷ On January 1, 2011, eight states increased their minimum wages, resulting in eighteen states, the District of Columbia and several cities having higher minimum wages than the federal minimum.¹⁸⁸ As the political circumstances surrounding the last minimum wage increase demonstrate, public and political perception will matter considerably.¹⁸⁹ In 2006, Kristin Kalsem, a law professor at the University of Cincinnati College of Law, explained that the debate over raising the minimum wage was an integral part of the 2005 bankruptcy reform legislative process.¹⁹⁰ Professor Kalsem quoted the late Senator Ted Kennedy, who lobbied for an amendment to the bankruptcy bill to bring the minimum wage up to \$7.25.¹⁹¹

The federal wage floor was incrementally increased to \$7.25 from 2007 to 2009.¹⁹² During the bankruptcy law debate in the Senate several years earlier, Senator Kennedy highlighted the importance of mandating a living wage.¹⁹³ He stressed that “a third of all bankruptcies take place from people who have income below the poverty level.”¹⁹⁴ The Senator also noted the

187. ROBERT P. JONES & DANIEL COX, PUB. RELIGION RESEARCH INST., RELIGION AND THE TEA PARTY IN THE 2010 ELECTION: AN ANALYSIS OF THE THIRD BIENNIAL AMERICAN VALUES SURVEY 23 (2010), available at <http://publicreligion.org/site/wp-content/uploads/2010/05/Religion-and-the-Tea-Party-in-the-2010-Election-American-Values-Survey.pdf> (finding that 67% of the United States population favors this increase).

188. Catherine Rampell, *Wage Floor Is Increasing in 8 States in New Year*, N.Y. TIMES, Dec. 23, 2011, <http://www.nytimes.com/2011/12/24/business/economy/8-states-to-raise-minimum-wage.html>.

189. See, e.g., Stephen Greenhouse, *Raising the Floor on Pay*, N.Y. TIMES, Apr. 9, 2012, http://www.nytimes.com/2012/04/10/business/economy/a-campaign-to-raise-the-minimum-wage.html?_r=1&adxnnl=1&pagewanted=all&adxnnlx=1349828852-8kMXzcKBeUqFFmyP4HSn6Q (discussing an increase in the minimum wage, the necessity of political support, public support since the last minimum wage increase, and related political concerns).

190. Kalsem, *supra* note 87, at 1218–25.

191. See 151 CONG. REC. S2114 (daily ed. Mar. 7, 2005) (statement of Sen. Ted Kennedy).

192. See OFFICE OF THE ASSISTANT SEC’Y FOR POLICY, *Fair Labor Standards Act Advisor: What Is the Minimum Wage?*, U.S. DEP’T OF LABOR, <http://www.dol.gov/elaws/faq/esa/flsa/001.htm> (last visited Dec. 09, 2012) (explaining the incremental increases in the federal minimum wage from 2007 to 2009).

193. 151 CONG. REC. S2113 (daily ed. Mar. 7, 2005) (statement of Sen. Ted Kennedy).

194. *Id.*; see also EHRENREICH, *supra* note 144, at 234–35 (citing a National Low-Income Housing Coalition report from 2006 that found “a worker had to earn \$16.31 an hour to afford a two-bedroom housing unit at market rents,” and surmising that “this figure can be taken as a rough estimate of what a true nationwide living wage might be. The supply of affordable housing is shrinking; there is a critical shortage of licensed child care facilities; 47 million Americans lack health insurance” while calling for “decisive action from the public sector and a vigorous social movement”) (citation omitted).

irony that

[t]hose who . . . benefit [from bankruptcy reform] are the credit card industry and the banks That is enormously interesting to me, as someone who is the prime sponsor of the minimum wage. We can find time for consideration of the bankruptcy bill; yet, we do not have time to look at an increase in the minimum wage for hard-working Americans.¹⁹⁵

For decades, politicians and economists have debated the utility—or economic risk—of raising the minimum wage, but reliable evidence exists to support its importance.¹⁹⁶ Professor Kalsem concluded that policymakers should exploit the nexus between the issues of bankruptcy and female poverty, as highlighted during that Congressional battle.¹⁹⁷ She urged advocates to “write over the old script and . . . consider more expansive ways of thinking about and addressing financial health and security in America.”¹⁹⁸ She argued persuasively for shifting the paradigm from a needs based one to one striving towards economic justice,¹⁹⁹ which is the theory underlying any well-meaning poverty reduction strategy.

D. Critical Need for Robust Federal Funding for Proven Poverty Reduction Programs

The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), which provides nutritional assistance (food itself and referrals to health care) to poor women and children, has demonstrated its effectiveness over the years. As compared to children receiving WIC benefits, studies have found higher rates of food insecurity, living conditions lacking proper heat or cooling, and unstable housing among children eligible

195. 147 CONG. REC. S1801 (daily ed. Mar. 5, 2005) (statement of Sen. Ted Kennedy).

196. See, e.g., David Card & Allen B. Krueger, *Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania*, 84 AM. ECON. REV. 772, 792 (1994) (finding that minimum wage increases did not cause reductions in employment); see also Robert Reich, *The Truth About the American Economy*, ROBERTREICH.ORG (May 31, 2011), <http://robertreich.org/post/5993482080> (describing the contributing factors such as globalization and technological advances, but concluding that stagnating wages, “shredded safety nets” like welfare reform and unemployment insurance cuts, and tax cuts for the rich are mostly to blame, and advocating for a minimum wage hike).

197. Kalsem, *supra* note 87, at 1224–25.

198. *Id.*

199. *Id.* at 1231.

for WIC but not receiving it.²⁰⁰ WIC participation has increased at least 4% since the recession began, and President Barack Obama recommends funding WIC to serve “all eligible individuals.”²⁰¹ Given the program’s abject success in achieving positive outcomes for participants, WIC funding must remain robust for other poverty reduction legal reforms to have a meaningful impact.²⁰²

WIC is similar in its structure and goals to the federal aid program, Supplemental Nutrition Assistance Program (SNAP—formerly called Food Stamps), which is another critical public benefit that combats and mitigates poverty among women and children.²⁰³ One commentator noted in 2009 that “raising food stamps participation to 85% of those eligible would reduce poverty by 1.4 million people.”²⁰⁴ Fortunately, the funding for and participation in SNAP has increased steadily, since the welfare reform of 1996 exposed millions to the risk of poverty.²⁰⁵

Federal spending on supplemental child care has also increased since welfare reform, but its continued funding is in jeopardy.²⁰⁶ Recent Congressional budget proposals, notably the 2011 House of Representatives plan for the 2012 budget, has “cut Head Start and the Child Care Development Block Grant, which would result in a total of 218,000 economically disadvantaged children losing access to child development services.”²⁰⁷ Child development services, such as Head Start and Early Head

200. KAREN JENG ET AL., CHILDREN’S HEALTHWATCH, FEEDING OUR FUTURE: GROWING UP HEALTHY WITH WIC 2 (2009), available at http://www.childrenshealthwatch.org/upload/resource/Feeding_our_future.pdf (noting that “every \$1.00 spent on WIC results in savings of between \$1.77 and \$3.13 in health care costs in the first 60 days after an infant’s birth. The program has the highest rating possible from the U.S. Office of Management and Budget’s Program Assistance Rating Tool (PART), an assessment based on a program’s goals, results and management. WIC’s superior rating is attributable to its measurable impacts on key health outcomes, the efficient use of program funds and its success in achieving long-term performance goals”).

201. *Id.* at 3.

202. *Id.* at 2.

203. Edelman, *supra* note 43, at 25–26.

204. *Id.*

205. Wendy A. Bach, *Governance, Accountability and the New Poverty Agenda*, 2010 WIS. L. REV. 239, 250 (2010).

206. WOMEN’S ECON. SEC. CAMPAIGN, CHILD CARE MATTERS: BUILDING ECONOMIC SECURITY FOR LOW-INCOME WOMEN 11 (2010) [hereinafter CHILD CARE MATTERS], available at <http://www.womensfundingnetwork.org/sites/wfnet.org/files/WESC/Improving-Access-to-Child-Care.pdf> (explaining that “[w]hile the economic stimulus legislation funded temporary increases for publically funded child care subsidies, those funds are drying up and many low-income families who need help affording early care and education are no longer receiving assistance”).

207. WOMEN OF COLOR POLICY NETWORK, NYUWAGNER, POLICY BRIEF: THE IMPACT OF

Start, often constitute child care for working mothers without other care alternatives.²⁰⁸ Funding cuts have already occurred at the state level—in 2008, more states cut child care than increased funding.²⁰⁹ In an unprecedented move on August 2, 2011, Congress entered into a compromise of herculean proportions with the Budget Control Act of 2011.²¹⁰ Advocates for child welfare programs like Head Start and SNAP agreed to a compromise which amounted to increased or flat-lined spending for the programs in the short term, but potential draconian cuts of nearly \$1 trillion over the next decade.²¹¹ Euphemistically called a “cap in discretionary spending,” the changes will almost certainly result in spending cuts—possibly lethal ones—to child care and education programs like Head Start and Early Head Start.²¹²

Lack of child care is a threshold barrier to work for many women.²¹³ Leveling the playing field for poor mothers who want to work requires a meaningful public support system for the care of their children, and adequate

RECENT BUDGET PROPOSALS ON WOMEN OF COLOR, THEIR FAMILIES AND COMMUNITIES 2 (2011), available at <http://www.google.com/url?sa=t&rect=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&ved=0CDUQFjAA&url=http%3A%2F%2Fwagner.nyu.edu%2Fwocpn%2Fpublications%2Ffiles%2F2011.PolicyBriefImpactofFY2012BudgetProposals.pdf&ei=MloBUbDFCofL2QW9yIC4CA&usq=AFQjCNHpJpH5k4O-WQxbvELUAg315vYtw&sig2=-c9bBA3HnKP631z0RdldKw&bvm=bv.41524429,d.b2I>.

208. U.S. DEP’T OF HEALTH & HUMAN SERVS., EARLY CHILDHOOD LEARNING & KNOWLEDGE CTR., STRATEGIES FOR HEAD START—CHILD CARE PARTNERSHIPS REVISITED (2009), available at <http://eclkc.ohs.acf.hhs.gov/hslc/ta-system/operations/Management%20and%20Administration/Program%20Diversity/Child%20Care%20Partnerships/StrategiesforHe.htm>.

209. NAT’L WOMEN’S LAW CTR., STATE CHILD CARE ASSISTANCE POLICIES 2009: MOST STATES HOLD THE LINE BUT SOME LOSE GROUND IN HARD TIME 1 (2009), available at <http://www.nwlc.org/sites/default/files/pdfs/nwlcstatechildcareassistancepolicies2009.pdf> (explaining that their study of child care policies in the fifty states and the District of Columbia revealed that “[b]etween February 2008 and February 2009 more states moved backward than forward” in policy areas due to funding cuts).

210. *Policy Priorities: Children’s Budget Watch*, CHILDREN’S DEF. FUND, <http://www.childrensdefense.org/policy-priorities/budget-watch/> (last visited Dec. 13, 2012).

211. *Id.*

212. *Id.*

213. ENGLISH, HARTMANN & HEGEWISCH, *supra* note 36, at 3 (citations omitted) (interpreting data to “suggest that a number of changes in policy and practice are needed to improve women’s earnings and the ability to combine work and family in the United States. These include: [i]ncreasing the availability of subsidized child care and family-friendly work arrangements, such as paid family leave, paid sick days, and flexibility in work schedules to allow workers to meet their family responsibilities”); see also CHILD CARE MATTERS, *supra* note 206, at 4 (explaining that “[s]ecuring stable, quality [child] care is costly, presenting an enormous barrier to single mothers, many of whom have very low incomes. . . . The “average” [cost of] child care is simply unaffordable for most low-income mothers”).

funding—at levels higher, not lower, than in the past.²¹⁴ As the Women’s Economic Security Campaign has sagely noted:

During this time of economic upheaval, when so many low-income women are struggling to find and keep work, the lack of affordable, quality child care presents an enormous obstacle to a more financially secure future for millions of families. . . . Ensuring that low-income, single mothers can access quality early care and education for their children is critical to improving economic security. . . . Any serious effort to reduce poverty must include increasing access to quality early care and education for low-income women.²¹⁵

The problem of inadequate child care is a human one, not just a problem in the United States—after all, if any mother is to join the labor force, she must find alternative care for her young children during her work hours.

Other analogous societies handle the problem in different ways, some strikingly more supportive than the United States approach.²¹⁶ In a landmark study, Naomi Neft and Ann D. Levine observed that while only a “few countries provide high-quality, subsidized child care,” some nations do so quite well.²¹⁷ Those that do so have work forces, government types, and economic systems analogous to the United States.²¹⁸ For example, in France, Denmark, Sweden, and Australia, working parents have access to either free child care facilities operated by the government or cash rebates for child care costs incurred.²¹⁹ Neft and Levine point out, however, that single mothers or those who work odd shift hours still have significant problems finding child

214. LOVELL, HARTMANN & WILLIAMS, *supra* note 47, at 16 (stressing that “to help get parents on a more equal footing with non-parents and to help single mothers who are especially vulnerable, more public support for the financial and time burdens of raising children is absolutely essential. This requires a far greater public investment in child care . . . and leadership from the federal government on valuing care work as performed by both women and men”).

215. CHILD CARE MATTERS, *supra* note 206, at 2, 9.

216. NAOMI NEFT & ANN D. LEVINE, *WHERE WOMEN STAND: AN INTERNATIONAL REPORT ON THE STATUS OF WOMEN IN 140 COUNTRIES 1997–1998*, at 75 (1997).

217. *Id.*

218. *Id.*

219. *Id.* (explaining that “[o]ne of the most successful programs is in France, where parents can enroll their children in a variety of child-care centers, preschools, and special day-care homes run by the government. Tuition is free or minimal, adjusted according to the family income” and that “[s]imilar systems have been established in Denmark, Sweden, and other European countries, while in Australia a 1994 law provides a cash rebate to families to help defray child care costs”).

care.²²⁰ They also notes that in the United States a “government study found that as many as 20% of full time employees work nonstandard hours but that only a dozen child care centers nationwide operate twenty-four hours a day.”²²¹

A decade later in 2008, the United States remained behind other Westernized nations in this category, still lacking a financial support program to assist working parents with child care.²²² In a 2008 report, Timothy Casey stresses that “[m]any jobs don’t pay enough for parents to afford decent child care, and subsidized child care is available only to a small fraction of parents.”²²³ There is little wonder why single mothers remain economically disadvantaged under the current system, as they are often forced to choose between a steady income and a place for their children to receive basic care while they earn this income.²²⁴

Adequately funding child care programs is essential, but so is funding the supportive services. A Women’s Economic Security Campaign report lists the following key “policy priorities” to bolster access to child care and education for needy families: “Enhance the Child and Dependent Care Tax Credit. . . . Increase Funding for the Child Care and Development Block Grant Program (CCDBG) and Head Start to Help States and Localities Reduce Waiting Lists for Subsidized Child Care. . . . Reduce Barriers that Prevent Low-Income Families from Using Subsidies in High Quality Settings.”²²⁵ This last measure would, for example, increase state reimbursements to child care providers and increase outreach to eligible families, which would help more families access necessary child care.²²⁶

Thoughtful, outcome-driven public support has historically reduced poverty in the United States,²²⁷ and, when combined with related legal

220. *Id.*

221. *Id.*

222. TIMOTHY CASEY, *YOUNG MEN ARE STILL ECONOMICALLY BETTER OFF THAN YOUNG WOMEN*, LEGAL MOMENTUM REPORT 4 (2008) (noting that “[u]nlike most rich countries, the United States does not have a children’s allowance program, meaning a public program that provides cash subsidies to parents to help offset the cost of raising children”).

223. *Id.*

224. CHILD CARE MATTERS, *supra* note 206, at 26 (pointing out that “[w]ithout good and reliable child care, women who try to hold down jobs will face little prospect of economic security, and their children will suffer the consequences of inconsistent, sub-standard care”).

225. *Id.* at 15.

226. *Id.*

227. YONATAN BEN-SHALOM ET AL., INST. FOR RESEARCH ON POVERTY, DISCUSSION PAPER NO. 1392-11, AN ASSESSMENT OF THE EFFECTIVENESS OF ANTI-POVERTY PROGRAMS IN THE

reforms, can reduce the ever-growing scourge of female and child poverty. Legislators must have the courage to stand by measures like these that, when coupled with the legal reform outlined in Part IV, can change the economic landscape for women and children in the United States.²²⁸ If politicians had the will to implement these measures, they could create a historic and innovative twist on the concept of a public-private partnership.

IV. FAMILY LAW REFORM FOR GENDER EQUALITY: NATIONALIZED SPOUSAL SUPPORT

This Part describes a potential system of uniform spousal support, otherwise known as alimony. Part IV.A. points out the problems of the fluid and discretionary nature of alimony, but explains that despite these problems, alimony is a necessary tenet of United States family law. Part IV.B. describes the existing nationalized systems of support in the United States and Canada that are instructive in numerous ways. Finally, Part IV.C. outlines specific aspects of an ideal, nationalized alimony system.

A. Alimony's Identity Crisis Must Not Overshadow Its Utility

Spousal support (used interchangeably with the term "alimony") is the most mercurial family law development in modern history.²²⁹ The law is a patchwork of state statutes and common law that often contradict one another.²³⁰ Predicting outcomes from state to state or even county to county is nearly impossible.²³¹ Even on threshold issues, such as whether marital fault may be considered for alimony determinations, the states share only an

UNITED STATES 15–18 (last revised June 2011).

228. See *infra* Part IV.

229. James Herbie DiFonzo, *Toward a Unified Field Theory of the Family: The American Law Institute's Principles of the Law of Family Dissolution*, 2001 BYU L. REV. 923, 946 (2001) (characterizing alimony as a "fluid doctrine whose consistency conformed to the shape of the rationale into which it was poured: spousal need, maintenance of marital living standards, support at subsistence level, punishment for sexual transgression, reward for fidelity, contractual right, and partnership duty").

230. Morgan, *supra* note 97, at 8–9.

231. See L.J. Jackson, *Alimony Arithmetic: More States Are Looking at Formulas to Regulate Spousal Support*, A.B.A. J., Feb. 2012, at 15 (stating that "'divorce law is one of the most discretion-filled areas of law there is'. . . [a]nd alimony is one of the most frequently litigated issues in family law . . . divorcing spouses deserve more predictable outcomes" and explaining the massive variations among state alimony laws); see also Rose Welton, *Alimony Laws in California*, LIVESTRONG.COM (May 1, 2011), <http://www.livestrong.com/article/125956-alimony-laws-california/> (stating that "alimony . . . guidelines vary in [California]'s counties").

utter lack of consensus.²³² Perhaps most troubling of all, there is also no consensus about why and to what extent alimony is useful.²³³ Alimony in its current unpredictable form, is not an economic safety net for divorcing wives, in contravention of its original legal identity.²³⁴ Yet, as explained by Professor Cynthia Lee Starnes:

often alimony is the only available tool for addressing cases in which marital roles have left divorcing spouses with disparate earning capacity at divorce. In these difficult economic times, with home equity disappearing and retirement savings diminishing, divorcing couples increasingly have few, if any, significant assets, which renders property distribution a useless tool, and makes income sharing, i.e., alimony, the only available economic remedy for the primary family caretaker.²³⁵

Starnes's characterization of alimony as a remedy for financial loss is consistent with the theory espoused by the authors of the American Law Institute's *Principles of the Law of Family Dissolution (Principles)* regarding alimony.²³⁶ The *Principles* advocate compensatory spousal payments to make up for financial losses or to "allocate financial losses that arise at the dissolution of a marriage. . . ."²³⁷ The *Principles* claim to shift the focus from "needs" (the prevailing lens through which state courts have historically analyzed alimony requests) to a calculus of what "losses" have been incurred as a result of the marriage and/or the divorce.²³⁸ Providing recompense for economic loss to women upon divorce is precisely the purpose alimony should serve, and in this regard—articulating the purpose

232. Morgan, *supra* note 97, at 8–9.

233. Yamiche Alcindor, *Should Alimony Laws Be Changed?* USA TODAY MONEY (Jan. 18, 2012, 3:17 PM), <http://www.usatoday.com/money/perfi/basics/story/2012-01-05/alimony-law-reform/52642100/1> (describing the debate among alimony reform advocates from several states who have differing views on what types of reform are necessary and why, and opponents of reform who also espouse various theories for their opposition, some of which are based in concerns that limiting alimony would exacerbate female poverty).

234. Ellman, *supra* note 96, at 699.

235. Cynthia Lee Starnes, *Alimony Theory*, 45 FAM. L.Q. 271, 272 (2011).

236. DiFonzo, *supra* note 229, at 946–52.

237. AM. LAW INST., PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS § 5.02 (2008).

238. *Id.* at § 1, Topic 1, Overview of Chapters 4 and 5, pts. I & II, cmts. b, c at 24–28 (explaining that "[t]he approach of these Principles is to refocus the alimony inquiry from need to loss, a shift that some cases have already begun to adopt").

of alimony—the *Principles* are spot on.²³⁹ However, the *Principles* are merely advisory, not binding, on state governments.²⁴⁰ How, then, can policymakers meaningfully reform alimony, to actually attain the theoretical goal expressed in the *Principles*, as state court judges, mediators, and attorneys implement a new alimony system? Furthermore, how can they attain true uniformity when other competing “model” rules exist alongside the *Principles*—most notably the Uniform Marriage and Divorce Act (UMDA),²⁴¹ which every state has not yet adopted? Congress needs to step in.

B. Precedent for Nationalizing Family Support

This Part describes two prescient examples of nationalized family support systems that can provide guidance for nationalizing the United States alimony system. Part IV.B.1 explains the history of child support in the United States, which federal legislation in large part nationalized beginning in the 1970s. Part IV.B.2 describes Canada’s experience with a national system of advisory alimony guidelines.

1. Child Support in the United States

Congress implemented radical child support reform starting in 1975 when it linked the states’ eligibility for certain welfare funding with requirements for child support enforcement in welfare cases.²⁴² Since then, Congress has enacted numerous additional legislative measures, and the child support system is now uniform across state lines with respect to many enforcement procedures, jurisdictional questions,²⁴³ and eligibility

239. *Id.*

240. See also David Westfall, *Unprincipled Family Dissolution: The ALI’s Recommendations for Division of Property*, in RECONCEIVING THE FAMILY: CRITIQUE ON THE AMERICAN LAW INSTITUTE’S PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION 176, 176–79 (Robin Fretwell Wilson ed., 2006) (opining that the *Principles* on all family law topics “may impede much needed reforms and even lead the legislators, judges, and rule makers to whom they are addressed to adopt unsound policies” and pointing out that “the [ALI *Principles*] sometimes offer no guidance at all as to the choice between contrasting rules” and offering as an example the *Principles*’s failure to provide clarity on the definition of “income” for determination of alimony).

241. UNIF. MARRIAGE & DIVORCE ACT § 308 (amended 1973), 9A U.L.A. 446 (1998).

242. *General Information about Child Support Enforcement*, NORTH CAROLINA DIVISION SOC. SERVS., http://www.ncdhhs.gov/dss/cse/geninfo.htm#History_CSE (last visited Dec. 13, 2012).

243. See UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 159 (2005 & Supp. 2009) (adopted in all fifty states due to a provision in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which makes enactment of UIFSA a condition for receipt

determination processes.²⁴⁴ Although Congress gives the states freedom to decide what types of guidelines they will use, states must have specific guidelines in place for determining child support.²⁴⁵ Standardized collection procedures are also required, and states must participate in numerous nationwide databases containing case information.²⁴⁶ The federal government maintains certain central databases, such as a Parent Locator Service, to facilitate collection of support across state lines.²⁴⁷ Congress also passed additional legislation to bolster enforcement and uniformity of child support nationwide, specifically the Family Support Act of 1988 (FSA),²⁴⁸ the Full Faith and Credit for Child Support Orders Act,²⁴⁹ and the Child Support Recovery Act.²⁵⁰ Child support reduces child impoverishment and keeps hundreds of thousands of children above the poverty level.²⁵¹

Alimony, like child support, serves as a poverty prevention strategy, with a primary purpose of compensating for economic loss.²⁵² Extensive research and commentary has ensued in the past several decades about the proper function of alimony and how states should determine and enforce it.²⁵³ The *Principles* themselves, as well as the Uniform Marriage and Divorce Act, attempt to map out alimony reform.²⁵⁴ Yet, alimony laws still

of federal funding for child support enforcement). Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 666(f) (2006).

244. 42 U.S.C. § 667 (2006); 45 C.F.R. § 302.56 (2011).

245. 42 U.S.C. § 667 (2006); 45 C.F.R. § 302.56 (2011).

246. *General Information about Child Support Enforcement*, *supra* note 242.

247. *Id.*

248. 42 U.S.C. § 666(a)(9) (2006) (mandating that states have procedures in place to make sure that support orders are final and thus enforceable, and that they give full faith and credit to each other's orders regarding support payments).

249. 28 U.S.C. § 1738B (2006) (clarifying obligations in the UIFSA and the FSA).

250. 18 U.S.C. § 228 (2006) (making it a crime to not pay child support even when the child resides in another state).

251. ELAINE SORENSEN & CHAVA ZIBMAN, THE URBAN INST., SERIES B NO. B-10, CHILD SUPPORT OFFERS SOME PROTECTION AGAINST POVERTY 2 (2000), *available at* <http://www.urban.org/UploadedPDF/b10.pdf> (explaining that “[c]hild support lifts about half a million children out of poverty, reducing poverty among these children by 5 percent”).

252. *See, e.g.*, Starnes, *supra* note 235, at 271 (explaining the justification for alimony as protecting the state from supporting a divorced spouse who “would be thrust into poverty”).

253. *See, e.g.*, June Carbone, *Back to the Future: The Perils and Promise of a Backward-Looking Jurisprudence*, in RECONCEIVING THE FAMILY: CRITIQUE ON THE AMERICAN LAW INSTITUTE PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION 209 (Robin Fretwell Wilson ed., 2006); Ellman, *supra* note 96; Starnes, *supra* note 235.

254. UNIF. MARRIAGE & DIVORCE ACT § 308 (amended 1973), 9A U.L.A. 446 (1998); AM.

vary nationwide on numerous threshold issues, such as whether courts may consider marital misconduct.²⁵⁵ Judicial discretion is enormous in many states, leading to perplexing outcomes that breed resentment among parties, attorneys, and judges.²⁵⁶ Alimony reform needs to follow the path of child support reform with Congressional action to mandate uniformity in determination and enforcement.

2. National Alimony System in Canada

A national set of alimony guidelines is not an anomaly. Canada, for example, has been using national alimony guidelines for several years.²⁵⁷ The Canadian voluntary, advisory guidelines went into effect in 2008.²⁵⁸ The guidelines “are now widely used across the country by lawyers, mediators, and judges in spousal support determinations.”²⁵⁹ They grew out of dissatisfaction with the discretion that the former system gave to trial judges in alimony cases.²⁶⁰ Unlike federal courts in the United States, which have stayed out of the realm of divorce economics by conscious choice, the Supreme Court of Canada has provided guidance on the issue.²⁶¹ This court held in 1992 that spousal support is compensatory at its heart—that it is intended to serve as “the equitable distribution between the spouses of the *economic* consequences of the marriage”²⁶² Seven years later the same

LAW INST., *supra* note 237.

255. See Joanna Grossman, *Can an Adulterer Receive Alimony?*, CNN.COM (May 19, 2005), <http://edition.cnn.com/2005/LAW/05/05/grossman.adultery.alimony/index.html> (explaining that marital misconduct such as adultery may be considered only in some states for alimony); see also Jackson, *supra* note 231, at 16 (explaining that “some states have a durational component for alimony; some disallow alimony for fewer than 10 years of marriage. Some states use gross income to calculate awards; others use net”).

256. See, e.g., Alcindor, *supra* note 233 (quoting alimony reform advocate Tom Leustek, president of New Jersey Alimony Reform, as stating that “[t]here should be consistent treatment across the board where you can predict what’s going to happen based on law, not a judge’s arbitrary decision”).

257. Carol Rogerson & Rollie Thompson, *The Canadian Experiment with Spousal Support Guidelines*, 45 FAM. L.Q. 241, 241 (2011).

258. *Id.* at 241–42.

259. *Id.* at 242.

260. *Id.* at 249.

261. *Id.* at 247; see also *Ankenbrandt v. Richards*, 504 U.S. 689, 701 (1992) (explaining the United States federal courts’ policy to decline to hear domestic relations disputes and leave those controversies to state courts).

262. Rogerson & Thompson, *supra* note 257, at n.24 (discussing *Moge v. Moge*, [1992] 3 S.C.R. 813 (Can.)).

court announced that there can also be *non*-compensatory justifications for spousal support when the economically disadvantaged spouse has a legitimate *need*.²⁶³ Problems arose as judges struggled to exercise the great discretion that these two cases gave them to determine alimony, guided only by factors in Canada's Divorce Act.²⁶⁴ This state of legal chaos, remarkably similar to the one in the United States today, led to the promulgation of the Canadian guidelines.²⁶⁵ Although challenges exist, there is consensus that the guidelines have bolstered predictability and order in the Canadian system.²⁶⁶ While Canadian courts of review have endorsed them,²⁶⁷ the guidelines are not mandatory.²⁶⁸ Unlike the voluntary nature of the Canadian guidelines, this Article suggests²⁶⁹ that Congress enact guidelines that are mandatory for every state. Congress has tried and failed to implement voluntary guidelines, as demonstrated by its experiments with the UMDA and the *Principles*.²⁷⁰

C. Recommended Protocols for Nationalized Alimony in the United States

Alimony is already partly nationalized, insofar as federal income tax laws dictate its treatment as taxable income.²⁷¹ The federal tax code's guidelines for alimony can serve as a starting point for national alimony guidelines.²⁷² For example, under the tax code, lump sum payments akin to property distributions and payments to maintain a former spouse's property do not constitute alimony.²⁷³ Congress, through careful work in committees staffed with individuals experienced in family law and economics, should

263. *Id.* at 248 (citing *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420 (Can.)).

264. *Id.* at 249 (referring to Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)).

265. *Id.* at 249–50.

266. *Id.* at 261–63.

267. *Id.* at 259.

268. Rogerson & Thompson, *supra* note 257, at 242.

269. *See infra* Part IV.C.

270. *See generally* Carbone, *supra* note 253, at 209, 230 (theorizing that the *Principles* actually are forward-looking and that they need to be restated as such because alimony should be given if the poorer spouse needs it in the future).

271. INTERNAL REVENUE SERVICE PUB. No. 504, ALIMONY SECTION, available at http://www.irs.gov/publications/p504/ar02.html#en_US_2011_publink1000175944 (last visited Dec. 13, 2012) (citing to the alimony section).

272. *Id.*

273. *Id.*

devise guidelines for the basic issues of alimony: determination and enforcement.²⁷⁴ This comprehensive reform would be even bolder than what Congress did with child support, and arguably more effective, because the various child support determination models among the states (Guidelines for Setting Child Support Awards)²⁷⁵ have enabled disparities to persist.²⁷⁶

1. Alimony Determination

Congress should resolve common disparities among the current state systems, such as whether courts may consider marital misconduct. Whether or not to allow evidence of marital misconduct is one example of the tenets that make up an effective system of alimony determination.²⁷⁷ But the states are divided—many allow it, and some make misconduct, such as infidelity, a bar to receiving alimony.²⁷⁸ However, the UMDA strictly forbids consideration of marital misconduct by either party,²⁷⁹ as do the *Principles*.²⁸⁰ This Article contends that this is well-intentioned policy gone awry, in both the UMDA and the *Principles*.²⁸¹ Trial courts are well-equipped to conduct fact-finding in alimony cases, and in fact do intensive fact-finding on issues of marital misconduct in many divorces where issues

274. See, e.g., Nat'l Legal Research Grp., *Are Alimony Guidelines in Our Future? The Uses and Abuses of Vocational Evidence in Divorce Cases*, DIVORCE RESEARCH CTR., (2003) <http://www.divorcesource.com/research/dl/alimony/03nov189.shtml> (discussing various statewide alimony approaches, including some which have guidelines, and referencing the *Principles*'s factor-based approach—rather than guidelines—but stopping short of calling for national guidelines).

275. 42 U.S.C. § 667 (2006); 45 C.F.R. § 302.56 (2011).

276. Ira Mark Ellman, *A Case Study in Failed Law Reform: Arizona's Child Support Guidelines*, 54 ARIZ. L. REV. 137, 144 (2012) (explaining that although all states are required to have child support guidelines, the particularized considerations that arise when determining precise support amounts, such as whether parenting time should be considered and to what extent actual child needs are considered, vary from state to state).

277. See, e.g., UNIF. MARRIAGE & DIVORCE ACT § 308 (amended 1973), 9A U.L.A. 446, 447 (1998) (excluding marital misconduct from determination of spousal maintenance, another term for alimony).

278. Morgan, *supra* note 97, at 410.

279. UNIF. MARRIAGE & DIVORCE ACT § 308 (amended 1973), 9A U.L.A. 446, 447 cmt. (1998).

280. See AM. LAW INST., *supra* note 237, at § 5.02(2) (stating that alimony can only be awarded “without regard to marital misconduct” and “nothing intended to foreclose bringing a claim recognized under other law for injuries arising from conduct that occurred during the marriage”).

281. See also Jackson, *supra* note 231, at 16 (quoting Pennsylvania divorce attorney Lynne Gold-Bikin as supporting the consideration of multiple issues including adultery in alimony determinations).

come before the court on child custody, domestic violence, or marital fault (in states that have retained fault grounds for divorce). Marital misconduct may be highly relevant in certain cases and to ignore it could be detrimental to already disenfranchised parties.²⁸² For example, a wife who has been the victim of domestic abuse or is married to an alcoholic spouse who voluntarily stopped working could be highly prejudiced by a “no marital misconduct” rule if she is the higher wage earner. Conversely, the marital misconduct of a husband who earns just slightly more than the wife may be the most relevant factor in determining her reasonable economic needs, if his marital misconduct was, for example, emotional abuse culminating in her developing an anxiety disorder that impedes her ability to work at her former earning potential. Federal alimony guidelines should include consideration of marital misconduct as one of several factors courts may consider in determining alimony amount as well as eligibility.²⁸³ Besides the potential marital misconduct exception, courts should favor eligibility for any spouse demonstrating a lower income or earning capacity.²⁸⁴ The definition of “income”²⁸⁵ should include imputed income from an earning capacity, if appropriate, to mitigate the problem of higher-earning spouses voluntarily reducing their incomes to avoid or reduce alimony.²⁸⁶

Once eligibility is resolved, courts must have criteria to determine alimony amount and duration. On this topic, notwithstanding their

282. *Id.* (describing an example of a “Harvard Business School grad [divorcing wife] who gave up her career to put her husband through medical school,” whose income is \$50,000 per year while her husband’s is over \$1 million and whose husband had “multiple affairs” during their twenty-four-year marriage and advocating for alimony awards for parties like her).

283. *See, e.g.*, 23 PA. CONS. STAT. § 3701(b)(14) (2008) (describing the Pennsylvania alimony factor that allows courts to consider “[t]he marital misconduct of either . . . part[y] [during the marriage]” when determining “whether alimony is necessary” and “the nature, amount, duration, and manner of payment of . . .”).

284. *See, e.g.*, 23 PA. CONS. STAT. § 4321(1) (2008) (imposing a duty of financial support on spouses who earn more than their respective spouse, which Pennsylvania enforces when those spouses are separated and before their divorce is final); *see also* 231 PA. CODE § 1910.1 (2012) (giving Pennsylvania state courts the power to enforce the duty of spousal support); 231 PA. CODE § 1910.16-4 (2012) (setting out the Pennsylvania spousal and child support guidelines).

285. *See, e.g.*, 23 PA. CONS. STAT. § 4302 (2008) (defining “income” for purposes of determining spousal and child support in Pennsylvania); *Frequently Asked Questions, Definition of Earned Income for SSI Purposes*, U.S. SOC. SEC. ADMIN. (June 11, 2012, 11:01 AM), http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/410/~definition-of-earned-income-for-ssi-purposes.

286. *See* Steven J. Willis, *Columns: Family Law Economics, Child Support, and Alimony: Ruminations on Income Part I*, 78 FLA. BAR. J. 34, 35 (2004) (explaining that “the definition of income is . . . a major factor for an alimony determination.”); *see also* UNIF. MARRIAGE & DIVORCE ACT § 308(b)(6) (amended 1973), 9A U.L.A. 446 (1998) (allowing for imputed income, also known as earning capacity, or the income an individual would be earning if they were employed despite their current unemployment or employment at a lower wage level).

misguided exclusion of marital misconduct, the *Principles'* remaining criteria are quite sound—much more so than the UMDA's strictly needs-based model.²⁸⁷ Not surprisingly, only a handful of states have adopted the UMDA since its promulgation in the 1970s.²⁸⁸ Section 5.02(3) of the *Principles* instructs courts to consider caretaking of children and its effect on loss of earning capacity, length of marriage, and the impact of the marriage on the financial situations of each spouse particularly in shorter marriages.²⁸⁹ Before settling on these as the end of the inquiry, states should benchmark each alimony statute to extract commonalities in alimony determinative factors, such as perhaps, length of marriage.²⁹⁰ The federal alimony guidelines should then include a set of factors that all states may use to determine alimony, in addition to those articulated in Section 5.02(3) of the *Principles*.²⁹¹

Perhaps most importantly, a uniform system is necessary for determining the amount of alimony owed. The majority approach for child support guidelines is an "income shares" model, and some states, such as Pennsylvania, have adopted it for spousal support as well.²⁹² An income

287. Compare AM. LAW. INST., *supra* note 237, at § 5 (including considerations of, among other things, care for children, financial losses incurred as a result of the marriage, and duration of the marriage), with UNIF. MARRIAGE & DIVORCE ACT § 308 (amended 1973), 9A U.L.A. 446 (1998) (stating only that "the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance: (1) lacks sufficient property to provide for his reasonable needs; and (2) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home").

288. Nat'l Conference of Comm'rs on Unif. Law Comm'n, *Enactment Status Map, Model Marriage and Divorce Act*, UNIFORM L. COMMISSION, <http://uniformlaws.org/Act.aspx?title=Marriage%20and%20Divorce%20Act,%20Model> (last visited Dec. 13, 2012).

289. AM. LAW INST., *supra* note 237, at § 5.02(3).

290. See, e.g., FLA. STAT. § 61.08 (2011) (instructing Florida courts to consider "duration of the marriage" when determining alimony and identifying several legal presumptions related to marital duration necessitating certain alimony determinations as to amount and duration); 23 PA. CONS. STAT. § 3701(b)(5) (2008) (identifying "duration of the marriage" as a factor that Pennsylvania courts must consider when determining alimony).

291. See Jackson, *supra* note 231, at 16 (quoting former President of the American Academy of Matrimonial Attorneys Linda Lea Viken for the sentiment that "'you have a greater chance of the [alimony] result fitting the facts of the case [and being reasonable and appropriate] if you simply have criteria that are considered by the court.'" Jackson further points out that "many lawyers say that allowing a judge discretion to weigh . . . factors offers flexibility . . .").

292. See, e.g., 231 PA. CODE §§1910.16-1, 1910.16-2 (2012); 23 PA. CONS. STAT. § 4322(a) (2008) (promulgating Pennsylvania's spousal support guidelines using the income shares model, and explaining same. It must be noted, however, that Pennsylvania's spousal support guidelines apply only to pre-divorce support awards, and not to post-divorce awards, which are called alimony and are not strictly subject to these guidelines but instead are determined by using a set of seventeen

shares model is easily adaptable from state to state and has the advantage of accounting for both parties' incomes.²⁹³ By contrast, the minority approach for child support guidelines is a "percentage of income" model that only calculates the payor's income.²⁹⁴ Adopting federal alimony guidelines using an income shares model, similar to the spousal support guidelines in Pennsylvania, would enable the states to use a fair and consistent alimony determination system, which is also inherently flexible enough to account for differences in income not only among states but among parties.²⁹⁵ As in Pennsylvania, an ideal set of guidelines would also include flexibility for factors, such as mortgage on the marital residence and extraordinary expenses.²⁹⁶ In this way, predictability is balanced with flexibility so that trial courts and parties settling cases outside of court may reach consistent outcomes that are tweaked to justly serve their individual economic needs.²⁹⁷

2. Alimony Enforcement

The most successful aspect of the federal child support system is enforcement.²⁹⁸ Although overall support collection rates are shockingly low, nationalized efforts institutionalized by child support reform have

statutory factors, although the spousal support guidelines may be consulted in alimony cases if the court deems it appropriate.).

293. See Bill Ruthhart, *Illinois May Alter Child Support Formula: 'Income Shares' Method Would Consider Both Parents' Incomes*, *Time with Child*, CHI. TRIB., Dec. 30, 2011, http://articles.chicagotribune.com/2011-12-30/news/ct-met-child-support-formula-20111230_1_support-payments-child-support-services-formula (reporting that Illinois state officials considered the income shares model "very fair" and an improvement to their "percentage of income" system for child support).

294. *Id.*

295. See, e.g., 23 PA. CONS. STAT. § 4322(a) (2008) (explaining that "spousal support shall be awarded pursuant to a Statewide guideline as established by general rule by the Supreme Court, so that persons similarly situated shall be treated similarly.") (emphasis added).

296. See *id.* (directing that "the guideline shall place primary emphasis on the net incomes and earning capacities of the parties, with allowable deviations for unusual needs, extraordinary expenses and other factors, such as the parties' assets, as warrant special attention").

297. *Id.*

298. See, e.g., Margot Bean, Office of Child Support Enforcement, *Compendium of Promising Practices/Good Ideas in Child Support Enforcement-2007*, U.S. DEP'T HEALTH & HUM. SERVICES (Mar. 26, 2008), <http://www.acf.hhs.gov/programs/cse/pol/IM/2008/im-08-02.htm> (outlining numerous successful child support enforcement measures in various states, all of which fall under the purview of this federal office and the federal act mandating certain enforcement measures, as demonstrated by the addressing of the memorandum to "ALL AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED PARTIES").

dramatically improved efficiency and effectiveness of enforcing support orders both within and across state lines.²⁹⁹ Our legislators should pay the same attention to alimony. A rising awareness of the feminization of poverty, coupled with the haphazard system of enforcement both among and within the states, led Congress to radically change the child support enforcement system, starting in the late 1960s.³⁰⁰ Using the same funded mandate style of getting states to comply that it had used with welfare reform, Congress eventually required states to set up uniform systems of enforcement, such as wage attachments, tax refund interceptions, and driver license and passport suspension for non-compliant child support obligors.³⁰¹ During the same era, Congress required all states to establish central registries for information about obligors and obligees, and to process the actual child support payments, known as Central State Registries (CSR).³⁰² Advances in technology, including superior availability of computer databases, further enhanced the effectiveness of CSRs.³⁰³ Today many states already have a CSR in place.³⁰⁴ Adding alimony collection and disbursement to the duties of a CSR would be an efficient and effective mechanism for prioritizing poverty reduction through alimony.

Another critical legal mechanism already exists: the Uniform Interstate Family Support Act (UIFSA).³⁰⁵ The National Conference of Commissioners on Uniform State Laws (Uniform Law Commission) promulgated UIFSA to promote enforcement of child support obligations across state lines.³⁰⁶ State enactment of UIFSA, like most of the other child

299. *Id.*; see also UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 159 (2005 & Supp. 2008) (requiring enforcement of support orders across state lines).

300. D. KELLY WEISBERG & SUSAN FRELICH APPLETON, *MODERN FAMILY LAW: CASES AND MATERIALS* 654 (4th ed. 2010).

301. See Family Support Act of 1988, 42 U.S.C. § 666(b) (2006) (requiring states to have procedures in place to withhold income from child support obligors); *id.* § 664 (2006) (authorizing the I.R.S. to intercept tax refunds from delinquent support obligors); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 666(a)(16) (2006) (authorizing driver and professional licenses to be suspended for delinquent support obligors), § 652(k) (requiring that delinquent support obligors are denied passports).

302. See generally Paul K. Legler, *The Impact of Welfare Reform on the Child Support Enforcement System*, in *CHILD SUPPORT: THE NEXT FRONTIER* 46, 53 (J. Thomas Oldham & Marygold S. Melli eds., 2000).

303. *Id.* at 53–54.

304. *Id.*

305. UNIF. INTERSTATE FAMILY SUPPORT ACT (amended 2001), 9 U.L.A. 159 (2005 & Supp. 2008).

306. *Id.*

support reforms described in this Part, was essentially mandated by Congress with the welfare reform legislation, Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA),³⁰⁷ and all states and the District of Columbia have adopted at least its initial version (several amended versions have been promulgated since).³⁰⁸

UIFSA aims for predictable results in questionable cases regarding jurisdiction. For example, Section 201 of UIFSA gives states eight bases for personal jurisdiction, including if the child lives in the forum state as a result of “acts or directives of the individual.”³⁰⁹ UIFSA also clarifies that the state which issued a support order retains continuing exclusive jurisdiction to modify that order, which another state cannot supersede, as long as one party or the child remains in that original state.³¹⁰ UIFSA’s third central provision is the guarantee of enforcement of orders across state lines.³¹¹ In all of these matters, UIFSA would remarkably help the enforcement of alimony orders. Early in the statute’s declarations section UIFSA explains that a “[d]uty of support’ means an obligation imposed or imposed by law to provide support for a child, *spouse, or former spouse*, including an unsatisfied obligation to provide support.”³¹² Therefore, in some cases UIFSA is already helpful, because the most prescient aspect of UIFSA (for these purposes) is its extension beyond just child support orders to orders for the support of a current or former spouse.³¹³ UIFSA provides a readymade national framework for enforcement of alimony across state lines.³¹⁴ National reform mandating that states adopt guidelines for determination and intrastate enforcement would dovetail naturally into the use of UIFSA in interstate

307. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 666(f) (2006).

308. See FRIEND OF THE COURT BUREAU/SCAO, MICHIGAN SUPREME COURT, UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA): STATES WORKING TOGETHER TO COLLECT CHILD SUPPORT (2010), available at <http://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/pamphlets/focb/PSA29-Text.pdf> (explaining explains how UIFSA applies to Michigan courts).

309. UNIF. INTERSTATE FAMILY SUPPORT ACT § 201(5) (amended 1996), 9 U.L.A. 328 (2005 & Supp. 2008).

310. *Id.* at § 205.

311. *Id.* at §§ 507, 601–04; see also Full Faith and Credit for Child Support Orders (FFCCSOA) Act, 28 U.S.C. § 1738B (2006) (requiring states to enforce other states’ child support orders).

312. UNIF. INTERSTATE FAMILY SUPPORT ACT § 102(3) (amended 2001), 9 U.L.A. 175 (2005 & Supp. 2008) (emphasis added).

313. *Id.*

314. *Id.*

collection cases without need for any further legislation.

V. CONCLUSION

Cultural change is often achieved best through legal change. Mainstream culture grew numb to the extent of female and childhood poverty in the twentieth century.³¹⁵ The current economic crisis and the political realities it has spawned offer a hidden opportunity. Advocates must be relentless in raising public awareness of the extent of the poverty that millions of women and children endure in this comparatively rich nation, utilizing the prevailing narrative of economic hardship to which so many individuals of all classes can relate. For instance, advocates could follow the recommendation of Malcolm Gladwell, an award-winning journalist, and organize grassroots advocacy groups to inspire an “epidemic”³¹⁶ that spreads the message. On the other hand, more traditional political tactics might just as well light a fire under a key member of the House of Representatives or the Senate. However advocates present the message, Congress should act quickly and thoroughly to implement the critical poverty reduction measures described in this Article, specifically federal budget reform and a national system of alimony.

315. EHRENREICH, *supra* note 144, at 217.

316. MALCOLM GLADWELL, *THE TIPPING POINT: HOW LITTLE THINGS CAN MAKE A BIG DIFFERENCE* 175–81, 258–59 (2000).