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THE BREAKDOWN OF THE AMERICAN FAMILY: WHY WELFARE REFORM IS NOT THE ANSWER

ALLISON B. SMITH*

In May of 1992, former Vice President Dan Quayle gave perhaps the most famous speech of his career to a civic group in Washington, D.C. In his speech, Quayle targeted the deterioration of the traditional nuclear family as the underlying cause of many of the nation's most serious problems, and in the process opened himself up to the censure and ridicule of the American public by criticizing the television character, Murphy Brown, for bearing a child out-of-wedlock.¹ In condemning the current trend towards the acceptance of single-parenthood, divorce, illegitimacy, and other "non-traditional" family structures, Quayle complained that "[i]t doesn't help matters when prime-time TV has Murphy Brown—a character who supposedly epitomizes today's intelligent, highly paid, professional woman—mocking the importance of fathers by bearing a child alone and calling it just another lifestyle choice."² In this same speech, Quayle cited figures illustrating the far greater poverty levels of families headed by single parents, and made the claim that "[m]arriage is probably the best anti-poverty program of all."³ Quayle emphasized an urgent need for government policies which "reinforce values such as family, hard work, integrity, and personal responsibility."⁴

Quayle was not the first or last to place much of the blame for poverty and the breakdown of the family on a welfare system "that impedes individual efforts to move ahead in society, and hampers [welfare recipients'] ability to take advantage of the opportunities America offers."⁵ Throughout his speech, Quayle

* B.A., 1994, Middlebury College; J.D. Candidate, 1997, Notre Dame Law School; Thomas J. White Scholar, 1995-97. This Note is dedicated to my parents, Hallie and Alfred Smith. I would also like to thank Professor John Robinson for his valuable criticisms and comments.

1. John E. Yang, *Clinton Finds New Voice of Emotion: Quayle Decries 'Poverty of Values': Vice President Urges a Firm Hand in Cities*, WASH. POST, May 20, 1992, at A1.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Strange Bedfellows 'Values Debate': Vice-President Quayle Touched a Nerve . . .*, DET. NEWS, May 24, 1992, at 1B.

returned to blaming welfare programs as the major contributor to family breakdown, claiming that welfare checks have replaced the father's role in many families.⁶ According to Quayle, by perpetuating a welfare system that is responsible for diminishing traditional families, the government is not upholding its duty to reinforce "traditional" values and the family.

Despite the criticism and ridicule he has received,⁷ Quayle's identification of the deterioration of the traditional family as a crucial issue for the 1990s was actually predictive of what was to come. At the time Quayle delivered his speech, even President Bush did not offer public support for his vice-president's criticism of Murphy Brown's choice to have a child out-of-wedlock.⁸ However, between the time of his speech in 1992 and 1994, the apparent changes in family structure in the United States over the past few decades had become a nationwide concern of undeniable importance. By 1994, the country had done a complete about-face. Even Donna Shalala, President Clinton's Secretary of Health and Human Services, specifically agreed with Quayle's assessment of the impact of Murphy Brown's choice stating that she did not believe "anyone in public life today ought to condone women having children out-of-wedlock . . . even if the family is financially able."⁹

Living in single-parent and other non-traditional families has proven to be harmful to children, and between 1992, the year of Quayle's speech, and 1996 there was an explosion of concern in the media and across the country about the effects that teen-age pregnancy, divorce, illegitimacy, and single-motherhood are having in the United States.¹⁰ There are today few who

6. *Id.*

7. See, e.g., Jim Puzzanghera, *Poll: Murphy Edges Dan for President*, CHI. SUN-TIMES, May 31, 1992, at 10; Jeff Simon, *Latest Rantings Show Griffin and Quayle Losing Grip on Reality*, BUFF. NEWS, May 26, 1992, at C1; *Quayle's 'Pulpit of Bull,'* BOSTON GLOBE, May 26, 1992, at 10; Dick Williams, *The President Hangs Dan Quayle out to Dry*, ATLANTA J. & CONST., May 26, 1992, at A9.

8. *Dan Quayle vs. Murphy Brown (the Vice President Attacks the Values of a Television Show)*, TIME, June 1, 1992, at 20.

9. *Donna Shalala Does a Dan Quayle, Slams Murphy Brown*, ORLANDO SENTINEL, July 16, 1994, at A11.

10. See, e.g., Ronald Brownstein, *Analysis Spotlight: Campaign '94 Issues are Values, Morality Quayle Speech Gets New Respect*, CINCINNATI ENQUIRER, Aug. 2, 1994, at A2; David Dahl, *To Restore Values, Take Responsibility*, ST. PETERSBURG TIMES, May, 10, 1993, at 1A; Marla Dickerson, *What's Happened to the Nuclear Family?*, DET. NEWS, Oct. 2, 1994, at 1B; Alan Gottlieb, *Census: Nuclear Family No Longer the Norm*, DENV. POST, Aug. 30, 1994, at A2; Myron Magnet, *The American Family, 1992*, FORTUNE, Aug. 10, 1992, at 42; Lance Morow, *Family Values: The Republican Pitch Seems Cynical, But it Goes to the Soul of What Kind of Country Americans Want*, TIME, Aug. 31, 1992, at 22.

deny that, as a statistical matter, children who live in single-parent families live with a handicap as compared with children who live in traditional two-parent families. The major cause of the current alarm over single-parent families is the rapidity with which their numbers have grown over the past several decades combined with the results of numerous studies which indicate that children who grow up in single-parent families tend to be less successful in their education, their career, and their own family life than children who live with both parents.¹¹ There has, therefore, been a growing consensus that the government should try to reverse the current growth of single-parent families through the various policy levers it has within its reach.

The correlation that Quayle made in his speech between the welfare system and the destruction of the traditional family structure is a correlation that is widely made across the country by everyone, from average citizens to influential politicians and journalists.¹² Many Americans assume that there is a causal connection between welfare and family structure decisions, and that if welfare were less available, less generous, or more temporary, the numbers of single-parent families would decrease. Welfare is perceived as encouraging low-income individuals to have children they cannot afford, and to have them out-of-wedlock. Many even claim that welfare encourages young women to have unwanted children simply for the increase in benefits children bring with them.¹³

The specific target of most welfare critics has been the now defunct Aid to Families with Dependent Children (AFDC) program, which primarily provided money and other benefits to single mothers and their children.¹⁴ In recent years, and especially in the recent debates in Congress over the new welfare law,¹⁵ governmental policy in the area of family structure decisions has

11. See Barbara Dafoe Whitehead, *Dan Quayle Was Right: Harmful Effects of Divorce on Children*, ATLANTIC MONTHLY, Apr., 1993, at 47.

12. See, e.g., George J. Church, *Fixing Welfare: A Consensus is Emerging on the Need for Radical Reform*, TIME, Feb. 16, 1987, at 18; Ulysses Currie, *Welcome Welfare Changes in Maryland*, WASH. POST, July 2, 1995, at C8; Joseph Perkins, *War-torn Poor Policies That Destroy Families Make Poverty a Vicious Cycle*, SAN DIEGO UNION-TRIB., Oct. 1, 1993, at B5; Robert Rector, *Real Welfare Reform: Married Parents Who Support Children*, CINCINNATI POST, May 20, 1994, at 14A; Robert Rector, *Welfare: A System in Need of Change, Spending on Current Programs Promotes Behavioral Poverty*, ST. LOUIS POST-DISPATCH, June 27, 1995, at 15B.

13. See CHARLES MURRAY, *LOSING GROUND* (1984).

14. See DIANE M. DiNITTO & THOMAS R. DYE, *SOCIAL WELFARE POLITICS AND PUBLIC POLICY* 102 (1983).

15. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

been focused on AFDC and how it could be modified so as to stem the increase in single-parent families. In this Note, I examine one particular program, generically called Family Caps, which is calculated to discourage the formation and growth of single-parent families. Family Caps programs were introduced in several states prior to the passage of the 1996 Welfare Reform Act through the use of federal waivers. Such programs are currently under consideration in many states now that the federal AFDC program has been abolished and states have free rein to create their own welfare policies.¹⁶

Unfortunately, while it is popular to blame AFDC for the downfall of the family, it is also misguided to do so. Respected studies have demonstrated that there is no practical correlation between levels of AFDC benefits and family structure decisions,¹⁷ and efforts to implement change through AFDC will be futile at best and harmful at worst. There are other options available to the government to reduce the poverty levels of single and two-parent families; these options would have the probable effect of reducing the number of single-parent families. Poverty and family disruption are linked, with one leading to another in a downward spiral. If fewer children were born into poverty, then it is less likely that these children will grow up with the feelings of hopelessness that lead to unwise and harmful decisions regarding childbearing.

This Note first gives a brief overview of the AFDC program, highlighting the important developments in the program since the 1930s. Part II explores the current popular perception of AFDC as destructive to traditional two-parent families; this Part also traces the roots of those perceptions. Part II then describes society's recent awakening to the harm that single-parent families are causing to children, and the realization of the enormous impact this problem has on society. Part III discusses the Family Caps programs that are being used to reform AFDC in some states, and explains how these programs operate. The section then explains how research and studies have proven conclusively that changing the structure of welfare is not going to have a significant impact on the problem of family breakdown. Part IV explores other options that the government could be consider-

16. Part II of this Note will examine the major changes enacted by the 1996 welfare reform.

17. See David T. Ellwood & Mary Jo Bane, *The Impact of AFDC on Family Structure and Living Arrangements*, 7 RES. LAB. ECON. 137 (1985); see also Robert Moffit, *Incentive Effects of the U.S. Welfare System: A Review*, 30 J. ECON. LITERATURE 1 (1992); T. Paul Schultz, *Marital Status and Fertility in the United States: Welfare and Labor Market Effects*, 29 J. HUM. RESOURCES, 637 (1994).

ing to improve the situation of the family in the United States, and recommends that federal and state legislators focus on these other options rather than welfare reform to stem the breakdown of the family.

I. THE ORIGIN AND DEVELOPMENT OF THE AFDC PROGRAM

In 1935, the Aid to Dependent Children (ADC) program was enacted as a part of the original Social Security Act.¹⁸ At its inception, the program was not meant to be a permanent solution to poverty or a work-incentive program. It was simply conceived as a temporary support program for children whose parents were unable to support them. For example, a typical ADC recipient at that time was a family in which the father (who was usually the primary income earner) had died. In fact, in 1937, 43% of the ADC caseload was comprised of widows and their children.¹⁹ The emphasis of the program initially, as signified by its name, was firmly on the needy *children* rather than on the adult or adults who acted as their caretakers, and the needs of these adults were not even calculated into the amount of money the children received.²⁰ As the program developed, however, it increasingly focused on adults, and in 1950 adult heads of ADC households began to receive benefits alongside their children.²¹

As the program developed further through the 1950s and early 1960s, the public began to perceive it as encouraging fathers to desert their families, since a family could not receive ADC if a father was unemployed and living in the same residence as his wife and children.²² As criticism of the program began to swell, family patterns were also changing. More mothers were working outside of the home, the divorce rate was increasing, and out-of-wedlock births were also rising.²³ In response to the criticism and changes in family patterns, the program was altered in 1961 to allow a child to receive aid because of his parents'

18. Social Security Act, Pub. L. No. 74-271, ch. 531, §§ 401-406, 49 Stat. 620, 627-29 (1935) (codified as amended at 42 U.S.C. §§ 601-606 (1982)). The original 1935 Social Security Act contained a total of 11 broad social programs. Other programs included programs targeted at elderly and blind people, specialized care and services for disabled children, and other child care programs.

19. Gwendolyn Mink, *Welfare Reform in Historical Perspective*, 26 CONN. L. REV. 879, 880 (1994).

20. DiNITTO & DYE, *supra* note 14, at 102.

21. *Id.*

22. *Id.* at 103.

23. Mink, *supra* note 19, at 880.

unemployment and not just because of death or desertion.²⁴ In 1962, the name of the program was changed to its current name, Aid to Families with Dependent Children (AFDC) to reflect a new emphasis of the program on *families*.²⁵

Other significant changes to the AFDC program were implemented in 1962, most of them reflecting a new view of the potential of AFDC to be rehabilitative in nature. Programs were designed to "reduce poverty by treating personal and social problems which stood in the way of financial independence."²⁶ Additional federal funds were given to states so that they could provide counseling, vocational training, family planning services, and legal services to their AFDC recipients.²⁷ This approach opened the door to a view of the AFDC program as a potential lever to modify behavior. As a result, in 1967, when these services had not produced significant improvement, a new approach to encourage AFDC recipients to work was created. A program called Work Incentive Now (WIN) was implemented in 1967; it helped recipients to train for and locate jobs.²⁸ WIN included incentives to work which allowed the first \$30 of earned income each month to be completely disregarded in calculating benefits, and total support amounts were based on only one-third of the remaining monthly income.²⁹

Therefore, an employed AFDC recipient was rewarded for being employed by being allowed to retain at least some of his earnings over and above the amounts of his AFDC benefits. Unfortunately, this new approach failed to achieve expected results, as the numbers of families enrolled in the AFDC program

24. This alteration reflected a significant change in the character of ADC recipients as a whole. Widows were 43% of the ADC caseload in 1937, but by 1961 they only accounted for 7.7%. Mink, *supra* note 19. Today, 3.75 million mothers receive cash benefits under AFDC. Forty-eight percent of these mothers have never been married at all. Twenty-two percent are widowed or divorced. Seventeen percent are married but their husbands are absent. Thirteen percent are married with their husbands present. Jill Young Miller, *Target Group of Welfare Reform is Less than 1 Percent of Total*, SUN-SENTINEL (Fl. Lauderdale), Mar. 4, 1995, at 3A. Where death was the primary family disruption in the 1930s, today divorce and non-marital birth have replaced the death of a parent as the major disruption of families. Barbara Flory, *Grandma's Quilt has Become Frayed*, ST. LOUIS POST-DISPATCH, Aug. 3, 1995, at 13B.

25. DiNITTO & DYE, *supra* note 14, at 103.

26. *Id.* at 105-06.

27. *Id.*

28. Social Security Amendments of 1967, Pub. L. No. 90-248, § 204, 81 Stat. 821, 884-92 (codified as amended at 42 U.S.C. §§ 630-645 (1988)), repealed by Family Support Act of 1988, Pub. L. No. 100-485, § 202(a), 102 Stat. 2343, 2356-60 (codified at 42 U.S.C. § 602 (1988)).

29. DiNITTO & DYE, *supra* note 14, at 106.

continued to increase.³⁰ Between 1968 and 1978, for example, the number of AFDC recipients nearly doubled in size from a little under two million recipient families to just under four million recipient families.³¹ At the same time, the costs of the program grew dramatically. In 1940, the cost of the program was \$133 million, in 1960 it was \$750 million, and by 1980 it had risen to almost \$12.5 billion.³²

Another major welfare reform occurred in 1988 with the advent of the Family Support Act,³³ which was termed at the time to be the "most significant revision of the welfare system since the New Deal."³⁴ This Act earmarked one billion dollars per year for employment training, education, and child care costs.³⁵ The legislation reflected the growing distaste of the American people for welfare and welfare recipients. Americans believed that recipients needed support only "because women were having children out-of-wedlock, men were sidestepping their responsibilities to their children, and, despite the marked increase in the labor force participation of women, both needed stronger attachments to the work force."³⁶ In order to achieve these goals, the Family Support Act "moved on a number of fronts."³⁷ To increase parental responsibility, the Act required that states establish paternity in AFDC cases and attempt to compel child support from absent fathers.³⁸ Mothers who wished to receive AFDC benefits were required to cooperate in the paternity actions. Any support payments received from these fathers were given to the state, and the state was responsible for distributing a support check to the mother.³⁹ The Act also mandated employers to automatically withhold legally due child support payments,

30. *Id.*

31. *Id.* at 107.

32. *Id.* at 108. These figures can be misleading. As a percentage of government spending, AFDC expenditures have been cut by more than two-thirds between 1971 and 1987. Today, AFDC expenditures constitute less than 4% of the total social welfare spending. Julie A. Nice, *Welfare Servitude*, 1 *Geo. J. Fighting Poverty* 340, 341 n.21 (1994).

33. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (codified at 42 U.S.C. § 602 (1988)).

34. Mink, *supra* note 19, at 892.

35. *Id.*

36. JUNE AXINN & HERMAN LEVIN, *SOCIAL WELFARE: A HISTORY OF THE AMERICAN RESPONSE TO NEED* 289 (3rd ed. 1992).

37. *Id.*

38. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343, 2344 (codified at 42 U.S.C. § 602 (1988)).

39. AXINN & LEVIN, *supra* note 36, at 289.

and provided mechanisms for locating absent parents.⁴⁰ A new program, Job Opportunities and Basic Skills Training Program (JOBS) was established to require almost all AFDC beneficiaries to become a part of the work force.⁴¹ To encourage employment, slightly higher amounts of earned income were disregarded from the calculation of benefits. Finally, the Family Support Act required each state to evaluate their AFDC programs every three years and reassess their AFDC need and payment standards.⁴²

The year 1996 saw the latest and most dramatic overhaul of the welfare system as on August 22, President Clinton signed legislation which "effectively end[ed] the federal government's six-decade guarantee of aid to the poor."⁴³ President Clinton, in his campaign for election in 1992, vowed "to end welfare as we know it,"⁴⁴ and originally a welfare proposal which would have kept AFDC as a federal program while imposing a tough two-year eligibility limit coupled with generous funds for child care, job training, and health insurance.⁴⁵ After intensive negotiations between the House and the Senate and between Republicans and Democrats, all of whom professed to share a commitment to welfare reform, President Clinton twice vetoed Congress' final product.⁴⁶ The bills President Clinton vetoed would have completely replaced the current federal AFDC program, and handed over the reins to each individual state by giving them block grants and imposing some federal guidelines for how their programs should be structured.⁴⁷ These proposals retained the two-year cap on eligibility, prohibited aid to certain categories of people, and placed a cap on each individual state's funding, ensuring no guaranteed benefits even for those people meeting the required criteria.⁴⁸

40. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343, 2344, 2353 (codified at 42 U.S.C. §§ 652, 666 (1988)).

41. AXINN & LEVIN, *supra* note 36, at 289.

42. *Id.* at 290.

43. Bruce B. Auster et al., *A Blizzard of Bills from Congress: Will Welfare Reform Worsen Life for the Poor?*, U.S. NEWS & WORLD REP., Aug. 12, 1996, at 25. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

44. *Clinton: 'It's Time to Change America'*, USA TODAY, July 17, 1992, at 13A.

45. Robert Kuttner, *Welfare Reform: A Race to the Bottom*, SAN-DIEGO UNION-TRIB., Sept. 27, 1995, at B7.

46. *As We Don't Know It: Veto Exposes President Clinton's Sham Promises on Welfare Reform*, CINCINNATI ENQUIRER, Jan. 19, 1996, at A14.

47. *House Vote on Welfare Reform Set: Plans Faces Tough Going in Senate*, PHOENIX GAZETTE, Dec. 21, 1995, at A23.

48. James Worsham, *Recasting Welfare (1995 Welfare Reform Legislation)*, NATION'S BUS., Nov. 1, 1995, at 30.

The Personal Responsibility and Work Opportunity Reconciliation Act which President Clinton signed is not very different from the two bills he vetoed.⁴⁹ The Act turns welfare over to the states, sets caps on the amount of time anyone may remain on welfare, and requires one-half of each state's welfare recipients to be working or training for a job by 2002.⁵⁰ It also cuts the availability of food stamps to some families and bars legal immigrants from receiving food stamps.⁵¹ The Act cuts \$56 billion from AFDC, food stamps, and other benefit programs, which is approximately the same amount that would have been saved in the plans the President vetoed in 1995.⁵²

The Act abolishes AFDC as a federal entitlement program, and instead provides states with block grants to fund a program entitled Temporary Assistance to Needy Families (TANF).⁵³ Unlike AFDC, TANF is not an entitlement, which means that the amounts given to each state are fixed, and more funds are not provided if need increases.⁵⁴ Additionally, families may receive TANF funds only for a cumulative total of five years, unlike AFDC which provided assistance for an unlimited amount of time.⁵⁵ Also, recipients must be employed by the time they have received benefits for two years or when the state determines the parent or caretaker is ready to work, whichever is earlier.⁵⁶

II. CURRENT PERCEPTIONS OF AFDC AND ITS IMPACT ON THE FAMILY

Although the criticisms lodged against AFDC in the past were serious and reflected some deep misgivings about it, AFDC faced greater criticism in 1996 than it ever had. The tremendous controversy over welfare and AFDC arose from a collective sense that the fundamental unit upon which our society is structured—the family—was breaking down and that AFDC was the major

49. Auster et al., *supra* note 43.

50. *Id.*

51. *Id.*

52. *Id.*

53. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 101-116, 110 Stat. 2110-85.

54. The portion of the Act which establishes the TANF program specifically provides: "This part shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part." Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 103(a)(1), 110 Stat. 2105, 2113 (codified at 42 U.S.C. 601, 602 (1994), *as amended by* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C.A. §§ 601, 602 (West 1996)).

55. *Id.*

56. *Id.*

contributor to the deterioration. Public desire for welfare reform escalated as people's dissatisfaction with it grew. By the late 1980s, badmouthing the welfare system had almost become a cliché. In February of 1987, *Time Magazine* reported:

The criticisms are such time worn staples of conservative oratory that by now anyone who reads about welfare can reel them off from memory. The system is a monstrous mess: it breaks up families, traps the poor in degrading idleness and breeds a self-perpetuating cycle of illegitimacy, poverty and government dependency.⁵⁷

More specifically, there was and is a popular perception that AFDC benefits directly contribute to single-parenthood. People seem to *want* to believe that AFDC benefits encourage family disruption. The *Time* article also demonstrates the strong desire to believe that AFDC programs are linked to family breakdown because they appear to create economic incentives for the formation of single-parent families:

The issue of whether welfare in fact encourages illegitimate births has been hotly debated. *Most studies show there is no direct causal relationship.* But the AFDC program, by its very nature, inevitably provides some economic incentives for the creation of single-parent families.⁵⁸

Since 1987, the news media has continued the tradition of laying the blame for single-parent families on the doorstep of AFDC programs.⁵⁹

A. Charles Murray's Influence on the United States' Perceptions of AFDC

Why the country is so willing to blame AFDC for the problems with the family is rooted in the increasingly negative attitude towards welfare that began to pick up steam in the 1980s. An extremely influential work which contributed to this view was Charles Murray's book, *Losing Ground*.⁶⁰ Murray's book on the failings of the United States' social policies regarding the

57. George C. Church, *Fixing Welfare: A Consensus is Emerging on the Need for Radical Reform*, TIME, Feb. 16, 1987, at 18.

58. *Id.* (emphasis added).

59. See *supra* note 12.

60. MURRAY, *supra* note 13. Charles Murray exploded into the welfare debate in 1984 with the publication of *Losing Ground*. Murray's central thesis, that welfare programs have been the major cause of family breakdown, led him to the conclusion that AFDC should be completely abolished. While at the time his book was published his conclusions remained on the outer fringes of the welfare debate, they are today much more generally accepted, such that even President Clinton has affirmed many of Murray's conclusions in *Losing Ground*.

poor examines the plight of the poor and the United States' social welfare system from an economic perspective, studying what economic incentives the welfare system places on the poor. Murray uses a nondescript couple, Harold and Phyllis, as a "typical" unmarried couple with only high school education facing an unwanted pregnancy to illustrate his points.⁶¹ He factors out other potential influences on the decisions this couple makes by making them completely average in every respect, and ignoring societal, moral, or cultural influences that might come to bear on these decisions:

I deliberately make [Harold and Phyllis] unremarkable except for the bare fact of being poor. They are not of a special lower-class culture. They have no socialized propensities for "serial monogamy." They are not people who we think of as "the type who are on welfare." . . . Neither of them is particularly industrious or indolent, intelligent or dull. They are the children of low-income parents, are not motivated to go to college, and have no special vocational skills.⁶²

Murray looks at Harold and Phyllis and their decisions twice—once in 1960 and once in 1970—and also makes a point of discounting the changing societal influences upon their decisions: "We shall ignore the turbulent social history of the intervening decade. We shall ignore our couple's whiteness or blackness. We simply shall ask: Given the extant system of rewards and punishments, what course of action makes sense?"⁶³

Murray picks these two points in time in order to demonstrate the changes in the structure of AFDC between 1960 and 1970, and how these changes were responsible for the deterioration of the traditional family. In 1960, Murray emphasizes, there were many negatives which influenced Harold and Phyllis' decision of whether to take full advantage of the potential benefits they could receive from AFDC.⁶⁴ If Phyllis had the baby out-of-wedlock, AFDC benefits would amount to only \$23 per week, and then only if she complied with several conditions. She could not take on any outside employment as any outside money earned would decrease her AFDC payments dollar-for-dollar. Also in 1960, AFDC had the "man in the house rule"⁶⁵ that prohibited

Peter A. Brown, *His Welfare Views Gain Audience, But Charles Murray Took Heat for Same Ideas Years Ago*, STAR-TRIB. (Minneapolis-St. Paul), June 6, 1994, at 4A.

61. *Id.* at 156.

62. *Id.* at 156-57.

63. *Id.* at 157.

64. *Id.* at 157-58.

65. DiNITTO & DYE, *supra* note 14, at 103.

any benefits for the woman if a man was living in her household. Thus, if Phyllis received AFDC, Harold would not be able to live with her, and she would certainly be unable to support both of them from her small income. Assuming Harold wished to be responsible for Phyllis and the baby, the most attractive option for both of them, according to Murray, was to set up a household together and have Harold work at a minimum-wage job.⁶⁶ This would allow them to live together and get married if they wished, and it would allow Phyllis to get a full or part-time job to supplement Harold's income if she chose. Overall, according to Murray's economic analysis, in 1960 the set of economic incentives that were in place encouraged the "average" unmarried couple with a child to stay off of AFDC and to support themselves, but did not influence their decision to marry.

By 1970, everything had changed. In 1960, the couple's three objections to Phyllis going on welfare were "too little money, no way to supplement it, and having to live separately from [one another]."⁶⁷ However, in 1970 none of these objections were present. The total benefits Phyllis could receive from AFDC were much greater. Phyllis could receive \$50 per week in cash and \$11 per week in food stamps, and was also eligible for Medicaid.⁶⁸ She also had the option to work to supplement her income up to \$30 per week, and after that "her benefits [were] reduced by two dollars for every three additional dollars of income."⁶⁹ Harold's income would not reduce AFDC benefits at all so long as he was not legally responsible for the child. The third problem with AFDC in 1960, that Harold could not live with Phyllis, was no longer an issue because of a Supreme Court ruling preventing this from being used as a criterion for receiving AFDC benefits.⁷⁰

Murray further argues that the 1970 AFDC system encouraged Phyllis to have and keep her baby, even if her natu-

66. MURRAY, *supra* note 60, at 158.

67. *Id.* at 159.

68. *Id.*

69. *Id.*

70. *King v. Smith*, 392 U.S. 309 (1968) (holding that Alabama's disqualification from AFDC of any mother cohabiting with a man who was not obligated to support her was inconsistent with the Social Security Act). Before the "man in the house" rule was overruled in *King*, it was common practice for AFDC caseworkers to visit their clients in the form of "midnight raids" in order to catch a "man in the bed." Any able-bodied male who resided with the AFDC family was considered responsible for its financial support. See Susan D. Bennet, "No Relief but Upon the Terms of Coming into the House"—*Controlled Spaces, Invisible Disentitlements, and Homelessness in an Urban Shelter System*, 104 YALE L.J. 2157, 2186 (1995).

ral inclination would be either to have an abortion or give the child up for adoption:

If [Phyllis] gives up the baby for adoption (or, in some states by 1970, has a legal abortion), she will be expected to support herself; and, as in 1960, the only job she will be able to find is likely to be unattractive, with no security and a paycheck no larger than her baby would provide. *The only circumstance under which giving up the baby is rational is if she prefers any sort of job to having and caring for the baby.*⁷¹

Murray deliberately limits his focus to economic factors only. He does not consider any of the factors that might go into a woman's decision to have a child other than financial ones: "It is commonly written that poor teenaged girls have babies so they will have someone to love them. This may be true for some. But one *need* not look for psychological explanations."⁷² Murray finally argues that from Phyllis' perspective it was against her interests to marry Harold under the 1970 AFDC system. If she and Harold got married and Harold had a job, then she could not receive AFDC benefits. Thus, once they married they could depend only upon his earnings from his minimum-wage job. Even if he made a little more from his job than Phyllis would receive from welfare, Phyllis was still in a worse position because she had no control over his paychecks, where she would have complete control over her AFDC income. Also, welfare income from the government is more dependable than earnings from Harold's minimum-wage job, and Phyllis would not have to worry about what would happen financially if her relationship with Harold should deteriorate.⁷³ Remaining unmarried was really the best alternative for both Harold and Phyllis under Murray's analysis because that course allowed them to live together while adding Harold's wages onto Phyllis's AFDC benefits.

Murray hypothesizes that these economic factors which come into play in the decisions of a "normal" couple, such as Harold and Phyllis, become more influential when one factors back in some of those qualities that Murray left out of his example such as "lower-class and black cultural influences that are said to foster high illegitimacy rates and welfare dependency."⁷⁴ Murray claims that when "economic incentives are buttressed by social norms, the effects on behavior are multiplied," but that

71. MURRAY, *supra* note 60, at 160.

72. *Id.*

73. *Id.* at 160-61.

74. *Id.* at 162.

these "social factors are not necessary to explain behavior."⁷⁵ Overall, what Murray suggests and criticizes in his writing is that the changes in the AFDC system in the United States have provided incentives for people to create single-parent families.⁷⁶ *Losing Ground* was an extremely important book because it articulated and put into a logical argument exactly what so many Americans already thought about the welfare system and its effect on the family.

B. *Barabara Dafoe Whitehead's Influential Article on Family Structure*

Thus far, this Note has alluded to the damage that single-parent families, illegitimacy, divorce, and teen-age pregnancy are doing to the country without specifying exactly what that damage is. The view that the American family is facing challenges that reach the crisis level was espoused by Dan Quayle in his 1992 speech. A more fact-based support of Dan Quayle's pronouncements was published almost a year later in Barbara Dafoe Whitehead's influential article, *Dan Quayle Was Right: Harmful Effects of Divorce on Children*.⁷⁷ The article attempts to challenge the tolerance with which many Americans viewed divorce and single parenthood by examining the damaging effects of these conditions on children. Whitehead explains that a shift in the perception of divorce and out-of-wedlock births occurred during the 1970s because "[w]hat had once been regarded as hostile to children's best interests was now considered essential to adults' happiness."⁷⁸ Divorce and non-marital birth ceased to be perceived as damaging to children, and there was no longer a sense that parents should remain in an unhappy marriage for the sake of the children. Whitehead describes this change in the perception of divorce and out-of-wedlock births as a "cultural shift" necessary to allow adults to engage in self-fulfilling behavior without feeling as though they were placing their happiness before their own children's.⁷⁹ Whitehead denounces the modern perception of these "disruptive behaviors" as contributing further damage to the family structure:

This cultural shift helps to explain what otherwise would be inexplicable: the failure to see the rise in family disrupt-

75. *Id.*

76. Many disagree with Murray on this point. See, e.g., CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS* (1992).

77. Whitehead, *supra* note 11, at 47 (1993).

78. *Id.* at 52.

79. *Id.*

tion as a severe and troubling national problem. It explains why there is virtually no widespread public sentiment for restigmatizing either of these classically disruptive behaviors and no sense—no public consensus—that they can or should be avoided in the future.⁸⁰

One reason for the increased concern over divorce and out-of-wedlock births is that their rates began to soar in the middle of the 1960s. Up until the early 1960s the divorce rate had remained at less than ten divorces per 1000 marriages for years.⁸¹ Starting in 1965, the divorce rate began to increase until it had more than doubled to twenty-three divorces per 1000 marriages in 1979.⁸² Out-of-wedlock births also increased sharply from 5% in 1960 to 27% in 1990.⁸³ As Whitehead explains, this situation perpetuated itself, as one divorce in a family increases the likelihood that there will be another disruption within the same family:

Following divorce, many people enter new relationships. Some begin living together. Nearly half of all cohabiting couples have children in the household. Fifteen percent have new children together. Many cohabiting couples eventually get married. However, both cohabiting and remarried couples are more likely to break up than couples from first marriages.⁸⁴

Also, this cycle has significant implications for the more distant future of these children, as the fact that their parents are divorced makes it much more likely that these children will themselves divorce later on in their lives.⁸⁵

Whitehead attributes many negative consequences to the rise of divorce and out-of-wedlock births. According to the evidence Whitehead sets forth, “children in families disrupted by divorce and out-of-wedlock births do worse than children in intact families on several measures of well-being.”⁸⁶ Whitehead lists many of the impacts of these types of families. Children in single-parent families are six times more likely to be poor, and are more likely to stay poor longer than their counterparts in two-parent families.⁸⁷ Children from single-parent families are

80. *Id.*

81. *Id.* at 50.

82. *Id.* at 52.

83. *Id.*

84. *Id.*

85. Jane Shaw, *People Problems: Some Children of Divorce Face Lifelong Problems*, BOSTON HERALD, Jan. 22, 1995, at O65.

86. Whitehead, *supra* note 11, at 47.

87. *Id.*

more likely to have emotional problems, to drop out of school, to become pregnant as teenagers, to abuse drugs, and to have problems with the law than children in two-parent families.⁸⁸

Not only do these single-parent families negatively impact childhood, but Whitehead finds that many of these children carry problems into their adulthood. While not every child of a non-traditional family has problems as an adult, "research shows that many children from disrupted families have a harder time achieving intimacy in a relationship, forming a stable marriage, or even holding a steady job."⁸⁹ Also, children and divorced wives suffer economically from living in a non-traditional family.⁹⁰ Children's parents are their primary means of support, and in the typical situation where the children are living with the mother, the father's support is dramatically reduced and often non-existent. Financial support from the mother, furthermore, is less in the divorced or never-married family than in intact two-parent families.⁹¹

Sara McLanahan and Gary Sandefur in their book, *Growing Up with a Single Parent: What Hurts, What Helps*, discuss in more detail the causes of the damage that single-parent families do to children and adults.⁹² They examine the effects of single parenthood through an analysis of three different factors: educational attainment, labor force attachment, and early family formation.⁹³ Through this analysis, McLanahan and Sandefur come to the same conclusions as Whitehead about the disadvantages faced by children in single-parent families.

McLanahan and Sandefur also analyze what causes these children to be disadvantaged. Their studies indicate that about 45% of the damage is caused by the differences in income between single and two-parent families.⁹⁴ They suggest that money is a factor because parents with more money can afford to send their children to better schools and private extra-curricular activities like summer camp or music lessons.⁹⁵ Also, a child who knows that his parents can afford to send him to college is more motivated to work hard in school, and has more hope for the

88. *Id.*

89. *Id.*

90. *Id.* at 62.

91. *Id.*

92. SARA MCLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* (1994).

93. *Id.* at 19.

94. *Id.* at 94.

95. *Id.*

future.⁹⁶ A final factor is that parents with more money tend to live in better neighborhoods which affects the child's general attitude towards school and the future.⁹⁷

McLanahan and Sandefur attribute the rest of the disadvantage to children from single-parent families to the difference in parenting between single-parent and two-parent families. McLanahan and Sandefur believe that:

besides economic security, children need parents who are willing to spend time with them reading, helping with homework, or just listening to how their day went at school. They also need parents who are willing and able to monitor and supervise their social activities outside school . . . [M]any children get off on the wrong track not because they lack talent or have the wrong values but because their opportunities for getting into trouble are higher.⁹⁸

McLanahan and Sandefur suggest that parental involvement and supervision are by necessity lower in single-parent families. The obvious reason for this is that there is one less parent involved on a regular basis with the child's upbringing, but a more subtle reason is that in general single-parent families are less stable than two-parent families, and this "creates uncertainty about household rules and parental responsibility."⁹⁹ Overall, children in single-parent families spend a significantly smaller amount of time with their fathers (and some spend no time with their father at all) and somewhat less time with their mothers (because she probably has a full-time job) than do children in two-parent families.¹⁰⁰ Ultimately, the quality of parenting in a single-parent family is likely to be much lower than the quality of the parenting in two-parent families, and this combined with the lower financial status of children in single-parent homes accounts for their overall lower state of well-being.¹⁰¹

96. *Id.*

97. *Id.*

98. *Id.* at 95.

99. *Id.* at 96.

100. *Id.* at 96-98.

101. *Id.* at 115.

III. FAMILY CAPS: A MISGUIDED APPROACH TO SOLVING THE PROBLEM¹⁰²

A. *An Introduction to Family Caps*

Family Caps proposals are the result of a combination of the views reflected in the Whitehead article and Charles Murray's book. A Family Caps program aims "[to eliminate] the increment in benefits under the program for which that family would otherwise be eligible as a result of the birth of a child during the period when the family is eligible for AFDC benefits."¹⁰³ Prior to the passage of the Welfare Reform Act in August of 1996, states could receive federal waivers to implement Family Caps programs.¹⁰⁴ With the advent of the Act in 1996, Family Caps became one of the many options open to the states in developing their welfare programs.¹⁰⁵

New Jersey's Family Caps program is the most prominent in the country, and is representative of the essential elements in the programs and proposals in other states. New Jersey's program, also called Child Exclusion, was part of a six-bill package called

102. While this section challenges the effectiveness of Family Caps as a policy measure, other writers criticize these programs on different grounds. Most challenges focus on the constitutionality of Family Caps and whether they violate constitutional rights to privacy, procreation, and reproductive choice, as well as the Equal Protection Clause. See Yvette Marie Barksdale, *And the Poor Have Children: A Harm-Based Analysis of Family Caps and the Hollow Procreative Rights of Welfare Beneficiaries*, 14 LAW & INEQ. J. 1 (1995); Marion Buckley, *Eliminating the Per-Child Allotment in the AFDC Program*, 13 LAW & INEQ. J. 169 (1994); Laura M. Friedman, *Family Cap and the Unconstitutional Conditions Doctrine: Scrutinizing a Welfare Woman's Right to Bear Children*, 56 OHIO ST. L.J. 637 (1995); James M. Sullivan, *The New Jersey Child Exclusion: Model or Mess?*, 2 GEO. J. FIGHTING POVERTY 127 (1994); Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719 (1992).

103. Sullivan, *supra* note 102, at 129.

104. *Devolving Welfare Programs to the States: A Public Choice Perspective*, 109 HARV. L. REV. 1984, 1994-95 (1996). In his State of the Union address in 1992, President Bush announced his intent to make the waiver process faster and easier, which increased the number of requests for waivers. As of January, 1996, at least 39 states had received a federal waiver to implement innovative state programs. *Id.* at 1995.

105. Many states are now implementing or considering whether to implement Family Caps programs. See, e.g., *Wilson Signs Welfare Cut Plan: AFDC Reductions Will Start Jan. 1*, SAN-DIEGO UNION TRIB., Nov. 29, 1996, at A3; Joel Dresang, *W-2 Start-Up Put on a Fast Track: Phase-in Will Start This Month*, MILWAUKEE J. & SENTINEL, Jan. 8, 1997, at 1; Thomas Frank, *Welfare Proposal Passes First Test*, DENV. POST, Feb. 8, 1997, at A1; Cindy Loose, *D.C. Options for Welfare Cover Range: Task Force Considering Family Cap, Drug Tests*, WASH. POST, Jan. 5, 1997, at B1; Laura Williamson, *Georgia Legislature Welfare: Governor's Proposals a Win for Republicans*, ATLANTA J. & CONST., Jan. 12, 1997, at C2.

the Family Development Act.¹⁰⁶ Normally, a family on AFDC would receive additional benefits for each additional child the mother has while on AFDC to compensate the family for the additional expenses of a new child. Before the enactment of Child Exclusion, an AFDC family in New Jersey would receive an additional \$64 per month when a new child was born.¹⁰⁷ Child Exclusion bars such families from receiving any additional money upon the birth of a new child. The denial of additional benefits to compensate for the expenses of a new child is the defining characteristic of all Family Caps programs. Most Family Caps programs, including New Jersey's Child Exclusion, include a ten-month grace period for new applicants to AFDC so that a family which bears a new child up to ten months after applying for AFDC can receive the additional benefits for that child. A final feature of New Jersey's Child Exclusion program is the inclusion of an income disregard, which allows a certain amount of earned monthly income to be disregarded when calculating the amount of monthly aid a family received.¹⁰⁸

The goals behind the enactment of Family Caps programs are fairly obvious. They are meant to discourage women receiving state or federal aid from having more children and to encourage them to find employment in order to wean them off of welfare. New Jersey's Child Exclusion program is meant to hold families receiving welfare to similar "constraints faced by employed families where there is no automatic increase in salary when another child is born."¹⁰⁹ Proponents of New Jersey's Child Exclusion also believe that if parents are not financially penalized for finding employment, they will be more willing to do so.

106. N.J. STAT. ANN. § 44: 10-3.5 (West 1995). Child Exclusion is not the only change implemented by the Family Development Act. The plan also requires every AFDC family member to obtain a high-school diploma, and it provides educational and vocational opportunities for those who succeed. Those who do obtain employment and get off of AFDC may keep their Medicaid benefits for two years instead of the federal limit of one. Penalties for not using these opportunities, however, may be as much as a 20% reduction in benefits. New Jersey also changed several state laws that impeded marriage and traditional family life in welfare households. Wayne R. Bryant, *New Jersey's Welfare Overhaul*, WASH. POST, Oct. 1, 1995, at C1. New Jersey's Child Exclusion Program was challenged and upheld in federal district court in 1995. *C.K. v. Shalala*, 883 F. Supp. 991 (D.N.J. 1995) (upholding New Jersey's Child Exclusion program on the grounds that encouraging responsible child-bearing decision-making was a legitimate statutory goal).

107. See N.J. ADMIN. CODE, tit. 10, § 82-1.2(b) (1992).

108. Laura M. Friedman, *supra* note 102, at 640.

109. Sullivan, *supra* note 102, at 7.

Ultimately, no family receiving TANF benefits has an incentive to earn much money because they will lose their benefits if they do so. Encouraging families on welfare to work a small number of part-time hours under the income-disregard is not likely to encourage the family to get off of welfare in favor of employment, because working five or ten hours a week does not require a significant commitment to employment. Furthermore, it is often difficult or even impossible for a mother of several small children to work at all. Besides the challenge of finding affordable child care, many of these mothers "face a variety of obstacles which make it difficult to make a successful transition from the home to the workplace: gender discrimination, poverty, lack of skills, and often disabilities and minority status."¹¹⁰ While society now seems to expect women with children to work, only one-fourth of married women not on AFDC are employed full-time, and many others work only part-time or do not work at all.¹¹¹

Family Caps programs like New Jersey's Child Exclusion are based on many assumptions, but the major assumption underlying all of these programs is that the amount of AFDC benefits is influential on women's family structure decisions.¹¹² Generally, current policy-makers seem to believe that if a single woman receives less AFDC money then she will be less likely to have a child, and that if she receives more AFDC money she will be more likely to have a child. The basis for these assumption is found in logic such as Charles Murray's, who, in his analysis of AFDC families, considers only economic influences. Harold and Phyllis were influenced in their decisions only by how much money they could receive from welfare. While Murray's book examines many of the significant changes in the AFDC system between 1960 and 1970, his analysis depends on his original hypothesis that economic factors are a major influence on individuals' decisions about family structure.

The impetus behind the Welfare Reform Act is similar to the motivations behind Family Caps initiatives. In the very beginning

110. Freidman, *supra* note 102, at 642.

111. *Id.*

112. Thus far, studies on the effectiveness of New Jersey's Child Exclusion Program have been inconclusive and fraught with political bickering. Conservatives proclaimed the program a success when statistics showed a decline in the number of births among New Jersey welfare mothers. Critics of the program point out that the rate of decline in births was almost identical to the decline in births in a specially designed control group of welfare families who remained exempt from the caps on benefits. John Harwood, *Poor Results: Think Tanks Battle to Judge the Impact of Welfare Overhaul*, WALL ST. J., Jan. 30, 1997, at A1.

of the section of the Act creating the block grants to the states for TANF, Congress lays out certain findings which clearly indicate the focus of this legislation. For example, the first three findings are as follows:

- (1) Marriage is the foundation of a successful society.
- (2) Marriage is an essential institution of a successful society which promotes the interests of children.
- (3) Promotion of responsible fatherhood and motherhood is integral to successful child rearing and the well-being of children.¹¹³

Following these first three findings is a long recitation of many of the statistics discussed in Whitehead's article regarding the recent dramatic increase in single-parent families and the links between single-parent families and increased crime, poverty, and welfare dependency.¹¹⁴ Also in the section of the Act creating TANF is a list of its purposes, which include "prevent[ing] and reduc[ing] the incidence of out-of-wedlock pregnancies and establish[ing] annual numerical goals for preventing and reducing the incidence of these pregnancies" and "encourag[ing] the formation and maintenance of two-parent families."¹¹⁵ Clearly, the Act was created with family policy in mind. The desire to discourage single-parent families and encourage the traditional two-parent family was foremost in the minds of the legislators who wrote it. Like Murray, the authors of the Welfare Reform Act believe that economic factors greatly influence the family structure decisions of welfare recipients.

B. *Studies Which Demonstrate that Family Caps and AFDC Reform Will Not Work*

Because so many law-makers and the American public at large have attributed many of the negative changes in the structure of American families during the 1970s and 1980s to the welfare system, many studies have been conducted to determine if there was such a correlation between AFDC benefits and the family structure decisions of women. One such study, conducted in 1985 by David T. Ellwood and Mary Jo Bane, has been given a great amount of weight by subsequent social scientists researching this issue.¹¹⁶ The study examines the impact of AFDC on

113. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2110.

114. *Id.*

115. *Id.*

116. Ellwood & Bane, *supra* note 17, at 137; see also Moffit, *supra* note 17, at 1; Schultz, *supra* note 17, at 637. Both studies support the findings of

three different family structure decisions women make: living arrangements, divorce and separation, and childbirth.¹¹⁷

The study begins by pointing to an obvious contradiction of the assumption that high AFDC benefits encourage single women to bear children. Every state sets different amounts of benefit levels in their welfare programs, and there are large variations between those amounts. In Mississippi in 1975, a family of four could receive only \$60 per month, while in the same year many states allotted over \$400 per month for a similar family.¹¹⁸ If Murray and today's law-makers are correct, then one would suspect that Mississippi would have a much lower rate of single motherhood than a state like Minnesota which has fairly high benefits. However, the opposite is actually true—Mississippi had a much higher rate of single motherhood.¹¹⁹ Even after controlling for a number of variables which could affect an association between welfare benefits and family composition, such as average state income and education levels, the state's racial composition, and the state's religious composition, there was still no correlation between the levels of a state's welfare benefits and women's family structure decisions.¹²⁰ However, the major portion of the study that Ellwood and Bane conducted was more sophisticated than a simple comparison of level of benefits and family structure decisions across the states. The results of that kind of analysis cannot indicate whether Mississippi's high unmarried birth rate might not be even higher if there were higher AFDC benefits.

The Ellwood and Bane study used three different methods. The first, over-time comparisons, asked if there were greater changes over a period of time in family structure in states where there were greater changes in benefit levels. The second method, comparisons of eligibles versus noneligibles, was based on the eligibility rules of AFDC, which does not offer benefits to divorced women without any children.¹²¹ This method examined whether "the divorce rate of couples with children relative to that of childless couples . . . [was] higher in states where benefits are high."¹²² The third method, likely versus unlikely recipient comparisons, looked at the various factors which make

Ellwood and Bane that welfare is not a significant factor in the family changes which have occurred over the past two decades.

117. Ellwood & Bane, *supra* note 17, at 138.

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* at 139.

122. *Id.*

it more or less likely for a woman to be an AFDC recipient, such as age, race, and educational background. It then compared divorce and unmarried birth rates between states, looking to see if in high benefit states, those people more likely to collect AFDC had more divorces and unmarried births.¹²³ While Ellwood and Bane believed the third method to be the most accurate, all three methods indicated similar results with only slight variations.¹²⁴

As a result of the study, Ellwood and Bane concluded that levels of AFDC benefits had different impacts on the three areas of impact studied: living arrangements, divorce and separation, and childbearing. They found that benefit levels "have a dramatic impact on the living arrangements of young single mothers."¹²⁵ In states with low benefit levels, young unmarried mothers not living with a husband were a lot more likely to live in their parent's home than in states with high benefits. As Ellwood and Bane point out, this is a policy lever that has been essentially unexplored by the government, as there has been little attention on the benefits or detractions of a young unmarried mother living at home.¹²⁶ There are positives and negatives attached to encouraging these women to stay at home. Living with her parents, a young single woman with a child is probably more likely to stay in school and may receive more emotional support than she would on her own. On the other hand, the home could be an abusive environment, and offering more welfare benefits could allow young women to escape from an unhealthy situation.¹²⁷

While there was a strong correlation between levels of AFDC benefits and living arrangements of young single mothers, the study found that AFDC benefit levels had only a moderate impact on divorce rates. For very young women, Ellwood and Bane found that a \$100 per month benefit increase would increase divorce and separation rates by 5-15%.¹²⁸ However, for older women (over thirty years old), increases in AFDC benefits had almost no effect on divorce and separation rates. Black women were overall more likely to be influenced by AFDC levels than white women in divorce and separation rates, although black

123. *Id.*

124. *Id.*

125. *Id.* at 141. See also HILARY WILLIAMSON HOYNES, DOES WELFARE PLAY ANY ROLE IN FEMALE HEADSHIP DECISIONS? (National Bureau of Econ. Research Working Paper No. 5149, 1995); Robert Moffitt, *Welfare Effects on Female Headship with Area Effects*, 29 J. HUM. RESOURCES 621 (1994).

126. *Id.*

127. *Id.* at 143.

128. *Id.* at 142.

women started out with a higher likelihood of divorce.¹²⁹ This is another area of AFDC reform that law-makers have not explored.

By far the area that has received the most attention from society and policy-makers is the effect that the level of AFDC benefits has on women's childbearing decisions. The assumption that AFDC benefit levels do significantly affect these decisions is what has inspired programs like Family Caps. This is, however, by far the area least likely to be affected by changes in AFDC benefit levels. Although there was a high correlation between AFDC and living arrangements, and a moderate correlation between AFDC and divorce and separation rates, Ellwood and Bane found *no correlation* between AFDC benefits and childbearing decisions. They state that across all three methods "[they] found no real evidence supporting the proposition that welfare and fertility among unmarried women are linked."¹³⁰

Ellwood and Bane conclude that welfare's impact on women's family decisions is dependent on the significance of the decision. Living arrangements are most strongly affected by AFDC levels because this decision affects only the woman's location—she is simply deciding if she can afford to live on her own. Divorce and separation are more significant because they involve "more than a decision to live independently; [they involve] a more complicated severing of emotional and most probably financial ties that husband and wife have to each other."¹³¹ Therefore, AFDC has less of an impact on these decisions, and where it does have a larger impact with younger women it is probably because these women have weaker emotional and financial ties to their husbands than do older women. Childbirth has an enormous impact on a woman's life—it involves very strong emotional and financial ties, and a commitment to the care and upbringing of the child for many years. The fact that AFDC levels have little impact on such decisions is therefore not so surprising.

In her article, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, Lucy Williams lists many of the reasons that might go into an AFDC mother's decision to become pregnant and to remain pregnant, none of which would really be addressed by Family Caps or any other kind of AFDC reform:

There are many reasons why AFDC mothers become pregnant or choose to remain pregnant. These reasons include occurrences of unplanned pregnancies . . . , the belief that

129. *Id.*

130. *Id.*

131. *Id.*

a child solidifies a relationship with the father, the assumption that children represent an economic value . . . , the belief that the significant health problems and infant mortality rates associated with poverty increase the risk that a single woman with only one child will become childless, a sense that one's life is so hopeless that having a child gives it value and meaning, and the desire to give a grandchild to one's own mother.¹³²

The decision to have a child, as Ellwood and Bane's study suggests, is simply too personal and requires too much of a commitment to be attributable to financial motivations. Rather, many of the reasons Williams cites are the result of the poverty in which AFDC women live, which would only be worsened by drastic cuts in AFDC benefit levels.

Ellwood and Bane ultimately conclude that AFDC cannot be held accountable for the family structure changes which have occurred over the past two decades:

Dramatic cuts in welfare would change the lives of poor women: [they] would reduce the incomes of single mothers, [they] would influence the location where many single mothers live, and [they] might even reduce the number of single mothers slightly. Ultimately, however, [they] would do little to slow the growth in single-parent families. Welfare simply does not appear to be the underlying cause of the dramatic changes in family structure of the past few decades.¹³³

If Ellwood and Bane are correct, federal and state governments are currently vigorously pursuing a policy measure that cannot be successful. The use of AFDC modification to change women's childbearing decisions is premised on the belief that "AFDC mothers have many children, that they have free access to medical options for family planning, and that they get pregnant in order to receive additional benefits"¹³⁴ The truth about AFDC families is that they consist on average, including adults, of slightly under three people, and that 90% of the families have three children or fewer.¹³⁵ Many AFDC women have no access to family planning and medical services, and those women that may wish to terminate their pregnancies often do not have access to abortion facilities.¹³⁶ Ultimately Family Caps and other AFDC

132. Williams, *supra* note 102, at 738-39.

133. Ellwood & Bane, *supra* note 17, at 143.

134. Williams, *supra* note 102, at 737.

135. *Id.* at 737.

136. *Id.* at 738.

modification plans as policy measures to influence child-bearing decisions "are inherently flawed because they are based on the assumption that the value systems of AFDC mothers are fundamentally alien to those of the rest of the population."¹³⁷

IV. OTHER METHODS FOR REFORM

Some of the difficulty in coming up with solutions to the problems which are undermining the growth of supportive and healthy families in the United States lies in the ambiguous nature of the problems themselves. Irregular family structure and poverty are complex when studied in conjunction because one leads to the other. Living in a single-parent family increases the chances of being poor, while being poor increases the chances of living in a single-parent family. In this sort of a chicken-and-egg dilemma, it is difficult to know which of these problems to focus on when trying to work out solutions. This has caused disagreement among analysts of this issue, some of whom believe that low income is the cause of single-parenthood, while others believe that low income is the result of single-parenthood.¹³⁸ There are only a few levers that the state or federal governments can use to influence family structure. Those measures include: 1) making life more difficult for single-parent families, 2) providing more education and counseling to aid in family structure decisions, 3) making it more difficult for absent parents to escape responsibility, and 4) encouraging the growth of two-parent families by helping those that face poverty.¹³⁹

A. *Making Life More Difficult for Single-Parent Families*

One approach, previously addressed, is to "give less and expect more from single parents."¹⁴⁰ David Ellwood, finding it "strange" that it is this option that most policy-makers have focused on, argues not only what has been discussed in this Note—that this sort of an approach is ineffective—but that this method would actually worsen the situation. The goal of this method is to "sacrifice the current generation of children in single-parent homes in the hope that the next generation will not be born."¹⁴¹ Reducing benefits or implementing programs like Family Caps creates a moral dilemma as it makes families that are

137. *Id.* at 736.

138. McLANAHAN & SANDEFUR, *supra* note 92, at 10-11.

139. DAVID T. ELLWOOD, POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY 75-76 (1988).

140. *Id.* at 76.

141. *Id.*

already poor, even with the government assistance, even poorer. While this approach could marginally reduce the number of births to unmarried women, it could force women to leave their children in unsafe conditions in order to obtain work or to make even more desperate choices.¹⁴²

B. *Providing Information, Education, and Counseling to Aid in Family Structure Decisions*

Other steps the government could take are less morally questionable. One policy the government could employ is to take a more active role in providing information, education, and moral guidance to aid people in making decisions about child-birth, sexual activity, contraception, and marriage. This method is especially appropriate in attempting to prevent teenage pregnancies:

Teenage pregnancy is one of the few aspects of single parenthood that is clearly undesirable. The overwhelming proportion of teenagers do not want children and those who do simply cannot realize what they are in for. It is not rational to get pregnant at 17, no matter what the alternatives appear to be. Teenage pregnancy is a matter of information, contraception, and sexual activity, all of which might plausibly be changed.¹⁴³

Ellwood promotes having clinics within high schools offering information, counseling, as well as contraceptives.¹⁴⁴ Currently, there is not much government effort to provide such services to adolescents.¹⁴⁵ Because of a lack of agreement between liberals

142. *Id.* at 77.

143. *Id.* at 76.

144. Two recent cases have examined the constitutionality of condom distribution programs that do not require parental consent. *See Alfonso v. Fernandez*, 606 N.Y.S.2d 259 (App. Div. 1993), *appeal dismissed*, 614 N.Y.S.2d 388 (1994) (holding that the program, by not requiring parental consent, violated parents' constitutionally protected liberty interest in directing their children's upbringing and education); *Curtis v. School Committee*, 420 Mass. 749 (1995) (holding that parental involvement in such programs is not constitutionally required). For further discussion of these two cases, see Jeffrey F. Caruso, *Sex Education and Condom Distribution: John, Susan, Parents, and Schools*, 10 NOTRE DAME J.L. ETHICS & PUB. POL'Y 663 (1996).

145. The government did make such an effort in the 1980s. In 1981, Congress passed the Adolescent Family Life Act (AFLA) which was created to promote and fund counseling and care for pregnant adolescents. *See* 42 U.S.C. § 300z (1995). The AFLA was designed to promote moral choices and it emphasized abstinence and alternatives to abortion. It also encouraged its grantees to include churches and other religious organizations to participate in their programs. The Act was challenged under the Establishment Clause and upheld in a Supreme Court case in 1988. *See Bowen v. Kendrick*, 487 U.S. 589

and conservatives on this issue “[f]ederal policy remains caught in the cross fire between liberals, who favor government-subsidized birth-control services for adolescents, and conservatives, who argue that providing such assistance undermines parental authority and legitimates sexual promiscuity.”¹⁴⁶ In the early 1990s only about two dozen high schools nationwide had condom distribution programs, and more than half of the nations sexually active teenagers had no access to reproductive health services.¹⁴⁷

Although there is some evidence to support Ellwood’s suggestion that programs offering counseling and contraceptive information could be helpful in preventing teenage pregnancies,¹⁴⁸ it would not be wise to rely on programs such as those to solve the entire problem of teenage pregnancy. Counseling and family planning programs have met with limited success in the past, and studies have shown that these kinds of services are too limited to be successful in addressing the roots of the problem of teenage pregnancy.¹⁴⁹ These studies have indicated that “many of the ill effects associated with adolescent pregnancy are rooted in poverty, a condition not explicitly addressed by any of the programs and services.”¹⁵⁰ These programs are mostly organized as a form of crisis intervention, offering short term advice and counseling, but they do not have any long term involvement with the teenagers who use their services. While programs such as these are certainly not harmful, and do offer short term aid to those who need it, it is unlikely that counseling and family planning programs can have any great impact on the incidence of teenage pregnancy.

(1988). The AFLA currently provides about \$10 million yearly in funding for a number of private groups (one-fourth of which have religious ties) for counseling and other programs to discourage adolescent sex. Ruth Marcus, *Funding for Religious Groups to Promote Chastity Upheld: Church-State Entanglement Not 'Excessive,'* WASH. POST, June 30, 1988, at A21.

146. Deborah L. Rhode, *Adolescent Pregnancy and Public Policy*, in *THE POLITICS OF PREGNANCY* 317 (Deborah L. Rhode & Annette Lawson eds., 1993).

147. *Id.* at 317-18.

148. See Kristin A. Moore & Steven B. Caldwell, *The Effect of Government Policies on Out-of-Wedlock Sex and Pregnancy*, 9 *FAM. PLAN. PERSP.* 164 (1977).

149. Richard A. Weatherley et al., *Comprehensive Programs for Pregnant Teenagers and Teenage Parents: How Successful Have They Been?*, 18 *FAM. PLAN. PERSP.* 73 (1986).

150. *Id.* at 77.

C. *Making it More Difficult for Absent Parents to Escape Child Support Responsibility*

Another way for the government to promote the growth of healthy families is to try to force absent parents to have more responsibility in at least the financial well-being of their children. While 97% of all Americans believe that absent fathers should contribute some child support, only one-third of all single mothers receive any child support at all.¹⁵¹ By not requiring absent parents to provide support for their children “[w]e are sending a clear signal. Not only do absent parents generally not have any responsibilities, we offer financial rewards to fathers for avoiding their responsibilities in that they do much better away from their families than with them.”¹⁵²

Single welfare mothers are unlikely to collect any child support from an absent father. Under the Family Support Act of 1988 child support for welfare mothers is compulsory. Mothers who wish to participate in AFDC must cooperate in establishing the paternity of her children so the state can attempt to recoup some of its spending from the absent fathers.¹⁵³ However, under the Family Support Act, the primary means through which a non-complying father's child support obligations are enforced is through wage-withholding, which goes into effect once the father is one month behind in is payments. Unfortunately, wage-withholding is effective only when there are wages to withhold. Fathers of children on welfare are typically in a low income bracket. One study indicated that over half of welfare children's fathers were unemployed at least one time over a two-year period, the average amount of time of unemployment being fourteen weeks per year.¹⁵⁴ Low income fathers are frequently unemployed and often change employment.¹⁵⁵ Therefore, if there is no voluntary compliance with a child support order, chances of receiving the support money from the father through other means are slim as the system currently stands.¹⁵⁶

151. ELLWOOD, *supra* note 139, at 78.

152. *Id.*

153. 42 U.S.C. § 602(a)(26)(B) (1994); 45 C.F.R. § 232.12 (1987).

154. Deborah Harris, *Child Support for Welfare Families: Family Policy Trapped in Its Own Rhetoric*, 16 N.Y.U. REV. L. & SOC. CHANGE 619, 647 (1987/1988).

155. *Id.*

156. A popular and widely discussed alternative to the current child support system is one that was constructed by Irwin Garfinkel from Wisconsin's Institute for Research on Poverty. Based on the “advance maintenance payment” systems that are currently used in some other industrial countries, this plan assures children of absent fathers a certain fixed monthly benefit. If the father cannot be located or is unemployed, the state pays the support and

D. *Encouraging the Growth of Two-parent families by Helping Those That Face Poverty*

A final policy approach is to try and help *two-parent* families remain strong and to cope better with the many challenges these families face. This approach is the inverse of an approach like Family Caps. Family Caps and other proposals that reduce AFDC benefits make it financially more difficult to be a single-parent, without providing a healthy alternative. Ellwood warns that:

[t]he notion that single-parent families are undesirable is clear only when the alternative is a happy, loving, and secure two-parent home. Because that is rarely the alternative, the danger is that policies designed to inhibit the formation of single-parent homes will encourage the maintenance of equally unsatisfactory alternatives [Therefore] only policies that encourage better arrangements should be devised.¹⁵⁷

The critics of single-parent families are only critical of them as opposed to two-parent families. The most basic assumption of such criticism was that if single-parent families could be discouraged, then healthy two-parent families would be simultaneously encouraged.

The welfare system is not a solution to two-parent family poverty, because “[i]f we are really serious about reinforcing the values of autonomy, work, family, and community, then we must find a way to improve the economic security of [two-parent families] without putting them into a welfare system.”¹⁵⁸ While single-parent family poverty gets a lot of the attention, two-parent family poverty is just as serious. Single-parent families get most of the attention because they have a much higher percentage of poverty than two-parent families. However, two-parent families are poor in equal numbers to single-parent families.¹⁵⁹ Opening up welfare programs to two-parent families is not desirable because welfare reduces rewards for working, and is “invasive, inadequate, restrictive, and isolating.”¹⁶⁰ In trying to help two-parent families:

takes the responsibility for collecting the debt. If the father is employed and can be located the state ensures support by taking a percentage of the father's income through his income taxes. If the father's income is too low to cover the entire benefit, the state makes up the difference, and if the percentage taken is higher than the fixed benefit, the surplus is passed on to the family. IRWIN GARFINKEL, *ASSURING CHILD SUPPORT* 106 (1992).

157. ELLWOOD, *supra* note 139, at 75.

158. *Id.* at 81.

159. *Id.* at 83.

160. ELLWOOD, *supra* note 139, at 104.

[t]he last thing we want to do is create a system that discourages and penalizes work and that isolates and stigmatizes the very people who are struggling hard to become a part of the economic mainstream. Instead, we want to find ways to reinforce their efforts, to integrate them, and to indicate that their work is valued and that work will pay off.¹⁶¹

Therefore, increasing the availability of welfare benefits to two-parent working families is not the best approach towards promoting the growth of healthy families.

Better solutions try to raise wages and reduce unemployment in order to avoid the stigma of going on welfare for two-parent families. Raising the minimum wage is one approach that is frequently suggested as potential answer to the problem. Because the minimum wage is now set so low, welfare programs often function as a subsidy to those employers who do not pay their employees enough:

Whether the services of a \$4.50 worker are worth \$5 or \$15 per hour to the employer, the primary effect of having a minimum wage substantially below the minimum cost of living is to subsidize low-wage employers (or their customers) by means of the welfare payments that supplement the non-living wage.¹⁶²

If the minimum wage were set higher than the typical welfare benefit level, not only would it be easier for those people who are already working to stay off of welfare, but more people would abandon welfare in favor of a job.¹⁶³

Another way to assist two-parent working families is through the Earned-Income Tax Credit (EITC). The EITC offers an alternative to welfare for working families by giving these families earning low wages tax credits for each dollar earned.¹⁶⁴ It is one

161. *Id.* at 105.

162. Gerhard Stoll, *We Don't Let Excess Labor Starve*, WALL ST. J., Oct. 19, 1995, at A23.

163. *Id.*

164. David Wessel, *Expanded Earned-Income Tax Credit Emerges as the Anti-Poverty Program of Choice for Many*, WALL ST. J., July 13, 1989. The earned-income tax credit was a spin off of the earlier idea of the "negative income tax." See Bruce Fuller, *Virtual Policy: The Earned-Income Tax Credit Feels Good, but Does It Lift Families Out of Poverty?*, CHI. TRIB., Jan. 3, 1996, at 11. The idea of a negative income tax is derived as a corollary to positive income taxes. In a positive tax system, all income above a minimum threshold (standard deduction plus personal exemption) is shared by requiring individual taxpayers to pay a percentage of the excess income. A negative income tax then shares all deficiencies below a minimum income by having taxpayers paying a percentage of the deficit. A principal difference between the negative income tax and

of the few anti-poverty programs that has been embraced by both liberals and conservatives, as it both reinforces the value of hard work and helps the poor without stigmatizing them through placing them in the welfare system.¹⁶⁵ The EITC provides a tax credit that represents a certain percentage of wage earnings up to a maximum amount. It works on a bell curve, rising as the worker's wages rise—the maximum benefits are received when annual wages are between \$7,520 and \$11,840. After this point the credit gradually declines until it is non-existent at an annual wage of \$22,370.¹⁶⁶ The structure of the EITC has a great advantage over a blunt minimum wage hike, as EITC benefits go only to low-income households. A minimum-wage increase cannot be targeted only to those families most in need, and would support low wage workers in high-income households.

V. CONCLUSION

Dan Quayle, in his 1992 speech, identified a national problem of immense proportions that has since been recognized by the nation as a whole. The importance of maintaining a relatively stable and healthy family life in the United States has never been in dispute. Today, the proposition that traditional two-parent married families are healthier and more supportive for children and adults than single-parent families is no longer in dispute. The controversy revolves around choosing which measures the government should take which will be supportive of the development of healthy and stable families. Right now, current policy assumes that the situation of the family can be improved by minimizing the crutch of AFDC that supposedly encourages the development and maintenance of single-parent families. This assumption unfortunately ignores the evidence of studies which indicate that AFDC reform will not have an impact on women's child-bearing decisions. As Ellwood and Bane and Lucy Williams suggest, a woman's decision to have a child is deeply personal and, in the case of a woman receiving welfare benefits, partially motivated by living in poverty conditions. The problem of single-parent families is cyclic, whereby children living in single-parent families are more likely to become single-parents

EITC is the tax base. EITC rewards only income that is earned, where a negative income tax includes all income. Timothy J. Eifler, *The Earned Income Tax Credit as a Tax Expenditure: An Alternative to Traditional Welfare Reform*, 28 U. RICH. L. REV. 701 (1994).

165. Paulette Thomas, *Earned-Income Tax Credit Program Faces Increased Scrutiny as It Expands*, WALL ST. J., Jan. 13, 1994, at A2.

166. Guy Gugliotta, *How to Aid 'Working Poor'? Tax Credit Serves as Lifeline but Has Its Critics*, WASH. POST, Apr. 15, 1993, at A1.

themselves. Using welfare reforms which will increase the poverty levels of women and their children will only perpetuate the cycle.

The ideas proposed in the last section of this Note are potential solutions to an immense problem. There is no guarantee that any one idea or combination of ideas will be effective in encouraging the growth of healthy families. However, the nation is currently heading down the wrong path. Welfare reform is not likely to help families, and may cause their situation to worsen. If we wish to help single-parent families and encourage the growth of two-parent families, we should concentrate our resources on pulling more families *out* of poverty rather than taking measures which will make them more impoverished.

