

## Chapter 8: Policy Change

This chapter parallels chapter 7, but instead of focusing on negotiations that couples and individuals work out to manage to work and raise children (like Hirshman's Rules or Deutsch's dual parenting couples), this chapter focuses on public approaches to supporting childrearing working families. Some of the readings focus mainly on workplace level policies, like part time or flexible scheduling, or parental leaves (Stone), some focus on legal or judicial approaches to crafting solutions to discrimination against workers because of their childrearing responsibilities—somewhat reminiscent of the case law covered in chapter 5 (Williams), and some focus primarily on changes in government policies (Williams does this via a brief comparison of the U.S. and European countries, while Crittenden and Steiner are both thorough and adventurous in their policy recommendations).

### **I. Pamela Stone, *Opting Out? Why women really quit their careers and head home*, Berkeley: University of California Press, 2007**

Pamela Stone's prescriptions aim at changing the workplace, not at passing work-family policies through state or federal governments:

What can be done to ... enable women like those in my study to avoid having to exercise the reluctant and false choice of family over career? As my study and so much other research shows, family-friendly policies often exist on the books only, idiosyncratically and unevenly implemented. Dispenses as special favors, they are not an ingrained part of workplace culture. How can this situation be changed? ...

I focus on the workplace as a lever for change because it is the asymmetry of women and men's places in the world of work that plays such a prominent role in women's quitting, but also because as a public place, it is somewhat more amenable than the family to policy interventions, not only at the macro-level of government, but via the policies of individual employers. ... Certainly, mothers need help parenting from their husbands, and I second the oft-sounded call for increased participation by men in fathering. Women also need husbands to support *their* careers more. However, among high-talent professionals, as we saw, men confront the same time demands as their wives, pointing again to the need to focus on the workplace as the locus of change. As long as both wife and husband are working "killer jobs"..., it is women's careers, not their husbands', that will bear the brunt. Until men too have more time, families and women's careers will continue to suffer. Bottom line: Women and the family have been squeezed as far as they can, they have literally "given at the office," and my results suggest that it is time for the office, that is, the workplace, to give back.

What would have enabled these women to continue on the course that the overwhelming majority had originally set, a course that combined family and career? ...the number one key to the successful integration of work and life for

these women is flexibility. Work-life experts view “flexibility” as an omnibus concept, and as these women used it, flexibility meant several things. It meant control, that is, the ability to work and to contain work so that it didn’t invade, encroach upon, or erode their time at home. It also meant a work day that meshed better with the school day. If there was only one thing that could be done to keep these women on the job, it would be ... a work day that ended at three or four o’clock so that they could be home with their children after school. But most of all, what flexibility meant was some kind of limit on the now relatively unbounded hours of work in professional and executive careers. Given the still highly-gendered nature of childrearing and women’s clear desire to have some hand in raising their children, ... long work hours are to these women what a flight of steps is to the wheelchair-bound: a fundamental obstacle to their ability to engage in the productive and rewarding work for which they trained and in which they accrued considerable experience and expertise.

The relative absence of less than full-time options, as well as the stigmatized and marginalized nature of those that are available [are] a function of the same thing, of work cultures that place a premium on long hours as a demonstration of total commitment.... [The tyranny of professional track] time norms and the time bind they create lay the groundwork for a time divide that is the new foundation for gender inequality, the bricks and mortar of the maternal wall and a de facto motherhood bar in elite professions....

My findings alert us to the pitfalls of attempting to resolve the double bind by relying too heavily on work-life policies that take it for granted, such as those that promote leaves and sequencing rather than integration of work and family. Most women cannot contemplate significant time out from work anyway, their earnings are too important. But more than that, leave policies, in the long run, may simply reinforce the double bind status quo. While time out of the workplace offers women positive opportunities for greater connection to their children and community and time for self-exploration, it also creates the context for a kind of professional crisis of confidence and a drift to traditionalism in their values and career interests....

This is not to say, of course, that leave policies should be less generous, but rather, if the goal is to encourage women to return from leave, leave policies need to be coupled with strategic “stay” policies which enhance and institutionalize not only flexibility (both of time and place) but reduce work hours across the board....

To the extent that a leave turns into a quit or interruption, the costs to women are considerable. While their earnings and career take a hit whenever they deviate from the full-time-plus that is characteristic of the professions, the costs of taking time out are greater than the costs of working part-time. In terms of lifetime earnings, working part-time typically exacts a penalty on the order of 10 percent, while the penalty for interruption is at least twice as large—estimated at 20 percent for a one-year interruption and 30 percent for a two- to three-year interruption, losses that are compounded when one takes into account their impact on pension and Social Security accumulation....

The gendered nature of childrearing and family-building coupled with the widespread deference that women ... continue to give to their husbands' careers make it all the more important that policies to promote flexibility and reduced hours not be aimed at women only. To the extent that men work extraordinary hours, the burden is borne not only by them, but by their wives, who sacrifice their own careers—however high-flying and on par—to support their husbands'. By de-stigmatizing part-time, by challenging the long-hours work culture, and by implementing part-time in a fair and equitable manner such that benefits and the like are prorated, one can expect that eventually these options will become more attractive to men too. [Equity entails] implementing policies that provide incentives for men to take advantage of flexibility or, as bosses, to offer it to others. Women are fearful of taking advantage of existing family-friendly options, and research suggests that men are even more so, and for good reasons given the consequences. Yet until more men themselves take advantage of, or at least, as senior managers, permit and do not punish those who do, reduced-hour and flexible accommodations are likely to remain stigmatized and under-utilized, in a never-ending chase-the-tail scenarios that redounds to women's disadvantage....

Furthermore, the linear, lock-step career is increasingly obsolete, with more and more workers, not only women, unable to follow this path—in part a function of changing life-cycle rhythms but also a function of economic insecurity and the disappearance of secure cradle-to-grave jobs. All this points to the realization that there is no easy one-size-fits-all policy or program regarding flexibility; indeed, that workplaces have to be flexible in their flexibility, and willing to customize solutions to fit the specifics of particular employees' needs if they are to make it possible for high-achieving women and mothers to persist in their careers.... The current practices surrounding flexibility give too much discretion to managers, ensuring no organizational buy-in or accountability. Indeed women saw no penalty to bosses who refused their requests; the detriment redounded only to their careers. To the extent that women continue to be the biggest constituency for flexibility, their careers, and their potential to make a contribution, are compromised by this ad hoc approach and adversely impacted relative to men's. As so many experts in this field have concluded..., flexibility cannot be tacked on, but has to be built in, requiring a fundamental reimagining and redesign of how work gets done. In some instances, flexibility and its implementation will require more teamwork, in others, more off-site work, in still others, some other adaptation, but the goal has to be to build a world of work that acknowledges women's (and men's) caregiving and family responsibilities—building work around life not life around work.

For the reimagining of work to work, a large body of research shows the importance of cultural change beginning at the very top—typically from the CEO or counterpart on down. Countervailing pressures—the speed-up occasioned by economic restructuring, global competition, and increased pressures for profitability—pose a considerable challenge to making the changes to enhance workplace flexibility.... In facing these impediments to change, we have to keep in mind that the workplace is not just an economic, but also a social construction.

There is no Invisible Hand other than our own. Considerable and still accumulating evidence suggests that there is a business case for flexibility and inclusiveness, that employers who offer it do better on their bottom line as well as in retaining employees, but more fundamentally, the case for flexibility has to rest on fairness and equity, on making opportunities to pursue productive, contributing, and . . . self-realizing work open to all who seek them, regardless of their gender or parenting or caregiving responsibilities. . . .

What women themselves tell us is that their decision [to quit and stay home with the kids] represents not an ideological reversal, a resurgence of conservative family values, a reinvention of motherhood, or a nostalgic return to the 1950s; rather it is largely a function of the formidable obstacles to leading a life that integrates, not segregates, work and family. When these high-achieving women who can leave do leave, they take with them a voice for valuing family, as well as for the values of care and connectivity that can leaven and offset the prevailing workplace culture that is hostile to families and by extension to women.

The fundamental difference between the type of women I studied and other still-working mothers is that the former can quit. Their ability to vote with their feet helps us see more clearly the dilemma they're facing—a dilemma faced to one extent or another by virtually all working mothers. . . . In resisting and not capitulating to the every-greedy workplace, women at home effectively challenge time norms, but too often their resistance is mistaken for conventionalism and acquiescence or lack of work commitment. These high-achieving women aren't voting against work or careers, they're voting *against* an outdated male model of work that ignores their reality, and voting *for* family (Stone, 2007, 219-228, 235).

### Questions.

1. Why does the male model of work need to be challenged, in Stone's view? Do you agree?
2. If men want to work long hours and women want to stay home and raise children, what's the problem with that?

## II. **Joan Williams, *The Interaction of Courts and Legislatures in Creating Family-Responsive Workplaces*, Washington, D.C.: Friedrich-Ebert-Stiftung, 2005**

Joan Williams, a law professor who has headed the work-family law centers at Washington University Law School and Hastings College of the Law, focuses on cross-national comparisons, then shifts to examining American reliance on legal strategies for protecting the rights of working parents.

It is a truism that the U.S. lags far behind other industrialized countries in providing supports for working families. The U.S., almost alone among industrialized countries, lacks paid parental leave; the European Union requires its members to provide at least three months parental leave in addition to maternity leave; requirements in several countries go significantly beyond this. The U.S. also lacks the high-quality, neighborhood-based subsidized child care centers that are common in some countries in Europe, notably France, Sweden, and Norway. In addition, American workers lack federally guaranteed paid vacation time; the European Union 1993 Working Time Directive requires its members to have a minimum of four weeks paid annual leave. In several countries, parents have the right to work part-time until their youngest child is in grade school; no similar provision exists in the U.S. The many mothers who work part-time are protected by the E.U. Directive on Part-Time Work which mandates pro-rated pay and benefits for part-time work; the U.S. lacks similar protections. Finally, Australia's New South Wales prohibits discrimination against "carers" (adults with caregiving responsibilities); only the District of Columbia has a similar law.

Family-hostile public policy has a particularly profound impact on American families because of their extraordinarily long work hours. Americans work the longest hours of any industrialized country except Korea, and dual-earner families in the U.S. work much longer hour than do similar families in Europe. Unlike in Europe, which has maximum 48 hours legislation, a 35-hour work week in France and many union contracts, and national statutes limiting overtime the U.S. tends to have good jobs at 50-plus hours a week and poor-quality part-time jobs.

Consequently, the U.S. has a pressing need for family supports, and lacks even the basics. In part this reflects our intensely privatized ideology of the family. In contrast to Europe, where investment in day care and family supports often is viewed as investment in the next generation of citizens, Americans often assume that bringing up baby is a private responsibility: "if you can't take care of your children, you shouldn't have them." This intensely privatized ideology feeds the anti-government fervor for "no new taxes," which makes initiatives that require outlay—from childcare subsidies to paid parental leave—less feasible, particularly given the Bush tax cuts, which some consider part of a conscious strategy to limit the government's ability to initiate new social programs. Important, too, is the U.S.'s steadily weakening union movement and ever-more-powerful business lobby and ideology, which make new worker protections such as part-time equity (pro-rated pay and benefits for part-time work and working time legislation an up-hill battle. Specific stakeholders also make family-friendly social policy less feasible. European unions have been actively involved in developing legislation for part-time equity and other working time provisions, while many American unions retain a high level of anxiety about part-time jobs and seek to eliminate rather than to upgrade them. Business leaders tend to see any attempt to impose part-time equity as an unwanted mandate that will eliminate a key way American businesses cut costs—namely by turning high-benefits full-time jobs into no-benefits part-time positions. Finally, 20<sup>th</sup> century American feminists have focused more, and more effectively, than Europeans on

gaining access for ideal-worker women to high-level traditionally masculine jobs, in keeping with the dominant “level playing field” ideology in the U.S. Europeans, particularly those with strong commitments to the welfare state, have focused more on providing opportunities and safety nets for mothers with child care responsibilities.... [After discussing the long-term nature of legislative change in the U.S., Williams then takes up media coverage of the opt-out revolution and legal battles for work-family protections:]

The standard media take on work/family issues in the U.S. is for a reporter to interview professional women who have “opted out” of high-pressure, high-status, high-hours jobs. The best known of this genre is Lisa Belkin’s “The Opt-Out Revolution” published in the *New York Times Magazine* (2003, 42), but similar stories are abundant in both print and live media.

The opt out story further impedes the potential for work/family legislation because it sends the message that the key effect of work/family conflict is on privileged white women and that they solve the conflict by choosing to quit their jobs. All adults, this story line intimates, have to make hard choices.

In sharp contrast, litigation shifts the attention away from the choices of privileged women onto the outright workplace hostility often encountered by a wide range of mothers—from grocery clerks to administrative assistants to firefighters to executives to lawyers to engineers, both white and nonwhite, who seek to be both good moms and good employees.... (Williams, 2005, 22-25).

In light of our research on maternal wall cases, a recognized on-line human resources journal made the following recommendations:

To avoid claims that you’re discriminating against parents, the following steps might be considered:

- Review personnel policies to determine if they adversely affect parents or employees with family responsibilities. In that regard, you might survey employees on policies they believe are discriminatory.
- If you have a part-time workforce predominantly consisting of employees who are parents, check whether the pay and benefits for those employees are disproportionately less. If you have a policy of providing benefits only to full-time employees, consider prorating at least some benefits for part-time employees (or at least for those part-timers who work a specified minimum number of hours).
- If it won’t impede your company’s productivity, consider permitting flexible schedules and/or telecommuting.
- Consider letting employees “borrow” sick leave from future years or other employees.
- Avoid questioning applicants and employees about their family situations or plans to have children. Instead, inquire about the ability to perform job functions and meet attendance and other job requirements.
- Don’t make assumptions or use stereotypes about your employees’ ability to meet job requirements based on their family situations or

responsibilities. When it comes to making hiring, promotion, and discharge decisions, focus on actual abilities and performance (Discrimination: A Glass Ceiling for Parents (2002), retrieved Nov 28, 2004 from <http://www.hrhero.com/pregnancy/parents.shtml>, cited in Williams, 2005, 29)....

[After reviewing a number of maternal wall cases, Williams notes that] litigation in the U.S. operates as a language of social ethics to negotiate issues that typically are negotiated in other industrialized countries in the arena of public policy. It may be that, as happened in Europe, litigation contributes to a process that results in path-breaking work/family legislation in the U.S. (Williams, 2005, 30).

### Questions.

1. Would following the guidelines that Williams cites above from the human resources on-line journal have prevented to situation that gave rise to Tracey Lust's lawsuit against the Sealy mattress company that we read about in chapter 5?
2. Why are Americans more apt to rely on the courts than working for legislative change as an avenue to protecting workers from discrimination as parents?

### III. **Ann Crittenden, *The Price of Motherhood: Why the most important job in the world is still the least valued*, NY: Metropolitan Books, 2001**

Like Joan Williams, Ann Crittenden notes that Europeans, unlike Americans, don't assume that capitalism will choke if they spend money on work-family policies, nor have they cut those policies even in hard economic times. However, she notes that

the United States is not Europe, and Americans may never accept the kind of compassionate capitalism or caring state that western Europeans demand. But it doesn't strike me as beyond our reach to revise a new social contract as well. I can easily imagine adding care to our pantheon of national values, along with liberty, justice, and the pursuit of happiness thought the pursuit of money.

But this will never happen unless women demand it. Women have to insist that caretaking and early education can no longer depend on their cheap or unpaid labor. And before that can happen, women have to understand that the true costs of care include their exclusion from full participation in the economy and in society....

Here are some overdue steps business needs to take:

*Give every parent the right to a year's leave:* ... Those concerned about family values or parental neglect of children could find no better place to attack the problem than by demanding a paid leave, which could be shared by both parents,

of at least one year. This would do more to improve infant care, increase family income, enhance fathers' emotional ties to their offspring, and promote economic equality between husbands and wives than almost any other single measure.

More generous leaves allowing parents to stay home with a sick child are also essential. Fewer than half of working parents stay home when their children are sick, even though research shows that sick children recover more quickly when a parent is there. According to a recent survey by the AFL-CIO, 54 percent of working women are not entitled to any paid leave for taking care of a sick child or other family member.

Corporate lobbyists have vehemently opposed the most minimal paid parental or family leaves, claiming that the cost would bankrupt American business. This is blatantly untrue. Generous paid parental leaves are a basic right in every other economically advanced nation, and in none of them does business have to foot the entire bill. In some countries the leaves are paid for by contributions of employers and employees to the national old-age insurance system; in others they come out of general tax revenues or some combination of taxes, Social Security, and employer or employee insurance funds....

*Shorten the workweek:* ...In Sweden, parents can opt to work a six-hour day until their children are eight years old. In the Netherlands the official workweek is thirty-six hours, and workers have a right to a four-day week. The legal workweek in France was reduced from thirty-nine to thirty-five hours in 2000, and pressure is rising for the rest of Europe to follow suit.

Americans have complained for years that they need a shorter workweek, but for many the workday is getting steadily longer instead. The average workweek has crept up to almost forty-eight hours for professionals and managers, and even so-called part-time work is now edging toward forty hours a week.

It always surprises people from other countries that the "rich" Americans allow themselves to be pushed so hard. Things weren't always this way. In 1870, workers in the United States, Germany, France, Japan, and Britain all averaged roughly the same hours a year on the job. Today, ... Europeans work on average almost *nine* forty-hour weeks (350 hours) less a year than Americans. This is another gift from unrestrained turbo-capitalism.

*Provide equal pay and benefits for equal part-time work:* A shorter workweek would have to be accompanied by a federal law requiring companies to pay part-time workers at the same hourly rates as full-timers doing the same job, as well as prorated fringe benefits, including vacations, sick leave, and inclusion in company pension plans. Currently, only about 22 percent of part-time workers have any health insurance, compared with 78 percent of full-time workers, and only 26 percent have any private pensions, compared with 60 percent of full-timers. These inequities give employers a huge incentive to hire nonstandard workers—most of them mothers—on cheap, exploitative terms.

A model for ending the exploitation and marginalization of part-time work had been established in the Netherlands, where one-third of all jobs are now part-

time. Dutch part-timers enjoy all of the benefits that accrue to full-time workers, on a prorated basis. The Canadian province of Saskatchewan has also set a precedent by becoming the first jurisdiction in North America to rewrite its labor laws to extend benefits to part-time workers.

*Eliminate discrimination against parents in the workplace:* Only eight states currently have laws prohibiting parental discrimination. Although such bias is hard to quantify, parents believe that it is widespread. One obvious example would be people who are penalized for declining to work overtime because of family responsibilities....

[Crittenden then turns from workplace reforms to government policies:]

*Equalize Social Security for spouses:* Under this reform, both spouses would automatically earn equal Social Security credits during their marriage. They would combine the credits with whatever credits they might have earned before or after marriage, for their own individual retirement benefits. This so-called earnings sharing would increase benefits for working and stay-at-home mothers alike, and for divorced women, who are among the poorest old people in the country.... An alternative would be simply to give Social Security credits to family caregivers. Both France and Germany give women pension credits for time spent out of the labor market caring for family members, young or old. During the 2000 election campaign such a “caregiver’s credit” was proposed by Vice President Albert Gore. He would credit any stay-at-home parent with \$16,500 annual income for up to five years. This would lift the benefits of as many as 8 million people, almost all of them mothers, by an average of \$600 a year....

*Offer work-related social insurance programs to all workers:* The artificial distinction between “members of the labor force,” who work for wages, and those who provide unpaid care should be abolished. A “worker” would be defined as anyone who either is employed in the provision of goods and services or is engaged in the unpaid provision of care and services to dependent adults and children. Primary caregivers would be considered to be “in the labor force,” and eligible for temporary unemployment compensation and job training in the event of divorce, and workmen’s compensation for job-related injuries.

*Provide universal preschool for all three-and four-year-olds:* A caring state would also guarantee that all children have access to developmental education in their critical early years. In the nineteenth century the United States led the world in establishing free public education for all children starting at age six. The early twentieth century saw the expansion of public education through high school. Yet the country has become a laggard in providing young children with the early education that can prepare them for success in school and in life....

The practical effect of this neglect is to deny an early education to poor children, who are the very ones who need it the most. Nationally, only 36 percent

of three- to five-year-olds from families earning less than \$15,000 a year attend any kind of prekindergarten, compared with 79 percent from families earning more than \$75,000.

In France, by contrast, 99 percent of three- to five-year-olds attend preschools at no or minimum charge. The French government also finances a licensed network of subsidized crèches, where 20 percent of younger children are cared for in a family setting.

The French system cost \$7 billion a year in the mid-1990s. A universal preschool program in the United States, similar to the one enjoyed by military families—free for children whose families are in the lowest income brackets and at sliding-scale rates for others—could easily cost \$50 billion a year. But often overlooked is the fact that the costs would be partially recovered by the tax revenues generated by increased maternal earnings. Universal early education would generate hundreds of thousands of skilled jobs, most likely filled by women. No other policy imaginable would do more to give children a more promising future, and boost the economy's long-term prospects.

*Stop taxing mothers more than anyone else:* ... One of the fairest, most effective ways of [reducing mothers' dependence on men] would be to lower taxes on mothers' incomes, as opposed to family tax cuts per se.

Edward J. McCaffery, a professor of tax law at the University of Southern California, has analyzed what he calls the “deep, complex, and pervasive gender bias of our tax system.” ... To some degree intentionally, the tax laws [set up between the 1930s and 1950s] discourage two-earner families at all income levels by taxing the lower-earning spouse at much higher rates than the primary earner.

The government could actually raise more revenue, without lowering families' income by a penny, by taxing married men more and married women less. Economists have discovered that in response to high tax rates, married women do shift from work outside the home to unpaid work in the home, while lower taxes, and more take-home pay, draw them back into the paid labor force. When taxes go up for married men, by contrast, either their work patterns are not affected by the change, or, if anything, the men work harder to make up for the loss of income.

As McCaffery puts it, by taxing a second income at the family's highest marginal rate, “we are doing exactly the wrong thing, if we care about utility, wealth, or women—that is, if we care about anything other than men alone.”

One simple way to remedy this tax bias against married working mothers is to restore separate filing of federal income tax returns, as was done in the United States before 1948. Separate filing, the most common method of taxing married persons in other advanced democracies, would currently put the first \$10,000 earned by the secondary earner, usually the mother, in a zero tax bracket, rather than having every dollar of her income taxed at the family's highest marginal rate....

A mother's taxes could also be reduced considerably by allowing her to deduct child-care expenditures. If business executives can deduct half the cost of meals and entertainment as a legitimate cost of doing business, then surely the

family's primary caregiver should be allowed to deduct the cost of substitute child care as a business expense, which it certainly is.

*A child allowance; or Social Security for children:* The big problem with tax deductions and tax credits for children and for child care is that tax breaks do nothing for the roughly 30 percent of parents whose income is so low they pay no federal taxes. Far better than tinkering with the tax code would be a child allowance paid to all primary caregivers of young children, whether they work outside the home or not. Such a "salary" for every mother is paid in a number of countries, including Britain and France, and is truly neutral regarding parents' decisions on how to raise their children, for the money can be used either to help pay for child care or to help pay the bills in households where one parent stays home....

An allowance, or "family wage" paid directly to caregivers, would help all families with kids. It could be paid out of a Children's Trust Fund, similar to the Social Security Trust Fund, supported by a dedicated income stream, possibly including contributions from employers and employees, as in the case of Social Security....

*Provide free health coverage for all children and their primary caregivers:* Another minimal element in a caring state is adequate health insurance for all dependents....

*Add unpaid housework to the GDP....*

[Crittenden then makes some proposals for reforming family law:]

*Two-tier marriage:* ... I propose that in marriages that produce children, the economic union would kick into higher gear. In this second tier of marriage the two individuals would automatically become full economic partners in a common family enterprise. Both parents' income would legally belong to this new family unit, created by the birth or adoption of a child. The adults' income would become "family income," institutionalizing sharing and protecting the altruism necessary for family life.

This idea, which sounds radical, is in fact quite old-fashioned. The notion of the family as an economic unit—as a community sharing its joint resources—actually predates capitalism and the nuclear family and lasted well into the present century even in the United States.... [Quoting Barbara Beran, she continues:] "Today we've lost an important part of the marriage contract... Women may fulfill their part of the bargain, and raise the children, but then men are able to renege on their part of the bargain. After she has supported the children and the family, there is no quid pro quo from him to support her. If women are going to do this work, someone has to protect them financially. The whole name of the game in the traditional family structure was to tie the man down so he didn't run away from that obligation. Men should have to pay a price if they do that.... The

key is to arrange it so that *no one*, husband or wife, can have kids without paying for it.”

*Equal standards of living after divorces involving dependent children:* The family wage would continue after a divorce. The partners would share their joint income for a fixed period of time, depending on the length of the marriage and the ages of the children, so that all family members would have an equal standard of living as long as they are supporting dependent children.

The basic idea here is that a divorce should neither unduly reward nor penalize either parent of the children. Spouses pledge to share equally in the risks and rewards of the marriage, and by the same token, they should share equally in the risks and rewards of divorce. This basic principle of fairness, says law professor Joan Williams, would “raise the costs of traditional gender roles for *men*, so that men, like women, suffer long-term adverse consequences for family patterns that involve wifely dependence.”

Postdivorce income sharing has in fact become the centerpiece of a new divorce reform movement, led by predominantly female legal scholars.... [One proposal is to] suggest one year of equal sharing of the couple’s combined income for every two years of marriage[, as we saw in the excerpt from Joan Williams in chapter six].

*Transfer all responsibility for postdivorce payments to a single federal agency:* This is the key to effective child support enforcement. One proposal put before Congress every year would have the federal government deduct court-ordered child support from paychecks, like taxes, and disburse them directly to parents. A similar system is used in many European countries, and it has been instrumental in minimizing poverty among single-parent households....

In 1995 Marge Roukema, a New Jersey Republican [member of the House], told me that “the tough part of child support is getting a bill out of committee. As long as it’s only talked about in back rooms, it never goes anywhere....the men find all kinds of reasons why you can’t do this or that. But if we can get it to the floor, it’s motherhood. They don’t dare vote against it.”

[Crittenden closes her prescriptions for change with some suggestions for increasing community support and responsibility for childrearing:]

*Provide community support for parents:* A striking feature of current attitudes toward parenting is the tendency to hold parents responsible for everything that goes wrong with their kids in the community, while maintaining that every parent should go it alone, without any help from the community or government.

Maybe it’s time to reevaluate this frankly mean-spirited contradiction.... “Right now the caring function is entirely invested in this black box called the nuclear family. It’s privatized, and it’s invisible, psychically as well as economically. The question is how do we establish closer links between families and communities?” [quoting Catherine Coon]...

[A vision for communities supporting childrearing] might include:

- Public schools and supervised playgrounds open for before- and after-school programs coinciding with parents' working day.
- Local public libraries with free lending libraries of educational toys and games, safety equipment, and art supplies. Library-based counselors could help parents and family day-care providers plan their daily activities with young children.
- Community pediatric clinics that would offer free health care, including shots, and give parents information and classes on children's physical, intellectual, and emotional development....

[Concluding, Crittenden writes:] Even if only a handful of these proposals were enacted, the most obvious result would be a massive shift of income to women—which is precisely why all of them have met with such resistance. But paying women for services rendered is precisely the point. Female caregivers have been the world's cheap labor for too long. They have been forced to be dependents for too long. This isn't fair, and it makes no sense in terms of the general welfare (Crittenden, 2001, 259-274).

**IV. Elizabeth Steiner, “Why Are Divorced Mothers Economically Disadvantaged? And What Can Be Done About It?” *Texas Journal of Women & the Law* 17: 131-151 (2007)**

What Can or Should be Done to Better the Economic Situation of Divorced Mothers?

So how can ... the problems that are causing the economic downfall of divorced mothers and their children be lessened or eliminated? How can we ensure the economic security of the large number of custodial divorced mothers in this country, thereby increasing the economic security of their children? In the next section I will propose several policy and legal changes that could benefit divorced mothers and their children. Some of these have been proposed by scholars. Others are my own ideas.

**A. Increase the Number of Enforced Child Support Agreements**

In order to improve the economic outlook for divorced mothers and their children, these women need to receive child support. First, these mothers need to have formal, legally binding child support agreements. Then, those agreements need to be enforced. It is not difficult to hypothesize that if the almost two-thirds of custodial parents in this country who do not receive the full child support that they are entitled to under the law began receiving full child support, then at least some of the forty percent of divorced mothers living below the poverty line would be pulled out of poverty.

The practical problem with this proposal is, of course, enforcement. The laws regarding child support are already out there. The problem is that they are frequently not being relied on to set up legally binding child support agreements

and, when they are used, these agreements or court orders are frequently not being enforced.

So how do you enforce child support better than it is currently being enforced? Some states, including Texas, already have a system set up whereby child support can automatically be deducted out of a person's paycheck. I propose that this should be a nationwide system. Employers should be responsible for questioning their employees as to whether they owe child support and, if so, deducting this from their paycheck. If an employer fails to do this, they could be subjected to fines or even possible criminal sanctions. Making the employer responsible and subject to sanctions would likely result in better compliance.

Also, a nationwide database should be set up to ensure that men cannot avoid support payments by moving to a new state. The system could be set up much like the sexual offender system - where anyone can access a website and search the name of an individual to find out if that person has been convicted of a sex crime. In the same way, upon a court order of child support, the person subject to the order would be entered into the database. This database should also report if that person is behind in his or her child support payments so that this information will be available to employers and creditors.

Late or non-payments of child support should also be reported on a person's credit report. The threat of losing a job offer or not being able to obtain credit may make many "deadbeat" parents more likely to comply with their financial responsibilities. After all, if a person can be denied credit or a job for not paying off a creditor, should they not also be subject to the same consequences for not taking financial responsibility for their children?

Another obstacle to overcome is the lack of binding child support agreements. Education is the key to achieving this goal. Parents need to be made aware of their rights and how they can act on those rights. Perhaps when a couple goes to get a marriage license, they could be given a packet of information about the rights of custodial parents upon divorce and required to read the information before receiving a marriage license. Public service announcements and other marketing materials could also be used to make individuals aware of their rights.

#### **B. The United States Should Have a National or Publicly Subsidized Child Care System and U.S. Employers Should Put More Emphasis on Family Friendly Policies**

As stated in a previous portion of this paper, secure attachment to the labor force (full-time, full-year employment) is a major determinant of financial stability and well-being for families. Higher income, in turn, is associated with many positive child outcomes including better health, academic achievement, and financial well-being as adults. Unfortunately, these are two areas where divorced women and their children do not fare well.

The percentage of children whose single mothers were employed full-time was only 47 percent in 2003 and 2004. This decline came after the percentage had increased substantially from 39 percent in 1996 (the year in which welfare reform was first implemented) to 50 percent in 2002.

However, despite the recent climb with welfare reform, U.S. percentages are drastically behind the percentages of other countries that have some form of publicly subsidized or universal child care. For example, in France, 82 percent of single mothers work full-time, and in Sweden that percentage is 70 percent. France, the country with the highest percentage of working mothers, has universal child care/education beginning at age two. In the age group of three to six year olds, 99 percent of children are enrolled in these programs. Sweden has universal child care beginning at age zero. In Sweden, approximately 48 percent of children ages one to three participate in these programs and 80 percent of children ages three to six participate in these programs. In both of these countries, maternal employment and government-provided income transfers are both key factors in reducing child poverty in families. In contrast, the United States does not provide universal education until age five. Only 26 percent of children ages three and under are in child care in the U.S. and only 50 percent of children ages three to four are in child care.

Furthermore, it is not only European countries with histories of more socialized forms of government that offer family friendly programs (like child care, job flexibility, and paid maternity leave) for the purposes of benefiting parents. The United State lags far behind almost all developed countries when it comes to mother friendly policies. For example, of 168 countries surveyed in the world, only four offer no national maternity leave program: Lesotho, Swaziland, Papua New Guinea, and the United States of America.

A national child care system or publicly subsidized child care would enable working mothers to have more time to devote to their educations and careers both during marriage and after divorce. "Publicly subsidized child care tends to increase mother's labor force participation and reduce gender inequalities in both the work and the home."

Cost currently limits access to quality non-familial care for both married mothers and divorced women with children. In many states, the cost of child care and early education is nearly twice as expensive as paying for a year of tuition at a public college. On average, it can cost anywhere from \$4,000 to \$10,000 a year to care for a young child. In some areas of the country, this cost is even more. This sometimes means that both married and divorced women are likely forced by financial circumstances to stay home with children instead of entering the work force because the cost of child care is so high. Furthermore, the high cost of child care for divorced women may mean that they stay out of the labor force, interrupt their educations to care for their children, and take lower paying jobs, or be forced to put their children in poor child care situations. A system of either national quality child care or subsidized child care would mean that divorced women with children would have more opportunities to participate in the workforce.

The main criticism regarding a publicly-subsidized or national child care system is going to come from taxpayers concerned over the expense that such a system would entail. Childless individuals will argue that they should not have to bear the burden of the tax expenses to pay for other people's children to be cared for. Even middle-class and wealthy parents who purchase "high-quality services in the private market" may oppose this suggestion because it will mean either an

additional tax burden for them or that some other government program has money taken away from it. Furthermore, elderly individuals and families, especially those who think that they have already "paid for" the public benefits that they receive, will likely share the same argument as the childless adults.

The rebuttal argument against this criticism is that society as a whole, and not just divorced mothers, ultimately stands to gain the benefit of having children that are better cared for, educated, and not living in poverty. Researchers have found that consistent, developmentally-sound and emotionally-supportive care has a positive effect on both children and families. Low-income children who attend intensive high-quality early education programs, like Head Start, have greater school success, higher graduation rates, lower levels of juvenile crime, decreased need for special education services, and lower teen pregnancy rates than their peers. It isn't a stretch to conclude that better educated and cared for children, children not exposed to the disadvantages of poverty, are more likely to make better, more productive citizens in the future who will bring larger benefits to society and who will put more in the government coffers. Furthermore, freeing these children's mothers to participate more freely in the workforce would mean that these women would currently be putting more into the government coffers and the economy.

Furthermore, I would point out to those concerned about a tax increase for this type of program that there are two other programs that our country spends a huge portion of the federal budget on every year that could easily be cut in order to fund such program: Social Security and Medicare. The United States spends between ten and fifteen percent of the entire federal operating budget on Medicare every year. Even more shocking, the United States spends more than a quarter of its budget on Social Security. The government provides universal health care to Americans over age 65 at a cost of 35 billion dollars and paid 430 billion dollars in Social Security benefits to some 40.5 million retired Americans and their beneficiaries.

Yet the population almost solely benefited by these two programs (the 65+ demographic) is the wealthiest portion of the population, the portion of the adult population that contributes the least amount of money back to the tax system through employment, and the portion of the population that will be least likely to directly produce a benefit to our society in the future.

This 65+ demographic - the only demographic in the United States with universal healthcare benefits (as long as someone is a Medicare beneficiary, there is no testing for eligibility based on income, need or any other factor once they reach the age of 65) - is far and away the demographic of the population that is faring the best economically. This is also the segment of the population with the lowest rates of poverty. As of 1999, the average net worth per household of a person between the ages of 65 and 74 was almost \$200,000. The average net worth per household of a person over age 75 was almost \$ 150,000. Compare these statistics with the median net worth for all households in the United States (\$55,000), the median net worth for all households under 35 (\$7,240), the median net worth for households aged 45 to 55 (\$44,275), and the median net worth for "female" heads of household (\$ 23,028). And, finally, compare this with the

median net worth of divorced mothers ages 36 to 43 (\$10,000). Furthermore, a recent survey, found that the mean net financial wealth of households headed by those in their early 60's is now eight times greater than the median household.

And Social Security benefits are not restricted to just the "needy" or "poverty stricken" elderly. Even among the wealthiest fifth of the 65+ population, Social Security still accounts for 20 percent of their income and 47 percent of the income of the second wealthiest fifth of that demographic.<sup>n82</sup> Since the median net worth for this population demographic is between \$150,000 and \$200,000, that means that at least 40 percent of the individuals receiving government aid are worth several hundred thousand dollars.

In sum, a national or publicly subsidized child care system could be financed by using the money spent to pay Social Security and Medicare benefits to the wealthiest 20 percent of the 65+ population (a population that does not need this money since the net worth of any one of its individual members is likely several hundred thousand dollars) to instead finance a program that would benefit a very financially needy population.

### C. Mothers Who are the Primary Caregivers for Their Children Should Receive Reimbursement or Payment From Their Husbands Independent of Child Support for Their Labor

Most divorcing fathers retain the primary benefit of the domestic ecology even after the marriage has ended. In the nearly 90 percent of divorces in which the mothers are awarded custody - even in states such as California where joint custody is favored - mothers typically remain the children's primary caregiver. In this context non-custodial fathers continue to be supported by a flow of domestic services from their ex-wives. If they were not, they too would have to "choose" a job that allowed them to stay home with the baby, to pick children up from school, to take time off when children are sick, or otherwise to provide care (or partially delegate it, at considerable expense) as their ex-wives now do.

Therefore, a husband's financial obligations to his ex-wife should reflect "the continuing dependence of their children and the continuing care taking obligations of [his] ex-wife." Unfortunately, current alimony and child support laws do not reflect this. Instead they focus on need. I propose that a divorced man's financial obligations to his wife should reflect all of the unremunerated labor that she must do in the home in order to care for his children. As Joan Williams states, "the relevant comparison is ... to [the ex-husband's] situation if he had to raise his children without a wife who serves as a primary caregiver." He is only able to maintain his status in the labor market (and his wage) because of her continued work in the home. Now that they are no longer married and she is not sharing (assuming that he did share his income) in his ideal worker wage, why shouldn't she receive compensation for the work that she does that enables him to be able to earn that wage? Consider for a moment the many expenses a man would have if he had to pay other people to do all of the tasks that his ex-wife does for his children. He would have to pay a domestic worker to clean the house and wash clothes. He would have to hire a nanny to supervise the children and make sure that they were bathed and cared for. He would have to also hire a cook

to prepare their meals; a chauffeur to drive them around; a nurse to care for them when they are ill; a personal shopper to buy them clothes, school supplies, and toiletries; a tutor to help them with their homework; and the list could go on and on. He would likely also have to hire a manager to oversee all of the other workers. The expense of all of these jobs would likely run into the tens of thousands of dollars. Yet the average custodial parent in the United States that receives child support (ignoring for a moment the other half that doesn't) is only awarded \$5,000. And this is designed only to cover the children's expenses like their food, schooling and clothing, not the mother's labor.

I propose instead that the father (or non-custodial parent) should have to pay his spouse for performing all of these functions. Of course, since the children are also the custodial parent's responsibility, the non-custodial parent would only be responsible for paying for half of the cost of the custodial parent's fees for performing these child rearing related services.

A major criticism of this system would likely be that this "payment" might be difficult to calculate. However, there are many awards in our legal system, like future medical expenses and pain and suffering, that are difficult to calculate, and, nonetheless, courts and juries calculate these awards on a regular basis. Furthermore, the salary could be calculated by considering the market rate for similar services (i.e. what the parent would have to pay for the services if they had to pay someone to perform those tasks) and could also incorporate into it an estimation of the opportunity cost that the custodial parent is giving up in order to spend time caring for the couple's children.

Another criticism would also likely be that the system is turning love into labor and turning a loving, familial relationship into a business deal. This argument is akin to arguing that the only compensation a mother should get for her labor in the home should be the love of her children and the personal fulfillment she gets from caring for them. A counter argument against this criticism is that many of the menial day-to-day tasks involved in rearing children do not present great opportunities for one to reap great personal rewards. This is not to say that child rearing is without any sort of personal rewards independent of a monetary gain, but there are personal in most jobs. For example, there are probably very few nurses, college professors, public service attorneys, public school teachers or social workers who would tell you that they perform their job solely or even predominately for the money. Nonetheless, our society still demands that we pay these individuals a wage.

## V. Conclusion

Change is needed in order to pull not only these women, but also the millions of children that they are raising out of poverty and to ensure that futures are more secure. In order to effect this change, both genders will need to work to redefine this country's divorce laws, in both substance and enforcement, and to reconsider the way that family work is compensated.

*Questions.*

1. Which of these proposals make the most sense to you? Which ones are likely to encounter the stiffest resistance, and why?
2. Why has the U.S. not adopted high quality affordable child care given the large number of working mothers?
3. Would Steiner's proposals avoid the stigma associated with being on welfare? What would it take to pass them?