

# The Teenage Pregnancy “Problem”:

## *Welfare Reform and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*

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### I. INTRODUCTION

In the last three decades, teenage mothers<sup>1</sup> have increasingly become the focus of an intense and anxious national debate over poverty and the changing nature of the American family. This anxiety has far outpaced actual changes in the teenage pregnancy rate. Indeed, when teenage pregnancy first became the subject of Congressional hearings in 1975,<sup>2</sup> teenage birthrates had been on a downward decline since 1960,<sup>3</sup> and between 1975 and 1985, birthrates declined even further.<sup>4</sup> Nevertheless, commentators as diverse as the “conservative” Charles Murray<sup>5</sup> and the “liberal” Bill Moyers<sup>6</sup> have sought to understand a complex web of issues—

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1. Unless otherwise indicated, teenage women refers to women aged 15 to 19 throughout the article.
2. See KRISTIN LUKER, *DUBIOUS CONCEPTIONS: THE POLITICS OF TEENAGE PREGNANCY* 71 (1996).
3. See *id.* at 196 tbl.1 (showing that birthrates declined from 91.0 births per thousand women aged 15 to 19 in 1960 to 55.6 births per thousand women aged 15 to 19 in 1975).
4. See *id.* (showing that birthrates declined from 55.6 births per thousand women aged 15 to 19 in 1975 to 51.0 births per thousand women aged 15 to 19 in 1985).
5. See CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980* 124–29 (1984) (attributing breakdown of the family in part to the high rate of “illegitimate births” among teenagers).
6. See *The Vanishing Family: Crisis in Black America* (CBS television broadcast, 1986) (on file with

poverty, out-of-wedlock childbearing, single parenting, premarital sexual activity, and welfare—through the prism of teenage pregnancy.

From 1985 to 1993, teenage birthrates rose only slightly from 51.0 births per thousand teenage women in 1985 to 59.6 births per thousand teenage women in 1993.<sup>7</sup> This increase is well within the historical range and the 1993 rate is still considerably lower than the 1960 rate of 91.0 births per thousand teenage women, and the 1970 rate of 69.7 births per thousand women aged fifteen to nineteen.<sup>8</sup> Yet the hysteria over teenage pregnancy continues. Most recently, it emerged during the debate over the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA" or "the Act"),<sup>9</sup> the federal act that "reforms" welfare by imposing strict work requirements and time limits on receipt of aid. The scope of this debate, as well as the continuing anxiety over teen pregnancy, indicate how central the issue is considered to be in discussions of social problems.

In this article, I describe the role that teenage pregnancy played in the PRWORA debate, seeking to explain the paradox of heightened public and legislative concern during a period when teenage birthrates in fact have suggested little cause for worry. I conclude that the anxiety over teenage pregnancy is caused not by teenage pregnancy itself, but by its perceived correlation with poverty and by the challenge it presents to the traditional family form. I also find that teenage mothers, who are largely assumed to be both black and poor, make easy scapegoats for a public troubled by welfare dependency and by the growth in out-of-wedlock sexual activity, childbirth, and parenting among women of all races and ages.

In Part II of this article, I trace the evolution of public and legislative understandings of the "problem" of teenage pregnancy. I discuss how national anxiety over teenage pregnancy peaked not when teenage birthrates were rising, but when out-of-wedlock childbirth and parenting among white women of all ages were increasing. These trends led to greater similarity between the behavior patterns of young black and white women, which suggests that some of the anxiety over teenage pregnancy may be an expression of racialized social valuations. Finally, I detail the early legislative responses to teenage pregnancy, showing that teenage pregnancy's assumed link to poverty and to teen sexual activity was an explicit source of congressional concern long before the passage of PRWORA.

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author) [hereinafter *The Vanishing Family*] (stating that teenage pregnancy causes and perpetuates poverty).

7. See STANLEY K. HENSHAW, ALAN GUTTMACHER INSTITUTE, U.S. TEENAGE PREGNANCY STATISTICS 5 tbl.2 (1996) ("Birth, pregnancy, and abortion rates per 1,000 women, by age at pregnancy outcome, 1972-1992").

8. See LUKER, *supra* note 2, at 196 tbl.1.

9. Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified in scattered sections of 42 U.S.C.).

In Part III, I identify the assumptions about teenage pregnancy that were manifest in the debate over PRWORA and that appear in PRWORA itself. I then unpack these assumptions in Part IV. I critique the hypotheses underlying PRWORA that teenage pregnancy causes poverty and that teenagers are primarily responsible for the growth in out-of-wedlock childbearing in recent years. I also show that conditioning benefits to unwed mothers on certain requirements will not reduce the incidence of out-of-wedlock childbearing. I then question the belief that marriage is a realistic means for teenage mothers to escape poverty and the related belief that reducing out-of-wedlock childbearing among teens will significantly reduce welfare costs. Finally, I demonstrate that teenage pregnancy is not caused by "predatory" older men. Rather, teenage pregnancy is more properly seen as a reaction to a variety of pre-existing problems that can vary significantly from population to population.

In Part V, I explore three possible explanations for why teenage pregnancy has played such a central role in the public debate over welfare, poverty, and changing "family values." First, I argue that concern about teenage pregnancy, and the out-of-wedlock childbearing that is associated with it, masks a deeper concern about changing marital norms among all women. Second, I argue that concern about teenage pregnancy similarly masks societal anxiety over the growth in extramarital sexual activity among all women. In the face of these trends, teenage mothers have become a potent symbol of the dangers of extramarital sexual activity and single parenting. Finally, I argue that the skepticism about the parenting rights of teenage mothers reflects a skepticism about the parenting rights of all poor women. Since teenage mothers are politically vulnerable, attacking their right to be parents provides a useful vehicle for attacking the right of all poor women to be parents.

In the final section of this article—Part VI—I discuss alternative proposals for addressing teenage pregnancy. I stress the need for programs that target both teenage mothers and their children, and I briefly survey two programs that have shown some success at reducing repeat pregnancies among teenage mothers. I conclude that programs that provide for the multiple needs of teenage mothers, including their need for life opportunities, are much more likely to be successful at reducing future pregnancies than the limited financial incentives that PRWORA provides.

It is my project to demonstrate how profoundly the exaggerated concern over teenage pregnancy influences legislative decisions about welfare and poverty, and to question the propriety of this influence. By naming and refuting the many assumptions that fuel the anxiety over teenage pregnancy, I hope to help those interested in formulating effective legal and political responses to poverty, or in challenging existing and proposed responses, to think more carefully about the true nature of the problems as well as their solutions.

## II. EVOLUTION OF THE "PROBLEM"

The widespread concern over teenage pregnancy in recent years would suggest that the scope of the "problem" has increased significantly. However, in the years between 1950 and 1970, before teenage pregnancy was "discovered," teens were in fact having babies at much higher rates than they were when the hysteria over teenage pregnancy peaked.<sup>10</sup> During the earlier period, however, unmarried white middle-class teens who became pregnant rarely kept their children.<sup>11</sup> Rather, they relinquished their babies through adoption to white, middle-class couples who could raise their children in "normal" fashion.<sup>12</sup> Black unwed mothers, by contrast, were excluded from the maternity homes to which white women escaped during their "crises,"<sup>13</sup> and they most often kept their babies.<sup>14</sup> They were often dependent on welfare<sup>15</sup> and they married less frequently than those white women who did keep their babies.<sup>16</sup> Much to the chagrin of many white observers, black women appeared to be defying the sexual, gender, and family norms of the day, and to be doing it all on the public dime.<sup>17</sup> However, as long as it was primarily black teens who were having and keeping their babies, teenage pregnancy did not appear to be a "problem."

Beginning in the 1970s, white teenagers began to mimic black behavior patterns and it was this phenomenon that finally put teenage pregnancy on the map as a pressing social issue. Between 1970 and 1990,

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10. See LUKER, *supra* note 2, at 196 tbl.1 (showing that teenage birthrates were 79.5 births per thousand women aged 15 to 19 in 1950, 91.0 births per thousand women aged 15 to 19 in 1960, 73.3 births per thousand women aged 15 to 19 in 1965, 69.7 births per thousand women aged 15 to 19 in 1970, and 59.9 births per thousand women aged 15 to 19 in 1990).
  11. See RICKIE SOLINGER, *WAKE UP LITTLE SUSIE: SINGLE PREGNANCY AND RACE BEFORE ROE V. WADE* 6 (1992); see also LUKER, *supra* note 2, at 24.
  12. See LUKER, *supra* note 2, at 24.
  13. See *id.*
  14. See SOLINGER, *supra* note 11, at 6.
  15. See STAFF OF HOUSE COMM. OF WAYS AND MEANS, 104TH CONG., 2D SESSION, 1996 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 474 (Comm. Print 1996) [hereinafter GREEN BOOK 1996]. In 1973, 38% of the AFDC caseload was white, while 45.8% was black. Note that AFDC was not always readily available to black women. Until the late 1960s, racially selective welfare policies led to the exclusion of black women from AFDC in many states. See Lucy A. Williams, *Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate*, 22 FORDHAM URB. L.J. 1159, 1176, 1178 (1995).
  16. See STAFF OF HOUSE COMM. OF WAYS AND MEANS, 101ST CONG., 2D SESSION, 1990 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 889 (Comm. Print 1990) [hereinafter GREEN BOOK 1990]. Between 1970 and 1974, 15.4% of black women aged 15 to 19 conceived their first babies out-of-wedlock and gave birth to them in wedlock. By contrast, 37.1% of white women aged 15 to 19 conceived their first babies out-of-wedlock and gave birth to them in wedlock.
  17. For an early example of white politicians' disdain for black family patterns, see OFFICE OF POLICY PLANNING AND RESEARCH, U.S. DEP'T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965) (employing what would now be termed a "culture of poverty" discourse to explain the "pathology" of the black family). The report was authored by Daniel Patrick Moynihan. See LEE RAINWATER & WILLIAM L. YANCEY, *THE MOYNIHAN REPORT AND THE POLITICS OF CONTROVERSY* xv (1967). For a later example, see *The Vanishing Family*, *supra* note 6.

the out-of-wedlock birthrates for white teenagers nearly tripled, while the out-of-wedlock birthrates for black teenagers, already considerably higher than white birthrates, increased only marginally.<sup>18</sup> As the stigma attached to single parenting began to dissipate, white unwed teens stopped resorting to adoption in such large numbers, and many no longer felt compelled to marry to "legitimate" their children.<sup>19</sup>

Against the backdrop of these changes in white teenagers' behavior, the Adolescent Health, Services, and Pregnancy Prevention and Care Act of 1978 ("AHSPPC")<sup>20</sup> was passed. The law allocated funding to pregnant and parenting teenagers, largely at the expense of family planning programs,<sup>21</sup> because it was believed that family planning would not prevent the significant numbers of teenagers who wanted children from having them.<sup>22</sup> In 1981, the Adolescent Family Life Act ("AFLA")<sup>23</sup> replaced AHSPPC. Reflecting a change in national leadership, the bill introduced another factor to the teenage pregnancy debate: the prevention of teenage sexual activity. The legislation called for the promotion of "self-discipline and chastity, and other positive, family-centered approaches to the problems of adolescent promiscuity and adolescent pregnancy."<sup>24</sup> The debate engendered by the bill clearly established the two prevailing views of teenage pregnancy. While conservatives argued that the problem was premarital sexual activity and the solution chastity,<sup>25</sup> liberals argued that the problem was pregnancy and the solution family planning programs and the provision of funds to pregnant and parenting teens.<sup>26</sup> Despite this disagreement, however, both sides agreed that teenage pregnancy was a pressing problem because of its link to poverty.<sup>27</sup>

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18. See LUKER, *supra* note 2, at 200 tbl.8 (showing that white out-of-wedlock births jumped from 10.9 to 29.5 per thousand women aged 15 to 19, while black out-of-wedlock births went from 96.9 to 110.1 per thousand women aged 15 to 19).

19. See *id.* at 10; MICHAEL B. KATZ, *THE UNDESERVING POOR* 221-22 (1989); MARIS A. VINOVSIS, *AN "EPIDEMIC" OF ADOLESCENT PREGNANCY?* 29 (1988).

20. Pub. L. No. 95-626, 92 Stat. 3551 (1978).

21. See *id.* § 601, 92 Stat. at 3595 (stating that the Act's "primary emphasis [is] on services to adolescents who are 17 years of age and under and are pregnant or who are parents"); see also VINOVSIS, *supra* note 19, at 33.

22. See VINOVSIS, *supra* note 19, at 33.

23. Pub. L. No. 97-35, 95 Stat. 578 (1981).

24. VINOVSIS, *supra* note 19, at 81 (quoting 127 CONG. REC. 7969 (1981)).

25. See LUKER, *supra* note 2, at 76-79; VINOVSIS, *supra* note 19, at 78-81.

26. See VINOVSIS, *supra* note 19, at 32-33.

27. See LUKER, *supra* note 2, at 72-74 (describing liberal consensus, during AHSPPC hearings, that teenage pregnancy leads to poverty); AFLA, § 2001, 95 Stat. at 579 (finding that "pregnancy and childbirth among unmarried adolescents . . . often results in severe adverse . . . economic consequences").

### III. THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT

The influence of the "problem" of teenage pregnancy on legislative thinking can be seen even more clearly in the 1996 efforts to reform U.S. welfare policies. Marking perhaps the most fundamental shift in welfare policy since the Social Security Act of 1935,<sup>28</sup> PRWORA replaced Aid to Families with Dependent Children ("AFDC") in 1996.<sup>29</sup> This section will describe the welfare reform debate surrounding the passage of PRWORA, PRWORA's provisions, and the assumptions implicit in PRWORA.

#### A. The Debate Over Welfare Reform

In the pre-PRWORA debate over welfare reform, teenage pregnancy was a central issue for both President Clinton and Congress. This is not surprising since many actors in the welfare debate would appear to agree that teenage pregnancy is one of "the greatest domestic social problem[s] America faces today."<sup>30</sup> In fact, the centrality of teenage pregnancy to the welfare debate clearly reveals that teenage pregnancy, and its associated ills of single parenting and illegitimacy, are believed to lie at the very heart of poverty and welfare problems in America.

In June 1994, President Clinton proposed his first welfare plan after promising "to end welfare as we know it."<sup>31</sup> Citing the link between "illegitimate births" and poverty, President Clinton proposed a national teenage pregnancy prevention campaign, a national requirement that teen mothers on welfare stay in school or enter a JOBS program,<sup>32</sup> and a national requirement that teen mothers live with a "responsible adult."<sup>33</sup> That these were among the President's first proposals to reform welfare suggests just how focused the debate had become on teenage mothers as the progenitors of social ills.

The House GOP welfare bill—H.R. 4—reflected a similar preoccupation with teenage mothers. In its initial incarnation, the bill stated that mothers under the age of eighteen and their children could never qualify for cash aid unless the mother married the child's biological father or an-

28. Pub. L. No. 74-271, 49 Stat. 620 (1935).

29. See PRWORA, Pub. L. No. 104-193, § 103, 110 Stat. at 2105, 2112 (1996).

30. 141 CONG. REC. S10,771 (daily ed. July 27, 1995) (statement of Sen. Specter); see also 141 CONG. REC. S12,759 (daily ed. Sept. 7, 1995) (statement of Sen. Dorgan that there is an "epidemic of teenage pregnancies in this country"); 140 CONG. REC. S6811 (daily ed. June 14, 1994) (statement of Sen. Lieberman that a national campaign against teenage pregnancy is "as important as anything else" in the welfare reform effort).

31. Jeffrey L. Katz, *Long-Awaited Welfare Proposal Would Make Gradual Changes*, 52 CONG. Q. WKLY. REP. 1622 (June 18, 1994) [hereinafter *Long-Awaited*].

32. See Family Support Act of 1988, Job Opportunities and Basic Skills Training Program, Pub. L. No. 100-485, 102 Stat. 2356 (1988).

33. See *Long-Awaited*, *supra* note 31, at 1624. Note that the link between "illegitimate births" and teenage pregnancy is treated as so natural that it goes without explanation. I return to this issue later in the article.

other man who would legally adopt the child.<sup>34</sup> Resistance to this provision from other GOP members, most notably then Senate Majority Leader Bob Dole, led to reform.<sup>35</sup> H.R. 1214, which was introduced to mollify moderates by allowing teenage mothers to be eligible to receive cash benefits after they turned eighteen, later became part of H.R. 4.<sup>36</sup> An amendment to H.R. 4 permitting states to provide unwed minor mothers with vouchers to "be used only for goods and services suitable for child care" was also added.<sup>37</sup> These changes were sufficient to get H.R. 4 passed in the House.<sup>38</sup>

When the Senate began its deliberations on welfare reform, the provision of benefits to unwed teen mothers again became a key point of contention.<sup>39</sup> Indeed, disagreement over this issue was the source of some of "the most serious intraparty Senate disputes."<sup>40</sup> Clinton stated that welfare reform was being stymied because "some people on the far right are blocking any action on welfare reform . . . that doesn't cut off children and parents if the parents are young, poor and unmarried."<sup>41</sup> Clearly, reaching agreement on the issue of teenage pregnancy had become essential to the passage of a welfare reform bill.

### B. PRWORA's Provisions

PRWORA was signed into law by President Clinton on August 22, 1996. The law largely eschews the provisions of H.R. 4 and H.R. 1214, adopting most of President Clinton's proposals instead. Specifically, the law requires unwed mothers under the age of eighteen to attend school or an equivalent training program and to live with a parent or in an adult-supervised home in order to receive benefits.<sup>42</sup> If the state deems the current living situation of a teenage mother inappropriate, she must receive help in finding "a second chance home, maternity home, or other appropriate adult-supervised supportive living arrangement."<sup>43</sup> Once teen moth-

34. See H.R. 4, 104th Cong. § 105 (1995).

35. See Jeffrey L. Katz, *Concerns over House Bill*, 53 CONG. Q. WKLY. REP. 282 (Jan. 28, 1995).

36. See H.R. 1214, 104th Cong. § 405 (1995); Jeffrey L. Katz, *GOP Moderates Central to Welfare Overhaul*, 53 CONG. Q. WKLY. REP. 813 (Mar. 18, 1995). H.R. 1214 eventually became a part of H.R. 4.

37. See H.R. 4, 104th Cong. § 405 (1995); 53 CONG. Q. WKLY. REP. 892 (Mar. 25, 1995).

38. See Jeffrey L. Katz, *House Passes Welfare Bill; Senate Likely to Alter It*, 53 CONG. Q. WKLY. REP. 872 (Mar. 25, 1995) (noting that House passed H.R. 4 by a vote of 234-199).

39. See Jeffrey L. Katz, *Senate Finance Is Poised to Approve Shifting of Welfare Control to States*, 53 CONG. Q. WKLY. REP. 1424 (May 20, 1995) (discussing conflict between Sen. Packwood and Sen. Santorum over this issue).

40. Jeffrey L. Katz, *GOP May Link Welfare Reform to Budget to Limit Dissent*, 53 CONG. Q. WKLY. REP. 2078 (July 15, 1995) [hereinafter *GOP May Link*]. The Senate bill eventually gave states the option to deny cash assistance to unwed teenage mothers, rather than mandating such a provision as the House bill did. See H.R. 4, 104th Cong. § 406 (1995).

41. *GOP May Link*, *supra* note 40, at 2078.

42. See PRWORA, Pub. L. No. 104-193, § 103, 110 Stat. 2105, 2135-37 (1996).

43. *Id.* § 103, 110 Stat. at 2136.

ers reach the age of eighteen, they, like all other welfare recipients, are subject to the five-year lifetime limit (or a lower limit set by a state) on benefits, and must seek work after two years of welfare receipt.<sup>44</sup>

PRWORA also establishes national goals for the prevention of out-of-wedlock teenage pregnancy,<sup>45</sup> mandates the establishment of a program to study "the linkage between statutory rape and teenage pregnancy, particularly predatory older men committing repeat offenses,"<sup>46</sup> and authorizes research studies on the effects of different state programs on teenage pregnancy rates.<sup>47</sup> Finally, the Act requires each state plan to "establish goals and take action to prevent and reduce the incidence of out-of-wedlock pregnancies, with special emphasis on teenage pregnancies, and establish numerical goals for reducing the illegitimacy ratio of the State."<sup>48</sup> The state plan must also explain how the State will provide education and training about statutory rape as a means to include men in teenage pregnancy prevention programs.<sup>49</sup>

### C. PRWORA's Assumptions

Since PRWORA does not deny cash aid to unwed teenage mothers as long as they meet the Act's requirements, it does not pose as great a threat to minor mothers as H.R. 4, in either its amended or unamended form, would have posed. In fact, it is the *universal* provisions of PRWORA, such as the five-year lifetime limit on benefits,<sup>50</sup> that are likely to cause the greatest trouble for teenage mothers.<sup>51</sup> Nevertheless, the implicit and explicit assumptions about teenage mothers that appear in PRWORA are deeply troubling because they ensure the continued scapegoating of teenage mothers for problems to which they only incidentally contribute. The primary assumptions are that: (1) teenage pregnancy is a central cause of poverty and out-of-wedlock childbearing; (2) financial disincentives to teenage pregnancy, along with incentives to marry, can fundamentally change the behavior patterns of the poor and reduce welfare costs; and (3) teenage pregnancy can be meaningfully reduced through stricter enforcement of the statutory rape laws.<sup>52</sup>

44. See *id.* § 103, 110 Stat. at 2137, 2113.

45. See *id.* § 905, 110 Stat. at 2349.

46. *Id.* § 906, 110 Stat. at 2349-50.

47. See *id.* § 103, 110 Stat. at 2153.

48. *Id.* § 103, 110 Stat. at 2113-14.

49. See *id.* § 103, 110 Stat. at 2114.

50. See *id.* § 103, 110 Stat. at 2137.

51. While it remains to be seen how many teenage mothers will be forced into abusive marriages or other unsatisfactory living arrangements as a result of PRWORA, a great number of teenage mothers already live with other relatives or husbands. See *infra* Part IV.F.

52. I do not mean to overstate the similarities between Democratic and Republican lawmakers' beliefs on the issue of teenage pregnancy. There were, in fact, some Democrats who took issue with some of the assertions Republicans made about teenage pregnancy. See, e.g., H.R. REP. NO. 104-651, at 2639-43 (1996) (Committee on Ways and Means—Dissenting Views). Nevertheless,

### 1. Teenage pregnancy as a central cause of poverty and out-of-wedlock childbearing

The centrality of teenage pregnancy to the welfare reform debate indicates that teenage pregnancy is seen as an important precursor to poverty. Moreover, the persistent focus on *unwed* teenage mothers indicates both that teenagers are seen as a primary cause of the out-of-wedlock childbearing phenomenon and that teenage mothers' unwed status is believed to explain their poverty. The language of PRWORA itself also demonstrates these beliefs. In PRWORA's "findings," the increase in out-of-wedlock pregnancies and births is documented by looking first to non-marital teen pregnancy rates.<sup>53</sup> The increase in the overall rate of non-marital births, which is nine percentage points lower than the teenage figure, is then reported.<sup>54</sup> With the data presented in this way, the implication is that teenage women are the crux of the out-of-wedlock childbearing problem, despite the fact that as of 1990, almost seventy percent of out-of-wedlock childbearing was occurring among women who were not teenagers.<sup>55</sup>

The "findings" section devoted to discussing the "negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society"<sup>56</sup> also reflects the presumption that the women at the center of this problem are teenagers. The section begins with a discussion of "[y]oung women 17 and under" and subsequently states that "[c]hildren born out-of-wedlock . . . [have] a greater likelihood of becoming teenage mothers *themselves*."<sup>57</sup> The latter statement is clearly based on the assumption that the children at risk are those who are born to teenage mothers. The initial reference to "young women 17 and under" also demonstrates this assumption.

Finally, the Act requires states to take action to reduce the incidence of out-of-wedlock childbearing and illegitimacy ratios, placing "special emphasis on teenage pregnancies."<sup>58</sup> This directive demonstrates that the source of the twin evils of out-of-wedlock childbearing and illegitimacy is seen primarily to be teenagers. Since out-of-wedlock childbearing is deemed to cause poverty,<sup>59</sup> it is clear why pregnancy among teenagers is also believed to do so.

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when the Democratic "alternatives," such as President Clinton's first proposed welfare plan, suggest the elimination of teenage pregnancy as a solution to poverty, and when substantial numbers of Democrats support a bill like PRWORA, it is clear that the Democrats have largely accepted the Republican terms of the teenage pregnancy debate.

53. See PRWORA, Pub. L. No. 104-193, § 101(6), 110 Stat. 2105, 2110 (1996).

54. *See id.*

55. *See* LUKER, *supra* note 2, at 199 tbl.7.

56. PRWORA, § 101(8), 110 Stat. at 2111.

57. *Id.* (emphasis added).

58. *Id.* § 103, 110 Stat. at 2113.

59. *See id.* § 101(5), 110 Stat. at 2110 (stating that "[e]ighty-nine percent of children receiving AFDC benefits now live in homes in which no father is present").

## 2. Encouraging marriage and reducing welfare costs through financial incentives

Once out-of-wedlock childbearing among teenagers is defined by PRWORA as "the problem," the direction in which reform should proceed becomes quite clear. "Marriage," PRWORA states, "is the foundation of a successful society."<sup>60</sup> In addition, "[m]arriage is an essential institution of a successful society which promotes the interests of children."<sup>61</sup> Those same interests depend on the "[p]romotion of responsible fatherhood and motherhood."<sup>62</sup> Married parenting is thus the only form of responsible parenting. According to the authors of PRWORA, those children who grow up "in homes in which no father is present"<sup>63</sup> have grim futures. Children born out-of-wedlock are more likely to have low birth weights,<sup>64</sup> low cognitive scores and fewer "educational aspirations,"<sup>65</sup> and children born into families receiving welfare are more likely to be on welfare as adults.<sup>66</sup>

PRWORA was intended to stem the "crisis" of single parenting by reducing out-of-wedlock pregnancies and births.<sup>67</sup> To cause this reduction among teens, married teenage mothers are exempted from the school and living requirements imposed on unmarried teenage mothers.<sup>68</sup> The assumptions are clear. First, it is assumed that imposing conditions on welfare receipt for unmarried teenagers will encourage teens to marry or to forego having children outside of marriage. Indeed, the House Report's introduction to PRWORA states explicitly that the requirements for unwed teenagers will "discourage[] out-of-wedlock childbearing."<sup>69</sup> Apparently it is believed that financial incentives of the kind adopted by PRWORA can change poor teenagers' behaviors. Second, it is assumed that when teenagers marry the fathers of their children (or a man who would adopt the child and thereby be responsible for the child), their families will be less poor,<sup>70</sup> their children will not grow up to be poor, and welfare costs will be reduced.

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60. *Id.* § 101(1), 110 Stat. at 2110.

61. *Id.* § 101(2), 110 Stat. at 2110.

62. *Id.* § 101(3), 110 Stat. at 2110.

63. *Id.* § 101(5), 110 Stat. at 2110.

64. *See id.* § 101(8)(B), 110 Stat. at 2111.

65. *See id.* § 101(8)(D), 110 Stat. at 2111.

66. *See id.* § 101(9)(C), 110 Stat. at 2112.

67. *See id.* § 101(10), 110 Stat. at 2112.

68. *See id.* § 103, 110 Stat. at 2135-36 (stating that provisions apply only to unmarried teenage parents).

69. H.R. REP. NO. 104-651, at 5 (1996).

70. *See* PRWORA § 101(9)(A), 110 Stat. at 2111 (noting that "[o]nly 9 percent of married-couple families with children under 18 years of age have income below the national poverty level").

### 3. The connection between statutory rape and teenage pregnancy

The absence of men from PRWORA's discussion of teenage pregnancy, particularly in light of its celebration of marriage, is striking. Men are only mentioned with regard to the enforcement of statutory rape laws.<sup>71</sup> PRWORA reflects the belief that teenage pregnancy can be reduced through stricter enforcement of these laws.<sup>72</sup> It is ironic that statutory rape law enforcement is among the primary responses to teenage motherhood. The irony lies in the fact that teen mothers who marry the very "predatory older men"<sup>73</sup> whom PRWORA supposes should be prosecuted for statutory rape are exempted both from the Act's requirements for unwed teenage mothers and from the moral opprobrium that the Act attaches to single mothers. The solution is also problematic because it is premised on two unsupported assumptions. First, it is assumed that most teenagers who become pregnant are minors. Second, it is assumed that few teenage women are getting pregnant or raising children by choice; rather they become pregnant because they have been victimized by "predatory older men." In the next section, I will examine the truth of these assumptions, as well as the other assumptions that PRWORA makes about teenage pregnancy.

#### IV. REFUTING PRWORA'S ASSUMPTIONS ABOUT TEENAGE PREGNANCY

As illustrated above, the welfare reform strategies adopted by PRWORA to diminish out-of-wedlock childbearing among teens are premised on a number of important assumptions. Specifically, the Act assumes that: (A) teenage pregnancy is a cause of poverty; (B) teenagers are primarily responsible for the increase in out-of-wedlock childbearing; (C) conditions on welfare benefits will discourage unwed teenage pregnancy; (D) marrying the fathers of their babies will enable teenage mothers to escape poverty; (E) a reduction in the number of out-of-wedlock births among teens will significantly reduce welfare costs; and (F) many teenagers become pregnant because of "predatory older males" or other outside forces, rather than through any volitional act of their own. All of these assumptions are not only faulty, but they also invite simplistic and ultimately unhelpful approaches to the reduction of teenage pregnancy.

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71. See *id.* § 101(7), 110 Stat. at 2111; § 103, 110 Stat. at 2114; § 906, 110 Stat. at 2349-50.

72. See *id.* § 103, 110 Stat. at 2114; § 906, 110 Stat. at 2349-50.

73. *Id.* § 906, 110 Stat. at 2349-50.

### A. The Relationship Between Teenage Pregnancy and Poverty

It is widely believed by legislators that teenage pregnancy is a precursor to poverty, both for the individual mother and for her children. During one PRWORA debate, Senator Lieberman described pregnancy among unwed teenagers as "an extraordinarily damaging epidemic that has swept this country, damaging to the young women whose future is hobbled and severely limited . . . and bringing into the world these children who are subjected to some of the worst imaginable conditions."<sup>74</sup> Despite the vehemence of these assertions, recent studies have begun to suggest that the failure of prior studies to control for socioeconomic differences among women have led to "overstated estimates of the long-term socioeconomic consequences of teen childbearing."<sup>75</sup> Moreover, these studies indicate that teenage childbearing rarely pushes a young woman into poverty; on the contrary, she is usually poor before she gives birth.

To assess more accurately the socioeconomic repercussions of adolescent childbearing, researchers Arline T. Geronimus and Sanders Korenman compared sisters who gave birth at different ages. By comparing the "primary outcomes"—those that measure actual material wealth—and the "secondary outcomes"—those that measure ability to achieve such wealth—for sisters who timed their first births differently,<sup>76</sup> they were able to filter out the biases of more traditional cross-sectional analyses.<sup>77</sup> Their data revealed both that women who give birth as teenagers tend to be more disadvantaged than those who give birth later in life,<sup>78</sup> and that "it may be misleading to assume . . . that observed differences in socioeconomic status result from exogenously determined differences in women's fertility timing."<sup>79</sup> As a result, they conclude that it may be fallacious to assume that delaying childbearing will improve the socioeconomic circumstances of poor teenagers.<sup>80</sup>

A recent study conducted by V. Joseph Hotz, Susan Williams McElroy, and Seth G. Sanders<sup>81</sup> substantiates Geronimus and Korenman's findings. These researchers sought to determine the costs of teenage motherhood by comparing women under the age of eighteen who miscarried to women under the age of eighteen who gave birth.<sup>82</sup> They chose

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74. 142 CONG. REC. S8076, 8102 (daily ed. July 18, 1996) (statement of Sen. Lieberman).

75. Arline T. Geronimus & Sanders Korenman, *The Socioeconomic Consequences of Teen Childbearing Reconsidered*, 107 Q. J. ECON. 1187, 1190 (1992).

76. *See id.* at 1193.

77. *See id.* at 1196.

78. *See id.*

79. *Id.* at 1211.

80. *See id.* at 1208.

81. *See* V. Joseph Hotz et al., *The Costs and Consequences of Teenage Childbearing for the Mothers and the Government*, 1 CHI. POL'Y REV. 55 (1996).

82. *See id.* at 55.

teenage women who had miscarried as the appropriate control group in order to minimize the bias resulting from preexisting differences between women who give birth as teenagers and women who delay childbirth.<sup>83</sup> Using this control group, the researchers concluded that "[i]t is not the case that teen mothers would fair [sic] substantially better in life if they delayed their childbearing."<sup>84</sup> The researchers found that teenage mothers who delay childbirth for two to two-and-a-half years have, statistically speaking, a third of a child less, spend twenty percent less time as a single mother, have *lower* levels of income from their husbands, and have virtually the same likelihood of obtaining a high school level education (either a high school diploma or graduation equivalency diploma).<sup>85</sup> Most surprisingly, the researchers found that beginning at age twenty-one, and extending through at least age thirty-four, teenage mothers actually worked a greater number of hours than those who delayed childbearing.<sup>86</sup> Moreover, at every age through age thirty-four, teenage mothers had greater earnings, on the whole, than those who delayed childbearing.<sup>87</sup> The Hotz study, as well as Geronimus and Korenman's findings, call into question the commonly held belief that teenage childbearing negatively impacts the socioeconomic position of teen mothers.<sup>88</sup>

Earlier studies also confirm that the negative socioeconomic consequences of teenage motherhood have been vastly overstated. Elaine McCrate documented the negative effects of poor schooling and a constricted labor market on poor teenagers' opportunities for socioeconomic success and concluded that these circumstances, especially for black women, "greatly reduce, on average, the supposed benefits of delaying childbirth."<sup>89</sup> Like the researchers in the Hotz study, McCrate noted that teenagers who have children are much more likely to be poor before giving birth than those women who postpone childbearing until later in life.<sup>90</sup> As a result, it is not surprising that these teenagers tend to remain poor once they become mothers.

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83. *See id.* at 65–68. This bias results because, on average, "teen mothers come from much more disadvantaged backgrounds than do women who delay childbearing." *Id.* at 66. As a result, simply comparing the socioeconomic outcomes for women who give birth as teenagers to those who delay parenthood may yield misleading results.

84. *Id.* at 56. The researchers were careful to note that this conclusion was limited to teenage mothers as their study did not consider the costs of teenage pregnancy for the children born to teen mothers nor for the fathers of such children. *See id.* at 60.

85. *See id.* at 74–77.

86. *See id.* at 78. The authors estimated, on average, that teenage mothers would work 20% fewer hours if they delayed childbearing.

87. *See id.* at 79–80. The researchers speculated that this finding may be explained by the fact that teenage mothers are most likely to have jobs where experience and continuity, rather than educational attainment, are valued. Because teenage mothers concentrate their parental obligations in their early years, they are better able to satisfy the requirements of such jobs. *See id.* at 81.

88. *See id.* at 83.

89. Elaine McCrate, *The Effect of Schooling and Labor Market Expectations on Teenage Childbearing*, 20 REV. RADICAL POL. ECON. 203 (1988).

90. *See id.*

In a study of the effects of welfare and non-welfare economic opportunities on birthrates among 900 black teenagers, Greg J. Duncan and Saul D. Hoffman<sup>91</sup> similarly found that poverty and lack of opportunity tend to precede teen pregnancy. They found that greater future economic opportunities, measured by a teen's predicted earned income at age twenty-six, reduced teenage out-of-wedlock childbearing to a statistically significant degree.<sup>92</sup> Duncan and Hoffman assert that if black women could expect the same mean income as white women at age twenty-six, the occurrence of AFDC-related teen births would fall by twenty percent.<sup>93</sup> They therefore conclude that decisions about out-of-wedlock childbearing among teenagers "are influenced by likely future marital and career opportunities. Women with the least to lose are most likely to have children during their teen years."<sup>94</sup>

Two abortion-related studies confirm that it is largely economically disadvantaged teenagers who are most likely to get pregnant *and give birth* as teenagers. More financially secure teenagers; a large majority of whom are white, are more likely to abort. In the first study, Theodore Joyce found that white adolescents at every age are more likely to abort than are blacks, Puerto Ricans, and non-Puerto Rican Latinos.<sup>95</sup> He also noted that teenagers who could depend on Medicaid to pay their abortion costs were at least twice as likely to carry their pregnancies to term as were other teenagers who had to seek outside funding for an abortion.<sup>96</sup> Using Medicaid as a proxy for low socioeconomic status, this finding supports his conclusion that "regardless of how accessible abortion services are, teenagers in poverty will be less likely to seek abortion than their more educated, and financially better-off counterparts."<sup>97</sup>

The second study, conducted by Randall H. King, Steven C. Myers, and Dennis M. Byrne,<sup>98</sup> confirms this interpretation. Their project was to understand how the "opportunity costs" of pregnancy affect a teenager's decision to give birth or to abort.<sup>99</sup> Opportunity costs were measured by predicted wages, local area unemployment rates, poverty status, and school enrollment status.<sup>100</sup> School enrollment status was determined to be

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91. See Greg J. Duncan & Saul D. Hoffman, *Welfare Benefits, Economic Opportunities, and Out-of-Wedlock Births Among Black Teenage Girls*, 27 *DEMOGRAPHY* 519, 520 (1990).

92. See *id.* at 530.

93. See *id.* at 531.

94. *Id.* at 532.

95. See Theodore Joyce, *The Social and Economic Correlates of Pregnancy Resolution Among Adolescents in New York City, by Race and Ethnicity: A Multivariate Analysis*, 78 *AM. J. PUB. HEALTH* 626, 627-28 (1988).

96. See *id.* at 628.

97. *Id.* at 630.

98. See Randall H. King et al., *The Demand for Abortion by Unmarried Teenagers: Economic Factors, Age, Ethnicity and Religiosity Matter*, 51 *AM. J. ECON. & SOC.* 223 (1992).

99. See *id.*

100. See *id.* at 233.

statistically insignificant.<sup>101</sup> The remaining variables, however, contributed to varying opportunity costs for differently situated teenagers. The authors' analysis of these costs led them to conclude that "[t]eenage girls in more favorable economic circumstances were much more likely than economically disadvantaged young women to abort a pregnancy."<sup>102</sup> To illustrate this phenomenon, the authors explained:

[A] pregnant 19 year old single black woman not enrolled in school and living in poverty in a labor market of moderate unemployment and who has an expected wage of \$3.50 (in 1984 dollars) had only a 2 percent expected probability of aborting. The probability rose to 54 percent as her expected wage increased to \$7.50 and she simultaneously moved out of poverty. The corresponding percentages for an otherwise identical Hispanic woman was [sic] 3 percent and 63 percent; and for a white woman the comparable figures were 8 percent and 78 percent.<sup>103</sup>

Thus, although race appears to have some correlation with the decision to abort, improved economic status was a more significant deterrent to childbirth for all groups. From this finding it is possible to conclude that the poorer a teenager is, the more likely she is to keep her baby.

The above studies indicate that, contrary to the assumptions made by the supporters of PRWORA and most of the other actors in the welfare reform debate, teenage childbearing does not push young women into poverty, but rather occurs most frequently among women who are already poor. Therefore, the negative socioeconomic consequences that are presumed to flow from early childbearing may be negligible for the disadvantaged young women who are most frequently having children as teens. As we shall see, this understanding of teenage pregnancy demands very different policy responses than those embodied in PRWORA.

### **B. The Responsibility of Teenagers for the Rise in Out-of-Wedlock Childbearing**

As discussed in Part III, many commentators and politicians involved in the welfare reform debates implied that teenage mothers were the primary source of the out-of-wedlock childbirth "problem."<sup>104</sup> Indeed, one reason proffered for PRWORA's requirements that teenage mothers live in an adult-supervised home and attend school was that such require-

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101. *See id.* at 229.

102. *Id.* at 233.

103. *Id.* at 231.

104. I put "problem" in quotes because I do not accept the conclusion that women giving birth outside of marriage is necessarily a problem. That single-parent families are poorer than two-parent families to me suggests problems of women's wages, women's employment opportunities, and the lack of state-supported child care more than it does problems of marriage. I will not pursue these arguments further in this article, however.

ments can help "combat illegitimacy."<sup>105</sup> The association between teenage pregnancy and out-of-wedlock childbearing can also be seen in the ease and frequency with which remarks about teen pregnancy evolve into remarks about illegitimacy. While proposing an amendment to Senator Dole's welfare bill, Senator Faircloth noted that further restricting benefits to unwed teenage mothers would "disrupt the pattern of out-of-wedlock childbearing that is passing from one generation to the next."<sup>106</sup> In another welfare reform debate, Senator Lieberman, while heralding President Clinton's "national crusade" against teenage pregnancy, stated that "[i]f we want to change welfare as a way of life, we have to deal with out-of-wedlock births."<sup>107</sup> In yet a third instance, Senator Santorum of Pennsylvania supported the denial of welfare checks to unwed teen mothers because he believed that doing so was necessary to decrease out-of-wedlock births.<sup>108</sup> Finally, the implications of PRWORA itself are that the increase in out-of-wedlock births is primarily a teenage problem.<sup>109</sup> Clearly, it is widely believed that teenage births have been a primary cause of rising rates of out-of-wedlock childbearing.

In fact, while the rates of out-of-wedlock births to teenagers have gone up since 1970,<sup>110</sup> the incidence of out-of-wedlock births is increasing among women of all ages<sup>111</sup> and teen mothers constitute an ever shrinking percentage of such births. The decline in this percentage has been substantial, dropping from forty-eight percent of non-marital births in 1970 to thirty percent of non-marital births in 1990.<sup>112</sup> Thus, while the rate of out-of-wedlock childbearing among teenagers remains relatively high, it is clear from recent trends that teenagers are not the exclusive, or even the greatest, contributors to out-of-wedlock births.

### C. The Connection Between Welfare Benefits and the Incidence of Out-of-Wedlock Pregnancy and Childbearing Among Teenagers

Charles Murray's book *Losing Ground* popularized the idea that the availability of welfare benefits dictates the behavior of the poor, usually

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105. H.R. REP. NO. 104-651, at 1348 (1996), *reprinted in* 1996 U.S.C.C.A.N. 2183, 2407.

106. 141 CONG. REC. S13,528 (daily ed. Sept. 13, 1995) (statement of Sen. Faircloth). Faircloth's amendment would have denied cash aid to any unmarried teenage mother living with an adult who had herself had a child out-of-wedlock or who had recently received AFDC benefits. *See id.* at S13,529.

107. 140 CONG. REC. S6811 (daily ed. June 14, 1994) (statement of Sen. Lieberman).

108. *See* Jeffrey L. Katz, *Senate Finance Is Poised to Approve Shifting of Welfare Control to States*, 53 CONG. Q. WKLY. REP. 1424 (1995).

109. *See* PRWORA, Pub. L. No. 104-193, § 101(6)(A), 110 Stat. 2105, 2110 (1996); *see also supra* text accompanying notes 53-59.

110. *See* LUKER, *supra* note 2, at 200 tbl.8 (showing that the rates of out-of-wedlock births per thousand teenage women have gone from 22.4 in 1970 to 42.5 in 1990).

111. *See id.* at 199 tbl.7.

112. *See id.*

in perverse ways.<sup>113</sup> The supporters of PRWORA appear to believe this too. They apparently believe that they can discourage teenage out-of-wedlock childbearing by conditioning benefits to unwed teenage mothers on requirements such as school attendance.<sup>114</sup> If history is any guide, however, fluctuations in benefit levels cannot outweigh the other influences, described in Part IV.F, that guide recipients' behavior.

If "high" benefit levels encouraged teenage pregnancy, one would expect that states with higher benefit levels would have higher rates of teenage pregnancy.<sup>115</sup> Similarly, if "low" benefits discouraged early unmarried childbearing, one would expect non-marital teenage birthrates to have dropped since 1973 as the real value of AFDC has declined.<sup>116</sup> These correlations, however, do not exist.<sup>117</sup> Moreover, programs that have offered financial incentives and penalties as a means to alter behavior have had at best mixed success. For example, the Learning, Earning, and Parenting ("LEAP") program in Ohio provided monthly bonuses to teens who attended high school regularly and subtracted the bonus amount from the welfare checks of those who did not satisfy the attendance requirements.<sup>118</sup> The program had only marginal success, keeping an additional ten percent of teens in school.<sup>119</sup> Although ten percent appears somewhat significant, it becomes less impressive when one considers the severity of the financial incentives involved. A teenager with one child who participated in the program had her check reduced to \$212 a month for failing to meet the program's attendance requirements, while she received \$336 a month for adequately meeting those requirements, a difference of \$124.<sup>120</sup> If financial rewards were all that dictated behavior, one would expect a more substantial effect than that which was observed.<sup>121</sup>

While the specter of the *total* denial of welfare benefits may have a greater impact on teenagers' behavior than programs like LEAP have

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113. See MURRAY, *supra* note 5.

114. See H.R. Rep. No. 104-651, at 2407 (1996) (stating that such requirements will "end the inducement of guaranteed cash welfare benefits for teens who have children outside marriage they are not equipped to support by themselves").

115. See LUKER, *supra* note 2, at 126.

116. See *id.* at 127.

117. See *id.* at 126-27 (comparing benefit levels across nations, states, and time to show that such levels have an insignificant relationship to behavior); see also Duncan & Hoffman, *supra* note 91, at 530 (stating that "AFDC benefit levels have a modest but statistically insignificant positive effect on the incidence of teen out-of-wedlock births"); DAVID T. ELLWOOD, POOR SUPPORT 59-60 (1988) (stating that problem with "welfare-as-villain" argument is that cuts in welfare benefits in early 1970s did not even slow increase in single-parent families).

118. See Jeffrey L. Katz, *The New Vision of Welfare: Offer More, Demand More*, 51 CONG. Q. WKLY. REP. 1420, 1421 (1993).

119. See *id.* at 1424.

120. See *id.*

121. The program was also marginally successful at encouraging teens who had dropped out of school to return, helping 47% of those students to return as compared to 33% in the control group. A senior program analyst in Ohio's human services department conceded, however, that the case manager who assisted participants with transportation and child care was as important as the money in helping the program achieve the success it did. See *id.*

had, the above evidence suggests that the behavioral incentives built into PRWORA alone are unlikely to reduce substantially unwed teenage pregnancy. The more likely scenario is that teenagers will continue to make choices based on the complicated realities of their lives, factoring in economic consequences where they can, and will struggle to make do with whatever meager resources come their way.

#### D. Marriage as the Answer to Poverty

By reserving its harshest demands for *unmarried* teenage mothers and by documenting the litany of problems that befall children in single parent households, PRWORA posits marriage as both a moral and practical solution to poverty. Putting aside the objection that replacing women's dependence on the state with women's dependence on men is not an appropriate solution to the problem of women's economic disadvantage, research suggests that marrying men in poor communities to escape poverty is also not a practical answer.

Writing about young black men, William Julius Wilson has argued that high rates of death, incarceration, and unemployment among black males have created a dearth of "marriageable" black men.<sup>122</sup> Analyzing what Wilson calls the "male marriageable pool index," he concludes that there has been "a long-term decline in the proportion of black men, and particularly young black men, who are in a position to support a family."<sup>123</sup> Kristin Luker notes that, beginning in the late 1970s with the "bifurcation" of the labor market and the loss of well-paid manufacturing jobs, this decline also occurred among white men.<sup>124</sup> It has already been established that the teenage girls who are most likely to become parents live in poor communities. It is therefore also probable that the men who they know are the very men who have found themselves on the losing side of changes in the economy. Thus, even assuming that marriage is the appropriate remedy for poverty in female-headed households, it is a remedy that is out of reach for most teenagers who become pregnant.<sup>125</sup>

#### E. The Connection Between Welfare Costs and Out-of-Wedlock Pregnancy and Childbearing Among Teens

The incessant focus on teenage pregnancy as a cause of poverty suggests that if teenagers would just delay childbearing until they were

122. See WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* 83 (1987).

123. *Id.*

124. See LUKER, *supra* note 2, at 166-67.

125. Professor Luker also notes that, particularly for women who work outside of the home, the decision to marry is further complicated by the fact that husbands tend to *add* labor in the household. See *id.* at 168.

"ready," they could escape the ranks of the poor. Not only would such an outcome be beneficial to individual young women, the argument goes, but taxpayers would also benefit. The trouble with this argument is that asking poor teenagers to postpone childbearing until they are "ready" as a means to reduce welfare costs wrongly assumes that as older women, these same teenagers will be able to raise children without government support. Unfortunately, this is often not the case.

As the previously cited studies indicated, teenage mothers are most often poor long before they have children, and those with similarly disadvantaged backgrounds who delay childbearing do not experience appreciable gains in their socioeconomic status.<sup>126</sup> Thus, the postponement of childbearing among poor teenagers will usually merely delay the costs to society until the time when the older mother must turn to welfare upon the birth of her child. Although the statistics offered in PRWORA suggest that the problems of poverty and single parenting pertain primarily to teenagers, a close look at the numbers reveals this not to be so. Rather, women at any age, and particularly women that start out poor, consistently find themselves in poverty when they attempt to parent alone. Accordingly, postponement of childbearing among teens will not shrink the welfare rolls.

The Hotz study found that "the average effect of delaying childbearing on the amount of welfare received is essentially zero."<sup>127</sup> In fact, after age twenty-four, the annual public assistance benefits received by women who had children as teenagers were actually lower than for women who had delayed childbearing.<sup>128</sup> Calculating the costs of public assistance received by teenage mothers,<sup>129</sup> as well as the taxes that such women will pay in a lifetime, the researchers found that the loss in earnings experienced by women who delay childbirth "translates to a reduction in taxes paid by these women and an increase, rather than decrease, in the net costs to government associated with the postponement of motherhood."<sup>130</sup>

As Professor Luker notes and as the Hotz study confirms, "the same social conditions [of disadvantage] that encourage teenagers to have babies also work to prevent them from ever being 'ready' to be parents in the way that a white, middle-class public might prefer."<sup>131</sup> Unless the hope is that these women will *never* have children, a possibility I return to below, it is clear that whether they have children as teenagers or as adults,

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126. See *supra* notes 75, 80–88 and accompanying text.

127. Hotz et al., *supra* note 81, at 81–82.

128. See *id.* at 82 fig. 10.

129. To make this calculation, the researchers added the costs of AFDC, food stamps, Medicaid, and the costs of other social programs such as Supplemental Security Income (SSI) and General Assistance (GA). See *id.* at 84.

130. *Id.* at 86.

131. LUKER, *supra* note 2, at 41.

poor women who have children out-of-wedlock will frequently have to turn to welfare to support them.

### F. The Connection Between Statutory Rape and Teenage Pregnancy

As we have seen, the only means that PRWORA envisions for including men in teenage pregnancy prevention efforts is more stringent enforcement of statutory rape laws. PRWORA's "findings" state that a strategy of strict enforcement of statutory rape laws is necessary because "[i]t is estimated that in the late 1980's, the rate for girls age fourteen and under giving birth increased twenty-six percent."<sup>132</sup> While this is a startling statistic, it obscures the fact that only 2.3% of births to teens are by girls under fifteen.<sup>133</sup> Even such a low percentage will no doubt trouble many people, and it is probably the case that very young girls often get pregnant because they were raped or were improperly pressured to have sex with older men.<sup>134</sup> However, the fact that enforcing statutory rape laws against such men might be "[a]n effective strategy to combat teenage pregnancy"<sup>135</sup> among very young teenage girls does not make it an appropriate response for the remaining ninety-eight percent of teenage girls who get pregnant each year.

PRWORA justifies its concern with the remainder of the teenage population by alleging that "[d]ata indicates that at least half of the children born to teenage mothers are fathered by adult men. Available data suggests that almost seventy percent of births to teenage girls are fathered by men over age twenty."<sup>136</sup> In fact, what "available data" shows is that fully 62.3% of teenagers who give birth are eighteen or nineteen years old,<sup>137</sup> people to whom the statutory rape laws do not even apply.<sup>138</sup> Moreover, that seventy percent of fathers of babies born to teens are over twenty is, in light of the above statistic, not very surprising. Data also shows that about eighty percent of teenage mothers are paired with men within five years of their own age.<sup>139</sup> Thus, the image of the fourteen-year-old girl being victimized by a much older man generated by PRWORA's "findings" is probably the aberration rather than the rule.

I do not mean to suggest that addressing issues of rape and coercive sex in teenage populations is inappropriate; on the contrary, there is evi-

132. GREEN BOOK 1996, *supra* note 15, at 211.

133. See LUKER, *supra* note 2, at 201 tbl.10.

134. See *id.* at 145 (citing report indicating that 74% of women who had had sex before they were 14 had had coercive sex, and 60% of women who had had sex before 15 had had coercive sex).

135. PRWORA, Pub. L. No. 104-193, § 101(7), 110 Stat. 2105, 2111 (1996).

136. *Id.* § 101(7)(B), 110 Stat. at 2111.

137. See LUKER, *supra* note 2, at 201 tbl.10.

138. See, e.g., CAL. PENAL CODE § 261.5(a) (Deering 1996) (defining "minor" for purposes of statute prohibiting "unlawful sexual intercourse" as person "under age of 18 years").

139. See LUKER, *supra* note 2, at 2.

dence to suggest that such attention is desperately needed among all teenagers.<sup>140</sup> However, I do mean to suggest that as a response to teenage pregnancy, enforcement of statutory rape laws is at best a limited solution. First, statutory rape laws do not apply to the largest percentage of teenage women who are getting pregnant. Second, the implication of the statutory rape "solution" is that few teenage women are getting pregnant or raising children by choice; rather they become pregnant because they have been victimized by "predatory older men."<sup>141</sup> Because such an assumption is often inaccurate and because this way of configuring the problem closes off important avenues of analysis, the statutory rape remedy is even more problematic.

Contrary to the implicit assumptions of PRWORA, there is evidence that many teenagers become pregnant (or at least decide not to abort) willfully and that there are compelling reasons for poor teenage women to bear children earlier than their more affluent peers. In 1974, Carol Stack published a book describing family living patterns among poor black families.<sup>142</sup> She described a culture in which "temporary child-exchange is a symbol of mutual trust"<sup>143</sup> and unmarried young black women "feel few if any restrictions about childbearing."<sup>144</sup> She attributed these phenomena to the fact that motherhood was so often a shared responsibility, with young mothers residing and sharing parental responsibility with a mother, a sister, or other kin.<sup>145</sup> In fact, "[w]hen a young girl bec[ame] pregnant, the closest adult female kin of the girl, or of the unborn child, [wa]s expected to assume partial responsibility for the young child."<sup>146</sup> This study suggested that the child-rearing assistance that many poor black teenagers could expect to receive made teenage motherhood a reasonable choice in these communities.

A 1990 study of the culturally different responses of Hispanic and African-American teen moms to pregnancy and parenthood demonstrates that the "kin networks" described by Stack continue to be a vital source of support among teenagers of color.<sup>147</sup> Of the 134 participants in the

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140. See *id.* at 145.

141. PRWORA represents just one of many depictions of the teenage mother as a naive victim. See, e.g., Barbara Mathias, *Single Teen Moms; Putting Baby First Isn't All That Easy*, WASH. POST, Jan. 2, 1992, at C5 (declaring that teenage pregnancy is the "puzzling, crippling phenomenon that separates . . . the reasonable from the emotional"); Sara Park Scattergood, *Curbing Teenage Pregnancy: A Novel Approach*, USA TODAY (Magazine), January 1990, at 88 (describing "Education for Parenting" program which teaches the otherwise unknowing teen about the price of teen parenting).

142. See CAROL STACK, *ALL OUR KIN: STRATEGIES FOR SURVIVAL IN A BLACK COMMUNITY* (1974).

143. *Id.* at 28.

144. *Id.* at 47.

145. See *id.*

146. *Id.* at 65.

147. See Martha M. Dore & Ana O. Dumois, *Cultural Differences in the Meaning of Adolescent Pregnancy*, 71 FAM. SOC'Y: J. CONTEMP. HUM. SERV. 93, 94-95 (1990); see also K. SUE JEWELL, FROM MAMMY TO MISS AMERICA AND BEYOND: CULTURAL IMAGES & THE SHAPING OF U.S. SOCIAL POLICY 180-81 (1993) ("One of the consequences of the period of retrenchment in the 1980s, whereby

Teens Aiming for Self-Improvement ("TASI") program that was studied, 29.1% were black and 70.9% were Hispanic.<sup>148</sup> Ninety percent were either pregnant, parenting, or both.<sup>149</sup> By far the majority, 77.3% , were unmarried and lived with their own families.<sup>150</sup> In black families, the teenage mother tended to live exclusively with her grandmother, whereas in Hispanic families, the mother tended to live with at least one of her parents as well.<sup>151</sup> Although the authors of the TASI study point out the problems associated with such trends,<sup>152</sup> their findings reveal that teen mothers continue to rely on family support networks in raising their children.

Another recent study of household structure among teenage mothers, conducted by Catherine Trent and Sharon L. Harlan, revealed similar results.<sup>153</sup> The study found that, despite cultural differences in living arrangements for Hispanics, blacks, and Non-Hispanic whites,<sup>154</sup> among all groups in 1980 "only a small proportion of teenage mothers were heading their own households while they were still teenagers; the vast majority, especially younger mothers, lived with others."<sup>155</sup> Indeed, the study found that among married teenage mothers, the tendency to live with relatives other than their parents was almost as high as it was among never-married and formerly-married teenagers.<sup>156</sup> Moreover, the study noted that for all teenagers, living with relatives was a more economically viable living arrangement than living alone, and that mothers who lived with both parents were least likely to live below the poverty line.<sup>157</sup> Thus, the authors concluded "that mothers derive a variety of benefits in the short term from living with extended family rather than living on their own or marrying."<sup>158</sup>

What do these studies reveal and why are they relevant to the statutory rape enforcement "solution" posed by PRWORA? They indicate that because of the child-rearing assistance that teenagers can expect from relatives, it may indeed be more sensible for poor women to begin

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the government began to rescind social policies that were designed to elevate the status of African Americans, was a revitalization of mutual aid networks.").

148. See Dore & Dumois, *supra* note 147, at 97 tbl.1.

149. See *id.*

150. See *id.*

151. See *id.* at 96.

152. See *id.* (noting that participants' living arrangements "tended to be precarious and crisis-prone," leading to frequent moves that made contact with case managers and eligibility for domicile-related programs more difficult).

153. See Catherine Trent & Sharon L. Harlan, *Household Structure Among Teenage Mothers in the United States*, 71 Soc. Sci. Q. 439 (1990).

154. See *id.* at 445-46.

155. *Id.* at 453 ("others" includes husbands). In 1980, 38.5% of teenage mothers lived in mother-husband households. See *id.* at 443 tbl.1.

156. See *id.* at 444.

157. See *id.* at 449 tbl.3 (noting that 84.7% of mother-only families lived below the poverty line in 1980, while only 54.8% of mother-mother families, 30% of mother-other relative families, 22.7% of mother-husband families, and 18.2% of mother-parents families did so).

158. *Id.* at 455.

having children when they are young. In addition, poor women face increasing medical problems as they grow older which may also encourage earlier childbearing.<sup>159</sup> Thus, while the question of whether teenagers "want" their babies is a complicated one,<sup>160</sup> the above studies provide powerful evidence that, contrary to the implication of the statutory rape enforcement provision of PRWORA, poor teenagers often become parents not because they do not know any better and are preyed upon by older men, but because there are compelling reasons for them to have children during their teenage years. In populations where teenagers can expect child-rearing help when they are younger, in which the health risks associated with childbearing increase with age, and in which the socioeconomic consequences of teenage childbearing are slight or inconsequential, teenage childbearing appears quite predictable and logical. As we shall see, such an understanding of teenage pregnancy invites very different policy responses than we have seen in PRWORA. PRWORA's statutory rape provision obscures this alternative and richer understanding of teenage pregnancy and the solutions it demands.

### V. WHY "TEENAGE PREGNANCY"?

In light of the above analysis, the obsessive focus on teenage pregnancy during the welfare reform debate raises many questions. If the women who are becoming teenage mothers are already poor, why do people believe that teenage pregnancy creates poverty? If the "opportunity costs" of becoming a mother as a teen are so low for many poor girls that their life chances are only minimally affected—if at all—by early motherhood, why do people believe that delaying childbirth among such women will reduce poverty? If there are powerful reasons to become a teenage mother, and the availability or generosity of welfare benefits has never correlated with the incidence of teenage pregnancy or parenting, why do people believe that changing welfare incentives will affect the behavior of poor women? Finally, if teenage birthrates were actually declining throughout the 1970s and 1980s, why did people during those years begin to see teenage pregnancy as the problem?

I will argue that there are at least three explanations. First, "teenage pregnancy" was a label that masked what was truly troubling about teenage birth patterns after 1970: rising *non-marital* birthrates. These rates were rising for women of all ages and, among whites, the changes were dra-

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159. See LUKER, *supra* note 2, at 170-71; see also Arline T. Geronimus & Sanders Korenman, *Maternal Youth or Family Background? On the Health Disadvantages of Infants with Teenage Mothers*, 137 AM. J. EPIDEMIOLOGY 213 (1993) (arguing that children of poor teen mothers often fare better than children of older poor women).

160. See LUKER, *supra* note 2, at 151-54 (discussing the difficulty of accurately assessing "wantedness" or "intendedness" among teenage mothers).

matic. Poor teenagers with babies provided an easy scapegoat for the anxiety provoked by these widespread demographic changes. Second, teenage sexual activity increased substantially during this period and, as the "chastity" movement in the early 1980s demonstrates, this also was a source of tremendous anxiety. For many, high school students with pregnant bellies were a troubling symbol of national moral decline. Finally, PRWORA evinces a true suspicion of and anger toward poor people. Underlying the "teenage pregnancy" language in the Act and the welfare reform debate is a veiled attack on the right of poor women generally to have children.

These three explanations are not exhaustive. Rather, they are important starting points for beginning to understand what fears and beliefs underlie the hysteria about teenage pregnancy. If we are to effectively advocate for or challenge certain governmental responses to teenage pregnancy and poverty either as lawyers, policy analysts, or as individuals, it is imperative to begin to understand some of the historical circumstances and attitudes that inform the debate.

#### A. Reasserting Marital Norms

As noted earlier, teenage birthrates declined steadily from 1960 to 1985, dropping from 91.0 per thousand teenage women in 1960 to 51.0 per thousand teenage women in 1985.<sup>161</sup> Concurrent with this decline, however, was a noticeable rise in the rate of *out-of-wedlock* teen births.<sup>162</sup> Conservative commentators such as Charles Murray explain that teenage pregnancy is a troubling phenomenon for precisely this reason.<sup>163</sup> It is *single* motherhood, rather than early motherhood, that "irretrievably change[s]" the lives of young women and their children.<sup>164</sup> Similarly, PRWORA, while cloaking itself in a rhetoric of concern for all teenage mothers, manifests a concern exclusively with *unmarried* teenage mothers.<sup>165</sup>

This concern must be assessed along with the demographic shifts that have occurred among women of all ages and races since the 1970s. Although the problem of out-of-wedlock childbearing is often configured

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161. See *id.* at 196 tbl.1.

162. See *id.* at 200 tbl.8.

163. See MURRAY, *supra* note 5, at 127. Ironically, Murray acknowledges that the teenage birthrate was declining during the period when "teenage pregnancy" was first discovered as a social problem. He states, however, that in addition to the fact that nonmarital births were increasing among teens, teenage pregnancy became worrisome because birthrates among teenagers were not falling as they were among older women. See *id.* at 127-28. While these factors may raise other policy concerns, neither explains why *teenage pregnancy* merits the heightened scrutiny it has received in recent years.

164. *Id.* at 128.

165. See, e.g., PRWORA, Pub. L. No. 104-193, § 103, 110 Stat. 2105, 2135 (1996) (stating that provisions requiring a teenage parent receiving assistance to attend high school or an equivalent training program apply only to unmarried teenage parents).

as a black teenage one because of historically high rates of such child-bearing among young black women,<sup>166</sup> it is older white women for whom the out-of-wedlock birthrate has increased so dramatically in recent years.<sup>167</sup> Beginning in 1970, "more women were having babies out of wedlock, and—contrary to prevailing stereotypes—older women and white women were slowly replacing African Americans and teens as the largest groups within the population of unwed mothers."<sup>168</sup> In a nation that has long been divided by race and that views marriage as the "foundation of a successful society,"<sup>169</sup> these shifts were profoundly disturbing and anxiety provoking. Against this backdrop, teenage mothers became a shorthand symbol for all that was wrong with American families; although it was white older women whose behavior was changing most, single (and often black) teenage mothers became the terrain upon which the anxiety over such changes was played out.<sup>170</sup>

A 1985 *Time* magazine cover story on teenage pregnancy clearly reveals both the anxiety provoked by teenage pregnancy, and the racism that has supported much of this anxiety.<sup>171</sup> The article was written at a time when teenage birthrates had long been declining,<sup>172</sup> and yet, according to the article, teenage pregnancies were "corroding America's social fabric."<sup>173</sup> Presumably, some change in teenage behavior had caused the corrosion. The article stated:

Twenty and 30 years ago, if an *unwed* teenager should, heaven forbid, become pregnant, chances are her parents would see that she was swiftly married off in a shotgun wedding. Or, if marriage was impractical, the girl would discreetly disappear during her confinement [and] the child would be given up for adoption . . . [Now w]ith the stigma of illegitimacy largely removed, girls are less inclined to surrender their babies for adoption.<sup>174</sup>

The unwed teen mother to whom the article refers is the *white* unwed mother since it was she who most frequently entered "shotgun" marriages

166. See LUKER, *supra* note 2, at 200 tbl.8.

167. See GREEN BOOK 1996, *supra* note 15, at 1179 (showing only modest growth in out-of-wedlock birth rate among black women of all age groups between 15 and 34 years from 1980 to 1991 and a reduction in the rate between 1991 and 1993, a near doubling of the rate for white teenagers between 1980 and 1993, and a more than doubling of the rate for white women in all the remaining age groups).

168. LUKER, *supra* note 2, at 83.

169. PRWORA, § 101(1), 110 Stat. at 2110.

170. The prominent role that pregnant and parenting teenagers played in the public discourse around poverty, welfare, and declining "family values" can be seen in the dramatic growth of articles published on this topic between 1978 and 1990. See *id.* at 81 (noting that number of articles climbed from 12 in 1978 to more than 200 in 1990).

171. See Claudia Wells & Richard Stengel, *Children Having Children: Teen Pregnancies Are Corroding America's Social Fabric*, TIME, Dec. 9, 1985, at 78.

172. See LUKER, *supra* note 2, at 196 tbl.1 (noting that teenage birthrates steadily declined from 91.0 per thousand women aged 15 to 19 in 1960 to 51.0 per thousand women aged 15 to 19 in 1985).

173. See Wells & Stengel, *supra* note 171, at 78.

174. *Id.* at 80.

or was "confined" to homes for unwed mothers and surrendered her child for adoption.<sup>175</sup> Thus, it is the change in *her* behavior that so troubles the authors. The article's universalization of this change to all teenage mothers, however, and its concurrent documentation of the higher rates of non-marital births among black teenagers,<sup>176</sup> combine to locate most of the apprehension over this change on black teens. This is ironic because it is black teenagers for whom this change was least pronounced. Thus, while the message is somewhat sweeping—teenagers who become pregnant, black or white, "represent a distressing flaw in the social fabric of America"<sup>177</sup>—it is black teens who bear the brunt of this distress.

The *Time* article also reveals that it is the willingness of teenagers to have and raise babies outside of marriage that is a central source of the concern over teenage pregnancy. As we have seen, this preoccupation with teenage mothers' failure to marry has evolved into an understanding—reflected in PRWORA—that teenage mothers are primarily responsible for the "illegitimacy" problem.<sup>178</sup> Moreover, black teenagers often are depicted as the greatest source of this problem.<sup>179</sup> Because we know that teenagers are not the primary source of today's out-of-wedlock births<sup>180</sup> and that out-of-wedlock births are increasing more rapidly among white teenagers than among black ones,<sup>181</sup> it is evident that teenage mothers have become a cause for concern for reasons other than their behavior. Teenage mothers—young, poor, and usually imagined to be black—have become scapegoats for the anger and apprehension caused by changing demographic trends among all women. By positing marriage as the norm that the highly stigmatized group of teenage mothers is defying, the primacy of marriage as the "foundation" of our society can be asserted without waging a direct attack on the much larger and more powerful group whose behavior in fact constitutes the greatest threat to marital norms: non-teenage white women.<sup>182</sup>

### B. Teenage Sexual Activity

The sudden emergence of "teenage pregnancy" as a national problem may also be explained by a trend that occurred among teenagers in

175. See *supra* text accompanying notes 11–14.

176. See Wells & Stengel, *supra* note 171, at 82.

177. *Id.* at 79.

178. See *supra* Part IV.B.

179. See, e.g., MURRAY, *supra* note 5, at 127 (discussing study that found "birth rates among American black teenagers in general and single black teenagers in particular were anomalous not only from the perspective of the American historical experience, but from that of the worldwide experience"); see also LUKER, *supra* note 2, at 85 (noting that observers often discuss high rates of out-of-wedlock childbearing among black teenagers while remaining silent about changes in such rates among white teenagers).

180. See *supra* Part IV.B.

181. See LUKER, *supra* note 2, at 200 tbl.8.

182. For a fuller development of this argument, see LUKER, *supra* note 2, at 81–86.

the 1970s. Sexual activity, the pregnancy rate, and the abortion rate among teenagers increased significantly during this period.<sup>183</sup> In fact, the number of sexually active teenagers almost doubled between 1960 and 1990.<sup>184</sup> These sexual trends among teenagers, like the family formation trends described in the preceding section, were mirrored by trends among older women.<sup>185</sup> Due to the "contraception revolution" of the 1960s and the legalization of abortion in 1973, a growing number of single women of all ages were having sex and were seeking abortions.<sup>186</sup> Moreover, as noted earlier, white single women during this time began to feel less shame about pregnancy.<sup>187</sup> Instead of hiding the evidence of their extramarital sexuality by escaping to a distant group home during pregnancy and relinquishing their child for adoption, white women began to keep their children in much greater numbers.<sup>188</sup> Reflecting this change, a 1971 district court decision stated that an unmarried, pregnant high school senior could not be barred from attending school because of her pregnancy.<sup>189</sup> Thus, single pregnancy, and the extramarital sexual activity that it indicated, was becoming much more publicly visible, especially among white women.

Discomfort with overt sexuality among young people was expressed as early as 1981, when AFLA added the concept of "chastity" to the increasingly urgent national discussion of teenage pregnancy. Since then, politicians and policy analysts have repeatedly blamed the phenomenon of single teenage pregnancy on unrestrained, culturally-promoted sexuality. In 1995, while debating amendments to Senator Dole's welfare bill, Senator Lieberman sought to explain the growing numbers of babies born to unmarried teenagers by stating that "[s]ome of it clearly has to do with an increasing sense of sexual permissiveness which we see by these stunning numbers is not without its consequences and its victims."<sup>190</sup> Reflecting his sense that sexuality is not properly restrained in mother-only families, he stated that "too often we are dealing here with girls growing up in poor families without a father in the house, and part of what that means is that there is not an older man in the house to protect his daughter from the unwanted advances of another older man."<sup>191</sup> Because

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183. *See id.* at 196 tbl.2 (showing that between 1972 and 1990, the abortion rate grew from 19 to 41 abortions per thousand women aged 15 to 19, and pregnancy rate grew from 95 to 117 pregnancies per thousand women aged 15 to 19); *see id.* at 198 tbl.4 (showing steady growth over approximately 30 years in rates of premarital sexual activity for women by ages 15, 17, 19, and 21).

184. *See id.* at 197, 198 tbl.4.

185. *See id.* at 82-83.

186. *See id.*

187. *See supra* text accompanying note 19.

188. *See id.*

189. *See Ordway v. Hargraves*, 323 F. Supp. 1155 (D. Mass. 1971).

190. 141 CONG. REC. S13,524, S13,531 (daily ed. Sept. 13, 1995) (statement of Sen. Lieberman).

191. *Id.*

"[s]exual activity at an early age . . . is simply wrong,"<sup>192</sup> the pregnancy that results from it is likewise "immoral."<sup>193</sup>

PRWORA represents the triumph of this vision of teenage sexuality and pregnancy. First, its requirement that teenage parents live in an "adult-supervised home" reflects Senator Lieberman's concern that teenagers live with adults who can protect them from the sexual advances of older men.<sup>194</sup> Second, the Act explicitly promotes abstinence education by allotting money to states that adopt abstinence education programs which have as their "exclusive purpose" the "teaching [of] the social, psychological, and health gains to be realized by abstaining from sexual activity."<sup>195</sup> A qualifying program must also "teach[] that a mutually faithful monogamous relationship in [the] context of marriage is the expected standard of human sexual activity."<sup>196</sup> Finally, PRWORA awards financial "bonuses" to states that decrease illegitimacy while simultaneously decreasing the abortion rate.<sup>197</sup> This provision leaves states with two options: increase the availability and effective use of birth control or decrease sexual activity among unmarried people. As PRWORA provides funds only for the latter approach, it is clear which option the supporters of PRWORA condone and that states are likely or able to pursue.<sup>198</sup>

Constance Nathanson has argued that it is the fear of "the sexually unorthodox and reproductively uncontrolled adolescent woman" that has made teenage pregnancy the source of such intense concern in the last three decades.<sup>199</sup> She argues that a "moral panic"<sup>200</sup> was precipitated by the increasing visibility of unorthodox sexual behavior in the 1970s and by

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192. *Id.* at S13,532.

193. 142 CONG. REC. S8076, S8102 (daily ed. July 18, 1996) (statement of Sen. Roth) (stating that teenage pregnancy prevention programs should communicate "the immorality of bearing a child as a teenager who is unmarried").

194. Of course, in Senator Faircloth's view, described in note 106, neither a woman who has had a child out-of-wedlock, nor a parent who has recently received welfare, can adequately fulfill such a protective role, presumably because she has committed the very transgressions that a worthy parent would help her child avoid. Similarly, the implication of Senator Lieberman's statement about the problem of the absent father is that any single mother is ill-suited to the protective role.

195. PRWORA, Pub. L. No. 104-193, § 912, 110 Stat. 2105, 2353-54 (1996).

196. *Id.*

197. *See id.* at § 103, 110 Stat. at 2118.

198. Increasing discussion of a national abstinence campaign, on the scale of the drunk driving campaign of the 1980s, and of a television chip to enable parents to deny their children access to shows which contain sexual themes, indicate that abstinence is indeed being widely promoted and adopted as a strategy to reduce "illegitimacy." *See* 141 CONG. REC. S13,524, S13,531-33 (daily ed. Sept. 13, 1995) (statement of Sen. Lieberman) (discussing need for media campaign against premarital sexual activity and teenage pregnancy); *id.* at S13,532 (discussing "choice chip" for televisions); 142 CONG. REC. H3548, H3548 (daily ed. Apr. 17, 1996) (statement of Rep. Clayton) (promoting abstinence education programs for teenagers and preteens); 142 CONG. REC. S8501, S8508-09 (daily ed. July 23, 1996) (statement of Sen. Faircloth) (discussing success of abstinence education at reducing teenage pregnancies).

199. *See* CONSTANCE A. NATHANSON, DANGEROUS PASSAGE: THE SOCIAL CONTROL OF SEXUALITY IN WOMEN'S ADOLESCENCE 4 (1991).

200. *Id.* at 16.

the perception that such deviance was beginning to be practiced by white, middle-class young women.<sup>201</sup> The panic over the increasingly "widespread normative conflict over the legitimacy of [sexual] norms"<sup>202</sup> led to the recognition of teenage pregnancy as a social problem.<sup>203</sup> Once recognized, however, adolescent pregnancy came to be seen as a problem of black sexuality,<sup>204</sup> and it was this identification that helped to redraw the boundaries between proper and improper sexual behavior.<sup>205</sup>

Nathanson's analysis also informs the earlier discussion of changing marital norms. Changes in sexual and marital behavior among all women during the past three decades have been profound, have provoked immense anxiety, and have led to "solutions" that call for the promotion of marriage and a reduction in premarital sexual activity. These efforts have been largely focused on poor, often black, teenagers since such women are politically vulnerable and are easily positioned as the "other" who stands outside appropriate social norms. Teenagers, and particularly black teenagers, are hardly the only appropriate targets if one is concerned about changing demographic trends. However, as a symbol of reproduction and sexuality gone awry, they have become a powerful emblem in the struggle to reinstitutionalize certain forms of social behavior.

### C. Attacks on the Parenting Rights of Poor Women

Although teenage mothers are at the center of much of the debate over poverty, welfare, and "family values," the PRWORA debate also reflects a more hidden skepticism about the parenting rights of poor single women generally. For example, one of the early versions of H.R. 4 included a provision which would have enabled states to deny cash and housing benefits to children born to unmarried women between the ages of eighteen and twenty-one.<sup>206</sup> This proposal suggests that the full denial of welfare benefits, commonly proposed as a solution to teenage pregnancy, is in fact believed by many to be a solution to "illegitimacy" among non-teenage women as well. In a similar vein, one of the House PRWORA bills, expressing concern with "illegitimacy" rates, proposed what is popularly known as a "family cap" provision. This provision stated that cash assistance could not be provided for a child born to a woman who had received cash benefits at any time during the ten months preceding the birth of her baby.<sup>207</sup> Although it was deleted from the final bill,<sup>208</sup> this pro-

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201. *See id.* at 216–18, 247–48.

202. *Id.* at 16.

203. *See id.* at 160.

204. *See id.*

205. *See id.* at 217–18.

206. *See* H.R. 4, 104th Cong. § 107 (1995).

207. *See* H.R. REP. NO. 104-651, at 2405–06 (1996).

208. *See* H.R. CONF. REP. NO. 104-725, at 2673 (1996).

vision indicates that the moral outrage over teenage pregnancy and "illegitimacy" often masks a less politically viable concern with all single parenting among poor women.

Comparing David Ellwood's welfare reform proposals, which formed the basis of much of President Clinton's welfare reform platform, with PRWORA as it was passed, also reveals widespread disregard for the parenting rights and responsibilities of poor single mothers. In his book, Ellwood asked, "Do we want single mothers to behave like husbands or like wives?"<sup>209</sup> In other words, should single mothers be required to work full time as is more typical of husbands, or should single mothers be allowed not to work or to work part time as is more typical of wives?<sup>210</sup> Ellwood concluded that to enable single mothers to meet the demands of their multifaceted roles, the government should neither require them to work as much as husbands nor allow them to work as little as most wives.<sup>211</sup> He argued that the government could make part-time work worthwhile for single mothers by: (1) providing "child support assurance" so that mothers who were unable to collect money from the fathers of their children could rely on a regular source of support each month;<sup>212</sup> (2) providing guaranteed medical care to mothers and their children;<sup>213</sup> (3) providing mothers with "transitional assistance" for a limited period;<sup>214</sup> (4) "making work pay" through a higher minimum wage, the earned income tax credit, and a refundable tax credit for child care;<sup>215</sup> and (5) providing jobs to those women who were unable to find employment in the private market.<sup>216</sup>

That PRWORA essentially adopted Ellwood's most punitive proposal reveals a clear disregard for the parenting responsibilities and rights of poor single women. PRWORA requires single mothers to support themselves through work after they have been on welfare for two years<sup>217</sup> and establishes a five-year lifetime limit on benefits<sup>218</sup> without providing the guarantee of a job, adequate wages, child care, medical care, or child support. In essence, under PRWORA, the plight of single mothers who must fulfill the "dual nurturing/provider role"<sup>219</sup> is ignored and single mothers are forced to act like husbands without providing any of Ellwood's suggested supports for doing so.

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209. ELLWOOD, *supra* note 117, at 133.

210. See *id.* at 132-33 for descriptions of the work patterns of husbands and wives in families with children.

211. See *id.* at 137.

212. See *id.* at 165-74.

213. See *id.* at 175-76.

214. See *id.* at 178-83.

215. See *id.* at 176-78.

216. See *id.* at 178-83.

217. See PRWORA, Pub. L. No. 104-193, § 103, 110 Stat. 2105, 2113 (1996).

218. See *id.* § 103, 110 Stat. at 2137.

219. ELLWOOD, *supra* note 117, at 132.

The rationale for this treatment of single mothers is clear. Because the increase in out-of-wedlock births and the increase in the number of children receiving public assistance is believed to be "closely related,"<sup>220</sup> the argument follows that women who choose to parent alone irresponsibly subject their children to a life of poverty. Accordingly, they should be punished. Governor Wilson of California clearly expressed this view when he stated that, "recipients—especially those who are themselves minor children—should be offered every assistance in placing their children for adoption, recognizing that such a decision is a courageous, wise and ultimately unselfish choice by the parent to give the child a home and opportunity which otherwise cannot be offered."<sup>221</sup> One need not go to an extreme to find such sentiments, however, as even Ellwood expresses ambivalence about the propriety of poor women choosing to parent alone. In seeking to explain the poverty of a never-married single woman with two children, Ellwood states that one explanation is that she has made "irresponsible parenting decisions."<sup>222</sup>

I have argued throughout this article that, contrary to the actual data, the increasing incidence of out-of-wedlock childbearing and single parenting over the last three decades has been configured as largely a teenage problem. Accordingly, teenage mothers have borne an unduly heavy stigma and have been subject to frequent and harsh criticism. In this section, I do not suggest that this is likely to change as poor women of all ages become subject to attack. Rather, I argue that the concern about teenage parents grows out of a skepticism about the parenting rights of poor single mothers that cannot be popularly expressed in sound bites such as "children having children." This is important because it suggests that policies which have implications for all poor women may be couched in discussions of "teenage pregnancy," as is illustrated by Governor Wilson's statement.

## VI. IDEAS FOR A SUCCESSFUL TEENAGE PREGNANCY PREVENTION PROGRAM

I conclude with a brief discussion of the principles that should inform future teenage pregnancy prevention efforts because to intervene effectively in the "teenage pregnancy" debate, at the level of either law or policy, we will need to offer solutions as well as critiques. I include this section because I believe that teenage pregnancy is not a determinant of poverty, but is in fact indicative of poverty. Viewed in such terms, teenage pregnancy prevention efforts are worthwhile because to be effective,

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220. PRWORA § 101(5)(C), 110 Stat. at 2110.

221. *Reforming California's Welfare System*, California Governor's Budget Summary 1997-1998, at 4.

222. ELLWOOD, *supra* note 117, at 131.

they will have to confront the deep poverty in which teenagers who are at the greatest risk of becoming teenage parents live.

The changes in family patterns over the last three decades have been profound and it is highly unlikely that social policy alone can undo these changes.<sup>223</sup> This seems especially true when one observes that changes of a similar kind and magnitude have occurred in most other industrialized countries during the same period.<sup>224</sup> To the extent that inroads can be made, however, the preceding discussion provides clues as to what will and will not work. First, it is clear that as long as the long-term socio-economic consequences of childbearing for a poor teenager are slight, and child-rearing assistance and health concerns counsel in favor of early pregnancy, financial "incentives" of the kind envisioned by PRWORA and its predecessors will not significantly reduce teenage childbearing. Similarly, "abstinence education" and television "choice chips"<sup>225</sup> will not be able to overcome the other deeper influences in a teenager's life. Finally, programs that "stress to minors the difficulties of becoming a teenage parent"<sup>226</sup> and the "immorality"<sup>227</sup> of doing so will not be effective so long as these messages run counter to their life experiences.

What these "solutions" have in common is a tendency to view teenage childbearing as the product of an individual shortcoming that could be cured with the right messages and incentives. However, the evidence that, because of the dearth of options available to them, poor teenagers might not adversely affect their life choices by early childbearing indicates that teenage pregnancy is more a structural than an individual problem. Accordingly, it demands broad-based and comprehensive solutions.

PRWORA's discussion of teenage pregnancy reflects the concern that teenage parents raise children who themselves become teenage parents.<sup>228</sup> Such an outcome is hardly surprising, however, in light of the fact that the child of a teenage parent is almost always raised in the same conditions of poverty that encouraged the parent's early childbearing. If we are to make a real commitment to ensuring that the children presently being raised by teenage mothers grow up with more options than their parents had, a substantial investment must be made in the families where those children reside. Of course, at a time when welfare benefits are being so drastically reduced, it is exceedingly difficult to garner political support for programs that provide *more* services to teenage parents. While some amount of support must be given to parents in order to enable such par-

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223. See generally *id.* at 75-79 (analyzing the potential influence of government policy options).

224. See Sheila Kamerman, *Gender Role and Family Structure Changes in the Advanced Industrialized West: Implications for Social Policy*, in POVERTY, INEQUALITY, AND THE FUTURE OF SOCIAL POLICY: WESTERN STATES IN THE NEW WORLD ORDER 231 (Katherine McFate et al. eds., 1996).

225. See *supra* note 198.

226. 142 CONG. REC. S8076, S8102 (daily ed. July 18, 1996) (statement of Sen. Roth).

227. *Id.*

228. See PRWORA, Pub. L. No. 104-193, § 101(8)(D), 110 Stat. 2105, 2111 (1996).

ents to provide a stable home for their children, many of the necessary programs can be framed in terms of support for children. Such programs may thereby become more politically viable.

For instance, a child's early school failure is an important predictor of teenage pregnancy.<sup>229</sup> In order to maximize poor children's chances of educational success, the Head Start program could be expanded and high-quality daycare could be made available to children under three. These needs have become especially compelling in light of PRWORA's requirements that teenage mothers remain in school and that all mothers seek work after two years of welfare receipt. Another means to improve children's success in school is through the provision of medical care. Early health problems have more adverse future consequences for poor children than for affluent ones,<sup>230</sup> and poor health can impede school success.<sup>231</sup> While many poor children are covered by Medicaid, a great number are not.<sup>232</sup> Programs that are serious about maximizing the life chances of poor children at risk for becoming teenage parents will have to provide all such children with a minimum level of adequate medical care.

More direct services to teenage mothers are also essential if the children in these homes are to prosper because parents under economic stress often cannot meet the emotional needs of their children.<sup>233</sup> These services can also be framed as child-based approaches. For instance, home visits, especially during times of significant change such as the arrival of a new baby, have proven helpful when they are administered by qualified professionals and when a broad array of services are offered.<sup>234</sup> Intervention at such times, because it is necessary to enable families to provide the necessary support to their children, may be a more popular approach than the mere provision of cash assistance has been.

Two programs that target both adolescent mothers and their children that have shown some success are the Queens Medical Center's Comprehensive Teenage Pregnancy Program in New York City and A School-Based Intervention Program for Adolescent Mothers in New Haven, Connecticut. The program in New York City provides participants with a team of caretakers, including an obstetrician-gynecologist, pediatrician, social worker, and health educator.<sup>235</sup> Participants can also take advantage of a physician/practitioner twenty-four-hour "on call" system.<sup>236</sup> Finally, a reproductive health and family education program is

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229. See LISBETH B. SCHORR, *WITHIN OUR REACH* 61 (1988).

230. See *id.* at 89.

231. See *id.* at 87.

232. See *id.* at 125.

233. See *id.* at 151.

234. See *id.* at 150-56, 256-58.

235. See Josefina J. Card et al., *The Program Archive on Sexuality, Health & Adolescence: Promising "Prevention Programs in a Box,"* 28 *FAMILY PLANNING PERSPECTIVES* 210, 218 (1996).

236. See *id.*

available to the participant, her partner, and her family.<sup>237</sup> Initial results indicate that the 498 low-income participants had higher rates of school attendance, graduation, and regular contraceptive use, while they had a lower repeat pregnancy rate than the control group.<sup>238</sup> In addition, participants and their children had better health than the control group.<sup>239</sup>

The program in New Haven offers services at an alternative public high school for pregnant students.<sup>240</sup> The school's staff of teachers, nurses, and social workers provide social and medical services, and child-birth education and counseling to help participants plan for their futures.<sup>241</sup> The 102 low-income participants who participated for more than seven weeks were less likely to have experienced a second pregnancy and showed greater educational attainment and economic self-sufficiency than those who participated for fewer than seven weeks.<sup>242</sup>

A review of teenage pregnancy prevention programs by Douglas Kirby indicates that programs such as the New Haven and New York City programs, which seek to expand the life options of low-income young women and children, may reduce teenage pregnancy.<sup>243</sup> The review notes that when women began to pursue higher education and more challenging careers between the mid-1950s and the mid-1970s, the teenage pregnancy rate dropped.<sup>244</sup> This correlation continues to the present day: "among today's adolescents, there remains a strong relationship between educational and career plans and adolescent pregnancy."<sup>245</sup> Accordingly, the review concludes that programs that focus on education, employment and life options for young people offer a "promising approach [that] should be explored more fully."<sup>246</sup>

Because teenage pregnancy is so closely entwined with poverty and disadvantage, "programs that focus upon only a small number of sexual beliefs or skills or even upon access to contraception are not likely to have a dramatic impact upon pregnancy."<sup>247</sup> Instead, teenage pregnancy prevention programs must comprehensively address the multiple factors that encourage young women to become pregnant and give birth as teen-

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237. *See id.*

238. *See id.* The authors note that their criteria for effectiveness "err in the direction of overinclusion: Most of these programs have not yet been distributed or evaluated beyond their original development site." *Id.* at 216.

239. *See id.* at 218.

240. *See id.*

241. *See id.*

242. *See id.* These findings, like those observed in the New York City program, are limited to the original development site. *See id.* at 216.

243. *See* DOUGLAS KIRBY, NATIONAL CAMPAIGN TO PREVENT TEEN PREGNANCY, NO EASY ANSWERS: RESEARCH FINDINGS ON PROGRAMS TO REDUCE TEEN PREGNANCY (SUMMARY) 11 (1997).

244. *See id.*

245. *Id.*

246. *Id.* at 12.

247. *Id.* at 15.

agers.<sup>248</sup> While a fuller exploration of the effectiveness of various teenage pregnancy prevention programs is beyond the scope of this article, I included this brief discussion for two reasons. First, I wanted to demonstrate that the hysteria about teenage pregnancy presents an opportunity to advocate for programs that address poverty among children at risk for future early pregnancy even in this period of PRWORA and other forms of retrenchment. Second, I hoped to show that there are a number of child-based reforms that could help create opportunities for poor children, while simultaneously lessening the burdens on their parents, without triggering fears that incentives to teenage childbearing have thereby been created.

## VII. CONCLUSION

Ultimately, PRWORA's teenage pregnancy provisions requiring unmarried teenage parents to live in an adult-supervised home and to attend high school or other training programs may not be as arduous as they seem. As we saw in Part IV.F, many teenagers already live in "adult-supervised" homes. Moreover, high school education or training programs, while certainly not panaceas, can only help teenagers to find the jobs that PRWORA mandates that they eventually find. However, the larger welfare reform debate, and the conclusions about teenage pregnancy that PRWORA assumes, indicate that teenage pregnancy continues to be seen as a primary and pernicious cause of poverty. If poverty worsens under PRWORA, and if PRWORA does not in fact provide an effective end to the "inducement of guaranteed cash welfare benefits for teens who have children outside marriage"<sup>249</sup> as its supporters predicted it would, the social and legal penalties imposed on unmarried teenage mothers will undoubtedly increase. The total denial of benefits to unwed teenage mothers, as well as the establishment of orphanages for the children of unwed teenage mothers, are just two of the more punitive proposals that have been offered as a means to reduce teenage pregnancy.<sup>250</sup>

As the effects of PRWORA continue to unfold, and as new teenage pregnancy prevention strategies emerge that propose to deepen the deprivations of poor teenage parents and their children, new legal and political challenges will face us. I hope that the discussion here has enabled readers to better meet these challenges by providing insight into the ideas, attitudes, and historical factors that presently shape the debate, as well as the tools to challenge the frequent assumptions that are made about teen-

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248. *See id.*

249. *See* H.R. REP. NO. 104-651, at 2407 (1996).

250. *See* H.R. 4, 104th Cong. § 105 (1995) (proposing denial of all cash aid to unmarried teenage mothers); Jeffrey L. Katz, *Parts of Welfare Plan Concern GOP Moderates, Governors*, 52 CONG. Q. WKLY. RPT. 3510 (Dec. 10, 1994) (discussing orphanage proposal).

age childbearing. In addition, I hope that the ideas presented here have inspired new thoughts about how to serve teenage parents and their children in ways that would fundamentally expand the choices that these children face when they reach the age at which their parents chose to become parents.