Welfare Reform and Sexual Regulation

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To avoid confusion, especially in the American context, I will use the word “state” to refer exclusively to American regional governments. The term “State” signifies the totality of governmental discourse – institutions, ideas, subjects, political struggles, and so on – within a given territorially defined space at all levels of jurisdiction (national, regional, and local) and in all branches (legislative, executive, and judicial). The State is itself a unique actor because it carries out formally autonomous official action, including “decision-making, planning, creating and mobilizing a bureaucratic infrastructure for [policy] implementation”; see Barbara Nelson, “The Origins of the Two-Channel Welfare State,” in *Women, the State, and Welfare*, ed. Linda Gordon (Madison: University of Wisconsin Press, 1990), 126. The State conditions political struggle, but it is also a privileged site for, and the product of, political struggle. Dominant forces do not automatically possess and master the State by virtue of their superior tactical position alone; they have to make extensive efforts to bring unity and coherence to the multiple and sometimes contradictory ensemble of projects being deployed under the State’s auspices at any given moment. The hegemonization of the State rests upon ideological struggle as well, namely the rendering of a specific viewpoint as the only legitimate framework for the treatment of virtually every important policy question, such that alternative perspectives become not only heavily stigmatized but even unthinkable. Understood in these terms, the boundaries of a hegemonic bloc rarely, if ever, correspond neatly to formal partisan differences. Ascendant political forces have to struggle to achieve hegemonic status by engaging in tactical and ideological maneuvers, and even when they do gain ground, their hegemony has to be continually renewed and defended in the face of ongoing political contestation. See Antonio Gramsci, *Selections from the Prison Notebooks*, ed. Quintin Hoare and Geoffrey Nowell Smith.
into two groups: the “most employable” and the “most encumbered.” The “most employable” have been “diverted” or “cut off” from poverty assistance thanks to the impact of welfare reform’s stricter eligibility rules, the workfare requirement, sanctions, and time limits. The type of State-citizen contact that is at work in this account is purely negative and noninterventionary: the recipient has been “expelled” from a program such that she has been forced to become self-reliant by entering the wage labor market. The normative character of her “expulsion” is, of course, hotly debated; neoliberal welfare reformers congratulate themselves on the fact that the most employable are no longer coddled by an excessively generous State, whereas progressives condemn the policies that are forcing poor single mothers to fend for themselves in the brutal conditions of the antifamily postindustrial labor market.

If we look closer at the actual structure of welfare reform law, however, a different image of power relations comes into view. To be sure, many poor families have been driven from the Temporary Assistance for Needy Families (TANF) program; the fact that the rolls have been drastically trimmed and

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**Introduction**

remained quite low even during the recession of the early 2000s is beyond dispute. However, the program’s eligibility rules, requirements, and sanctions are complex in nature. Some rules, such as workfare and the time limits, are fairly well understood. Other measures, however, are rarely discussed. By their very design, these other measures require poor single mothers to conform to a one-size-fits-all heteropatriarchal model of kinship relations. Under the mandatory paternity identification and child support cooperation rules that are established in federal law, the poor single mother who receives TANF benefits must name the biological father of her children and assist the state in collecting support payments from him. In practice, these rules, which I will call “paternafare,” impose difficult and enduring demands upon the TANF client. Even when a recipient meets the program requirements in this respect, the precise structure of the paternafare rules creates a situation in which the payer’s obligation typically remains intact for many months after the TANF family exits the program. The paternafare rules are so burdensome, however, that many TANF recipients are sanctioned for failing to make an adequate effort in this regard. Some are even expelled from the program on these same grounds. Many needy mothers may be avoiding the program altogether because of the “paternafare” requirement, especially in cases where they are fleeing from a biological father who has been abusive toward them and their children. A domestic violence survivor in this situation has good reason to believe that if she entered the paternafare system, the biological father would retaliate after being named as the payer in her case.

Gwendolyn Mink argues that welfare reform has severely intensified the moral policing of poor single mothers.

In exchange for welfare, TANF recipients must surrender vocational freedom, sexual privacy, and reproductive choice, as well as the right to make intimate decisions about how to be and raise a family. Ordinarily, these rights are strongly guarded by constitutional doctrine, as they form the core of the Supreme Court’s jurisprudence of (heterosexual) personhood and family. Not so for a mother who needs welfare.

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3 My critique of child support enforcement and paternity identification is heavily indebted to Gwendolyn Mink’s work; her groundbreaking book, *Welfare’s End* (Ithaca: Cornell University Press, 1998) was particularly important in this respect.

The impact of welfare reform upon those needy mothers who are receiving TANF benefits, having their benefits reduced as a result of program sanctions, leaving TANF, or remaining outside the program is multidimensional. We are witnessing the State's withdrawal from the poor where redistribution is concerned. At the same time, however, the State is intervening quite intensely in the intimate lives of the poor: it is coercing poor single mothers to participate in a precisely calibrated kinship mapping project, and it is embracing both poor women and poor men within a massive tracking and support collection apparatus targeting the biological father.\(^9\)

The ideological construction of welfare law is quite different where the “most encumbered” are concerned. According to the prevailing journalistic narrative, the “most employable” are being winnowed out of the program; within the residual recipient group, severely antisocial pathologies are supposed to be rampant. These welfare mothers are constructed as racially “other,” slothful, and slowly work-avoiders who need to be firmly taught how to bring order into their chaotic lives and how to submit themselves to the work ethic.\(^10\) The fact that most TANF recipients were already cycling back forth between low-wage work and poverty assistance programs before welfare reform was introduced in the mid-1990s is suppressed.\(^11\) This “hardcore” group is also constructed as grossly deficient where morality and sexual behavior are concerned. They are branded as reckless teen mothers, sly profit-maximizers who deliberately become pregnant in order to increase their benefits, neglectful and abusive parents, and immature marriage-avoiders.\(^12\)

In this account, welfare reform is depicted as the crown jewel of “compassionate conservatism.” The TANF program will “rescue” the “most encumbered” through intervention: it will embrace them within “rehabilitative” mechanisms, such as workfare, teen pregnancy avoidance projects, abstinence education courses, and marriage promotion programs. In this moment, welfare reform is ideologically constructed such that it appears to be a vehicle for the delivery of therapeutic intervention. It is promised that welfare reform will penetrate the psyche of the wayward recipient and deliver effective behavior modification results. The “most encumbered” will be enveloped within effective corrective treatment schemes that are personally tailored, pedagogical, and dialogical in nature. These schemes will deploy appropriate psychological and moral treatment technologies such as counseling, self-help groups, Bible study classes, and relationship skill-training workshops.

Once again, this ideological construction of welfare reform is misleading. If we closely examine the family cap law that has been adopted by almost half of the states, we find a crude and anonymous financial sanction rather than therapeutic intervention. Under the terms of a family cap, the state is prohibited from increasing the welfare cash benefit after the welfare mother gives birth. The measure is clearly intended to discourage the demon figure of the sly profit-maximizer from having more children. But the family cap measure relies on a very blunt instrument, namely an economic disincentive. The state simply freezes the benefit level of the TANF family; it does not draw the welfare mother into a counseling program. As we will see, the capacity of the family cap to limit cash benefits is quite significant; the family cap is one of the primary mechanisms that the states are using to restrict their expenditures on cash benefits. But the family cap is agnostic on a wide range of moral concerns. Being precisely tailored to punish the welfare mother when she gives birth, it is indifferent on virtually every other aspect of her sexual practices and intimate behavior. The abstinence education courses and marriage promotion workshops that are being supported with TANF allocations are supposed to be profoundly interventional. In actuality, they are quite superficial, and the initial data suggest that they are having little impact, if any, on the behavior of their graduates.

In this respect, I am picking up a theme that is present, in an implicit form, in Dorothy Roberts's work. In her study of sterilization abuse, the family cap, and the prosecution of women who expose their fetuses to illegal drugs,\(^13\) Roberts depicts contemporary State power as an impersonal, deductive, and nontherapeutic force. Roberts demonstrates that the rights of poor women of color are being flagrantly violated by State agencies as they seek to advance various social control projects. An explicit discussion of the boundaries that separate the various paradigms that social theorists have constructed to interpret power relations lies beyond the scope of Roberts's project. Her account nevertheless reveals that these human rights violations are not accompanied by the recruitment of the targeted women into rehabilitative schemes. Official discourse pays lip service to moral instruction, uplift, and

\(^9\) Public spending on TANF benefits was reduced by a two-thirds margin between 1994 and 2001. During the same period, however, the net public cost of operating the paternafare system (the sum of the federal and state governments' retained portions of the TANF collections minus the governmental costs for operating the system) rose by about 179 percent. (See Appendix III.)


\(^13\) Roberts, *Killing the Black Body*. 
correction, but its actual material investment in what Foucault would call “discipline” remains relatively minimal. Roberts’s narrative foregrounds exclusion, degradation, deprivation, and the infliction of corporeal punishment. By coming into contact with the State in these contexts, the targeted citizen experiences a severe restriction of her reproductive rights, the invasion of her privacy and bodily integrity, arbitrary detainment, and the withholding of relief from herself and her destitute family, even though they are already extremely vulnerable where food insecurity and housing crises are concerned.

In this study, I attempt to bring the concealed structure of welfare reform’s sexual regulation to light. I focus on the following measures: paternafare, the family cap, the promotion of family planning and child relinquishment within the context of the TANF program, marriage promotion, fatherhood programs, and abstinence education. Because welfare reform has greatly enhanced state autonomy, my analysis encompasses readings of statutes and regulations at both the federal and state levels. I situate this legal material within broader contexts by referring to theories of State power, Supreme Court decisions, and, to a lesser extent, the history of influential ideological traditions. I move far beyond the boundaries that are usually observed by feminist political theory in this study. In my view, the Gramscian and Foucauldian analysis of historical institutions and State power necessitates the violation of traditional disciplinary limits. We can gain valuable insights about the structure of a policy like sexual regulation in welfare reform by moving back and forth between social theory, in-depth documentary analysis, and constitutional doctrine. I certainly recognize the value of other feminist political theory paradigms, such as abstract normative arguments about human rights, interventions in democratic theory, and psychoanalytically informed explorations of identity, recognition, and power. I view historically specific analyses of State-centered sexual regulation campaigns as a complementary paradigm that can advance feminist political projects by enhancing the precision of our critical diagnoses and enriching our discussions about resistance strategy.

In Chapters 1, 2, and 3, I develop my social theory framework by engaging in critical assessments of the concept of “biopolitics” in Agamben and Hardt and Negri, Piven, and Cloward’s theory of the capitalist State’s regulation of the poor, the Foucauldian concept of biopower, and the post-Foucauldian theory of neoliberal risk management. Next, in Chapter 4, I trace the ideological construction of paternafare by placing it in the context of legal foundations—especially the 1968 *King v. Smith* decision—and by examining the demonization of the welfare mother in political discourse from the 1960s to the mid-1990s. Chapter 5 is devoted to a close reading of the paternafare law that is currently in effect. In Chapter 6, I examine the other welfare reform initiatives ostensibly designed to shape the kinship relations and intimate decisions of poor women: the family cap, TANF family planning initiatives, the promotion of marriage and child custody relinquishment, responsible fatherhood programs, teen pregnancy prevention, and abstinence education. I turn to normative considerations in the final section of the book. Chapter 7 assesses rival poverty assistance and child support models using a side-by-side “ideal-type” analysis. In Chapter 8, I present my vision of a progressive and antiracist feminist revolution in redistributive policy and family law.

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The inclusion of paternalism in contemporary welfare law fulfills an ideological objective that is viewed by the leadership of both major political parties as a crucial political goal. It symbolically constructs poverty as the fruit of immoral and pathological behavior on the part of deviant heterosexual women rather than the product of the structural conditions, and it exemplifies and legitimizes the neoliberal transfer of the obligation to support the poor from the State to the private patriarchal household. On an ideological level, paternalism mimics feminist principles: men should pay their fair share where childrearing costs are concerned. Poverty advocates who are seeking some immediate gains for welfare mothers under the welfare reform regime rightly point out that child support payments can lift some of these women and their children out of poverty. However, even the best designed child support regime cannot, in and of itself, transform the wage labor market that locks a substantial number of these men and women in the lowest income brackets. Further, paternalism encroaches upon poor custodial mothers' privacy rights and right to self-determination, and it uniquely imposes its heteropatriarchal model of dependence upon poor women. Finally, paternalism enhances the risk that the male payers will harass and abuse the welfare mothers and their children. In this sense, paternalism should be seen as the fruit of antifeminist ideology.

The paternalism system was enhanced by the PRA. Under this law, the states must continue to make cooperation with paternity identification and child support enforcement a compulsory condition of eligibility for poverty assistance for needy single mothers. The state TANF programs must also continue to require these women to assign their child support rights over to the state. Even further, the PRA orders the states to sanction clients who do not make a good-faith effort to meet their paternalism obligations and expands the administrative powers of the IV-D agency. Under the PRA, the state's exposure to judicial review is reduced. For the first time, the PRA combines state incentives – bonuses are offered to the states that have good records of welfare-case-related child support payment collection – with state sanctions. Any state that fails to enforce the paternity identification and child support enforcement cooperation requirement will lose up to 5 percent of its total block grant. The paternalism compliance rates are quite impressive. Based on my own reading of the TANF laws and regulations for the fifty states, it appears that all of the paternalism measures that are specified in the federal law have in fact been incorporated in every single state's TANF program. The PRA also marks a somewhat ambiguous development. Whereas previous federal law and regulations had required the states to provide a good-cause exemption, the PRA gives the states the freedom to choose whether they will have such an exemption in their TANF programs. At the same time, the optional exemption in the PRA represents an advance since the law makes specific reference to domestic violence.

Under the PRA, the state must shuttle the poor single mother, by virtue of her marital status alone, through the most demanding aspects of the paternalism process. A poor married woman admitted into the TANF program does not have to undergo the same treatment because the state usually considers her legal husband as the father of her children. The PRA imposes close federal oversight where the state's paternity identification and child support enforcement efforts are concerned. Each state must achieve a 90 percent success rate in establishing the paternity of the children on its TANF case load. The single mother must sign a statement establishing the paternity of each child in her household. To be sure, some clients may have evaded this requirement in the past by naming a deceased male or by making up an entirely fictitious person. The PRA imposes a demanding standard where cooperation is concerned; it is much more difficult now for the single mother to dodge the system. In order to remain in compliance with the federal rules, the state must press the single mother to name the father of the child. Her efforts are deemed acceptable only if and when child support arrangements are successfully put into place. Wherever these arrangements are not imposed within a reasonable period of

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3 See, for example, Michael H. v. Gerald D., 491 U.S. 110 (1989) (finding that the California statutes that define the child of a married woman who is cohabiting with her husband as a child of the marriage, unless the husband is impotent or sterile, do not violate the due process rights of unwed biological fathers).
4 U.S. Congress, House Committee on Ways and Means, Background Material and Data on the Programs within the Jurisdiction of the Committee on Ways and Means (Washington, D.C., March 2004), 8-15.
time, the state must punish her: the state must either decrease her benefits or expel her from the program.

Congress acted again in 1998 to enhance the child support requirements; it passed the Deadbeat Parents Punishment Act. This law made it a felony for any payer to cross state lines with the intent of evading a child support obligation and made it a crime for any payer to willfully fail to support a child residing in a different state.

The “Best-Case” Scenario under Paternafare Law

The welfare mother may be reluctant to cooperate with the paternafare system, and for good reason. In far too many cases, she is fleeing from the biological father’s abusive behavior. But even where retaliation, aggression, and violence do not take place, the child support enforcement system presents serious problems. It cannot be overemphasized that welfare law imposes extraordinary burdens upon poor single mothers; by virtue of their income status, they are obliged to cooperate in paternity identification and child support enforcement procedures in order to gain access to poverty assistance. The nonpoor single mother, by contrast, does not have to do so. We do not inform her that she must specify the biological father of her children and assist the state in pursuing him when she applies for other types of public benefits, such as a mortgage interest tax deduction, Medicare, or Social Security.

Even if we set aside the normative questions that are raised by the mandatory paternafare obligations, further problems arise as a result of the practical ramifications inherent to this policy. For example, disputes between the TANF mothers of out-of-wedlock children and the alleged biological fathers on the paternity of the children in question are inevitable. The PRA sets out mechanisms that the state must use in these instances. The TANF mother must sign a sworn statement “alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties.” If the alleged biological father continues to reject her account of their sexual contact around the time of the child’s conception, he may sign his own sworn statement “denying paternity, and setting forth facts establishing a reasonable possibility of the non-existence of sexual contact between the parties.” The dispute therefore triggers yet a deeper invasion of privacy: both the single mother and the alleged biological father must disclose their sexual histories around the time of the child’s conception in sworn statements. If the statements themselves do not lead to a resolution of the paternity dispute, the state informs the single mother that she must file a sworn statement requesting genetic testing. The single mother must then make herself and the child in question available for genetic testing in order to remain eligible for TANF assistance. Meanwhile, the court orders the putative biological father to undergo genetic tests as well. Even though the provision of sample material for DNA testing can involve the relatively noninvasive cheek swab procedure, this requirement still raises concerns about the violation of the individuals’ right to bodily integrity. Neither party – neither the single mother nor the alleged biological father – has been convicted of a crime; for that matter, neither one has been charged with any wrongdoing. The child herself or himself is, of course, innocent as well. State agencies nevertheless intrude deeply into their intimate lives, procure sworn statements alleging facts relating to extremely personal conduct, and submit their bodies to genetic testing.

Given their constrained position, however, it is not surprising that most of the single mothers participating in the TANF program choose to cooperate. By the same token, so many low-income Americans have been touched by the paternafare system that public knowledge of its requirements may be widespread. Perhaps the needy women who do not want to cooperate are not showing up in the TANF data simply because they are avoiding the program altogether. Where the AFDC program prevented the states from withholding benefits from the children in a needy household because the custodial mother was not cooperating with the paternafare system, TANF law reverses course: it specifically allows the states to delay the benefits for the children until the custodial mother has initiated a support action and can demonstrate her cooperation to the social services agency. The single mother knows that if she does not comply with the paternafare system, her children will go hungry; she is hardly in a position to walk away. A study conducted by federal authorities several years after the PRA was adopted found that most TANF recipients were cooperating with the paternafare system. Unknown, though, is how many needy single mothers are avoiding the TANF program because they find the paternafare system too onerous to bear. Poverty rates are continuing to climb, however, and an increasing proportion of desperately poor households with at least one dependent child is failing to participate in the nation’s poverty programs.

According to Piven and Cloward, poverty programs tend to be sharply scaled back during historical moments in which there is little protest on the
part of the poor, and when large-scale private employers – especially those invested in the regulation of the low-wage labor market – successfully assert their dominance over the social policy terrain. There are, however, many different techniques that can be used by the State to achieve this retrenchment. Discouraging potential applicants from seeking assistance by enhancing the harsh reputation of the program and allowing agencies to reject applications by ratcheting up eligibility requirements are only two examples. The PRA also imposes tough requirements upon already admitted applicants with respect to program compliance. The recipients not only have to contend with a ticking clock as the two-year and five-year limits loom large; they also have to pass continuous performance tests to maintain their eligibility throughout their benefit period.

Every year, the TANF cases of almost 2 million families are closed. According to the states, almost 5 percent of the closures (89,506 families) arise because the recipients in question allegedly violated the workfare requirements. For our purposes, we should note that the paternafare rules operate in a similar manner. More than one out of five closures (441,563 families, or 22.2 percent) were ordered on the grounds that the recipients had not made a sufficient effort to cooperate with TANF's child support rules in 2001. In other words, TANF's paternafare rules, like the workfare requirements, are providing the State with an ideologically compelling means to trim down the size of the rolls, even though the need for poverty assistance is not diminishing among the households concerned.

In some cases, the biological father comes forward, admits paternity, and accepts the imposed child support order without engaging in any retaliatory behavior. For her part, the welfare mother is allowed to stay in the program because she has made a sufficient effort to meet the child support enforcement requirements. In a fraction of the cases belonging to this best-case scenario, the payer also makes full payments on a regular and timely basis. This does not, however, mean that the welfare mother's income automatically increases. In about half the states, the IV-D agency seizes the entire child support payment and deposits it into governmental coffers as "reimbursement" for the cost of her TANF assistance. About seventeen states pay her a $50 per month "pass through" share of the support payment. In four states, she may receive a greater share. Minnesota and Connecticut "pass through" the entire support payment but do not disregard the moneys when calculating the custodial mother's income. Only one state, Wisconsin, has experimented with a system in which the entire support payment was transferred to the custodial mother. During the test period for the program, Wisconsin also disregarded her collection of support payments when it applied its means test and calculated her eligibility and benefit levels. (I return to the Wisconsin model later.) Before 1996, the states had to have a $50 "pass through." After the PRA made the "pass through" optional, about half the states took advantage of the law's enhancement of state authority by keeping the entire child support payment; as a result, welfare participants are receiving less child support now than they did under the AFDC rules.

The child support arrangements are drawn up according to the terms established in state law. Typically, the payer's obligation is calculated according to his gross income, the number of his children in this household, and his obligations to other children. For example, a payer might be obliged to render about one-fifth of his gross income – after his deductions for Social Security are subtracted – as a monthly payment to support two children. Once the payer is ordered to contribute child support, his obligation remains in effect until the child in question reaches the age of maturity. The burden falls upon the custodial parent to petition the state to close the case after she leaves the TANF program. If we set aside the Wisconsin exception for the moment, the State initially seizes the support payments as reimbursement for TANF assistance. When the welfare mother leaves the program for whatever reason – perhaps she reaches the time limits, or finds work, or is expelled for non-compliance – the payer must continue to meet his child support obligation. The State continues to seize moneys to cover the cost of the TANF assistance for months after the welfare mother has left the rolls in about half of the cases in which support payments are being made. Even if the payer does manage to pay off the total reimbursement sum, however, his support obligation remains in effect until the child reaches the age at which he or she is no longer considered a dependent, unless further legal action is taken. The payer must continue to make child support payments in a timely manner; if his account falls into arrears, he will face a battery of sanctions. To be sure, the situation of the custodial mother might improve as the state agency handling the support payments redirects the payer's funds to the custodial mother herself. It is

15 House Committee on Ways and Means, Background Material (2004), 7–85. Figures are for the fiscal year 2001.
entirely possible that once a payer meets the reimbursement requirement and begins to have his entire payment redirected to the custodial mother, he will become more highly motivated to cooperate with the system. This does not, of course, rule out the possibility that new tensions will arise between the payer and the custodial mother, or that the payer will stop making payments altogether. By the same token, once the state has secured the payer’s funds as reimbursement for TANF assistance, it loses its fiscal incentive to pursue the payer. Mothers who have left TANF have in fact encountered difficulties in obtaining legal services relating to their child support cases.\(^{20}\)

In a few cases, the payer holds a regular job that pays a livable wage and cooperates fully with the system. Because the support payment is geared to his income and does not reflect the TANF benefit that the state has established for the welfare mother’s household, the support payment can exceed the TANF benefit. This is, of course, all the more likely in the states with very low benefit levels.\(^{21}\) Where the child support payment lifts the custodial mother’s income above the state’s maximum eligibility limits, the welfare mother is expelled from the program. In a sense, the State instructs her that because the payer has the means to support her, the community as a whole no longer has an obligation with respect to her welfare; if she cannot support her household by earning a wage, then she must look to the biological father for assistance.

In 2001, 330,000 TANF cases were closed for reasons related to the custodial mother’s receipt of child support payments; this number represents about 16.5 percent of all case closures.\(^{22}\) We should note, however, that the TANF program’s extremely low means-test eligibility threshold effectively inflates the impact of these collections-related case closures. In the early 2000s the states typically allowed applicants to possess no more than $1,000 or $2,000 in assets and one vehicle. They varied greatly on the upper limits for earned income (for a family of three, from $205 per month in Alabama to $1,642 in Hawaii) and unearned income, which includes child support payments. In general, the upper limits for all types of income were quite low.\(^{23}\) Furthermore, the total number of TANF cases dwarfs the 330,000 figure; there were 2,121,000 TANF families in 2001. In other words, 84.4 percent of the TANF recipients did not receive enough child support payments that year to rise above the low means-test limits. The data on case closures for a single year can also be misleading; we cannot tell, for example, how many of the TANF families that left the program because they received child support payments continued to receive funds from the payers in subsequent years.

Procedures relating to paternity identification and establishing the child support relationship, to say nothing of tracking down the payer and establishing wage-garnishing mechanisms, take time. It makes sense, then, that even the payers who are located and who hold living-wage jobs typically do not begin to make substantial payments while the custodial mother is still receiving TANF assistance. The fact that the recipient’s two-year eligibility clock keeps winding down as the state moves through the child support procedures compresses the window of time in which the state can force the transfer of funds from the payer to the custodial mother. It is not surprising, then, that so few TANF cases are closed as a result of support payments that exceed the benefit level. Many of the men targeted as payers do not, in fact, hold living-wage jobs; many are unemployed or disabled, others are incarcerated, and still others can only find minimum-wage positions or seasonal work.\(^{24}\) Even in the cases in which the state pays very low benefits and the payer in question does earn a living wage, the time lag is substantial enough to account for a relatively low paternafare-related expulsion rate.

There are, of course, many hidden costs involved with TANF child support cooperation for the custodial mother. Consider, for example, a welfare mother who has an amicable relationship with the man designated as the payer. Perhaps he had been making under-the-table contributions in cash or in kind to her household before he was ordered to pay support. (Of course, the impossibly low benefit levels put pressure on the custodial mother to engage in fraud by concealing informal gifts of all kinds from the TANF caseworker.) Will he stop giving her these gifts once he begins to make official support payments? Or maybe he had been visiting her household regularly and had built up a positive relationship with the children. He could have been, for example, a good baby-sitter, or he could have provided reliable help to the mother by picking up the children from school every afternoon without fail. Will he leave town, or move to a different state, in an effort to evade the support collection system? If a welfare mother considers the payer as her children’s father and has a good relationship with him, and if he visits the children regularly, she tends to regard his emotional contribution to the family very highly.\(^{25}\) Even in this best-case scenario, she runs a serious risk: the contributing biological father might decide to flee when the paternafare system starts looking for him.\(^{26}\)

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\(^{21}\) In January 2003 the TANF benefit paid to a recipient with two dependent children who was not sanctioned varied widely between the states. Mississippi’s benefit, $170, was the lowest while Vermont’s $709 benefit level was the highest. House Committee on Ways and Means, Background Material (2004), 7-38-9.

\(^{22}\) Ibid., 8-4.


\(^{25}\) Karen Seccombe, “So You Think I Drive a Cadillac?” Welfare Recipients’ Perspectives on the System and Its Reform (Boston: Allyn and Bacon, 1999), 143.

A description of the best-case scenario would not be complete without some consideration of the ideological “gains” that are reaped by moral conservatives and the neoliberal elite from the paternafare regime. The 2004 House Ways and Means Committee’s report on federal poverty programs makes an explicit reference to this dimension. After reviewing various cost/benefit analyses of child support enforcement, the report contends:

A strong child support program may change the way society thinks about child support. As in the cases of civil rights and smoking, a persistent effort over a period of years may convince millions of Americans, both those who owe child support and those concerned with the condition of single-parent families, that making payments is a moral and civic duty. Those who avoid it would then be subject to something even more potent than legal prosecution — social ostracism.

In time, the report contends, it is possible that child support enforcement will be regarded as a “long-term investment similar in many respects to education, job training, and other policies that help families support their children.”

Such a “social investment” would not necessarily bear fruit immediately, but, over the long run, fewer poor families would turn to the State for assistance.

The ideological effects of a program ostensibly tailored to pay the State back for TANF assistance and to help keep poor single mothers off the rolls might be profound and widespread. Fundamental ideas about gender identities, marriage, sexuality, and the relation between the “private” family and the State could change if the program gained additional public attention and credibility. The idea that biological fathers should pay support would have more adherents. By the same token, it seems entirely logical that these same biological fathers would be regarded with more sympathy. From a patriarchal and bourgeois perspective, masculinity and money rule: the male breadwinner who “pays the bills” ought to have the most authority in the family unit. To the extent that it gains hegemonic status, paternafare ideology will be able to enhance patriarchal authority and the idealization of the male breadwinner, regardless of whether men actually do make a fair contribution — in financial or nurturing labor terms — to caregiving. In addition, the argument for enhancing the rights of the father in the poor family — even where that necessitates a reduction in the rights of the mother — will become even more unassailable.

Sanctioning the Noncooperating Payer

The federal government pays for the majority of costs incurred by the states as they set up and maintain their TANF-related IV-D (paternity identification and child support enforcement) systems. It is responsible for the overall design of the automated databases used in the system and provides technical support to the states to ensure systemwide compatibility and multistate cooperation in those cases in which the payer resides in a different state. The federal government provides highly specialized assistance to the states to help with the location of the payers and the collection of payments. It maintains a Federal Parent Locator Service (FPLS) and makes Internal Revenue Service data available to the states for these purposes. The federal courts also work with local family courts and social service administrators to put pressure on payers to admit paternity, submit to a child support order, and make regular payments.

The FPLS gathers a complete list of the payers sought by all fifty states and sends the list to every federal department and agency. The latter must compare the list against their own databases on a weekly or biweekly basis and report any matches to the FPLS.

The PRA expanded the role of the FPLS as well. If any parent in a case handled by the IV-D agency is having difficulties with respect to the enforcement of child custody orders or visitation rights, the FPLS must assist that parent.

Take, for example, a typical payer retaliation scenario: the payer strikes back against the TANF mother by suing in family court for joint custody or visitation. If the custodial mother does not abide by the custody or visitation arrangement ordered by the family court and moves out of town to avoid the payer altogether, the payer can request assistance from the IV-D agency to help him to track her down. The payer is also allowed to secure the address of the custodial parent even if he does not obtain custody or visitation rights. Under a 1997 amendment to the PRA, the FPLS must disclose the address of the custodial parent to the noncustodial parent at the latter’s request. Only those cases in which a local court has determined that such disclosure may result in harm to the custodial parent or child, given sufficient evidence of domestic violence or child abuse, are exempt.

Since the 1988 Family Support Act, the states have been obliged by Congress to upgrade their IV-D databases. Under the PRA, the states have to continue to maintain state-of-the-art databases that mine information about the payers from a wide variety of public and private sources. On a quarterly basis, the states must obtain reports from private financial institutions that detail the accounts of all of their private clients. The states must check to see if any of the missing or delinquent payers are present in the financial institutions’ records. Each state must also operate its own version of the FPLS. At the state level, the locator service typically searches in telephone directories, tax files, motor vehicle registries, and employment and unemployment records. Working with the FPLS, each state must conduct searches for all of the payers

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27 House Committee on Ways and Means, Background Material (2004), 8–68.
28 Ibid.
29 Ibid.
who are sought across the country, thereby facilitating multistate cooperation. It must regularly upload its own child support enforcement records onto an automated registry that is compatible with the one used by the FPLS.33 Once a payer is ordered to pay child support, the state can request credit reports from consumer credit agencies to assist the IV-D agency to calculate the payer’s payment schedule.36

It is true that the states have often failed to meet the federal government’s deadlines and standards. The provision of federal funds for the IV-D infrastructure and administration costs (the “carrots”) and the threat to withhold a portion of the state’s TANF block grant (the “sticks”) are quite substantial, however. Federal officials estimate that almost all of the states have in fact established acceptable automated IV-D databases. By the early 2000s, only two states, California and South Carolina, were lagging behind.37 As a result of these well-financed, highly coordinated, and technologically savvy efforts, the child support enforcement agencies are able to track the payers across traditional jurisdictional barriers, state lines, and the state-federal divide with a facility that would be the envy of a typical police force or intelligence gathering operation. The bureaucratic investment that is necessary for this entire system is substantial. There are about sixty thousand employees working at the federal, state, and local levels in child support enforcement.38 This means that its staffing level is about thirteen times larger than that of the Drug Enforcement Administration worldwide.39 Private firms that have obtained lucrative child support collection contracts include Policy Studies Incorporated, Support-Kids, and Lockheed Martin IMS. Policy Studies itself operates thirty-one collection centers that are located in fifteen different states.40 The entry of private contractors into the field complicates the policymaking field because these for-profit businesses have a vested interest in ensuring a steady supply of payers that receive collection services because they have fallen into arrears.41

If a wage-earning payer falls more than one month behind in his payments, then the state must identify his employer and ensure that the employer garnishes his wages. (Congress brought the payers’ private employers into the enforcement system when it passed the Child Support Amendments in 1984.) The state also has the option of purchasing the services of private collection agencies to deal with past-due accounts.42 If a delinquent payer receives unemployment benefits or a tax rebate, inherits an estate, wins a civil suit and collects damages, obtains workers’ compensation, or hits the winning number in the state lottery, the state must ensure that the child support enforcement agency is notified such that it can take its cut. The state can place a lien against the payer’s real and personal property, and it can seize his or her retirement funds. The state can also report all overdue child support accounts to consumer credit agencies, and it can charge a late payment fee of up to 6 percent of the overdue amount.43 In those cases in which a payer is severely delinquent, the PRA makes provisions for serious punitive action. The state itself can revoke a license that it had granted to the delinquent payer, such as a driver’s license, a hunting permit, or a professional certification. Under various state gun laws, individuals with child support arrears are not allowed to obtain a weapons permit. In extreme cases, the federal government itself can even revoke the delinquent payer’s passport.44

Some men do not have enough income or wealth to meet their TANF obligations. To be sure, this does not mean that the system is sending scores of delinquent payers to prison. Many states have adopted criminal penalties for failing to pay child support, but almost all of them provide an affirmative defense of inability to pay. Even where the state has established criminal penalties for nonpayment, arrest and conviction policies vary from county to county. On the whole, custodial prison sentences for child support delinquency are quite rare.45 There are, of course, all sorts of opportunities in the system for State mischief in the paternafare system because the caseworkers and the court are granted such wide discretionary powers. In one particularly obnoxious case, a judge convicted a man who had failed to meet his poverty program-related child support obligations. The judge then placed the delinquent payer on probation. The court required the delinquent payer to not father another child, in a biological sense, during his probation term; he would be allowed to do so only if he petitioned the court and demonstrated that he could support both his current children and the newborn child. On appeal, the higher court upheld the probation order.46

In some jurisdictions, the unemployed payer who protests that he cannot afford to meet the payment schedule will be automatically directed into a publicly funded employment placement program designed specifically to address the needs of the neediest payers who have been linked by the State to

33 Ibid., 8-12.
34 Ibid., 8-14.
36 Ibid., 8-4.
38 Ibid., 698.
39 Ibid.
40 House Committee on Ways and Means, Background Material (2004), 8-33.
TANF households. The delinquent payer is expected to make a "good-faith" effort to find and to hold a job, even if the only work that is available in the local labor market pays a minimum wage. In a relatively high TANF benefit state, the payer's child support obligations can dwarf his earnings, especially if he has only a minimum-wage job or works on a part-time, seasonal, or irregular basis. In addition, the payer might also be saddled with Medicaid costs and foster care costs relating to the TANF mother's household. Even though the monthly support obligation is typically tailored to reflect earned income, the payers facing these conditions often take years to meet the state reimbursement levels. If they become unemployed or enter prison, their support obligations continue to accumulate. Unemployed and incarcerated payers usually receive some relief from the arrearage penalties and are only charged interest where their support account is reduced to judgment. But if they ever return to the full employment, their debt load may tower far above their earning power.

Paternity Law Today

Paternity and Domestic Violence

We should expect to see an overrepresentation of women survivors of domestic abuse in the poverty program recipient populations. Although domestic violence can be found in families from all income groups and class backgrounds, the research suggests that women with higher incomes and assets have a lower tolerance for abusive treatment from their partners. The wealthier a woman is, the more likely she is to leave an abusive relationship in its earliest stages. By the same token, poor women are only slightly more likely than wealthy women to report that their partners have abused them. But they tend to stay for a longer period in what they themselves would recognize as an abusive relationship. Although the decision to leave an abusive partner is complicated, especially where the abuse is severe and prolonged, the scholarly literature suggests that women who do not hold well-paying jobs and who do not have their own savings tend to hesitate the most before leaving. Research on domestic violence among low-income couples suggests that between 15 and 30 percent of the women reported being recently victimized by their partners — they reported being subjected to a range of abusive behaviors from violent assault to credible threats to their lives — while more than one out of two women on welfare indicate that they have endured abusive behavior committed by an intimate partner at some point in their lives. Finally, some women qualify for TANF assistance even though they were not always poor. The women fleeing abusers who left their homes quite abruptly and went into hiding in order to protect themselves and their children from the abuser usually experience the greatest decrease in their standard of living. They may have left their jobs, cash deposits, vehicles, and assets behind when they took flight.

Paradoxically enough, a woman who flees from her male abuser enters into the most dangerous phase of her relationship with him. Studies have shown that of all the different stages of an abusive heterosexual relationship, it is during the period that follows directly after the female victim has fled from the home that the abusive male is most likely to inflict serious injury — including fatal injury — upon her. The TANF mother who stays in an abusive relationship during her participation in the program might also find that the program's requirements put her at an even greater risk. Batterers typically make aggressive efforts to restrict the movements of their victims. TANF participants are required to attend several meetings, child support enforcement court dates, job-search training sessions, and workfare assignments. If any of them are in a relationship with abusive male partners, it is highly likely that the men will resent the women's activities very deeply, because the imposed TANF schedule diminishes their control over the women's movements. The paternity requirement also increases the risk of assault. Research suggests that when a man begins to make paternity payments, he tends to demand more authority over the rearing of the children. Even if he has not been abusive in the past, he tends to introduce more conflict into the relationship between himself and the custodial mother. Obviously, the risk of retaliation is much greater in those cases in which the payer had in fact acted abusively toward the TANF mother before the child support order was imposed.


For these reasons, feminist welfare advocates have lobbied for special provisions in welfare law. They contend that the states ought to be identifying domestic violence victims within the TANF applicant population and giving them access to safe housing, ensuring the strict confidentiality of their home address, and providing referrals to counseling and appropriate medical and legal services.\(^{53}\) Congress actually did create a good cause exemption to AFDC's child support enforcement cooperation requirement in 1975. It directed the state agencies to excuse single mothers receiving AFDC benefits from paternity identification and child support enforcement requirements where cooperation contradicted the “best interests” of her child or children.\(^{54}\) The corresponding regulations adopted by the federal government evolved over time. After substantial pressure from feminist welfare advocates, the federal Department of Health and Human Services promulgated a version of the regulation that referred explicitly to domestic violence. It ordered the states to offer the “good cause” exemption whenever the recipient’s child was conceived as a result of incest or “forcible” (as opposed to statutory) rape. The feminist welfare advocates were not entirely successful, however; the regulation also had several weaknesses. The states had to grant the exemption only when they “reasonably anticipated” that the single parent’s cooperation would result in either physical or emotional harm to the child himself or herself, or physical or emotional harm to the child’s caregiver such that she could not adequately care for the child. Further, the anticipated harm to the caregiver had to be so severe that it would have risen to the level of “impairment that [would have] substantially affect[ed] the individual’s functioning.”\(^{55}\) At the implementation stage, the policy results were mixed. Several thousand AFDC mothers did manage to obtain the good cause exemption, and the protection that it afforded was not insubstantial. But caseworkers did not always inform applicants about the exemption, and the federal government did not give the states any incentive to implement the exemption. Less than one-tenth of 1 percent of AFDC recipients applied for and received “good cause” exemptions from the AFDC paternity establishment and child support enforcement cooperation requirements in the period before 1996.\(^{56}\)

Feminist welfare advocates continued to press for better treatment of domestic violence survivors in poverty programs as the welfare debates unfolded in the early to mid-1990s.\(^{57}\) In the end, two strategies bore fruit. Although the PRA is massively oriented toward pushing welfare recipients to participate in compulsory program activities such as workfare, advocates successfully battled for state flexibility, such that the states would be allowed to excuse a certain fraction of their recipients from these requirements.\(^{58}\) In addition, progressive feminists in Congress in the early to mid-1990s made every effort to introduce legislation that would have created a comprehensive and federally mandated domestic violence initiative within the new welfare program, complete with a screening process, personnel training, appropriate service referral and case management provision, and exemptions from program requirements and the time limit rules. The welfare reformers, for their part, resisted these efforts at every turn.

Ultimately, a compromise was reached. Under the PRA, the states are allowed to adopt a somewhat weaker version of the domestic violence initiative at their discretion. Under the Family Violence Option, the state can screen applicants for domestic violence and refer them to appropriate service providers. The state is allowed to waive the program’s child support requirements, residency rules, and time limits for domestic violence survivors for a temporary period.\(^{59}\) Feminist welfare advocates then put pressure on the state legislators to follow through. By 1998, thirty-one states had decided to adopt the option and committed themselves to implementing the screening, referral, and exemption measures in the TANF program and their sense of the stigmatized nature of poverty benefits. In many cases, however, the clients were very anxious about the fact that entering the TANF program would entail state contact with the biological father and the disclosure of the family’s location. Corrigan estimates that in making their decisions to leave their abusive partners, her clients were heavily influenced by their anticipation of financial hardship; those with access to independent sources of income tended to leave at the earliest stages in the abuse cycle, while those who did not often left later, after they and their children had endured greater harm (personal interview, Philadelphia, 29 August 2006).\(^{55}\)

\(^{53}\) Menard and Turetsky, “Child Support Enforcement,” 21-5. It is true that some victims of domestic violence actually do want to pursue their abusive former partners for child support (Ibid., 27.) But, in my view, the whole issue ought to be moot; the entire paternafare system should be scrapped because it inevitably violates the fundamental rights – namely the right to privacy, the right to self-determination, and the right to a caregiver’s entitlement – of the poor single mother.


\(^{55}\) 45 CFR § 232.42 (1996). As a regulation associated with AFDC law, it expired when the PRA replaced the AFDC program with TANF in 1996.


\(^{57}\) My thanks to Wendy Mink for explaining this political process to me.


near future. According to the federal Department of Health and Human Services, all fifty states were making some efforts to assist domestic violence survivors through the TANF program in 2004. Thirty-nine states had submitted documents certifying their adoption and implementation of the option; the other eleven claimed that they were screening for domestic violence and delivering appropriate aid, but were doing so on their own terms.

In my own overview of the fifty states' TANF laws and regulations, I found that most of the states had some sort of domestic violence exemption from child support enforcement rules in place in their TANF statutes and regulations by 2001, but that their exemptions were still quite weak. Each state typically included a vague reference to the fact that TANF participants can be exempted from program requirements for "good cause" reasons. Several states required applicants to furnish police records or court documents to support their claims that the payers had seriously victimized them. Only a few states allowed the applicant to submit a sworn affidavit to this effect. Many states were not taking any special steps to ensure that their TANF caseworkers had training in domestic violence screening. Several states were relying entirely on the goodwill of their civil servants and the force of regulatory inertia. These states had not made any provisions at all for the victims of domestic violence in the state law that governed their TANF program; the exemption occurred only in their regulations and appeared to be left over from the pre-1996 period. One state, Utah, lacked an exemption not only for survivors of domestic violence but for those women who had borne children as a result of incest and rape as well, in both its TANF statutes and its regulations.

California, Connecticut, Minnesota, and New York deserve some credit for taking a slightly more enlightened position on domestic violence than the other states. These states were either earmarking special funds for appropriate support services, conducting training programs for TANF caseworkers to assist them in identifying and supporting domestic violence victims, or bringing several government agencies together with community service organizations to establish TANF policies relating to domestic violence. Applicants seeking the domestic violence exemption from the paternafare obligations in these states faced a burden of proof that is more reasonable than that imposed by the other states. Because domestic violence is rarely reported to the police, and because police forces are sometimes notoriously reluctant to press charges in domestic violence cases, and judges often fail to take domestic violence

61 The eleven states that had not adopted the FVO as of 2004 were Connecticut, Idaho, Indiana, Maine, Michigan, Mississippi, Ohio, Oklahoma, South Dakota, Virginia, and Wisconsin. U.S. Department of Health and Human Services, Office of Family Assistance, Temporary Assistance to Needy Families: Sixth Annual Report to Congress (November 2004), XII, 26-7.
62 I conducted a comprehensive study of the TANF statutes and regulations in all fifty states between September 2000 and May 2001. Again, my initial findings are presented in "The Sexual Regulation Dimension of Contemporary Welfare Reform: A Fifty State Overview."
example, was delayed by congressional Republicans, and a new version was approved only at a late date in the session. 66

Even the states with the best domestic violence measures cannot escape the fact that the overwhelming thrust of the TANF program is to subject the poor to harsh and degrading treatment and to cycle needy families quickly off the rolls. An interim study conducted in 1999 by the federal government found that very few TANF participants were being granted a good cause exemption from the program's mandatory paternity identification and child support enforcement requirements. 67 The managers and caseworkers who were interviewed by the federal officials estimated that many of their TANF program clients were actually fleeing domestic violence, but that they were not receiving the exemption. They said that some of the participants found the process embarrassing and intimidating. They claimed that some of their other clients had told them that they did not want to apply for the exemption because their application would amount to an official accusation against their abusers. According to these accounts, the TANF mothers believed that if their abusers found out that they had merely applied for the exemption, they would lash out against the women and their children. The managers and caseworkers concluded that the survivors preferred to report instead that they had no knowledge about their absent husbands or the biological fathers of their children. 68 The governmental researchers noted, however, that the caseworkers were making very little effort to assess the needs of the TANF program participants; the burden of identifying a domestic violence history almost always fell entirely upon the participant herself. Further, the caseworkers typically had very narrow eligibility standards. They were much more likely to grant the TANF participant a "good cause" exemption if the client supplied official documentation such as a police report, protective order, or hospital record than if she offered a signed affidavit alone. 69

Paternafare's Significant and Yet Limited Antipoverty Effects

The government data on the antipoverty effects of the child support enforcement system raise several interpretive challenges. At first glance, the total sum of child support collections handled by the fifty states' IV-D agencies is quite impressive. In 2002, for example, IV-D child support collections amounted to more than $20 billion. 70 But the total refers to collections involving a diverse set of cases. The custodial parents with children receiving benefits from TANF, Medicaid, and the foster care programs must cooperate with the IV-D agencies. Other custodial parents can voluntarily enter the system and purchase the services of the IV-D agency in return for a fee. In fact, the IV-D agencies were dealing with a total of 16.1 million cases in 2002, and current TANF cases composed only 18 percent of the total case load. 71

The total collections figure is therefore misleading, because it includes the collections pertaining to the fee-paying clients, and some of them have household incomes that rise above the poverty line. In addition, the "non-TANF" cases include both fee-paying voluntary participants and former TANF families that presumably had the child support order established during an eligibility period. Across the fifty states, it is the families that have left the TANF program who make up the largest group of IV-D participants. While 18 percent of the IV-D cases involve families that are currently receiving TANF assistance, another 36 percent are not currently in the program and have never received TANF assistance. The remaining 46 percent of the IV-D cases involve families that received, at one time or more in the past, TANF assistance. 72

Although the total collection figures might be impressive, the overall fiscal picture is much more complicated. In addition to its assumption of two-thirds of the administrative costs and the lion's share of infrastructural investment costs, the federal government offers incentive grants to the states and allows the states to keep a significant proportion of the TANF child support payments and voluntary non-TANF user fees. With these arrangements, the federal government has been operating the program at a net loss for years. The states, by contrast, managed to turn their IV-D agencies into profitable operations for several years; they were netting a healthy share of the collections and fees, and they were bearing only one-third of the administrative costs. However, the IV-D agency failed to remain a net income generator for most of the states over the long run, and they eventually followed the federal government into the red. By 2002, the federal government's child support enforcement budget showed a deficit of $2.252 billion, while the states had a deficit of $4,633 million that year as well. American taxpayers therefore had to pick up a total bill of $2.715 billion to operate the system that year. 73 It is particularly striking that the federal and state governments have tolerated these massive losses at a time of apparently strict fiscal restraint in all policy areas that do not involve military spending, domestic security, and the penal system. The child support enforcement deficit—that is to say, the net cost to taxpayers—increased 119 percent between 1994 and 2001. During that same period, total governmental spending for the AFDC/TANF program fell by 29 percent. Public spending on AFDC/TANF cash benefits in particular decreased


68 Ibid.

69 Ibid.

70 House Committee on Ways and Means, Background Material (2004), 8-6.


72 Ibid.

73 House Committee on Ways and Means, Background Material (2004), 8-66.
64 percent, while food stamps allocations fell 38 percent. While Congress has tended to slash government spending where social programs are concerned since the early 1990s, it has approved significant increases in federal spending on the national paternity identification and child support enforcement system. The net gain or loss figures in the child support enforcement budgets, however, are very difficult to interpret, especially over time. They reflect complicated and shifting accounting practices, as well as cost-sharing and revenue-distribution relationships between the state and federal government and between different governmental agencies.

The House Committee on Ways and Means has released data that suggest that the support payments retained by the federal and state governments amounted to approximately $2.13 billion in 2002. Again, the number strikes the reader as impressive, but we have to bear in mind that there were more than 2 million households receiving TANF assistance in the early 2000s. Further, when we compare the “TANF” share to the funds collected by the entire child support enforcement system, we find that they make up only 14 percent of the total. The arrears rate for the cases designated as “TANF” in the Ways and Means report is quite high: there were only 806,000 cases – out of a TANF population of more than 2 million families – in which a single support payment was collected during the entire year.

The total amount of IV-D collections (more than $20 billion in 2002) represents payments made by payers connected to current TANF families, former TANF recipient families, and families that have never received TANF benefits. The collections related to the families that have never received TANF benefits are the highest: $10.2 billion. Those flowing from the payers connected to custodial parents who previously received TANF recipients amounted to $8.3 billion. The payments related to the current TANF recipients came a distant third: $1.7 billion. Again, a reasonable time lag between a cooperating custodial mother’s entry into the program and the receipt of the first payment should be expected. It may be the case that the state successfully establishes a child support relationship between the custodial mother and the payer during the twenty-four-month window of benefits eligibility and yet that relationship yields its greatest financial returns only after the custodial mother leaves the program. A simple cost-benefit analysis would therefore have to factor in the future cost avoidance gain accrued by the State as successful child support enforcement cases keep the poverty program rolls lower than they would be otherwise. The net value of future cost avoidance effect cannot be gleaned from the IV-D agency budgets alone.

Other research, however, indicates that the measurement of cost avoidance might be fraught with difficulties. In a nutshell, it seems that the payer would have to make substantial and consistent contributions to the needy custodial mother’s household income in order to keep her out of poverty. In addition, there are indications that a demographic shift has taken place. The rolls have been increasingly trimmed since 1996, and they were held down at low levels even during the 2001-2 recession. It is entirely plausible that it is the most employable recipients who have left the program. The recipients with serious health problems, disabilities, learning difficulties, addictions, and children with special needs now make up a more significant proportion of the TANF population. Perhaps the biological fathers of their children also face higher than average barriers to livable wage employment; after all, individuals tend to form intimate relationships with others who share similar economic resources and social ranking in our highly stratified society. Perhaps child support enforcement will be increasingly “cost ineffective” where TANF mothers are concerned, given the increasing representation of the least employable women in the program. Undue emphasis on the data relating to their cases alone would tend to distort an across-the-board assessment of child support enforcement policy. But it is also true that the payers associated with these cases will not, in all likelihood, be able to make the significant payments needed to lift a custodial mother and her dependent children above the poverty line and to sustain them at an above-poverty level income.

One possible approach to these data interpretation challenges is to pose the problem in the form of a redistributive question: how many poor households with dependent children are being lifted above the poverty line by child support payments? We already know that the TANF benefit is too low, even in the more generous states, to lift a household out of poverty. We also know that even when TANF leavers find work, their jobs usually pay a minimum wage, and that their modest incomes are quite precarious. For the poverty advocates who defend paternafare, the financial potential of child support for the households living below the poverty line that are headed by single mothers

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75 House Committee on Ways and Means, Background Material (2004), 8-6.
76 Ibid.
caring for dependent children, where the male who could be designated as the nonresident payer is still living, is particularly important. The data suggest that about 36 percent of these households received child support in 2001. 81 (The proportion of these families that received any child support in 1996 was about 31 percent; the massive expansion in the paternafare apparatus lifted this figure only 5 points between 1996 and 2001.) For these families, child support payments made up, on average, about 30 percent of the total household income. 82

In other words, when a poor custodial mother does receive a support payment, it can make a huge difference to her household income. However, we have to consider the fact that when we are dealing with extremely low household incomes, even the slightest injection of funds becomes enormously significant. In 2004 a household with one adult and two related children was deemed poor if it had an annual income of less than $11,280. 83 Expressed in monthly terms, the poverty line income for this household was $1,268. Almost 6 percent of Americans live in extremely poor households with incomes that are less than 50 percent of the poverty line in 2004. 84 The extreme poverty rate was higher for those households headed by women; 6.4 percent had incomes that fell below 50 percent of the poverty line. Black and Native American households had much higher extreme poverty rates: 12.6 and 11.4 percent respectively. 85 A household with one adult and two dependent children would have been deemed extremely poor if its monthly income had been less than $634 per month. A monthly child support payment could have made up one-third of that household’s income even if it amounted to as little as $209.

There is no question that the poor custodial mothers who receive support payments or even a small “pass through” check experience a noticeable increase in their standard of living. But we should not lose sight of the fact that the neoliberal cuts to poverty programs and the brutal low-wage labor market have set up a situation in which a minuscule support payment makes a huge difference. In a highly inegalitarian context, a small transfer of funds between a payer and a custodial mother can increase her household income by an impressive margin. The lesson that should be taken from these data is not simply that child support enforcement enhances the conditions of about three out of ten of the poor households headed by single mothers, but that, as

82 Ibid.
83 Ibid.
84 U.S. Department of Commerce, Census Bureau, Poverty Thresholds for 2004 by Size of Family and Number of Related Children under 18 Years of Age (Washington, D.C., January 2005).
86 Ibid.

a society, we are grossly failing to meet the needs of these families in the first place.

The fact that the data suggest such a low level of compliance is also striking. Again, we have to focus on the households living below the poverty line that are headed by a single parent caring for dependent children, and that have a second adult who is still living, who can be designated as a payer, and who is residing outside the family home. If the research indicates that about 36 percent of these households received child support in 2001, 87 then that means that a full 64 percent did not receive a single penny in support payments that year. Poverty advocates who support child support enforcement have a solution, of course; they want to see massive governmental investment in work programs for the designated payers. 88 But even if the neoliberal policy makers could be convinced to establish a mini–New Deal for these men, serious questions would remain. Given the realities of the war on the poor, the neoliberal tax giveaways to the wealthy, and our bloated imperialist military budget, on what grounds can we have any confidence that new funds for “fatherhood programs” would not come at the cost of deep cuts in allocations currently being earmarked for poor custodial mothers, such as the TANF benefits and childcare subsidies? Do the custodial mothers in these families really want to be economically dependent upon these men? Should not our moral duty be to improve the life chances of all poor Americans, regardless of their parental or familial status, and then to let them sort out their intimate relationships on their own terms?

When we look at the entire population of poor children, we can see that child support has only a limited effect. Support payments lift many children out of poverty each year, but with so many children living in extreme poverty, and the entry of hundreds of thousands of new households into the poor population every year, these same payments reduce the poverty rate only by a small amount. Even if we accepted the premise that the imposition of child support enforcement policy upon the poor is morally defensible, we would have to focus on the ability of child support enforcement to improve the poverty rate among families with dependent children that are headed by a single parent. The poverty rate among all single-parent-headed families was 23 percent in 2001. If we isolate the single-parent-headed families that received child support payments, by contrast the poverty rate drops to 19 percent; the difference, then, amounts to a 4-point shift in the right direction. 89 By the same token, however, we can find much more impressive contrasts in poverty rates when we take racial or ethnic differences and gender differences into account. The families headed by non-Hispanic white single fathers have a much lower poverty rate – 11.9 percent 90 – than that for all single-parent-headed

87 Sorensen, Child Support Gains Some Ground.
88 Ibid.
89 House Committee on Ways and Means, Background Material (2004), 8–69.
90 See Appendix II.
families receiving child support payments – 19 percent. Further, the non-Hispanic white single fathers’ poverty rate is much lower than that for single-mother-headed families of all racial or ethnic categories; the latter rate is 35.7 percent. Not only is the poverty rate for the families headed by non-Hispanic white single fathers about 34 points lower than that for families headed by single African American and Hispanic women – 46.1 and 46.6 percent respectively – it is even 4.9 points lower than that for the Hispanic families that are headed by a couple. These numbers suggest that single parenting and the lack of child support payments are hardly the only factors that increase the risk of poverty among families with dependent children in our highly stratified society. A more progressive approach to fighting poverty would begin with these gendered, racial, and ethnic differences, for they are clearly significant.

The families identified in these data as living in poverty are not morally deficient, and their primary problem does not consist in their lack of child support. First and foremost, their life chances are sharply curtailed by oppressive and exploitative structures that are central to our patriarchal and racial capitalist society. Why are the poverty rates so much higher for the families that are not headed by non-Hispanic white couples and non-Hispanic white single fathers? Gender discrimination, the segmentation of racial and ethnic minorities in failing schools, the exploitative character of the low-wage labor market, the profit-oriented reorganization of a deindustrializing economy, the racially and ethnically biased criminal justice system, and the brutality of neoliberal policies that are heavily biased in favor of the wealthy are all working together to create almost inescapable and highly inequitable social structures in America. After the reimbursement level is met, child support collection amounts to a largely intracommunity private transfer – the movement of small cash sums out of the pockets of poor men and into those of poor women. On its own, child support enforcement does absolutely nothing to address these larger structural problems.

The collection rates specifically pertaining to the TANF and former TANF populations are also sobering. There is ample evidence not only that the pre-PRA child support enforcement regime did not generate significant collections, but also that the welfare policy experts had access to plenty of evidence that an enhanced paternafare system would deliver, at best, a minimal impact upon poverty. The total child support collections relating to AFDC cases before 1996 were quite meager. It was estimated that even if the State successfully imposed child support orders upon the absent biological fathers of all the children in the TANF program, and the men actually met their obligations, their incomes were so low that the AFDC case load would have decreased only by 11 percent. There was plenty of room at the time that the PRA was drawn up and debated for skepticism about the antipoverty potential of stricter child support enforcement procedures. Even the most effective child support regime could not change the fact that many of the payers did not have access to jobs that pay a living wage.

I would concede that the post-PRA scenario is somewhat more complicated. Turetsky divides the contemporary federal IV-D collection data into three groups: the current TANF assistance cases, the former assistance cases, and the cases involving custodial parents who never received assistance. Collection rates have steadily improved in the 1990s for all three groups, but they nevertheless indicate that the system continues to face problems where compliance and the ability to pay are concerned. As expected, the current assistance cases have the lowest collection rate: paternity may have to be established, the support case has to be opened, support orders may have to be imposed, and the payer has to be located and brought into the system. As a result of these factors, the collection rate in 2002 for the current assistance cases is quite modest: payments took place in only 29 percent of the cases involving current TANF families that year. Although this figure has been steadily improving over the years, it is still remarkably low.

The former assistance cases have a much better collection rate of 51 percent. Clearly, the time lag matters a great deal. The process of enrolling the recipient custodial mother, identifying the payer, tracking him down, putting the case through the legal and administrative machinery, and setting up the collection account is time-consuming. The cases involving payers who contest paternity allegations, attempt to evade detection, or try to conceal their income and assets move through the system even more slowly. Finally, there are the cases in which the payers obtain temporary relief from their support obligations because they are incapacitated or incarcerated, and only begin to earn income after a considerable delay.

It is not clear how many of the payers linked by the states to previous TANF recipient families are still trying to meet their reimbursement obligation. In the TANF-related cases in which a collection takes place, payers submit about

$2,150 on average to the state every year. 99 In New York, the TANF families consisting of one adult and two dependent children that did not earn any income received $577 per month on average in cash benefits during 2002. 100 If we also assume that this family spent twenty-four months in the program, then the reimbursement level for the payer connected to this New York TANF family would amount to $13,848. At a payment rate of $2,150 per year, it would take the payer over six and a half years to meet the reimbursement level. In fact, one study of the payers in the TANF-side of the paternafare system found that each man was in arrears by $2,000 on average, while his average total earnings for the previous nine months added up to a mere $2,800. 101 It is entirely plausible, then, that a significant proportion of the payers will take several years after the custodial mother leaves the program to meet their reimbursement levels. It seems reasonable to assume that a payer who has reached the benefit reimbursement level has a greater incentive to participate. Ideally, his payments are forwarded from the state collection agency to the custodial mother. If we assume he understands this procedure, and that the state collection agency follows through, an altruistic payer might feel more motivated to send in his payment, because he knows that the full amount will be sent directly to her household. However, we should bear in mind that the issue of this added incentive is moot for many of the payers who are linked to the former TANF households, because they have not yet reached their reimbursement levels.

It is remarkable that the “never received TANF assistance” cases have a collection rate that is hardly better, only 55 percent. 102 Perhaps the payers connected to the custodial mothers in question are poor or low-income as well. After all, some of these never-TANF cases stem from compulsory child support procedures relating to the Medicaid or foster care programs. Or perhaps the custodial mothers in these cases had low incomes but opted into the system and paid a fee for the IV-D services in anticipation of support payments that would offset the cost. If they do indeed have low incomes, it would make sense if we found that the payers with whom they had an intimate relationship tended to have low incomes as well.

But we also know that at least some of the fee-paying voluntary customers in the never-TANF case load have middle-range incomes as well. The Ways and Means Committee staff has claimed that state spending on IV-D administration has not been sufficiently restrained and that the federal government is shouldering too much of the costs. According to the 2004 staff report, the creation of a fee-paying IV-D option has simply allowed the states to enter into market competition with private attorneys. The report alleges that the states have expanded their fee-paying IV-D customer list not by attracting huge numbers of custodial parents who would not have otherwise pursued the absent parent for child support in the absence of an IV-D program. On the contrary, the report advances the argument that the states’ IV-D agencies are using the fee-paying track to offer heavily subsidized service packages to clients who would have otherwise taken their case to lawyers in the private sector. From its perspective, the state IV-D agencies are cynically using the federal subsidies to crowd the private attorney out of the child support service market in order to collect the relevant fees, but without improving overall collections. 103 It may very well be the case that the federal-state cost- and revenue-sharing agreement has created an incentive for the states to enter into market competition with private attorneys for the child support business of nonpoor custodial parents.

In any event, the Ways and Means report also asserts that the overall collection rate for child support flowing to single-mother-headed families has not significantly improved between the mid-1970s and the early 2000s, that is, over the period in which the IV-D agencies became so heavily involved in all child support cases. About 24 percent of these mothers received payment in full in 1978, while 25 percent did so in 2001. 104 The single mothers with the highest levels of education — that is to say, the ones most likely to be well-off — lead the way where child support is concerned. They are the women who are most likely to have been awarded support by a court and to have a legal child support order in place. They typically receive the largest payments every year; single mothers with at least a bachelor’s degree received an average support sum of $6,239 in 2001. 105 As we move downward through the educational groups, we find that the less educated single mother is less likely to have an award and to have a support order. When the less educated and poorer single mother does receive child support, the sums are much more modest. The mean annual collection for single mothers with less than a high school education was only $2,934 in the same year. 106 When we look at the poor single mothers in isolation, we find that black women and women who had never married received the lowest amounts of support payments every year. 107 What we do know for certain is that black men with low levels of education face the toughest conditions in the job market when compared to other men. They have higher unemployment rates and lower wage levels than white non-Hispanic men with the same credentials, such as a high school diploma. They are also more likely to be incarcerated, and when they are released from prison.

99 Ibid., 6.
100 Rowe and Roberts, The Welfare Rules Databook, 80. This calculation of average benefit assumes that the family has no special needs, pays for all shelter costs without any subsidies, and is subject to the same benefit standard that applies to the majority of the state’s case load. This figure does not include other TANF program costs such as childcare or transportation subsidies.
101 Hays, Flat Broke with Children, 80.
102 Turetsky, Child Support Trends, 9.
103 House Committee on Ways and Means, Background Material (2004), 8–75.
104 Ibid., 8–24, 8–75.
105 Ibid., 8–71.
106 Ibid.
107 Ibid.
they may suffer from harsher forms of employer discrimination than the ex-convicts who are white non-Hispanic. Given the fact that we pursue our intimate relationships in a highly segregated society, we can assume that many poor black single mothers are effectively being instructed by the paternafare system to look to poor black male payers for their support. The fact that they receive the lowest amounts of support moneys is hardly surprising; it reflects the unequal distribution of life chances in the prevailing racial capitalist social structure.

The 2004 Ways and Means report was published only one year before Republican leaders in the House introduced the first version of the 2005 budget bill that would have slashed federal child support enforcement spending. There is a remarkable continuity between the report’s position on cost sharing and this legislative maneuver. In the end, the House Republicans modified these particular cuts, but the final version of the 2005 Deficit Reduction Act nevertheless ushers in some reductions in federal spending on the child support enforcement apparatus. We should note, of course, that the cut in federal money for child support enforcement in no way diminishes the burden of the TANF mother. Under the terms of the 2005 law, she still has to cooperate as before. However, after she identifies the biological father of her children, her case may be handled by a downsized bureaucracy. The diversionary function of the child support enforcement rules is left intact; some needy custodial mothers who fear reprisal from the biological fathers will continue to avoid the TANF program. As before, many of the applicants who are admitted into the program will later be sanctioned or expelled for their inadequate cooperation, because the paternafare obligations have not been reduced at all. But if the states react to the reduction in federal paternafare subsidies by reducing the budget of their IV-D agency, we will see even less support funds going into the hands of the few poor single mothers who stood to gain from the paternafare system in the first place. It is likely, for example, that budget cuts will mean that fewer paternities will be established, more payers will be able to evade the system, and less support moneys will be collected — including moneys that would have been forwarded directly to the welfare mothers themselves. Poor single mothers will continue to pay the price of the harsh eligibility requirements — and the advance of the neoliberal assault on their redistributive social rights that is achieved by the paternafare system — but they will receive even less income.


At first glance, there is nothing particularly mysterious about the family cap, the provision of family planning materials and services, the payment of “incentives” to TANF mothers who give up their children for adoption, abstinence education, and the promotion of marriage in federal and state welfare law. Each of these initiatives constitutes a State tool for discouraging childbirth and childrearing among poor women and for shepherding as many TANF clients as possible into legal heterosexual marriages. There is no question that these measures should be listed under the rubric of welfare sexual regulation. However, the analysis of the form of governance in welfare sexual regulation would be incomplete without a close examination of these policies, for it is only by studying their precise design that we can pierce the legitimating ideology of the neoliberals and religious right and grasp the emerging structure of the postwelfare State. These measures will undoubtedly fail to meet their ostensible objectives. Human sexuality is a complex and overdetermined terrain; it is extremely unlikely that these crude and superficial interventions will bring about the desired changes in the sexual practices, childbirth, childrearing, legal marital status, and kinship structures in any significant degree. By introducing these aspects of sexual regulation, however, the welfare reformers have accelerated the transition in governance from disciplinary inclusion and dialogical therapeutic intervention to brute exclusion and the increased exposure of poor mothers to harsh market forces.

The Family Cap

TANF benefits usually reflect household size. The households with a greater number of dependent children generally receive a larger benefit than their smaller counterparts. This is not to say that the increases amount to princely sums; the average increase in an AFDC/TANF benefit when an additional