

# STEREOTYPES, CHILDCARE, AND SOCIAL CHANGE: HOW THE FAILURE TO PROVIDE CHILDCARE PERPETUATES THE PUBLIC PERCEPTION OF WELFARE MOTHERS

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## INTRODUCTION

The Thirteenth Amendment, the Civil Rights Act of 1964, and the Voting Rights Act of 1965 were all laws enacted to alter the treatment of Blacks in America. Yet, by freeing the slaves, penalizing discrimination on the basis of color, and eliminating barriers that previously prevented Blacks from voting, these laws sought to change more than just behavior; rather, they sought to create a society that would reward people based on merit, not the color of their skin.

A vast amount of literature has been written discussing whether laws have the capacity to induce social change. The literature often frames the debate by asking whether the enactment of a law generates social change or, alternatively, whether the law merely affirms pre-existing social changes. Experience has proven that the truth falls somewhere between these two extremes. While laws possess a tremendous capacity for effecting change, it appears that certain conditions in society must be met to allow change to occur.

In his essay, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, Thomas B. Stoddard presents a four-part theoretical framework with which one can analyze a law's ability to induce social change.<sup>1</sup> According to Stoddard, creating social change, or a "culture-shift," through legislation means enacting laws that "advance the rights and interests of people who have been treated badly by the law and by the culture, either individually or collectively, and to pro-

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1. Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. REV. 967 (1997).

mote values we think ought to be rights.”<sup>2</sup> He asserts that this can only be done when 1) the law makes a broad and profound change; 2) the public is aware of the change; 3) the change is perceived as a legitimate one; and 4) the government effectively enforces the change.<sup>3</sup> Applying this four-part framework, this Note uses New York City as a case study to analyze whether or not the New York Social Services Law<sup>4</sup> (as adapted to meet the requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA))<sup>5</sup> has produced social change through welfare policy.

Achieving social change through lawmaking in the context of welfare policy is an extremely complex endeavor. Given that welfare is shrouded in negativity, welfare laws must go beyond the regulation or administration of benefits and confront this negativity directly. Stereotypes based on race and gender necessarily permeate any discussion about welfare because “[w]hen many people think of welfare they think of young, unmarried black mothers having babies.”<sup>6</sup> As the fol-

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2. *Id.* at 973.

3. *Id.* at 978.

4. N.Y. SOC. SERV. LAW §§ 1–342 (McKinney 2001).

5. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended in scattered sections of 42 U.S.C.). To receive federal funding for social welfare programs, states must comply with eligibility requirements as prescribed by the PRWORA. To be eligible, a state must submit a written plan outlining how it will meet the articulated goals of the PRWORA. *Id.* § 401, 110 Stat. at 2113-15. States rely heavily on federal funding to meet their welfare needs, as they receive an average of \$5,300 a year per family. Jason DeParle, *Leftover Money for Welfare Baffles, or Inspires, States*, N.Y. TIMES, Aug. 29, 1999, at A1.

6. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 171 (1996) [hereinafter *WHEN WORK DISAPPEARS*]; see also MORRIS F.X. JEFF, JR., *The National Association of Black Social Workers' Reflection on the New Welfare Reform Law*, 4 HARV. J. AFR. AM. PUB. POL'Y 49, 52 (1998). The truth of these assumptions is another complex subject. Historically, evidence indicated that the numbers of Black and White women on welfare were essentially the same. *WHEN WORK DISAPPEARS*, *supra*, at 167. There is also evidence that women are leaving the welfare rolls in greater numbers under the PRWORA. However, White women leave the system more quickly than Black and Latina women, leaving Black and Latina women as the majority populations on welfare rolls. Jason DeParle, *Shrinking Welfare Rolls Leave Record High Share of Minorities*, N.Y. TIMES, July 27, 1998, at A1. Numerous factors may contribute to White women's increased exit from the welfare system. Relevant to this Note, there is evidence that White women have much better relationships with caseworkers and therefore are much more likely to receive the support services they need, such as childcare, to aid them in leaving and staying off of welfare. See generally Susan T. Gooden, *All Things Not Being Equal: Differences in Caseworker Support Toward Black and White Welfare Clients*, 4 HARV. J. AFR. AM. PUB. POL'Y 23, 23-24 (1998). Furthermore, there is also evidence that White women have an easier time securing employment and that, once employed, they receive

lowing statement demonstrates, this sentiment is not only believed by much of the population that is not on welfare, but it is also felt by welfare recipients:

I'm a woman. I'm a black woman. I'm a poor woman. I'm a fat woman. I'm a middle-aged woman. And I'm on welfare.

In this country, if you're any of those things—poor, black, fat, female, middle-aged, on welfare—you count less as a human being. If you're *all* of those things, you don't count at all.<sup>7</sup>

When a law is perceived to benefit a specific class of recipients, especially a class like Black mothers that is deemed unworthy by society, there is a significant threat that the law will receive less support and risk being repealed.<sup>8</sup> Where there exists “the belief that the moral character of individuals, not inequities in the social and economic structure of society, is at the root of the problem,”<sup>9</sup> the threat to the program may be even greater. Therefore, if a law is to successfully bring about social change in the area of welfare, a goal must be to dispel some of these negative stereotypes and assumptions about welfare recipients. Without such effort, the reforms will merely function as changes in welfare law, or, as Stoddard calls them, “rule-shifts,” that may eventually lead to the complete demise of government funding of welfare programs, regardless of their social necessity.

The overarching goal of welfare reform, to move recipients from welfare into work,<sup>10</sup> should theoretically eliminate many of these stereotypes by creating independence and self-sufficiency. If welfare recipients, Black women included, move from welfare to work, the myth

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higher salaries than Black women, increasing their ability to leave and stay off of welfare. SUSAN GOODEN, CENTER FOR PUBLIC ADMINISTRATION AND POLICY (CPAP), VIRGINIA TECH, RACE AND WELFARE REPORT: EXAMINING RACIAL DIFFERENCES IN EMPLOYMENT STATUS AMONG WELFARE RECIPIENTS 1-8 (1997). Nonetheless, the cause of Black women being the statistical majority is not as relevant as the fact that, even when they were in statistical parity with White women in terms of welfare enrollment, the negative assumption that they were the majority of the recipients who were abusing the system was widely believed. This means that the programs designed to help the poor—Blacks, Whites and others—are still in jeopardy. These programs may be in an even more tenuous state if the statistics do begin to show that Black women constitute the majority of the welfare population, considering that institutional barriers to societal entry are often overlooked as individual women are exclusively blamed for their state of poverty.

7. Johnnie Tilton, *Welfare*, Ms., July/Aug. 1995, at 50.

8. WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 118 (1987) [hereinafter *THE TRULY DISADVANTAGED*].

9. *WHEN WORK DISAPPEARS*, *supra* note 6, at 161.

10. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, § 401, 110 Stat. at 2113.

that they are lazy or trying to scam the government out of money will be dispelled. Despite the potential benefits of the PRWORA for welfare mothers, institutional barriers exist that will make this transition more difficult than some hope.<sup>11</sup> Specifically, this Note argues that the systematic failure to enforce the childcare provisions of the New York Social Services Law<sup>12</sup> results in a lack of quality and affordable childcare services, preventing women from successfully and permanently entering into the workforce, thus decreasing the Law's ability to induce social change in the area of welfare.

As the discussion below illustrates, the New York Social Services Law has failed to induce a culture-shift. Although the Law purports to create social change, it actually works to the detriment of those whom it is supposed to protect. Childcare is an essential component of working women's lives. Consequently, when there is insufficient, unstable, and low quality childcare, women become ineffective members of the workforce. If women are unable to find work, or they are unable to sustain employment because of childcare issues, they may have to return to welfare. The cycle of dependency will then come full circle: Negative stereotypes will persist, and poor people will remain in jeopardy of losing benefits needed to sustain their lives and families.

Part I of this Note provides a working definition of the terms "law" and "social change." It then discusses the role that law plays in society and whether this role enables it to change society. Part II discusses Stoddard's theory of how to determine whether social change has occurred as a result of a law's enactment, arguing that the law does have some ability to induce social change. Part III introduces relevant sections of the PRWORA and the PRWORA-adapted sections of the New York Social Services Law. Part IV applies Stoddard's test to New York's Law, demonstrating that New York City's failure to satisfy one of the Stoddard factors—continuous enforcement of the law, specifically those portions dealing with childcare—is a primary barrier to inducing social change in the area of welfare reform in New York City. Part V analyzes why this lack of enforcement is problematic, both in the general context of the law's ability to bring

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11. WHEN WORK DISAPPEARS, *supra* note 6, at 162 (stating there is general agreement welfare recipients could work if they wanted to, and many welfare recipients cheat in order to get benefits).

12. As will be discussed below, see *infra* Part III, states model their welfare program in accordance with federal mandates in order to receive federal funding for their respective welfare programs. This Note looks exclusively at the New York adaptation of the PRWORA.

about social change and in the specific context of change in welfare policy.

## I

### INDUCING SOCIAL CHANGE THROUGH LEGISLATION

#### A. *What Is "Law"?*

There is no single definition of "law." On the personal level, laws are directives from parents, teachers, employers, and friends about what behavior is personally, morally, and professionally acceptable. On the public level, laws are enactments and decisions from Congress, state legislatures, presidents, courts, and administrative agencies stating what behavior is socially acceptable. One author asserts that the principal function of law is to "regulate and constrain the behavior of individuals in their relationships with one another."<sup>13</sup> Another author contends that laws are rules that contain two parts: "First, a statement of fact . . . and, second, a statement of the consequences that will or may follow upon the existence of that fact, within some . . . system of governmental control."<sup>14</sup> The same author asserts that because law is not a tangible thing, but rather an abstract concept, it is appropriately considered to be a part of a legal system which "brings to mind . . . a working process, a breathing, active machine. The legal system is behavior, movement, demand, and response."<sup>15</sup> These definitions coexist with one another and capture different aspects of the meaning of law. The working definition of law for this Note incorporates elements of each of these definitions, defining law as a final decree from a recognized source of authority, which, acting in the interest of the populace, has the power to regulate human behavior or system procedure.

#### B. *What Is "Social Change"?*

Definitions of "social change" vary from scholar to scholar. One scholar has commented that "[i]n its most concrete sense, social change means that large numbers of people are engaging in group activities and relationships that are different from those in which they or their parents engaged in previously."<sup>16</sup> This definition emphasizes the generational aspect of social change. In essence, the people of one

13. STEVEN VAGO, *LAW AND SOCIETY* 8 (4th ed. 1994).

14. Lawrence M. Friedman, *Legal Rules and the Process of Social Change*, 19 *STAN. L. REV.* 786 (1967), reprinted in *LAW & SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW* 689 (Stewart Macaulay et al. eds., 1995).

15. LAWRENCE M. FRIEDMAN, *LAW AND SOCIETY: AN INTRODUCTION* 5 (1977).

16. VAGO, *supra* note 13, at 223.

generation are not likely to change their belief systems, but new generations are able to accept a social reality that is different from the one experienced by their parents. Another scholar has asserted that social change means “a fundamental alteration in the way an aspect of society is structured, in the way that people relate to one another or in the way that an issue is perceived and acted upon.”<sup>17</sup> This definition of social change refers to a change in the outlook of an existing society, which would have the added result of altering the outlook of future generations.

This Note utilizes Professor Stoddard’s definition of social change, which he refers to as “culture-shifting.”<sup>18</sup> When there is a culture-shift in society, there is “a whole new model of conduct that, consciously and deliberately, overturn[s] doctrines embedded in American culture.”<sup>19</sup> A culture-shift in society’s views on race, resulting from the numerous laws designed to counter race discrimination, for example, is evidenced by the fact that public schools, restaurants, and other accommodations are no longer legally segregated; African-Americans occupy numerous high-level positions throughout corporate America; and perpetrators of violent crimes motivated by racial animus face harsher penalties than perpetrators of other crimes. Without dismissing the pervasive effects of racism that remain a part of American society, generations of tolerance and acceptance have resulted in a twenty-first century American reality where people of all races coexist in neighborhoods, schools, and jobs in a peaceful and cooperative way that would have been unimaginable just fifty years ago. While a change in conduct alone does not necessarily evidence a change in thinking, it does represent a change in social reality, and can have a powerful impact on one’s beliefs, perceptions, and attitudes. Thus, while there is no magic formula to measure the degree of social change, this Note assumes that widespread change in conduct is demonstrative of, and can lead to, changes in beliefs, perceptions, and attitudes.

### C. *Can Laws Bring About Social Change?*

Given the integral role that law plays at every level of society, and considering the benefits of social change, we must determine whether laws have the capacity to produce the social changes we de-

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17. John Morison, *How To Change Things with Rules*, in *LAW, SOCIETY AND CHANGE* 5, 7 (Stephen Livingstone & John Morison eds., 1990).

18. Stoddard, *supra* note 1, at 973. In this Note, social change and culture-shift are used interchangeably.

19. *Id.* at 974.

sire. The ambiguity and malleability of the concepts of law and social change make it understandably difficult to determine when and how laws induce social change.<sup>20</sup> Nonetheless, scholars agree that laws do have the power to bring about social change by forcing people to change their behavior: "If the law prevents people from acting consistently with old beliefs and values, then they abandon the old beliefs and adopt new ones which fit the actions they find themselves doing."<sup>21</sup> Cognitive dissonance theory suggests that when people's beliefs differ from the reality in which they find themselves, they will subconsciously shift their beliefs into alignment with their reality in order to reduce the dissonance between the two.<sup>22</sup> Most people obey laws merely because they are laws,<sup>23</sup> and most laws apply generally to all members of society. Thus, when a law prohibits or requires conduct that is contrary to existing cultural values, and there is widespread voluntary compliance with this law, the law can produce social change.

Even when laws do not intend to create social change, change often occurs as a side effect of the pervasive connection of law to our social system.<sup>24</sup> Laws can criminalize certain activity by imposing sanctions such as fines and prison sentences. Laws also set tax rates, maintain public resources, control the environment, allocate funds for a variety of projects, and perform most other tasks that are necessary in civil society.<sup>25</sup> Thus, "the potential for law to be used to effect deliberate and calculated change is enormous."<sup>26</sup>

Law can also induce social change through symbolically legitimizing a new way of thinking even where the law's actual effects are minimal.<sup>27</sup> Rape law reform is one example. Statutory changes in the definition of rape, elimination of resistance as a necessary element of a prima facie case of rape, and enactment of rape shield laws are common reforms in rape law.<sup>28</sup> Due to a variety of factors not particularly

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20. See generally Morison, *supra* note 17, at 8.

21. ROBERT L. KIDDER, *CONNECTING LAW AND SOCIETY: AN INTRODUCTION TO RESEARCH AND THEORY* 119 (1983).

22. *Id.*

23. See VAGO, *supra* note 13, at 235-36.

24. See generally Morison, *supra* note 17, at 13 ("Law intercedes into our whole network of daily relationships with an agenda for living in society . . .").

25. See *id.* at 9.

26. *Id.* at 13.

27. See W.G. Carson, *Law Making: Symbolism and Instrumentality*, in *LAW AND SOCIETY* 236, 239-42 (C.M. Campbell & Paul Wiles eds., 1979).

28. Julie Horney & Cassia Spohn, *Rape Law Reform and Instrumental Change in Six Urban Jurisdictions*, 25 *LAW & SOC'Y REV.* 117 (1991), reprinted in *LAW & SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW*, *supra* note 14, at 522, 523-24.

relevant to this Note, these legal reforms have not been as effective as anticipated in increasing the number of rape convictions.<sup>29</sup> Nonetheless, the message articulated through the changes—that rape is not about chastity, or a woman’s sexual history or behavior—“may be more important than the instrumental change that was anticipated.”<sup>30</sup> In other words, legal ratification of a new perception of an issue may shift the commonly held cultural perception of that issue.<sup>31</sup>

This brief discussion of the law’s potential for effecting social change is not exhaustive. There are a number of factors that determine to what extent, and in what way, a social change will manifest itself. These theories do, however, provide strong evidence that laws have the power to effect social change. The following discussion of Stoddard’s four-part test provides a viable framework for determining when and if social change has occurred.

## II

### A THEORETICAL FRAMEWORK FOR ANALYZING SOCIAL CHANGE

#### A. *The Stoddard Test*

In his article, Stoddard indicates that for a rule-shift (a change in the law) to result in a culture-shift: 1) the change must be “very broad or profound;” 2) the public must be aware of the change; 3) there must be a general impression that the change is legitimate; and 4) there must be “[o]verall, continuous enforcement of the change.”<sup>32</sup> “In general, ‘culture-shifting’ requires all four; anything less amounts to a form of ‘rule-shifting.’”<sup>33</sup>

Stoddard asserts that laws typically serve the function of either making or changing rules that the government enforces—this is called “rule-shifting.”<sup>34</sup> Lawyers of Stoddard’s generation, however, believed lawmaking could also be used to effect widespread social change that would improve “society in fundamental, extralegal ways”—this is called “culture-shifting.”<sup>35</sup> Thus, rule-shifting merely

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29. See generally *id.* at 535-43.

30. *Id.* at 547.

31. See Joseph R. Gusfield, *Moral Passage: The Symbolic Process in Public Designations of Deviance*, 15 SOC. PROBS. 175 (1967), reprinted in LAW & SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW, *supra* note 14, at 509, 511.

32. Stoddard, *supra* note 1, at 978.

33. *Id.*

34. *Id.* at 972-73.

35. *Id.* at 973.

affects individual behavior, whereas culture-shifting transforms society by altering basic societal principles in dramatic ways.<sup>36</sup>

To illustrate the distinction between these two concepts, Stoddard compares the legal and cultural attitudes towards homosexuals in New Zealand with those in the United States. Unlike the United States, New Zealand designates sexual orientation as a protected category under its anti-discrimination laws.<sup>37</sup> As a result, homosexuals no longer face automatic dismissal from military service, and sodomy and related criminal offences, ordinarily enforced only against homosexuals, have been abolished.<sup>38</sup> These legislative changes demonstrate that New Zealand is far ahead of the United States in recognizing the legal rights of homosexuals. Nonetheless, despite these rule-shifts, people who attempt to lead openly gay lifestyles in New Zealand are subject to the same level of societal disapproval as are those in the United States. Contrary to his initial belief “that changes in the rules that governed a society would inevitably lead to some form of larger cultural transformation,” Stoddard realized that “most gay people in New Zealand still did not feel safe enough to ‘come out,’ even though their laws now offered them protection.”<sup>39</sup> In other words, the rule-shift did not result in a culture-shift in this instance.

Stoddard presents the Civil Rights Act of 1964 as a paradigmatic example of a rule-shift resulting in a culture-shift. First, the Act was enacted to deal with the problem of racism, the consequences of which affected the personal, professional, and moral decisions people made on a daily basis. The Act, through desegregation and the penalizing of discrimination, was intended to have broad and profound implications for every American citizen. Therefore, the Act meets the first part of the Stoddard test.<sup>40</sup>

Second, the vast scope of the Act indicates that “[i]t set a new standard of conduct for the nation as a whole in the transaction, moment by moment and day by day, of the ordinary affairs of ordinary people.”<sup>41</sup> This change is strong evidence of the awareness of this law

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36. *Id.* at 978.

37. *See id.* at 968.

38. *Id.* at 968-69.

39. *Id.* at 970.

40. *See id.* at 978-79.

41. *Id.* at 978.

by most, if not all, of the American public, satisfying the second part of the test requiring public awareness of the change.<sup>42</sup>

Moving to the third prong, Stoddard presents three hypotheses for why an aura of legitimacy<sup>43</sup> surrounded the Act: 1) the *Brown v. Board of Education*<sup>44</sup> decision gave people time to adjust to the idea of integration;<sup>45</sup> 2) the African-American Civil Rights Movement did a great deal to disparage Jim Crow segregation and other forms of discrimination;<sup>46</sup> and 3) the law was debated and enacted by Congress, the one body that can claim to be representative of the nation as a whole, as opposed to a Supreme Court pronouncement.<sup>47</sup> Whatever the reason, despite hundreds of years of discriminatory practices by Whites, the Act met with little resistance and was perceived to be both timely and legitimate, satisfying the third prong of Stoddard's test.<sup>48</sup>

The fourth part of the Stoddard test is overall, continuous enforcement of the change.<sup>49</sup> Though Stoddard does not comment on how well or how often the Act was enforced, it is enough to note that the Act itself provides injunctive, punitive, and other remedies for victims of discrimination. Thousands of cases have been brought challenging discriminatory practices by public actors under the various titles of the Act. Thus, the law continuously self-enforces through plaintiffs' lawsuits, satisfying the final part of the Stoddard test and indicating that the Act induced a culture-shift in the areas of racism and discrimination.

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42. Other scholars concur in Stoddard's belief that the publicizing of legal changes and reforms is essential to a law's ability to affect social change. See Friedman, *supra* note 14, at 704; Morison, *supra* note 17, at 9.

43. Like Stoddard, other authors concur that legitimacy must exist not only in the law, but also in the authority of the body that enacts the law. See TOM TYLER, *WHY PEOPLE OBEY THE LAW* (1990), reprinted in *LAW & SOCIETY: READINGS ON THE SOCIAL STUDY OF LAW*, *supra* note 14, at 474, 476-77; see also FRIEDMAN, *supra* note 15, at 139.

44. 347 U.S. 483 (1954) (providing that separate schools for Black and White children, even if schools are deemed to be equal, violates the Equal Protection Clause of Fourteenth Amendment).

45. Stoddard, *supra* note 1, at 984.

46. *Id.*

47. *Id.* at 977, 984-85.

48. *Id.* at 983.

49. Most authors recognize that continuous and effective enforcement of laws is vital to achieving social change. "[T]he enforcement of the law must be aimed at making the change in a relatively short time." VAGO, *supra* note 13, at 232. Symbolic ratification through mere enactment of a law can serve as a form of enforcement by serving as a public affirmation of a social norm. See Gusfield, *supra* note 31, at 511; see also FRIEDMAN, *supra* note 15, at 116-34.

### B. *The Value of the Stoddard Test*

This Note does not assert that Stoddard's test is the only, or even the best, way of analyzing this issue. In fact, one scholar criticizes Stoddard's method of analysis as inappropriately treating the law as a vaccine.<sup>50</sup> Analyzing law as a vaccine means to 1) "identify a clearly defined legal action with a specific target population;" 2) "search for cases where relevant behavior should have changed, testing whether it did;" and 3) "try to determine whether the legal action produced the change or failed to produce it."<sup>51</sup> This scholar identifies two potential problems with this sort of analysis. First, since it is impossible to account for the effects of "institutions, processes, and agents," through which all legal commands are filtered, it is difficult to determine whether the formal legal commands failed or whether the external forces through which these commands were filtered prevented the law from achieving its desired result.<sup>52</sup>

The second critique of the law-as-vaccine approach arises from the fact that the legislative process renders it nearly impossible to determine the legislative intent underlying a law. Consequently, it is equally difficult to determine the legislative purpose that a law failed to accomplish. Although the alert reader will assert that legislative intent can be determined by examining sources such as legislative history, issue debates, newspaper and magazine articles, and press releases, none of these sources provides conclusive proof of legislative intent.

Despite these criticisms, there are several significant benefits to using the Stoddard test. While each of the four separate prongs of the test have been asserted by others as being necessary for social change,<sup>53</sup> Stoddard was the first to call for a comprehensive analysis considering all four factors together. Having a concrete list of factors introduces specific parameters to a subject area full of hard-to-define terminology and concepts, greatly simplifying the analysis of these complex issues. Second, the test could provide a useful model for legislators to follow. It is in the interest of the public not only to have legislators enact good laws, but to have them enact good laws that can and will be effective. Thus, a model with specific analytical guidelines could provide a straightforward solution to current problems with social change legislation. Third, the test may help constituents lobby

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50. See KIDDER, *supra* note 21, at 115.

51. *Id.*

52. *Id.* at 142.

53. See *supra* notes 42-43, 49.

their representatives in a more focused manner. Constituents may be better able to identify elements of legislation capable of effecting the desired social change if they can point to a set of specific, relevant factors. The advantages of the Stoddard analysis make it a valuable tool for analyzing the conditions under which a rule-shift has the power to induce a culture-shift.

*C. How Does the Stoddard Theory Apply to Welfare Reform?*

Before discussing welfare reform, it is helpful to examine a law that did induce a culture-shift in America. State-sanctioned segregation and blatant discrimination spawned by racism have historically been insidious forces that affected the economic, social, mental, and psychological well-being of Blacks in America. The Civil Rights Act of 1964 sought to alleviate some of the damage inflicted by these practices by prohibiting the behavior that furthered them. As was discussed above, forcing people to change their behavior through law-making can serve as a powerful tool for changing the mentality of both the perpetrators and victims of socially harsh policies.<sup>54</sup> While acknowledging that we do not live in a society that is free of race-based prejudice, Blacks and other people of color have been integrated into professions, neighborhoods, and educational institutions in unprecedented numbers. In addition to integration in these regulated areas, there has also been a degree of acceptance of Blacks in areas that are not subject to regulation of the Civil Rights Act, including television, the fashion industry, and politics. While inclusion in these areas of life is not dispositive evidence that all perceptions and beliefs about Blacks have changed, inclusion in the “principle cultural medi[a] suggests that [the American public has] at least embraced the ideals—the desiderata—of equality and integration.”<sup>55</sup> As was discussed above, change in conduct and change in beliefs and attitudes are the primary factors indicating that a culture-shift has occurred.

There is no tangible, insidious force in the area of welfare reform. In fact, the notion of helping poor families to obtain basic necessities is inherently positive. However, negative stereotypes about welfare recipients pose a significant obstacle to the enactment of effective welfare policy.<sup>56</sup> The prevailing “Myth of the Welfare Queen” as-

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54. See *supra* Part I.C.

55. Stoddard, *supra* note 1, at 975.

56. One example of the reluctance of states to maximize welfare dollars for the benefit of welfare recipients is highlighted by DeParle, who noted that despite the increased funding states receive as a result of the fact that more women are leaving the welfare roles, many states refuse to use the excess funds to enhance or increase

sumes that welfare dollars are primarily benefiting multiple-child-bearing Black women who are lazy, uninterested in working, and abusive of the government's generosity so that they and their children can live for free.<sup>57</sup> Thus, despite the fact that welfare helps families of all races, it is the widespread belief in the unworthy Black welfare mother that poses a threat to the enactment of effective welfare policies and to the viability of the entire welfare system.<sup>58</sup> The "desiderata" for welfare reform is a change in the public perception of the welfare mother so that welfare laws will be beneficial for all poor families who need assistance. The PRWORA, and the state adaptations thereof, should theoretically induce a shift in this perception.

When Black women, particularly those who receive welfare, are regarded as valuable contributors to society, social change will have occurred. Because the worthiness of Black women to receive welfare is highly associated with a mutual obligation to work for benefits,<sup>59</sup> requiring women to work for their benefits serves as a primary means of effecting social change in the area of welfare. Once welfare recipients attain a certain level of respectability, society may be more supportive of social programs. First, social programs will be deemed to be temporary assistance for the "truly needy," as opposed to programs promoting lifelong free-riding. Second, female welfare recipients will seem more employable when they are viewed, not as incompetent women, but as women who have experienced brief set-backs. Finally, as welfare recipients observe others leaving the welfare rolls and staying off, they may become more motivated to seek employment and leave welfare permanently as well.

According to this model, the culture-shift will occur when the beliefs of society are changed because of a change in conduct of welfare recipients. By obligating welfare recipients to work for their benefits, the New York Social Services Law should induce this social change. However, as the following discussion will show, systematic failure to enforce the childcare provisions of the Law is a primary reason why change will not occur.

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social services. DeParle, *supra* note 5, at A30. New York left fifteen percent of its federal dollars unspent. *Id.* "[A]dvocates for the poor say [that by not using the remaining fifteen percent] the state is squandering an opportunity to invest in programs aimed at helping recipients enter the workforce." Raymond Hernandez, *Surplus Puts New York at Center of a Debate*, N.Y. TIMES, Aug. 29, 1999, at 30.

57. Jeff, Jr., *supra* note 6, at 52; WHEN WORK DISAPPEARS, *supra* note 6, at 162.

58. THE TRULY DISADVANTAGED, *supra* note 8, at 118-20.

59. See *id.* at 159-164 (discussing rationales underlying "new-style workfare," including importance of requiring welfare recipients to work for their benefits, although reasons conservatives and liberals identify with this idea vary).

## III

## THE NEW WELFARE LAWS

Although this Note uses New York City as a case study of the ability of welfare laws to enact social change, this section begins with a presentation of the relevant federal law. It is through compliance with the federal law, the PRWORA, that states receive funding for state-administered welfare programs.<sup>60</sup> Subsequently, when the PRWORA is mentioned in the course of analyzing welfare law under the Stoddard test, it is intended to refer to how that law is effectuated through the New York State Social Services Law in New York City.

A. *The Personal Responsibility and Work Opportunity Reconciliation Act*

The congressional findings associated with the enactment of the PRWORA highlighted the following factors: 1) “[m]arriage is the foundation of a successful society;”<sup>61</sup> 2) children born out-of-wedlock often burden the social welfare system;<sup>62</sup> 3) young women who bear children out-of-wedlock are more likely than other women to require public assistance and, once enrolled, to depend on it for more years;<sup>63</sup> and 4) children of welfare recipients face significant negative consequences in society.<sup>64</sup> Accordingly, two of the stated purposes of the PRWORA are to “end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage,” and to “prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies.”<sup>65</sup> Ending the “cycle of dependency” through a mandatory work requirement and decreasing the number of out-of-wedlock children born to women while on welfare will help to alter society’s perception of welfare mothers and effect social change.

To realize its goals of ending illegitimacy and government dependency, the PRWORA requires that states present plans to the federal government outlining programs that will “provide[ ] assistance to needy families with (or expecting) children and provide[ ] parents with job preparation, work, and *support services* to enable them to

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60. Professional Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 402, 110 Stat. 2105, 2113 (1996) (codified as amended in scattered sections of 42 U.S.C.).

61. *Id.* § 101, 110 Stat. at 2110.

62. *See id.*

63. *Id.* § 101, 110 Stat. at 2111.

64. *Id.*

65. *Id.* § 401, 110 Stat. at 2113.

leave the program and become self-sufficient.”<sup>66</sup> Under the revamped federal welfare law, changed in part to allow states greater flexibility in administering their welfare programs, states may design their plans “in any manner that is reasonably calculated to accomplish the purpose[s]” of the Act.<sup>67</sup> A state plan, however, must demonstrate how the state expects to meet the federal requirement that the welfare recipient begin “work activities” once she is ready to work, or after she has received public assistance for twenty-four months, whichever is sooner.<sup>68</sup>

“Work activity” must be conducted in accordance with the requirements of Section 407(d) of the PRWORA.<sup>69</sup> A parent with a child under six years of age must be engaged in defined work activities at least thirty hours per week.<sup>70</sup> Alternatively, a recipient may participate in independent job search activities for up to six weeks.<sup>71</sup> A third option, for recipients under twenty years of age, is exemption from the mandatory work requirements provided that the recipient demonstrates that she is maintaining “satisfactory attendance” at a secondary school, or attending a school “directly related to employment.”<sup>72</sup> States may not, however, permit more than twenty percent of all welfare recipients at any given point in time to be engaged in vocational or educational activities.<sup>73</sup> Finally, states may completely exempt single custodial parents of children one year old or younger from work activity requirements.<sup>74</sup> Thus, the PRWORA provides a number of ways for recipients, depending upon age and ability, to fulfill their end of the welfare bargain.

Parents failing to meet either the mandatory work requirement or the other requirements for participation in the welfare program may be sanctioned. If an individual refuses to work, she may be sanctioned by a reduction in, or termination of, benefits.<sup>75</sup> A state may also sanction parents if their children do not comply with the state’s school

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66. *Id.* (emphasis added).

67. *Id.* § 404, 110 Stat. at 2124.

68. *Id.* § 402, 110 Stat. at 2113.

69. *Id.* § 407(d), 110 Stat. at 2133. There are twelve different examples of “work activity,” including, but not limited to, on-the-job training, vocational training, education directly related to employment, and “provision of child care services to an individual who is participating in a community service program.” *Id.*

70. *Id.* § 407(c)(1), 110 Stat. at 2131.

71. *Id.* § 407(c)(2), 110 Stat. at 2132.

72. *Id.*

73. *Id.* § 407(c)(2)(D), 110 Stat. at 2132-33.

74. *Id.* § 407(b), 110 Stat. at 2131.

75. *Id.* § 407(e), 110 Stat. at 2133.

attendance requirements.<sup>76</sup> Adults may be sanctioned by the state if they have not attained, and are not working to attain, a diploma or state recognized equivalent of a diploma.<sup>77</sup> States may not, however, sanction a parent for not working if she is a single, custodial parent who proves that she was unable to find childcare because of a lack of 1) appropriate childcare within a “reasonable distance” from her home or work site; 2) appropriate or suitable, informal childcare available from a relative; or 3) affordable, formal childcare.<sup>78</sup>

The PRWORA creates certain negative consequences for the administration of state welfare rolls. While it is evident that Congress accounted for the fact that working parents have special needs in the area of childcare, the PRWORA provides incentives for states to get the maximum number of parents off the welfare rolls as quickly as possible. For example, states are entitled to receive bonuses for being “high performing” states.<sup>79</sup> While the formula for measuring high performance was not determined at the Act’s inception, it is clear that Congress intended the receipt of bonuses to correlate with how quickly states could remove people from their official welfare rolls.<sup>80</sup> The bonus system gives caseworkers an incentive to ignore recipients’ childcare dilemmas and push women into work so that they can get their names off welfare rolls and qualify the state for a bonus allotment.<sup>81</sup>

PRWORA should theoretically minimize the consequences of these negative incentives through its requirement that states draft “employability plans” which provide “an initial assessment of the skills, prior work experience, and employability of each recipient of assistance.”<sup>82</sup> Among other things, the plan may include employment goals, recipient obligations, and an explanation of what “services the State will provide the individual so that the individual will be able to obtain and keep employment in the private sector.”<sup>83</sup> One of the services a state may allocate federal funds to is child care.<sup>84</sup> When as-

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76. *Id.* § 404(i), 110 Stat. at 2127-28.

77. *Id.* § 404(j), 110 Stat. at 2128.

78. *Id.* § 407(e)(2), 110 Stat. at 2133.

79. *Id.* § 403, 110 Stat. at 2121.

80. *See id.*

81. *See infra* notes 137-48 and accompanying text.

82. Personal Responsibility and Work Opportunity Reconciliation Act, § 408, 110 Stat. at 2140.

83. *Id.* § 408, 110 Stat. at 2141.

84. *Id.* § 403, 110 Stat. at 2115-17. The reader should note that there is no requirement that states provide childcare services. The statute only mentions that there are monies allocated for childcare and that it is acceptable for states to spend federal funds to provide this service.

sessing the employability of a recipient, a state official may determine that a recipient needs childcare for employability. In that case, the official should assist the recipient in meeting that need. However, as the discussion below will show, this rarely occurs. Parents' childcare needs are often overlooked when jobs are assigned, and parents receive insufficient funding and support to allow them to secure appropriate childcare.<sup>85</sup>

### B. *The New York Version of the PRWORA*

In 1938, New York amended its Constitution to include Article XVII which clearly expresses the legislature's belief in society's obligation to provide assistance to the needy.<sup>86</sup> In order to secure federal funds to continue this sixty-year-old policy of assistance, New York State's social welfare program closely follows the mandates of the PRWORA. New York requires most of its recipients to engage in work activity a minimum of thirty hours per week.<sup>87</sup> Furthermore, the New York Social Services Law defines particular activities that qualify as work activity, including independently searching for a job,<sup>88</sup> engaging in "vocational educational training,"<sup>89</sup> attending secondary school,<sup>90</sup> or participating in the work experience program.<sup>91</sup> If a recipient fails to comply with either the work requirement or the other program requirements, she can be sanctioned in a variety of ways.<sup>92</sup>

One way in which the New York welfare law deviates from the PRWORA is that, while the PRWORA generally demands that a state agent must conduct an employability assessment of the recipient,<sup>93</sup> the New York analog is much more specific. New York law requires that state officials, in consultation with the recipient, conduct em-

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85. See Rachel L. Swarns, *Mothers Poised for Workfare Face Acute Lack of Day Care*, N.Y. TIMES, Apr. 14, 1998, at A1; see also *infra* notes 132-44 and accompanying text.

86. See N.Y. CONST. art. XVII, § 1 ("The aid, care and support of the needy are public concerns and shall be provided by the state . . ."); see also Nancy E. Hoffman, *Workfare Implications for the Public Sector*, 73 ST. JOHN'S L. REV. 769, 770 (1999).

87. N.Y. SOC. SERV. LAW § 335-b(1)(d). Single parents caring for a child under the age of six are only required to work an average of twenty hours per week. *Id.* § 335-b(3).

88. *Id.* § 336(1)(f).

89. *Id.* § 336(1)(h).

90. *Id.* § 336(1)(k).

91. *Id.* § 336-c.

92. See generally *id.* § 342 (discussing various sanctions for noncompliance).

93. Professional Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 408, 110 Stat. 2105, 2140.

ployability assessments of each welfare recipient.<sup>94</sup> In performing this assessment, the state agent is instructed to take into account “childcare and other supportive services needs . . . [and] include a review of family circumstances including a review of any special needs of a child” before assigning the recipient to any work activity.<sup>95</sup> After considering such issues, the worker is expected to help the recipient create an employment plan that includes the recipient’s goals and obligations, as well as a description of the social services that the state will provide.<sup>96</sup> State agents, when considering what jobs to assign to recipients, must keep in mind the employment plan and the mandate “that childcare is *guaranteed*.”<sup>97</sup> Thus, on its face, this section of the New York Social Services Law appears to provide New York’s welfare recipients with the tremendous benefit of guaranteed childcare. As the discussion below indicates, however, the provisions of Section 335 are rarely enforced. “A severe shortage of child care for the poor, along with the city’s failure to finance more care, has left many caseworkers unable—or unwilling—to help” mothers find suitable childcare.<sup>98</sup>

#### IV

##### APPLYING THE STODDARD TEST TO THE NEW YORK SOCIAL SERVICES LAW

###### A. *The Breadth and Profundity of Welfare Reform*

The New York Social Services Law satisfies the first prong of the Stoddard test by bringing broad and profound change to the existing welfare system. In accordance with the PRWORA, the goal of the law dramatically shifts welfare policy from its original focus on providing basic support to the poor to requiring women to work for their benefits<sup>99</sup> and “reduc[ing] . . . out-of-wedlock births.”<sup>100</sup> This Law ended

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94. N.Y. SOC. SERV. LAW § 335(1). It should be noted that state agents are only required to provide employability assessments to families with dependent children. *Cf. id.* § 335-a; *Bishop v. New York State Dep’t of Soc. Servs.*, 246 A.D.2d 391 (N.Y. App. Div. 1998) (holding that employability assessments are not guaranteed to home relief recipients). It is not difficult to imagine a situation in which a woman with a newborn child is unable to reach her welfare caseworker in time to arrange for an employability assessment to address her new needs for an adjusted work assignment and childcare. If the woman fails to meet her work requirements, her benefits may be diminished or terminated before she has the opportunity to show good cause. *See* N.Y. SOC. SERV. LAW § 342(4).

95. N.Y. SOC. SERV. LAW § 335(1).

96. *Id.* § 335(2)(a).

97. *Id.* § 335(5) (emphasis added).

98. Swarns, *supra* note 85.

99. *See* N.Y. SOC. SERV. LAW § 335-b.

sixty-two years of welfare policy that provided obligation-free, cash assistance to needy families.<sup>101</sup> It is important to note that profound change does not necessarily equal widespread support. Senator Daniel Patrick Moynihan shared his thoughts that the changes are not just dramatic, but may also be detrimental: “Through 11 Presidents and 31 Congresses, we have tried to help dependent children and never, until now, have we undertaken to do them harm.”<sup>102</sup> Inevitably, profound changes in welfare law affect not only welfare recipients, but others as well. They affect the children of welfare recipients, who will endure harsher poverty; social welfare agencies, which will have to deal with the influx of women and children who need more services; cities, which will have to deal with the problem of increased homelessness when people are removed from welfare rolls regardless of whether they have the skills to find employment; and taxpayers, who will have to fund the increase in costly social services. Contrary to the notion that welfare reform only affects those who receive a check from the government, it actually affects everyone in numerous, indirect ways.

### B. Public Awareness of Welfare Reform

While it is difficult to assess public opinion or awareness of welfare reform without the benefit of polling information, other indicators demonstrate that the average New Yorker has sufficient knowledge about the state’s basic changes in welfare policy to satisfy the second prong of the Stoddard test—public knowledge. For example, since 1995, journalists in New York have produced a steady stream of articles and commentary highlighting welfare reform and the issues that are associated with it.<sup>103</sup> For example, an article highlighting the law-

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100. Nicole Huberfeld, *Three Generations of Welfare Mothers Are Enough: A Disturbing Return to Eugenics in the Recent “Workfare” Law*, 9 UCLA WOMEN’S L.J. 97, 99 (1998). For a detailed comparison of the previous welfare law and the PROWRA, see Matthew Diller, *Working Without a Job: The Social Message of the New Workfare*, 9 STAN. L. & POL’Y REV. 19 (1998).

101. Nancy A. Wright, *Welfare Reform Under the Personal Responsibility Act: Ending Welfare as We Know It or Government Child Abuse*, 25 HASTINGS CONST. L.Q. 357, 359 (1998).

102. Alison Mitchell, *Greater Poverty Toll Is Seen in Welfare Bill*, N.Y. TIMES, Nov. 10, 1995, at A27 (quoting New York Senator Daniel Patrick Moynihan).

103. See, e.g., Karen W. Arenson, *Workfare Rules Cause Enrollment to Fall*, CUNY SAYS, N.Y. TIMES, June 1, 1996, at A1; Alan Finder, *Evidence Is Scant That Workfare Leads to Full-Time Jobs*, N.Y. TIMES, Apr. 12, 1998, at A1; David Firestone, *Workfare Cuts Costs but Tracking New Jobs Poses Problems*, N.Y. TIMES, Sept. 9, 1996, at B1; Steven Greenhouse, *Judge Orders Assessments For Workfare Recipients*, N.Y. TIMES, Mar. 26, 1997, at B3 [hereinafter Greenhouse, *Assessments*]; Steven Greenhouse, *Many Participants in Workfare Take the Place of City Workers*, N.Y.

suit brought by several New York citizens who challenged their “work experience program” (WEP) assignments was published in the *Village Voice*, a newspaper that is widely read in New York City.<sup>104</sup> In December of 1999, there were over six million welfare recipients in the United States.<sup>105</sup> Statistical evidence indicates that this large population crosses color lines, meaning that members of most, if not all, racial groups were affected by the reforms.<sup>106</sup> Thus, even if every New Yorker did not know exactly what the welfare reforms entailed, it may be assumed from these numbers that most knew that the reforms required welfare recipients to work for their benefits and prohibited them from staying on welfare for long periods of time.

### C. *The Legitimacy of Welfare Reform*

The welfare reform laws have been widely accepted as legitimate, thus satisfying the third prong of the Stoddard test. “[T]he idea that receipt of public benefits gives rise to reciprocal obligations on the part of welfare mothers . . . enjoys support across the political spectrum.”<sup>107</sup> In addition, a “vast majority of Americans have long felt that the nation’s welfare system was in need of extensive reformation.”<sup>108</sup> Interestingly enough, politicians and the general public are not the only ones who believed that the welfare system was in need of change. Welfare recipients themselves have said that they believe in the fundamental changes the PRWORA has made. In interviews of welfare recipients by Joyce Purnick at various “workfare” sites in New York City, “several women voiced a notable level of support for the idea of working.”<sup>109</sup> In the author’s own interviews, Melinda Curson<sup>110</sup> stated that she was grateful to receive assistance in finding

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TIMES, Apr. 13, 1998, at A1; Jonathan P. Hicks, *Students at CUNY Complain Work Rule Limits Education*, N.Y. TIMES, Sept. 9, 1996, at B3; Douglas Martin, *New York Workfare Expansion Fuels Debate*, N.Y. TIMES, Sept. 1, 1995, at A1; Mitchell, *supra* note 102; Joyce Purnick, *Many Women on Workfare Express Hope*, N.Y. TIMES, Aug. 22, 1996, at B1; Swarns, *supra* note 85; Vivian S. Toy, *Tough Workfare Rules Used As Way to Cut Welfare Rolls*, N.Y. TIMES, Apr. 15, 1998, at A1.

104. Deirdre A. Hussey, *Welfare Quotas*, VILLAGE VOICE, Dec. 31, 1996, at 18; *see also* Greenhouse, *Assesments*, *supra* note 103, at A1.

105. DEP’T OF HEALTH & HUMAN SERVS., TEMP. ASSISTANCE FOR NEEDY FAMILIES PROGRAM 3D ANN. REP. TO CONGRESS (2000), at 2-3.

106. “Of the families on welfare, approximately 37% were White, 36% were African-American, 20% were Latino, 3% were Asian-American and 1% were Native American.” Elspeth K. Deily, *Working with Welfare: Can Single Mothers Manage?*, 12 BERKELEY WOMEN’S L.J. 132 (1997).

107. Diller, *supra* note 100, at 19.

108. Wright, *supra* note 101, at 358.

109. Purnick, *supra* note 103, at B1.

110. Names of interviewees have been changed to protect their privacy.

work or job training.<sup>111</sup> The only dissatisfaction she expressed was the fact that the welfare benefits she received for the thirty hours of work every week added up to less than minimum wage with no benefits.<sup>112</sup> If the legislature, the general public, and the participants in the program agree that welfare reform, by encouraging independence and hard work, is a positive reform, then it appears that the reforms possess an air of legitimacy.

#### D. Overall, Continuous Enforcement of Welfare Reform

##### 1. Are the Childcare Provisions of the New York Social Services Law Enforced?

The New York Social Services Law satisfies the first three prongs of the Stoddard test. Nonetheless, failure to enforce the Law's services provision causes it to fall short of inducing a culture-shift. "Effective enforcement of a new law . . . may be impossible without multiple systems of enforcement . . . [including] nontraditional methods of enforcement."<sup>113</sup> In respect to the Social Services Law, enforcement concerns include concerns about the provision of childcare: "A big increase in the availability and affordability of childcare is *essential* right now, if only to ensure that welfare reform succeeds."<sup>114</sup> The lack of enforcement is harming women in the workplace. Alexis Herman, former Secretary of Labor, stated that "the difficulties parents have with child-care arrangements can have a direct effect on their performance at work."<sup>115</sup> These effects can include excessive absenteeism, distraction, and accidents.<sup>116</sup> Because quality and affordable childcare is essential to the success of welfare reform, the childcare provisions of welfare laws must be enforced and this care

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111. Interview with Melinda Curson in Harlem, N.Y. (Nov. 16, 2000) [hereinafter Curson Interview]. Ms. Curson is a welfare recipient who resides in the state of New York.

112. *See id.* For more discussion on the treatment of workfare workers as traditional employees, see Hoffman, *supra* note 86, at 772-74.

113. Stoddard, *supra* note 1, at 986.

114. Margy Waller, *Taking Child Care Seriously*, New Democrats Online, at [http://www.ndol.org/ndol\\_ci.cfm?contentid=2618&kaid=114&subid=144](http://www.ndol.org/ndol_ci.cfm?contentid=2618&kaid=114&subid=144) (Jan. 9, 1998) (on file with the *New York University Journal of Legislation and Public Policy*).

115. U.S. DEP'T OF LABOR, MEETING THE NEEDS OF TODAY'S WORKFORCE: CHILD CARE BEST PRACTICES 1 (1998), available at <http://www.dol.gov/dol/wb/childcare/child3.pdf> (on file with the *New York University Journal of Legislation and Public Policy*) [hereinafter MEETING THE NEEDS OF TODAY'S WORKFORCE] .

116. MARK GREEN, PUBLIC ADVOCATE FOR THE CITY OF NEW YORK, WELFARE AND CHILD CARE: WHAT ABOUT THE CHILDREN? 6-8 (1997).

must be provided.<sup>117</sup> Yet, since the initiation of welfare reform in 1996, childcare has been, and continues to be, in a state of disarray.

Between 1996 and 1999, on average, sixty-one percent of working mothers had children under the age of three.<sup>118</sup> Furthermore, of the 15.2 million families that had children under the age of six in March of 1999, 2.3 million were headed by women.<sup>119</sup> In 1997, forty-one percent of American families had children under the age of fourteen, and “[i]n more than half of these families, either both parents worked (14.6 million) or the family was headed by a single working woman (4.7 million).”<sup>120</sup> Eighty percent of employed mothers with children under the age of six need some sort of non-parental childcare.<sup>121</sup> These statistics are not so alarming until they are compared with statistics regarding the availability of childcare for these families. In 1996, when the PRWORA was enacted, the “Office of Management and Budget found that at a time when childcare is most needed, federal childcare funds may fall short by \$2.4 billion.”<sup>122</sup> In 1997, the Congressional Budget Office estimated that federal spending was still more than one billion dollars below childcare needs.<sup>123</sup> Despite the fact that New York has one of the most generous cash assistance benefit levels in the nation,<sup>124</sup> in 1996 “almost 7,000 children were waiting

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117. There is evidence that the number of welfare recipients has decreased rapidly and dramatically since the adoption of the new welfare laws. See DeParle, *supra* note 5, at A1. However, it is important to note that a decrease in welfare roles does not necessarily translate into a successful transition into the workforce. In fact, women’s stories have indicated that they are not being offered legitimate work opportunities, but are being forced into job experiences that are low-paying and dangerous. This type of work experience does not prepare them to be independently successful or more employable in the future. Additionally, it is important to note that even if women are getting good jobs, lack of appropriate and quality childcare makes them extremely vulnerable to dismissal. See *supra* notes 114-16 and accompanying text.

118. U.S. DEP’T OF LABOR, WORK-RELATED CHILD CARE STATISTICS, at <http://www.dol.gov/dol/wb/childcare/ccstats.htm> (last visited Mar. 05, 2001) (on file with the *New York University Journal of Legislation and Public Policy*).

119. *Id.*

120. MEETING THE NEEDS OF TODAY’S WORKFORCE, *supra* note 115, at 1.

121. U.S. DEP’T OF HEALTH & HUMAN SERVS., CHILD CARE BUREAU, FREQUENTLY ASKED QUESTIONS, ECONOMICS OF CHILD CARE, at <http://www.acf.dhhs.gov/programs/cb/faq/econom.htm> (last visited Mar. 05, 2001) [hereinafter ECONOMICS OF CHILD CARE] (on file with the *New York University Journal of Legislation and Public Policy*).

122. Deily, *supra* note 106, at 136.

123. Wright, *supra* note 101, at 403.

124. See RIEDINGER ET AL., THE URBAN INST., INCOME SUPPORT AND SOCIAL SERVICES FOR LOW-INCOME PEOPLE IN NEW YORK (1997), available at <http://newfederalism.urban.org/html/issny.html> (on file with the *New York University Journal of Legislation and Public Policy*).

for slots in ACD-contracted centers”<sup>125</sup> and in 1997, more than 16,000 children in New York were on waiting lists for slots in group and family childcare.<sup>126</sup> For example, Grace Francis, of Francis Grace Day Care, turns away at least five to six women who call her looking for childcare services every day.<sup>127</sup> Tiffany Gruber, an intern in the Family Defense Clinic at New York University School of Law, spent more than a week making phone calls to locate suitable childcare for her client’s four-year-old son who had behavioral problems.<sup>128</sup>

Ms. Gruber’s statement is particularly eye-opening considering how she services her clients. As a part of her job, she is required to help three clients with their social service issues, while a team of law students provides the clients with legal services.<sup>129</sup> Ms. Gruber stated that dedicating a full week of her time to finding the childcare was not a problem for her because “having only three clients makes it easy to respond to each of their needs in depth, fully, and accurately.”<sup>130</sup> The client attention Ms. Gruber finds relatively easy to administer, however, must be virtually impossible for caseworkers that have hundreds of clients to whom they must provide services.

Melinda Curson has been a welfare recipient since 1988.<sup>131</sup> According to Ms. Curson, since the changes in New York’s welfare laws were adopted, she has never had an employability assessment appointment with her caseworker.<sup>132</sup> This means that her childcare needs were never properly addressed. Able to “slip through the cracks” for the past three years, the lack of an employability plan was not a problem because she was not asked to work.<sup>133</sup> However, when her youngest son recently turned one year old, her caseworker informed her that she must begin working.<sup>134</sup> Even after she was assigned to work activity, she was not given the statutorily required employability assessment.<sup>135</sup> Though she reports that she did not meet much resistance when she asked her caseworker to allot her ninety dollars a week to pay for childcare, she was not assisted in any manner by her

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125. *Id.*

126. *Id.*

127. Interview with Grace Francis, Board of Directors, Francis Grace Day Care, in Queens, N.Y. (Nov. 13, 2000) [hereinafter Francis Interview].

128. Interview with Tiffany Gruber, Social Work Intern, Washington Square Legal Services, in New York, N.Y. (Nov. 15, 2000) [hereinafter Gruber Interview].

129. *Id.*

130. *Id.*

131. Curson Interview, *supra* note 111.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

caseworker in securing this childcare.<sup>136</sup> She was merely given the money for childcare and expected to show up for her workfare assignment one week later.<sup>137</sup>

At the time of the interview, Ms. Curson was living in a domestic violence shelter where she had to walk up six flights to her apartment. She had no telephone in her apartment, and she could rarely find enough money for train fare to get to and from her high school equivalency classes, which constituted one part of her mandatory work requirement.<sup>138</sup> Under these conditions, it is not difficult to understand why Ms. Curson was only able to solve her childcare dilemma by putting her son in a potentially dangerous, unlicensed childcare facility.<sup>139</sup> Although caseworkers are required to help parents find the care they need,<sup>140</sup> New York City's Public Advocate asserts that New York's Office of Employment Services (OES), the office responsible for administering New York's welfare programs, "routinely" violates this law by not providing women with either oral or written information to help them find childcare.<sup>141</sup> In fact, one New York recipient reported that caseworkers often "bully" women into finding any sort of childcare arrangement by threatening to reduce benefits if the mother cannot find childcare on her own.<sup>142</sup> In times of desperation, and not knowing that such threats are statutorily

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136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* When she initially enrolled her son in the facility, the owner lied to her and told her that it was licensed. Until the owner confessed to her lie, Ms. Curson's caseworker refused to provide her with assistance to determine whether the childcare center was licensed. *Id.*

140. N.Y. SOC. SERV. LAW § 335 (McKinney 2001).

141. See GREEN, *supra* note 116, at 6-7 (stating that only 39% of study participants received oral information about day care centers; only 29% received written information about day care centers; only 47% were ever asked if they needed help finding childcare). "State law requires that parents who request assistance with child care must be given two referrals to regulated child care services which have verified openings. Yet of the 39 respondents who reported asking for child care referrals, one-third were given no referrals." *Id.*

142. See Swarns, *supra* note 85, at A1 (providing example where caseworker told recipient, "[t]hey're going to reduce your benefits if you can't find anyone [to care for your children]"). The Public Advocate's study also found that mothers were coerced into finding care, regardless of what the facilities' health and safety conditions were. See GREEN, *supra* note 116, at 5-6.

barred,<sup>143</sup> women feel compelled to put their children in low quality, and often dangerous, childcare services.<sup>144</sup>

Most childcare is of extremely low quality. "Only one in seven centers provides care that promotes child development, while seven in ten provide care that could compromise a child's future learning abilities and one in eight provides care that threatens a child's health and safety."<sup>145</sup> The Department of Health and Human Services' Child Care Bureau cites a report that says "[t]he quality of services provided by most centers was rated as barely adequate."<sup>146</sup>

The lack of quality childcare is the result of a two-fold problem. First, there is a need for widespread training of childcare providers and higher wages to decrease the profession's 25% turnover rate.<sup>147</sup> Second, unskilled relatives often provide childcare because mothers cannot afford other care. In 1993, 48% of preschool-aged children who were in childcare were in care provided by relatives.<sup>148</sup> Furthermore, a study by New York City's Public Advocate found that in 1997, 66.8% of children of 234 former and current welfare recipients interviewed were in unregulated care.<sup>149</sup> It is an unfortunate reality that placement in potentially dangerous day care arrangements happens more often to poor children than to others. In 1997, 14,500 children of welfare and low-income parents who could not cover the cost of childcare were on a waiting list to get childcare vouchers.<sup>150</sup> In 1994, households earning less than \$1,200 per month, substantially more than what welfare recipients in New York receive every month,<sup>151</sup> reportedly spent at least 25% of their monthly income on

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143. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 407(e), 110 Stat. at 2105, 2133 (stating that unavailability of adequate childcare provides adequate exception to work requirement to avoid sanctions).

144. See generally Clare Huntington, *Welfare Reform and Child Care: A Proposal for State Legislation*, 6 CORNELL J.L. & PUB. POL'Y 95 (1996); Wright, *supra* note 101.

145. Huntington, *supra* note 144, at 102.

146. U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD CARE BUREAU, FREQUENTLY ASKED QUESTIONS, CHILD CARE FOR YOUNG CHILDREN: QUALITY, at <http://www.acf.dhhs.gov/programs/ccb/faq/quality.htm> (last modified June 1, 2000) (on file with the *New York University Journal of Legislation and Public Policy*).

147. Huntington, *supra* note 144, at 102.

148. LYNNE M. CASPER, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS: WHO'S MINDING OUR PRESCHOOLERS? 1 (1996), available at <http://www.census.gov/prod/1/pop/p70-53.pdf>.

149. See GREEN, *supra* note 116, at 4-5.

150. RIEDINGER ET AL., *supra* note 124.

151. Curson Interview, *supra* note 111.

childcare alone—13% more than households with twice this income.<sup>152</sup>

These statistics and stories indicate the lack of enforcement of an essential component of the new welfare policy—provision of social services, specifically childcare. Many women on welfare are barely able to pay for life's basic necessities. Although women on welfare are required to join the workforce, under the current situation they are merely joining the ranks of the “‘forgotten [working] poor’ [who] earn too little to pay for their own homes, cars, health insurance, day care, and ‘sometimes even food.’”<sup>153</sup> Yet fear of sanctions for not complying with the mandatory work requirements leads them to spend a significant portion of their income on childcare, which, when it can be found, is often low quality and unsafe. This lack of quality childcare can lead to increased absenteeism,<sup>154</sup> can leave parents vulnerable to losing their children to the dismal social welfare system under allegations of neglect,<sup>155</sup> and can have other effects on a mother's ability to be a worker in good standing. It is unclear what our society will look like when and if welfare reform results in a culture-shift. It is clear, however, that the lack of childcare will be a primary barrier preventing welfare mothers from making a successful transition from welfare to work. The resultant failure to make this move, or a return to welfare after a failure to sustain independence, will only serve to confirm people's beliefs that welfare mothers are incompetent and generally unworthy of assistance. Therefore, the possibility of social change in the area of welfare will be drastically undermined.

## 2. *Why Is Insufficient Enforcement in the Context of Welfare Reform Important?*

This Note does not attempt to state an opinion about the merits of welfare reform. Welfare reform merely provides an excellent example of why American citizens must be more proactive in monitoring legislative activity, especially when legislators enact laws intended to ef-

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152. ECONOMICS OF CHILD CARE, *supra* note 121. For example, Ms. Curson receives ninety dollars a week for childcare. Curson Interview, *supra* note 111. She could not afford to send her son to Francis Grace Day Care, a warm and inviting environment with educational tools throughout the center and a well trained support staff, because Ms. Francis charges \$100-125 per week for infants who are not potty trained. Francis Interview, *supra* note 127. The only childcare that Ms. Curson can afford is supervision by a woman whose credibility has been tainted by her lies about having a license. Curson Interview, *supra* note 111.

153. Wright, *supra* note 101, at 370-71 (first alteration in original).

154. See MEETING THE NEEDS OF TODAY'S WORKFORCE, *supra* note 115, at 2.

155. See, e.g., Wright, *supra* note 101, at 365.

fect social change. Specifically, the discussion above indicates a definite reason why the failure to demand accountability through enforcement of important provisions of welfare laws can be perilous—children’s lives are being endangered daily.

The stereotypes about Black female welfare recipients make the debate over welfare policy and the resulting laws emotional, negative, and less productive. Despite factual evidence that debunks these myths, other forces moved to pass the law in the form in which it exists today.<sup>156</sup> While many have critiqued the form of the new welfare law, this Note shows how requiring women to work could be potentially beneficial to the women, as it would compel society to change its views about them. This Note also demonstrates that it is the lack of enforcement, not the substance of the law, which is detrimental to poor people. If the stereotypes about Black women made it through the legislative process, which is filled with several levels of analysis and discussion, it is likely that most Americans, having little access to the relevant analysis, will persist in holding their negative beliefs. The failure of welfare mothers to successfully transition to the workforce due to a lack of appropriate childcare will further embroil them in the stereotyped image, impeding any meaningful culture-shift in the area of welfare.

#### CONCLUSION

Since the New York Social Services Law was amended to comply with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, New York City has not effectively enforced the social services provisions of the respective welfare reform policies. Specifically, it has failed to fund, establish, or administer sufficient quality and affordable childcare for working mothers. Childcare, essential to a healthy workforce, is an integral component of any desired culture-shift in the welfare arena. Assuming the welfare reform laws embody positive reforms, lawmakers who expect the laws to bring about social change must be committed to fully enforcing the rules they have established. Until the legislature satisfies its burden of enforcing this integral portion of welfare law, New York’s children will continue to be in peril; Black women will continue to be the targets of malicious stereotypes; and welfare law will never be fully beneficial to poor people.

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156. *See id* at 374-384.

