
PANEL VI: COULD THESE BOTH BE TRUE?: RECONCILING THE “END OF MEN” WITH WOMEN’S CONTINUING INEQUALITY

TANF AND THE END (MAYBE?) OF POOR MEN

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I. DEFINING THE END OF MEN	1141
II. TANF’S AMBIVALENCE: GET A JOB/GET A HUSBAND.....	1147
A. <i>The Call to Work</i>	1148
B. <i>The Call to Marry</i>	1151
C. <i>The Call to Marry Within the Call to Work</i>	1153
III. EXCISING PATHOLOGY FROM DESCRIPTIONS OF INDIGENT, FEMALE-HEADED HOUSEHOLDS	1155

I. DEFINING THE END OF MEN

According to Hanna Rosin, men are ending.¹ Men are coming to an end not because they are dying from some strange and tragic cause at rates that are exceeding those of women; neither are men ending because boys are not being born anymore. No, men are very much alive; instead, in Rosin’s reading, they are losing their status as the dominant sex. This loss of dominance is that to which the “end of men” refers.

In Rosin’s account, structural changes in the economy have greatly reduced, or eliminated entirely, the industries that employed men and made them dominant.² Moreover, the areas of the economy that are projected to grow – “nursing, home health assistance, child care, food preparation” – are those that are “more amenable to women than to men,” as Rosin describes it.³ Women

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¹ See generally Hanna Rosin, *The End of Men*, ATLANTIC, July/Aug. 2010, at 56.

² See *id.* at 58.

³ *Id.* at 63-64.

are coming to dominate the labor force. As a result, family dynamics are changing. Women no longer need men to be the breadwinners and to provide for the household. More women are opting not to marry⁴ and are choosing to raise their children, if they elect to have them, as single mothers.⁵ If they do decide to marry, many women are expecting their husbands to take on the “female role” of yesteryear: laboring in the home and caring for the children. Meanwhile, women are taking on the “male role” of times past by acting as the breadwinner.⁶ Furthermore, Rosin suggests that this gender dynamic will not be a temporary blip, but rather will be an enduring feature in society; she looks at post-secondary schools, a place where “a quiet revolution is under way,” insofar as more women than men are earning master’s and bachelor’s degrees.⁷

In short, men are ending because their incomes are such that they can no longer support a family and, as a result, women are choosing to do without them. Of course, it is seriously debatable whether this is true.⁸ To begin, the “quiet revolution” that Rosin observes in post-secondary schools is actually heavily influenced by race. While it is true that more women than men are going to college and earning degrees, it is also true that these women tend to be racial minorities.⁹ One observer writes: “[T]he big gender gap on college

⁴ See *id.* at 70 (stating that only sixty percent of women between the ages of thirty and forty-four are married today, down from eighty-four percent in 1970).

⁵ *Id.*

⁶ *Id.* at 60; see also Hilary Stout, *Real-Life Stay-at-Home Husbands*, MARIE CLAIRE (Aug. 9, 2010), <http://www.marieclaire.com/sex-love/relationship-issues/stay-at-home-husb-and-status-symbol> (claiming that while women are laboring in the workforce, men are laboring in the home and “taking up the slack”).

⁷ See Rosin, *supra* note 1, at 66.

⁸ While it is not Rosin’s focus, it is worth noting that, even if men are ending and women are now dominating, then women with race privilege remain *more* dominant than women without it. See Amy Gray, *Women in a Time of Trouble: Caregivers, Job-holders, and the Glue that Holds It All Together*, FREEDOM SOCIALIST, <http://www.socialism.com/drupal-6.8/?q=node/1471> (last visited Apr. 6, 2013) (“Women make only about 80 cents on the dollar compared to white men; women of color even less. Underpaid and overworked, African American women make 69 cents and Latinas 60 cents.”). Of course, women lacking race privilege appear in Rosin’s *Atlantic* article, yet they are not explicitly named as such. They are, in all likelihood, the “other women” performing the low-paying domestic jobs for their more prosperous “sisters” whose higher-paying jobs require them to hire outside “help.” See Rosin, *supra* note 1, at 60 (“[T]he U.S. economy is in some ways becoming a kind of traveling sisterhood: upper-class women leave home and enter the workforce, creating domestic jobs for *other women* to fill.” (emphasis added)).

⁹ See Bob Burnett, *America’s Missing Father*, HUFFINGTON POST (Nov. 23, 2005, 9:00 AM), http://www.huffingtonpost.com/bob-burnett/americas-missing-father_b_11127.html (remarking that, among the poor, fifty-eight percent of white students are women while sixty-four percent of black students are women); Daisy Hernandez, *The “End of Men” Isn’t the End of Racism*, COLORLINES (June 30, 2010, 3:13 PM), http://colorlines.com/archives/2010/06/the_end_of_men_isnt_the_end_of_racism.html (stating that “the gender gap on college campuses was actually among Blacks, Latinos and poor whites”).

campuses right now is in the Latino community. Immigrants are still more likely to be male than female, and against a backdrop of immigration raids, men are focused on finding work while a BA seems like a luxury.”¹⁰ Thus, if the preponderance of women in college indicates the end of men, as Rosin would have us believe, then we are witnessing the end of non-white men, not the end of men generally.

Furthermore, some note that the traditionally male-dominated manufacturing economy that Rosin describes as having been decimated has, in actuality, merely moved to other parts of the globe. Therefore, while these “male” jobs have disappeared in the United States, they have appeared in other nations.¹¹ Thus, if the end of men is indicated by the elimination of industries that once employed men and paid them a wage that could support a family, as Rosin would have us believe, then we are witnessing the end of men in the United States, but again, not the end of men generally.

Moreover, even in the United States, men still preponderate in the labor force,¹² especially at its highest, most-elite, most-powerful rungs.¹³ Women also continue to face discrimination and earn less than their male counterparts in the workforce.¹⁴ Further, even if the economy has shifted such that the emerging industries are ones in which women have predominated historically, there is no reason to assume that women will continue to predominate in those industries.¹⁵ Further still, there is no reason to assume that new industries will not emerge that are more congruent with “male” labor.¹⁶ And what exactly

¹⁰ See Hernandez, *supra* note 9.

¹¹ Steven Shaw, *Why Men Are Still the Dominant Force*, ASKMEN, http://www.askmen.com/entertainment/austin_500/501_why-men-are-still-the-dominant-force.html (last visited Apr. 6, 2013).

¹² See *id.* (citing numbers from the U.S. Bureau of Labor Statistics showing that men still dominate the U.S. labor force).

¹³ *Id.* (stating that women constitute only three percent of Fortune 500 CEOs); see also Katha Pollitt, *Women on Top?*, NATION (June 24, 2010), <http://www.thenation.com/article/36605/women-top> (“[M]en still dominate in science, math, engineering and IT (where the good jobs are) . . .”).

¹⁴ See Pollitt, *supra* note 13 (“[W]omen need a college degree to earn as much as a man with a high school diploma and, in any case, are sandbagged in the workforce by discrimination, as well as by childcare and eldercare responsibilities men are able, still, to slough off onto their wives or sisters. That women earn 20 to 30 percent less than men in nearly every occupation from salesclerk to surgeon is not a detail, and suggests that gender reversal is hardly around the corner, no matter how well girls do in school.”).

¹⁵ See Ann Friedman, *It’s Not the End of Men*, AMERICAN PROSPECT (June 10, 2010), <http://prospect.org/article/its-not-end-men-0> (observing that Rosin’s “underlying assumption is that the growth industries we currently consider to be ‘women’s work’ . . . will *always* retain that designation” and querying “why these ‘nurturing professions,’ as Rosin dubs them, must forever be the province of women”).

¹⁶ See Shaw, *supra* note 11 (“It is naïve to assume that the economic conditions prevailing at this point will remain fixed in perpetuity.”).

makes an industry more congruent with “male” labor? Is it that the jobs require “brawn” and not “brains,” the latter of which tend to be held in monopoly by females?¹⁷ Is that not a dangerously sexist and problematic construction of the genders?¹⁸

Nevertheless, if this is how one defines the end of men – women are not marrying men and are choosing to raise their children outside the institution of marriage because (1) men cannot find jobs that can support their families, and (2) women *can* find jobs that can support their families (or, alternately, they can otherwise support their families without men) – then *poor black men ended a long time ago*. Indeed, this is precisely what Daniel Patrick Moynihan identified in the notorious report he wrote in 1965 on the “Negro Family.”¹⁹ Close to fifty years ago, Moynihan observed that almost 25% of “urban Negro marriages” were dissolved, almost 25% of “Negro births” were “illegitimate,” and almost 25% of “Negro families” were female-headed households.²⁰ He noted the gender “role reversal” that had occurred among black families.²¹ Moynihan also observed the loss of esteem that black men experienced upon losing their dominance:

Consider the fact that relief investigators or case workers are normally women and deal with the housewife. Already suffering a loss in prestige and authority in the family because of his failure to be the chief breadwinner, the male head of the family feels deeply this obvious transfer of planning for the family’s wellbeing to two women, one of them an outsider. His role is reduced to that of errand boy to and from the relief office.²²

Note the eerie similarities between Moynihan’s description and Rosin’s report of an exchange that she observed at a male support group between a social worker and a group of men who had been estranged from their families:

“Let’s see,” he continues, reading from a worksheet. “What are the four kinds of paternal authority? Moral, emotional, social, and physical. But

¹⁷ See Elizabeth Weingarten, *The Last Days of the American Male*, SLATE (Sept. 13, 2011, 2:14 PM), http://www.slate.com/articles/news_and_politics/intelligence_squared/2011/09/the_last_days_of_the_american_male.html (interviewing and quoting Rosin: “Some people say it’s biology and brain makeup that make women do better at this moment. Obviously that’s partly true: There’s some way in which women are wired to kind of concentrate and focus and do better in school.”).

¹⁸ See Friedman, *supra* note 15 (“The narrow, toxic definition of masculinity perpetuated by Rosin and others – that men are brawn not brains, doers not feelers, earners not nurturers – is actually to blame for the crisis.”).

¹⁹ DANIEL P. MOYNIHAN, OFFICE OF POLICY PLANNING & RESEARCH, U.S. DEP’T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965).

²⁰ *Id.* at 1, 6.

²¹ *Id.* at 30 (“A fundamental fact of Negro American family life is the often reversed roles of husband and wife.”).

²² *Id.* at 19 (quoting EDWARD WIGHT BAKKE, *CITIZENS WITHOUT WORK* 212 (1940)).

you ain't none of those in that house. All you are is a paycheck, and now you ain't even that. And if you try to exercise your authority, she'll call 911. How does that make you feel? You're supposed to be the authority, and she says, 'Get out of the house, bitch.' She's calling you 'bitch'!"²³

Yet, there is an important difference in the way the “problem” that Moynihan described almost half a century ago was talked about and the terms of the current debate about the end of men: the female-headed family form in which men were absent and women were the only parental presence was pathologized, and viciously so, when it could be identified as a feature unique to the “Negro Family.” In contrast, the language of pathology, generally speaking, has not been used to describe this same family form as it is being replicated in the “overall” – that is, non-black – population.²⁴ The debate about the end of men tends to swirl around the question of whether the phenomenon that Rosin purports to identify is really happening; it is fairly unusual to hear voices articulating the sentiment that the end of men is a “problem” that needs to be fixed before it is too late.²⁵ Indeed, when the end of men is reflected in

²³ Rosin, *supra* note 1, at 62.

²⁴ This is not to deny that there are some who are wary about the relative health of the female-headed family form compared to the two-parent family form. As Kathryn Edin writes, the fact that more women are parenting alone has been understood as both a cause for concern as well as a reason to celebrate; it all depends on “the eye of the beholder.” Kathryn Edin, *Few Good Men*, AM. PROSPECT (Dec. 19, 2001), <http://prospect.org/article/few-good-men>. She writes:

Some [read the statistics documenting the declining incidence of marriage and] happily take them as an indication that women can now survive without men who beat them, abuse their children, or are otherwise difficult to live with. Others lament the moral effect on the fabric of American society. Still others worry because of the strong association between growing up with a single parent and a host of negative outcomes for children.

Id. Nevertheless, she also notes that many fears are allayed when the negative outcomes are discovered not to be endemic to the female-headed household per se, but rather correlate with poverty and other factors that poverty brings. *Id.* (acknowledging studies demonstrating that “half the disadvantage these children face reflects the poverty so often associated with single parenthood” and “the other half reflects such factors as lower parental involvement and supervision, and greater residential mobility in mother-only families”).

²⁵ The exceptions to this general refusal to construct the “end of men” as a problem tend to sound extremist. Consider an article, titled *The End of Men; Are Males an Endangered Species?*, that was published on the blog *Everything Andropause*. See Jed Diamond, *The End of Men; Are Males an Endangered Species?*, EVERYTHING ANDROPAUSE, http://www.everythingandropause.com/articles/jeddiamond/endangered_species.php (last visited Apr. 6, 2013). It is worth noting that “andropause” refers to “male menopause,” which, according to the site’s authors, is a rarely discussed but incredibly common phenomenon in which men experience various symptoms – such as anxiety, hair loss, hot flashes, and loss of libido and fertility – as they age. See *Frequently Asked Questions*, EVERYTHING ANDROPAUSE, <http://www.everythingandropause.com/faq.php> (last visited Apr. 6, 2013). In questioning the survival of the male species, Diamond notes that, by virtue of simply being male, men are at

popular culture, on both the big and little screens, the genre in which the reflection appears is not usually drama or horror, but rather comedy.²⁶

It is worth questioning why the end of non-black men has thus far escaped being framed as a domestic and international pathology, while the end of black men was constructed as a “case for national action.”²⁷ It is possible that the construction of the latter phenomenon as a pathology was simply a result of it being perceived as an anomaly among black people and families.²⁸ A more

risk of suicide. Diamond, *supra* (“The number one risk factor for suicide is being male. The imbalance between the number of males who kill themselves and the number of females who die by their own hand is evident throughout the life-cycle . . .”). The author goes on:

[W]e’re not just talking about men’s roles being in danger, but we may be in danger on a much more fundamental level. Our balls may, literally, be on the line. . . . [One researcher] notes that men are having increasing difficulty fathering children and males are actually in decline. “Now it looks like something is wrong with baby boys,” she cautions. “Fewer boys are being born today than three decades ago, and more of them have undescended testes and effects in their penis. More young men are getting testicular cancer than as recently as the early 1990s, and they are developing it at younger ages.”

Id. (quoting DEVRA DAVIS, *WHEN SMOKE RAN LIKE WATER: TALES OF ENVIRONMENTAL DECEPTION AND THE BATTLE AGAINST POLLUTION* 193 (2002)). The author cites a 2005 book by geneticist Bryan Sykes that predicts males will actually become extinct in a couple hundred thousand years. *Id.* (explaining that Sykes estimates “guys have another 125,000 years” (citing BRYAN SYKES, *ADAM’S CURSE: A FUTURE WITHOUT MEN* 357-58 (2004))).

²⁶ See Hanna Rosin, *Primetime’s Looming Male Identity Crisis*, ATLANTIC (Sept. 8, 2011, 8:00 AM), <http://www.theatlantic.com/entertainment/archive/2011/09/primetimes-looming-male-identity-crisis/244692/> (discussing the proliferation of sitcoms featuring strong women and fairly emasculated men); see also Rosin, *supra* note 1, at 70-72 (commenting on the appearance of the “end-of-men” trope in feature-film comedies such as *Knocked Up*, *The 40 Year-Old Virgin*, *She’s Out of My League*, and *Greenberg*, as well as in Lady Gaga’s video for her song *Telephone*).

Interestingly, Lady Gaga has a male alter ego, Jo Calderone, who was featured extensively in her video *You and I* (and who performed in Lady Gaga’s stead at the MTV Video Awards in 2011, even accepting the award for Best Female Video on Gaga’s behalf). Adam Rathe, *Lady Gaga Performs in Drag as Male Alter-ego Jo Calderone at 2011 MTV Video Music Awards*, N.Y. DAILY NEWS (Aug. 29, 2011, 4:29 PM), <http://www.nydailynews.com/entertainment/lady-gaga-performs-drag-male-alter-ego-jo-calderone-2011-mtv-video-music-awards-article-1.944654>. Does Jo Calderone suggest that Rosin is right, that men are so obsolete that women can actually do what they do? Women can actually become men? Or does Jo Calderone’s existence run counter to Rosin’s thesis? That is, when one of the most influential female musical artists in the world right now feels compelled to “perform maleness,” does that suggest that being a woman is not enough?

²⁷ See MOYNIHAN, *supra* note 19, at 47.

²⁸ See *id.* at 29 (“There is, presumably, no special reason why a society in which males are dominant in family relationships is to be preferred to a matriarchal arrangement. However, it is clearly a disadvantage for a minority group to be operating on one principle, while the great majority of the population, and the one with the most advantages to begin with, is operating on another. This is the present situation of the Negro.”). Moynihan goes

convincing explanation for the construction of the event as pathology, however, may be located in the fact that the Moynihan Report extensively cites statistics documenting the disproportionate receipt by female-headed black families of assistance from the Aid to Families of Dependent Children (AFDC) program.²⁹ This fact suggests that dependence on the state is that which determines whether a phenomenon will be constructed as a problem or as a mere fact.³⁰ Which is to say: the end of non-black men has not been pathologized because there does not seem to be a threat that, with their demise, women will need to turn to the state for financial assistance. In contrast, the end of black men was pathologized because women's need for state assistance was a product of these men's demise.

If women's dependence on the government for cash assistance is that which determines whether or not the end of the men on which they otherwise would depend will be constructed as a problem, then it is worth paying attention to the program that currently provides cash assistance to families. That is, how does the Temporary Aid for Needy Families (TANF) program approach men's end? Does TANF, like the Moynihan Report, pathologize the phenomenon? Or, does it, like Rosin and other pundits, merely approach it as nothing more than an interesting datum – a fact that one accepts more than one criticizes or laments? Alternately, does it disbelieve that men are ending altogether?

II. TANF'S AMBIVALENCE: GET A JOB/GET A HUSBAND

In 1996, Congress passed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the legislation that instituted TANF.³¹ TANF replaced the longstanding AFDC as the program that provides cash assistance to indigent families.³² The changes instituted by TANF were many;³³ most significant to the present discussion is that there is a strong

on to explain that “[o]urs is a society which presumes male leadership in private and public affairs. The arrangements of society facilitate such leadership and reward it. A subculture, such as that of the Negro American, in which this is not the pattern, is placed at a distinct disadvantage.” *Id.*

²⁹ *Id.* at 12.

³⁰ *Id.* (stating that “[t]he majority of Negro children receive public assistance under the AFDC program at one point or another in their childhood,” that “14 percent of Negro children are receiving AFDC assistance, as against 2 percent of white children,” and that “[t]he steady expansion of this welfare program, as of public assistance programs in general, can be taken as a measure of the steady disintegration of the Negro family structure over the past generation in the United States”).

³¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended at 42 U.S.C. §§ 601-619 (2006)).

³² See Khiara M. Bridges, *Wily Patients, Welfare Queens, and the Reiteration of Race in the U.S.*, 17 TEX. J. WOMEN & L. 1, 33-34 (2007).

³³ Notably, while the Supreme Court's decision in *Goldberg v. Kelly* established that AFDC was an individual entitlement, 397 U.S. 254, 254 (1970), TANF was instituted as a block grant from which no individual was guaranteed funds. See 42 U.S.C. § 601(b)

emphasis in the program on both incentivizing beneficiaries to work and urging them to marry.³⁴

A. *The Call to Work*

TANF recipients are required to engage in any of a number of “work activities” for varying hours depending on the beneficiary’s family structure.³⁵ The statute defines “work activities” as

- (1) unsubsidized employment;
- (2) subsidized private sector employment;
- (3) subsidized public sector employment;
- (4) work experience (including work associated with the refurbishing of publicly assisted housing) if sufficient private sector employment is not available;
- (5) on-the-job training;
- (6) job search and job readiness assistance;
- (7) community service programs;
- (8) vocational educational training (not to exceed 12 months with respect to any individual);
- (9) job skills training directly related to employment;
- (10) education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;
- (11) satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate; and
- (12) the provision of child care services to an individual who is participating in a community service program.³⁶

Should a beneficiary fail to meet the mandatory work requirements, the statute gives states the discretion to reduce his or her³⁷ grant or to terminate it altogether.³⁸

(declaring that TANF “shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part”). As Gwendolyn Mink observed: “Block grants and the recession of the entitlement strengthen the discretion of states. States are no longer obligated to provide assistance to *all* needy families, even if all of them meet state eligibility criteria. If funds run out, some needy families will have to go without.” GWENDOLYN MINK, *WELFARE’S END* 63 (1998). Moreover, TANF prohibits any beneficiary from receiving funds for more than five years throughout the course of his or her life. 42 U.S.C. § 608(a)(7).

³⁴ The dual emphasis of the program is noted in its stated goal to “end the dependence of needy parents on government benefits by promoting . . . work and marriage.” 42 U.S.C. § 601(a)(2).

³⁵ *Id.* § 607(c)(1)(B)(i).

³⁶ *Id.* § 607(d).

³⁷ While TANF is technically gender neutral, “[m]ost TANF adult recipients were

This motley assemblage of activities that is understood as “work” within TANF is interesting for many reasons. Notably excluded from the list is the work that goes into acquiring a post-secondary education; thus, a woman who is studying for a degree that is not immediately related to an employment opportunity is not “working” within the meaning of the statute.³⁹ Moreover, a single mother who is engaged in the frequently all-consuming task of caring for her own infant child is also not “working” within the letter of law,⁴⁰ while the states are given the option to *exempt* her from the work requirement, she is not understood to have *fulfilled* the work requirement by laboring in the home by taking care of her child.⁴¹ Analogously, the single mother who devotes her time to raising a child between the ages of six months and six years does not “work” either; instead, the time she devotes to parenting earns her a ten-hour credit on her mandatory labor ledger.⁴²

women, as men represented 14.8 percent of adult recipients. Ninety percent of adult recipients were the head of the household.” *Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2010*, OFF. FAM. ASSISTANCE, U.S. DEP’T OF HEALTH & HUM. SERVICES, (Aug. 8, 2012), <http://www.acf.hhs.gov/programs/ofa/resource/character/fy2010/fy2010-chap10-ys-final>.

³⁸ 42 U.S.C. § 607(e)(1).

³⁹ See Janice Y. Law, *Changing Welfare “As We Know It” One More Time: Assuring Basic Skills and Postsecondary Education Access for TANF Recipients*, 48 SANTA CLARA L. REV. 243, 257 (2008) (stating that, when TANF was reauthorized in 2005, regulations were passed to specify which activities count as “work” and that the regulations specifically explain that “the TANF program was not intended to be a college scholarship program for postsecondary education” (quoting Reauthorization of the Temporary Assistance for Needy Families Program, 71 Fed. Reg. 37,453, 37,460 (June 29, 2006) (to be codified at 45 C.F.R. pt. 261))); Noah Zatz, *Welfare to What?*, 57 HASTINGS L.J. 1131, 1141-42 (2006) (“TANF largely excludes from ‘work’ educational activities lacking some link to employment, most significantly all forms of non-vocational post-secondary education.”).

⁴⁰ 42 U.S.C. § 607(a)(5) (stating that “a State may, at its option, not require an individual who is a single custodial parent caring for a child who has not attained 12 months of age to engage in work”).

⁴¹ *Id.* (providing states with the “option for participation requirement *exemptions*” (emphasis added)).

⁴² *Id.* § 607(c)(2)(B)(i) (“[A] recipient who is the only parent or caretaker relative in the family of a child who has not attained 6 years of age is deemed to be engaged in work for a month if the recipient is engaged in work for an average of at least 20 hours per week during the month.”); see also Zatz, *supra* note 39, at 1142 (stating that TANF recognizes the care of a young child “only as a basis for an excuse from or a reduction in work requirements, not as a way to meet them”). TANF “allows a State to count people in its Federal work participation rate that participate in work activities for at least a minimum average of 30 hours per week.” *Frequently Asked Questions: Meeting the Needs of TANF Applicants and Beneficiaries Under Federal Civil Rights Laws*, U.S. DEP’T HEALTH & HUM. SERVICES, <http://www.hhs.gov/ocr/civilrights/resources/specialtopics/tanf/faqtanf.html> (last visited Apr. 6, 2013).

Insofar as the statute understands job training, job search, community service, and unpaid childcare services for others as “work,” it does not require the strict exchange of labor for money.⁴³ Nevertheless, there is an unmistakable undercurrent in the statute that pushes beneficiaries into the labor market.⁴⁴ The program thus encourages indigent women – who are the overwhelming majority of TANF recipients – to become independent of the state by becoming dependent on a wage earned through unsubsidized employment. Accordingly, should a woman answer the call of the statute – should she become the independent wage earner that the statute clearly encourages her to be – she will be the woman who is reflected in Rosin’s *Atlantic* article. Bravely surviving an epoch in which men have ended, she, unmarried, does what she has to do – works, goes to school, finds strength in other similarly situated women, is awake for more hours than is medically recommended – in order to support a family that, in a previous era, would have been supported by a man. Rosin describes a scene illustrating this dynamic at community colleges, where “people go to learn practical job skills and keep current with the changing economy”⁴⁵:

One afternoon, in the basement cafeteria of a nearly windowless brick building [at a typical community college], several women were trying to keep their eyes on their biology textbook and ignore the text messages from their babysitters. Another crew was outside the ladies’ room, braiding each other’s hair. One woman, still in her medical-assistant scrubs, looked like she was about to fall asleep in the elevator between the first and fourth floors.⁴⁶

⁴³ See Zatz, *supra* note 39, at 1141 (stating that “work” within the TANF statute “does not mean simply an ordinary job in which an employer pays an employee for services rendered” and that it also includes subsidized employment, “workfare,” community service, and activities that prepare a recipient for employment).

⁴⁴ See *id.* at 1142 (remarking that, in order for most activities to qualify as “work” within TANF, they must have a connection to employment and observing that TANF allows caseworkers to construct “individual responsibility plans” with the design of “moving the individual immediately into private sector employment”). Zatz explains that the program’s emphasis on having beneficiaries find unsubsidized employment is made much more explicit in its implementation:

At both the federal and state levels, the relevant agencies place great emphasis on a pervasive, albeit informal, message that welfare recipients should be seeking a paycheck in order to avoid a welfare check. This more symbolic aspect can be seen, for instance, in renaming “Income Maintenance Centers” as “Job Centers” and in hanging banners in welfare offices with messages like “Welcome Job Seekers!” and “You Have A Choice, Choose a Job – Work First.” In this less technical sense, the ubiquitous references to work – in state programs named “CalWorks” and “Wisconsin Works,” in federal “Welfare-to-Work” grants, and elsewhere – clearly invoke unsubsidized employment.

Id. at 1142-43.

⁴⁵ Rosin, *supra* note 1, at 66.

⁴⁶ *Id.*

As such, TANF embraces a model in which men have ended; the state, refusing to assume the role that men assumed in a bygone era, compels beneficiaries to become the women that Rosin assumes all women will come to be in a rapidly approaching brave new world.

B. *The Call to Marry*

As strident as the call for TANF beneficiaries to get a job is the call for TANF beneficiaries to get married. When passing the PRWORA, Congress presented the lack of marriage, and the resultant necessity that mothers parent outside of the heteronormative family, as the reason why there are so many problems – one of them being the large size of the welfare state – in the United States. Indeed, the first facts Congress “found” were that “[m]arriage is the foundation of a successful society” and that “[m]arriage is an essential institution of a successful society which promotes the interests of children.”⁴⁷ Presumably, the parade of horrors that makes up the balance of the PRWORA’s congressional findings stems from the absence of marriage. Congress tells us that children born “out-of-wedlock” are “3 times more likely to be on welfare when they grow up”; have compromised “school performance and peer adjustment”; have “lower cognitive scores, lower educational aspirations, and a greater likelihood of becoming teenage parents themselves”; are “3 times more likely to fail and repeat a year in grade school than are children from intact 2-parent families”; are “4 times more likely to be expelled or suspended from school”; are living in neighborhoods with “higher rates of violent crime”; and are overpopulating the “[s]tate juvenile justice system.”⁴⁸

Ostensibly, marriage is the solution to these social ills. Thus, the legislation lists a series of activities that may promote “healthy marriage,” all of which states may fund with TANF monies.⁴⁹ These activities include “[m]arriage education, marriage skills, and relationship skills programs, that may include parenting skills, financial management, conflict resolution, and job and career advancement” for non-married pregnant women and non-married expectant fathers; “[p]re-marital education and marriage skills training for engaged couples and for couples or individuals interested in marriage”; “[m]arriage enhancement and marriage skills training programs for married couples”; “[d]ivorce reduction programs that teach relationship skills”; and “[m]arriage mentoring programs which use married couples as role models and mentors in at-risk communities.”⁵⁰

Moreover, when TANF was reauthorized in 2005 the government reaffirmed its commitment to promoting marriage among TANF beneficiaries. The Bush administration increased federal funding for the Healthy Marriage

⁴⁷ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 101, 110 Stat. 2105, 2110.

⁴⁸ *Id.* at 2110-12.

⁴⁹ 42 U.S.C. § 603(a)(2)(A)(iii)(III)-(VII) (2006).

⁵⁰ *Id.*

Initiative, administered by the Administration for Children and Families.⁵¹ Through this initiative, to which \$150 million has been allocated annually, states can use community-based contractors to promote marriage through such avenues as couples counseling, marriage education, and media campaigns.⁵²

If one looks only at the marriage-promotion piece of TANF, then the program would appear to encourage indigent women to become independent of the state by becoming dependent on a wage-earning man.⁵³ As such, it would appear that the program does not proceed from the assumption that men have ended. Instead, the program appears to shout that men are very much alive. Moreover, the program assumes that if the state campaigns for the benefits of marriage, then women (and men) will recognize just how viable and beneficial an institution it really is and will enter into it happily.

In sum, when one reads TANF's emphasis on job promotion together with its emphasis on marriage promotion, one can perceive the program's ambivalence.⁵⁴ TANF appears to be just as committed to men's end as it is to men's continued survival.

⁵¹ Emily Amick, *Marrying Absurd: The Bush Administration's Attempts to Encourage Marriage*, NATION (Feb. 27, 2007), <http://www.thenation.com/article/marrying-absurd-bush-administrations-attempts-encourage-marriage#> (describing how the Bush administration allocated \$750 million – \$150 million every year for five years – to the Healthy Marriage Initiative in 2006).

⁵² See ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH & HUMAN SERVS., HEALTHY MARRIAGE INITIATIVE 2002-2009, at 2-6 (2010).

⁵³ Cf. Zatz, *supra* note 39, at 1172 (“Additionally, if one conceives of ‘self-sufficiency’ strictly in terms of avoiding *government* transfer payments, encouraging marriage could . . . promote ‘self-sufficiency’ among welfare recipients by encouraging them to substitute spousal support for government benefits.”).

⁵⁴ In a very helpful analysis, Professor Brenda Cossman offers that TANF's ambivalence may be a result of “contesting conservativisms.” Brenda Cossman, *Contesting Conservativisms, Family Feuds, and the Privatization of Dependency*, 13 AM. U. J. GENDER SOC. POL'Y & L. 415, 416 (2005). Essentially, TANF embodies competing conservative approaches to solving the “problem” of welfare dependency: fiscal conservatives would solve the “problem” by compelling indigent welfare recipients to rely on the private labor market instead of the government, while social conservatives would solve the “problem” by encouraging welfare recipients to rely on the private institution of heteronormative marriage. See *id.* at 454-55 (“This tension characterizes the hybrid nature of the PRWORA, which seeks to promote both a fiscal conservative privatization of the once public costs of supporting families and a social conservative vision of the traditional family by reducing the number of births outside of marriage and promoting marriage.”).

Interestingly, when Cossman describes the fiscal-conservative approach of compelling women to work (that is, the part of TANF that assumes men have ended), she writes that “[t]he strategy is an individualizing, and *degendering* one.” *Id.* at 462 (emphasis added). Analogously, when she describes the social conservative approach of encouraging women to marry (that is, the part of TANF that assumes men are very much alive), she writes that “[i]n marked contrast to fiscal conservatives, the social conservative strategy is a *familializing* and *gendering* one.” *Id.* at 463 (emphasis added).

There is a compelling argument, however, that even through its job promotion, the statute assumes that indigent women can and should marry. Now, if the call to marry can be heard within the call to work, then it might be fair to argue that the weight of TANF is on the side of men having not ended.

C. *The Call to Marry Within the Call to Work*

One can hear the call to marry within TANF's call to work by looking at the different methods by which women may accumulate the hours during which they must be engaged in "work activities."⁵⁵ As discussed above, the statute provides that a single mother with a child under the age of six months may be exempted from the work requirement;⁵⁶ thus, she can engage in zero hours of "work" without jeopardizing her TANF grant if a state so chooses. A single mother with a child between the ages of six months and six years is required to "work" twenty hours per week.⁵⁷ Finally, single mothers with children over the age of six years must "work" thirty hours per week.⁵⁸

Things get interesting, and illuminating, however, when the legislation contemplates the married mother⁵⁹: members of a two-parent family must, together, "work" thirty-five hours per week.⁶⁰ Intriguingly, the statute does not require that the parents evenly split the workload; indeed, the statute does not require that both parents, in fact, "work."⁶¹ Instead, one parent may engage in all of the requisite "work" while the other parent engages in no "work" at all. Stated differently, the program allows one parent to work in the labor market, engaging in the statutorily specified "work activities," while the other parent stays at home and cares for the kids.⁶² Gender realities as they are and as they

⁵⁵ The call to marry within the call to work would have been heard most clearly had Congress passed a Senate bill that included as a "work activity" participation in marriage preparatory programs. *See Zatz, supra* note 39, at 1171-72 (stating that the bill included as "work" "'participation in programs that promote marriage,' such as 'marriage education, marriage skills training, [and] conflict resolution counseling in the context of marriage'" (quoting S. REP. NO. 109-51, at 175-76 (2005))).

⁵⁶ 42 U.S.C. § 607(a)(5) (2006).

⁵⁷ *Id.* § 607(c)(2)(B).

⁵⁸ *Id.* § 607(c)(1)(A).

⁵⁹ Zatz notes that two-parent families represent a small, but meaningful percentage of TANF beneficiaries; he estimates that during 2007, 61,080 two-parent families received TANF funds. Noah D. Zatz, *Revisiting the Class Parity Analysis of Welfare Work Requirements*, 2009 SOC. SERV. REV. 313, 319-20. As such, these families made up 6.5% of all households receiving TANF funds. *Id.* at 320.

⁶⁰ *Id.* at 322 ("In addition, TANF requires fewer total work hours per parent from two-parent families than from one-parent families. Two-parent families collectively must work 35 hours per week.").

⁶¹ *Id.* ("For the two-parent rate, however, the sum of both adults' work hours determines work requirement compliance. Thus, one parent may perform all the requisite work while the other performs none; the two also may split the hours in any proportion.").

⁶² Zatz observes that, unlike the approach the statute takes with respect to single-parent

have been historically, it is not illogical to assume that the statute presumes that the parent working in the labor market will be the man and the parent staying at home and caring for the kids will be the woman. As Zatz effectively summarizes:

[TANF] continue[s] the long-standing pattern in which social policy is structured around a normative household consisting of a man who works in the labor market and a woman who keeps house and cares for the (married) couple's children; the man is figured as the breadwinner on whom others are economically dependent.⁶³

In essence, TANF assumes that men have not ended and that there remains the possibility that a man can be the breadwinner on whom his wife and children can be economically dependent.⁶⁴

households, it makes no distinction between two-parent families with children under the age of six months, or between the ages of six months and six years, and families with older children. *Id.* The assumption is clearly that one parent will provide full-time care while the other parent works; thus, it need not make allowances for children of varying ages. *Id.* “If, however, the household utilizes child-care subsidies, the required hours increase from 35 to 55 because the second parent is now free to work an implied 20-hour week.” *Id.*

⁶³ *Id.* at 314.

⁶⁴ Accordingly, Responsible Fatherhood grants represent the government's effort to make poor men into the breadwinners that TANF assumes they can be. In 2010 Congress authorized annual spending of \$75 million on “activities promoting fatherhood, such as counseling, mentoring, marriage education, enhancing relationship skills, parenting, and activities to foster economic stability.” *Promoting Responsible Fatherhood*, U.S. DEP'T OF HEALTH & HUMAN SERVS., <http://fatherhood.hhs.gov/2010Initiative/index.shtml> (last visited Apr. 6, 2013). Thus, the Department of Health and Human Services and related government agencies solicit grant applications from organizations that can implement programs designed to make poor men into marriage material, essentially. *See, e.g., Community-Centered Responsible Fatherhood Ex-Prisoner Reentry Pilot Project*, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP'T HEALTH & HUM. SERVICES, <http://www.acf.hhs.gov/grants/open/foa/view/HHS-2011-ACF-OFA-FO-0196> (last visited Apr. 6, 2013) (seeking grant application from organizations that can design “programs that provide innovative community-centered, pre- and post-release Responsible Fatherhood and supportive services to formerly incarcerated fathers” and stating that funded projects must be “designed to support activities that promote healthy marriage and relationships, improve parenting skills, and alleviate[] barriers to social and economic self-sufficiency in a manner that strengthens families, empowers formerly incarcerated fathers and reduces the likelihood of recidivism”); *Pathways to Responsible Fatherhood Grants*, ADMIN. FOR CHILD. & FAMILIES, U.S. DEP'T HEALTH & HUM. SERVICES, <http://www.acf.hhs.gov/grants/open/foa/view/HHS-2011-ACF-OFA-FK-0194> (last visited Apr. 6, 2013) (seeking grant applications from organizations that can help poor men “build mutually supportive and long-lasting relationships with their children, the mothers of their children, and help fathers overcome barriers to economic self-sufficiency”).

III. EXCISING PATHOLOGY FROM DESCRIPTIONS OF INDIGENT, FEMALE-HEADED HOUSEHOLDS

In short, while there is a strong and undeniable emphasis in TANF on encouraging or coercing indigent women to find paid employment – to get a job, any job – there is also an undeniable current in the legislation of encouraging indigent women to get married. Moreover, even when the statute encourages or coerces women to find paid employment, one can hear the statute's enduring commitment to solving the problem of poverty with heteronormative marriage.

Thus, it would appear that the authors of TANF do not believe the men that would marry TANF beneficiaries have ended; they appear to disbelieve that there are no longer men who have incomes that, alone or acting in concert with a woman's income, would help lift a woman out of poverty.⁶⁵ TANF seems to proceed from the assumption that "marriageable" men are out there and, moreover, with the proper incentives and marketing, an indigent woman will find such a man and marry him.

In remaining highly skeptical – and, ultimately, unconvinced – that men have ended, TANF constructs indigent women's refusal to marry them as a matter of personal choice, a corruption of values even.⁶⁶ According to TANF, women have decided that, for whatever misguided reason, they will not marry the marriageable men that are out there waiting to be found,⁶⁷ even though

⁶⁵ There is also a species of argument that even if the men that poor women would marry do not have incomes that would help lift women (and themselves) out of poverty, all parties would simply do better if they were married. See, e.g., Bryan Caplan, *Being Single Is a Luxury*, LIBR. ECON. & LIBERTY (Feb. 8, 2012), http://econlog.econlib.org/archives/2012/02/being_single_is.html (making various arguments about why people do better when they are married, including the observations that marriage cuts expenses and that married men, for unexplained reasons, have higher incomes than unmarried men); Ross Douthat, *What Charles Murray Got Right*, N.Y. TIMES (Feb. 14, 2012, 5:33 PM), <http://douthat.blogs.nytimes.com/2012/02/14/what-charles-murray-gets-right/> (“[I]t is still the case that if you marry the mother or father of your children, take work when you can find it and take pride in what you do, attend church and participate as much as possible in the life of your community, and strive to conduct yourself with honesty and integrity, you are very likely to not only escape material poverty, *but more importantly to find happiness in life.*” (emphasis added)).

⁶⁶ See Cristina Gallo, *Marrying Poor: Women's Citizenship, Race, and TANF Policies*, 19 UCLA WOMEN'S L.J. 61, 100 (2012) (“Although low-income women see single parenthood as a socially acceptable and rational decision, marriage proponents regard it as an act of deviance.”).

⁶⁷ Interestingly, one commentator has offered that the reason why indigent mothers remain unmarried is not because they are refusing to marry marriageable men, but rather because marriageable men are refusing to marry them. DANIEL T. LICHTER, PROGRESSIVE POLICY INST., MARRIAGE AS PUBLIC POLICY 2 (2001), available at http://www.dlc.org/documents/marriage_lichter.pdf (“Most studies attribute low marriage rates to shortages of economically attractive or ‘marriageable’ men. But too often we fail to appreciate that unwed childbearing also greatly diminishes women's own marriageability. . . . Marriage

marrying them is likely to lift them out of poverty or, simply, make them happy.⁶⁸ As such, the cause of the female-headed household among the poor can be located in individual decisionmaking.⁶⁹ Indeed, it is not an accident that the legislation that instituted TANF was called the *Personal Responsibility and Work Opportunity Reconciliation Act*. Which is to say: Congress identified *personal* choices, and individual *irresponsibility*, as the reason why people were indigent.⁷⁰ As such, fixing poor people's personal shortcomings would solve the "problem" of welfare dependency.

In contrast, individual decisionmaking plays a relatively minor role in discussions about the end of men phenomenon as it affects the general – that is, non-poor – population; instead, structural forces, such as a changing economy, are pointed to as causes of the female-headed household. Without a doubt, individual women are making choices not to marry given these structural transformations. The structural transformations, however, remain the focus of the debate, not "personal responsibility."

Moreover, the women affected by these structural transformations have made *rational choices* not to marry. They surpass the men that they would marry in terms of academic success. This frequently translates into surpassing the men that they would marry in terms of career success. Women make more money than their would-be male partners. They could create a perfectly happy, self-sustaining life – entirely independent from government subsidy – without men. It makes perfect sense not to get married. As one undergraduate quoted in Rosin's original article sees it, "In 2012, I will be Dr. Burrell . . . Will I have to deal with guys who don't even have a bachelor's degree? I would like to date, but I'm putting myself in a really small pool."⁷¹

promotion must begin by discouraging out-of-wedlock childbearing, which arguably is the single greatest threat to forming healthy and satisfying marriages that last.").

⁶⁸ See Douthat, *supra* note 65.

⁶⁹ See Gallo, *supra* note 66, at 100 ("Proponents [of marriage promotion] locate fault in the recipient's behavior – the choices not to marry and to nonetheless bear children. The marriage movement has directed efforts toward changing or 'fixing' individuals, reflecting an assumption that the root "problem" lies within the person, not . . . society or environment." (internal citation and quotation marks omitted)); *cf.* Martha Fineman, Gwendolyn Mink & Anna Marie Smith, *No Promotion of Marriage in TANF!*, 30 SOC. JUST. 126, 132 (2003) ("The whole workfare model, for example, is based on the erroneous idea that poverty is caused by a lack of initiative on the part of the poor. Like the marriage promotion project, 'workfare' is based on a 'blaming-the-victim' approach. Most welfare recipients cycle on and off welfare not because they are lazy, but because there are not enough decent paying and secure job opportunities to go around.").

⁷⁰ In Cossman's reading of the PRWORA as embodying competing conservative discourses, she notes that "[f]or fiscal and libertarian conservatives, personal responsibility was primarily economic in nature – these women should work. For social conservatives, personal responsibility is primarily moral – these women should avoid pre-marital sex or marry the fathers of their children." Cossman, *supra* note 54, at 464-65.

⁷¹ Rosin, *supra* note 1, at 66.

In contrast, TANF posits that the indigent women electing not to marry are making entirely *irrational choices* not to marry. Presently unmarried, they are mired in poverty, living off the government dole. Marriage, however, almost promises them freedom from indigence.⁷² Nevertheless, they remain unmarried. Unlike the soon-to-be Dr. Burrell, they are not in a “really small pool.” They have simply, and irrationally, decided to get out of the pool.

The question then becomes: What if the structures within which individual indigent women decide not to get married were illuminated? What if it were revealed that, like their non-poor sisters, it is an entirely rational choice to remain unmarried? As Kathryn Edin has demonstrated, indigent women frequently have *excellent* reasons for remaining single.⁷³ What if it were revealed that indigent women are operating within an economy that has eliminated many of the jobs that the men they would marry would take,⁷⁴ a

⁷² See ROBERT G. WOOD ET AL., MATHEMATICA POLICY RESEARCH, INC., MARRIAGE PATTERNS OF TANF RECIPIENTS: EVIDENCE FROM NEW JERSEY 3 (2003), available at <http://www.mathematica-mpr.com/pdfs/tanfmarriage.pdf> (describing how, among TANF beneficiaries in New Jersey, “[w]omen who marry after entering TANF have substantially better economic outcomes than their counterparts who do not marry” and that “after four and a half years, the family income of those who were married was 65 percent above the poverty threshold, on average, compared to only 10 percent above poverty for similar recipients who had remained single”).

Moreover, to hear some pundits tell it, marriage promises freedom from many personal problems. See, e.g., LICHTER, *supra* note 67, at 4 (citing a recent study purporting to show that “unmarried persons, when compared with married persons, tend to have higher mortality, poorer physical and emotional health, and are more likely to engage in ‘risky’ behaviors, including drug and alcohol use”).

⁷³ See Edin, *supra* note 24. She explains:

Mothers see economic stability on the part of a prospective partner as a necessary precondition for marriage. Welfare-reliant and low-wage working mothers worry a great deal about money simply because they have to. The price for not balancing their budgets is high: the stability of the household and the well-being of their children. Though men frequently contribute to mothers’ households, their employment situations are often unstable and their contributions vary.

Id.

⁷⁴ Interestingly, although Moynihan observed that women were choosing to raise children outside of the institution of marriage, in part, because men’s incomes were such that they could not support a family, he nevertheless blamed individuals for creating the “tangle of pathology” that, to him, described black families. Compare MOYNIHAN, *supra* note 20, at 20-21 (“The fundamental, overwhelming fact is that Negro unemployment, with the exception of a few years during World War II and the Korean War, has continued at disaster levels for 35 years. . . . [T]he cyclical swings in unemployment have their counterpart in increases and decreases in separations.” (emphasis omitted)), *with id.* at 44 (“The unemployment statistics for Negro teenagers – 29 percent in January 1965 – reflect lack of training and opportunity in the greatest measure, but it may not be doubted that they also reflect a certain failure of nerve.”). As evidence of the personal failures that produced the dismal state of affairs within which black families found themselves, he quotes an exchange between the Secretary of Labor and an unnamed black everyman that he

criminal justice system that essentially is warehousing men⁷⁵ and disenfranchising them once they are released,⁷⁶ an educational system that tragically is failing students,⁷⁷ and a healthcare system in which poverty invariably translates into being sicker and dying earlier?⁷⁸ If the structures within which individuals are operating were illuminated, would the language of pathology disappear?

encountered: “‘Are you looking for a job?’ Secretary of Labor Wirtz asked a young man on a Harlem street corner. ‘Why?’ was the reply.” *Id.* at 44.

⁷⁵ *Prison Population Declined in 26 States During 2011*, BUREAU JUST. STAT., DEP’T JUST. (Dec. 17, 2012, 10:00 AM), <http://bjs.ojp.usdoj.gov/content/pub/press/p11pr.cfm> (“The national imprisonment rate for males (932 per 100,000 male U.S. residents) was over 14 times the imprisonment rate for females (65 per 100,000 female U.S. Residents).”).

⁷⁶ Michael McLaughlin, *Felon Voting Laws Disenfranchise 5.85 Million Americans with Criminal Records: The Sentencing Project*, HUFFINGTON POST (July 12, 2012, 3:01 PM), http://www.huffingtonpost.com/2012/07/12/felon-voting-laws-disenfranchise-sentencing-project_n_1665860.html (“4 million Americans . . . cannot cast a ballot because they’re on probation or parole, or live in a state that withholds the right to vote from all ex-felons.”).

⁷⁷ See Joel Klein, *The Failure of American Schools*, ATLANTIC (Apr. 26, 2011), <http://www.theatlantic.com/magazine/archive/2011/06/the-failure-of-american-schools/308497/> (last visited Apr. 6, 2013) (“On America’s latest exams . . . one-third or fewer of eighth-grade students were proficient in math, science, or reading. Our high-school graduation rate continues to hover just shy of 70 percent . . .”).

⁷⁸ INST. OF MED. OF THE NAT’L ACAD., U.S. HEALTH IN INTERNATIONAL PERSPECTIVE: SHORTER LIVES, POORER HEALTH 1 (2013) (“Americans live shorter lives and experience more injuries and illnesses than people in other high-income countries.”).