

# FIXING THE PIG IN THE SNAKE PROBLEM WITH FAMILY-FRIENDLY POLICIES

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## I. INTRODUCTION

The United States implemented Social Security in 1935 as a way to provide a monthly income to workers and their families when they reach retirement age or in the event that they become disabled or die.<sup>1</sup> The Social Security system in the United States is a Pay-As-You-Go (“PAYGO”) system. This means that a portion of a laborer’s wages is paid today in exchange for a promise that the laborer will receive money earned by others once he or she retires.<sup>2</sup> In other words, pensions are funded by *current* tax revenues made up of payroll taxes paid by workers and their employers.<sup>3</sup>

In a balanced PAYGO scheme, the current contributions to the system exactly covers pension payments. This is understood through the equation,  $sWL = PN$ , where the rate of contribution to the Social Security system ( $s$ ), multiplied by the average nominal wage ( $W$ ) and the number of laborers ( $L$ ) equals the average nominal pension ( $P$ ) multiplied by the number of pensioners ( $N$ ).<sup>4</sup> A change in any single element alters the equilibrium of the equation and requires changes to be made to other elements in order to reinstate equilibrium. For example, if the number of laborers decreases while the number of pensioners increases, as is the case in much of the industrialized world,<sup>5</sup> the system can only be balanced through increasing contributions or decreasing pensions.<sup>6</sup>

The United States is facing this imbalance today, despite a previous attempt by Congress to avoid it. In 1983, Congress implemented Social Security Amendments in response to the imminent deficit that would have resulted when the annual Social Security outlays exceeded its income. Additional changes need to be made now, however, to ensure the current

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<sup>1</sup> Stephen C. Goss, *The Future Financial Status of the Social Security Program*, 70 SOC. SEC. BULL. 111 (2010).

<sup>2</sup> Nicholas Barr, *Population Ageing – A Problem Not a Crisis*, in ECONOMIC POLICY ISSUES FOR THE NEXT DECADE 85, 86 (Karl Aigner & Gernot Hutschenreiter eds., 2003). Compare this to a funded scheme which is a state-run mechanism through which a portion of a laborer’s wage is saved so that, upon retirement, the laborer receives its own money back and uses that money to purchase goods produced by those who are still in the workforce after the laborer retires.

<sup>3</sup> Goss *supra* note 1, at 111.

<sup>4</sup> Barr, *supra* note 2, at 89.

<sup>5</sup> Sarah Harper, *Falling Fertility, Ageing and Europe’s Demographic Deficit*, in FERTILITY RATES AND POPULATION DECLINE 221, 222 (Ann Buchanan & Anna Rotkirch, eds., 2013).

<sup>6</sup> Barr, *supra* note 2, at 89.

labor force will be entitled to Social Security benefits upon retirement.<sup>7</sup> The 1983 Amendments enabled Social Security to run a surplus through increasing contributions (i.e., increasing payroll taxes) and decreasing pensions paid (i.e., increasing the retirement age).<sup>8</sup> The surplus was then placed in a fund to be accessed when the amount owed to beneficiaries exceeded the amount contributed. Even at the time, Congress knew the Amendments could only keep the Social Security Trust “financially healthy” for a minimum of seventy-five years.<sup>9</sup> It was quickly realized, however, that the financial health of the system would not last even that long. Yet, in 1983, Congress could not have predicted that by 2020—less than forty years after the changes were made—the annual cost of Social Security would exceed its income.<sup>10</sup>

The Social Security Administration (“SSA”) anticipates tapping into the reserves of the trust fund, which accrued from the surplus enabled by the 1983 Amendments, for the first time in 2020 in order to pay beneficiaries what they are owed.<sup>11</sup> Further, it anticipates that the entire 2.9 trillion dollar trust fund will be fully depleted by 2035, right when the older portion of today’s workforce will expect to start receiving pensions.<sup>12</sup> This will have enormous consequences for our society. However, these consequences could be mitigated through policies that counteract the underlying problem of the pension system’s demise. Simply increasing contribution rates or decreasing pensions paid places a band-aid on the wound without acknowledging that Social Security needs a much more significant fix to be healed. Plus, the 1983 Amendments’ short-term fix suggests that mitigating the problem would require a steady increase in payroll taxes contributed to the system, a steady rise in retirement age, or a decrease in the amount of each pension check—all of which will hit a limit at some point,<sup>13</sup> particularly if the number of laborers continues to fall.

At its core, the problem is a demographic one. It is referred to as the “pig in the snake problem”<sup>14</sup> because baby boomers in the United States are “a huge bulge in an otherwise skinny age distribution.” As baby boomers age, it is projected that demographics for the country as a whole will begin to look like the state of Florida—with the population of retirees exceeding the size

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<sup>7</sup> Rudolph G. Penner, *Myth and Reality of the Safety Net: The 1983 Social Security Reforms*, TAX POL’Y CTR. 8 (Sept. 30, 2014), <https://www.taxpolicycenter.org/publications/myth-and-reality-safety-net-1983-social-security-reforms/full>.

<sup>8</sup> See *id.* at 2.

<sup>9</sup> *Id.* at 7.

<sup>10</sup> BD. OF TR., FED. OLD-AGE & SURVIVORS INS. & FED. DISABILITY INS. TR. FUNDS, THE 2019 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS 2 (2019), <https://www.ssa.gov/OACT/TR/2019/tr2019.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 5; Daren Fonda, *The Social Security Trust Fund Will Run Out of Money by 2035*, BARRON’S (Apr. 22, 2019), <https://www.barrons.com/articles/social-security-deficit-reserves-check-benefits-payroll-tax-51555958282>.

<sup>13</sup> Other solutions, such as a progressive tax system in which those with higher incomes contribute more into Social Security or an increase in the amount that businesses contribute to the Social Security fund are also possible but, as this Note will shortly explain, do not solve the underlying demographic problem facing the United States and the industrialized world as a whole.

<sup>14</sup> Paul Krugman, *Reckonings: The Pig in the Python*, N.Y. TIMES: OPINION (June 21, 2000), <https://www.nytimes.com/2000/06/21/opinion/reckonings-the-pig-in-the-python.html>; EDWARD D. KLEINBARD, *WE ARE BETTER THAN THIS: HOW GOVERNMENT SHOULD SPEND OUR MONEY* 192 (Oxford University Press ed. 2015).

of the workforce.<sup>15</sup> It is estimated that the number of Americans over sixty-five will increase by 85 percent between 2013 and 2038.<sup>16</sup> This, combined with a steadily decreasing fertility rate (which effectively decreases the size of the workforce for future generations), creates an imbalance in the PAYGO equilibrium which the federal government, the provider of Social Security, must address.

Though equilibrium could be achieved by increasing the retirement age, which was part of the change made by the 1983 Amendments, that would only be a short-term solution. The share of “ultra-aged” individuals—individuals over eighty years old—is expected to double every twenty years.<sup>17</sup> The increasing share of these “ultra-aged” individuals makes increasing the retirement age an insufficient solution to fully compensate for the falling population and decreasing labor force.<sup>18</sup>

This Note will focus on increasing the size of the labor force through family-friendly policies that encourage women to enter the workforce and couples to increase fertility. Part II will briefly expand upon the magnitude and potential consequences of the “pig in the snake problem.” Part III will discuss the considerations and potential roadblocks of introducing family-friendly policies. Parts IV and V will discuss paid maternity leave and publicly funded childcare more specifically, by explaining the current policy in the United States, making a case for broadly introducing such policies, and suggesting a policy that could be introduced in the United States. Part VI will address the impact each policy proposal would have on the “pig in the snake problem”—both in terms of female workforce participation and fertility rates. Finally, Part VII will conclude.

## II. THE PIG IN THE SNAKE PROBLEM

A combination of decreasing fertility rates, increasing lifespans, and the baby boomer generation entering retirement creates the “pig in the snake problem” and poses significant threats to the American economy. This phenomenon is measured through “dependency ratios,” which compare the proportion of individuals who are too old to work with those of working age.<sup>19</sup> When a country’s dependency ratio increases, it begins to experience population aging. Population aging leads to a decline in economic growth because it means the workforce, and thus the amount of payroll taxes

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<sup>15</sup> Krugman, *supra* note 14.

<sup>16</sup> KLEINBARD, *supra* note 14, at 192.

<sup>17</sup> Gøsta Esping-Andersen, *Towards a Positive Equilibrium for Ageing Societies*, in ECONOMIC POLICY ISSUES FOR THE NEXT DECADE 79, 81 (Karl Aigner & Gernot Hutschenreiter eds., 2003) [hereinafter *Towards a Positive Equilibrium*].

<sup>18</sup> Increasing the retirement age likely *would* be possible, however. Given the increased life expectancy, amongst other factors, in 1998 the OECD estimated that sixty-year-old males could work ten to twelve more years without experiencing work impairing disabilities. This is still an insufficient solution because, even if the retirement age were increased to seventy-two, the number of individuals over that age is steadily increasing. If the number of people who cannot work continues to increase, there will come a point when the retirement age can no longer be effectively increased. *Id.* at 80; Robert Holzmann, *Demographic Alternatives for Aging Industrial Countries: Increased Total Fertility Rate, Labor Force Participation, or Immigration* 8 (IZA, Discussion Paper No. 1885, 2005), <http://ftp.iza.org/dp1885.pdf>.

<sup>19</sup> Harper, *supra* note 5, at 224.

collected, is smaller.<sup>20</sup> This then increases the economic burden on the federal government because the country has to pay for more pensions and healthcare.<sup>21</sup>

The share of global individuals who are over sixty-five years old has been steadily increasing. The United Nations Department of Economic and Social Affairs predicts that by 2050 the United States will be home to 36.6 individuals over sixty-five per every 100 individuals aged fifteen to sixty-four.<sup>22</sup> Though much lower than the ratios predicted for Japan and Germany—74.3 and 53.2, respectively—it is still problematic for America (see Figure 1).<sup>23</sup>

In the United States, the Bureau of Labor Statistics (“BLS”) classifies individuals who are between sixteen and twenty-four years old as “youth.” Youth employment and unemployment rates are tracked between April and July of each year because of the “seasonal changes” that occur during the spring and summer months.<sup>24</sup> This suggests that large numbers of individuals between sixteen and twenty-four are students or, for some other reason, not full-time members of the workforce. In fact, between April and July 2019 this “youth labor force” increased by three million, a 14.9 percent increase.<sup>25</sup> What this indicates for the purpose of this Note is that, even though dependency ratios typically assume the working population’s age to be between fifteen and sixty-four, there is an expectation in the United States that individuals will not be consistent members of the workforce until they are in their mid-twenties. Considering this, a more accurate dependency ratio in the United States would compare individuals over sixty-five to those between the ages of twenty-four and sixty-four. That ratio is estimated to increase from 28 percent in 2015 to 45.3 percent in 2050.<sup>26</sup> This indicates that the problem the Social Security fund faces now will only grow if the number of individuals aged twenty-four to sixty-four does not increase.

In part, this is because life expectancy is steadily increasing, individuals are entering the workforce later in life (as alluded to above), and the retirement age is not rising.<sup>27</sup> There is not, however, a mechanism or policy that can ethically prevent life expectancy from increasing. Nor would society benefit from individuals entering the workforce instead of delaying their entry in order to gain an education.<sup>28</sup> Further, increasing the retirement age

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<sup>20</sup> For the sake of this Note it is assumed that the payroll tax rate does not change with the size of the workforce.

<sup>21</sup> Harper, *supra* note 5, at 224.

<sup>22</sup> U.N. WORLD POPULATION PROSPECTS, <https://population.un.org/wpp/DataQuery> (follow “Old-age dependency ratio (ratio of population aged 65+ per 100 population 15-64)”) (last visited Dec. 20, 2019).

<sup>23</sup> *Id.*

<sup>24</sup> U.S. BUREAU OF LAB. STAT., USDL-19-1477, EMPLOYMENT AND UNEMPLOYMENT AMONG YOUTH SUMMARY (2019), <https://www.bls.gov/news.release/youth.nr0.htm>.

<sup>25</sup> *Id.*

<sup>26</sup> U.N. WORLD POPULATION PROSPECTS, <https://population.un.org/wpp/DataQuery> (follow “Old-age dependency ratio (ratio of population aged 65+ per 100 population 25-64)”) (last visited Mar. 20, 2020).

<sup>27</sup> *Life Expectancy at Birth, Total (Years)*, THE WORLD BANK, <https://data.worldbank.org/indicator/sp.dyn.le00.in> (last visited Mar. 22, 2020); *Towards a Positive Equilibrium*, *supra* note 17, at 80.

<sup>28</sup> See generally *Education Indicators in Focus*, OECD LIBRARY, [https://www.oecd-ilibrary.org/education/what-are-the-social-benefits-of-education\\_5k4ddxnl39vk-en](https://www.oecd-ilibrary.org/education/what-are-the-social-benefits-of-education_5k4ddxnl39vk-en) (last visited Mar. 22, 2020).

will not prevent aging populations from growing and continuing to consume more of the “collective pie.”<sup>29</sup>

#### A. COMBATTING POPULATION AGING

Corrective demographic policies are typically limited to increasing fertility rates, increasing labor force participation, and increasing immigration.<sup>30</sup> Increased fertility rates and increased immigration quotas are, therefore, the only two policies which can increase the number of individuals in the working age cohort. Though increasing immigration quotas ought to play an essential role in mitigating the “pig in the snake problem,” it is not the focus of this Note.<sup>31</sup> Because this Note is focused on the role that family-friendly policies play in solving the “pig in the snake problem,” increasing fertility rates will be considered instead.

Maintaining the population requires a fertility rate of 2.1 children per reproductive woman.<sup>32</sup> Even if rates are at or above replacement rate, population aging can still occur if fertility rates are falling.<sup>33</sup> And as fertility rates decline, the population declines, leading to the uncertainty of the welfare of future generations because of the need to balance the PAYGO system.<sup>34</sup> When fertility rates fall below the 2.1 replacement rate, it can be detrimental to a population. Between 1960 and 1980, the average number of children per woman aged fifteen to forty-four in twenty-one Organization for Economic Cooperation and Development (“OECD”) countries fell from 2.88 to 1.87, and by 1998 that average dropped to 1.59.<sup>35</sup>

Peter McDonald found that, all else equal, a period total fertility rate<sup>36</sup> of 1.3 over the course of a century leads to an annual 1.5 percent decrease in population and results in a population at the end of the century that is only a quarter of its original size.<sup>37</sup> South Korea is the only country included in the comparison for this Note that could experience similar effects.<sup>38</sup> Currently, its fertility rate of 1.11 is predicted to hit its lowest point in the 2020 to 2025 period and then begin to rise.<sup>39</sup> As illustrated in Figure 2, the total fertility

<sup>29</sup> *Towards a Positive Equilibrium*, *supra* note 17, at 80.

<sup>30</sup> Holzmann, *supra* note 18, at 8.

<sup>31</sup> If the quota of working-aged persons allowed to immigrate to the United States increases, there is an immediate addition to the size of the workforce. Plus, the impact of family policies on fertility exists, but tends to be small overall. This means that increased immigration quotas are a necessary consideration to adequately address the precarious dependency gap in the United States. Allison E. Vos, *Falling Fertility Rates: New Challenges to the European Welfare State*, 7 SOCIO-ECON. REV. 485, 497 (2009).

<sup>32</sup> Harper, *supra* note 5, at 221.

<sup>33</sup> Holzmann, *supra* note 18, at 8.

<sup>34</sup> Giuliano Bonoli, *The Impact of Social Policy on Fertility: Evidence from Switzerland*, 18 J. EUR. SOC. POL’Y 64, 64 (2008).

<sup>35</sup> Francis G. Castles, *The World Turned Upside Down: Below Replacement Fertility, Changing Preferences and Family-Friendly Public Policy in 21 OECD Countries*, 13 J. EUR. SOC. POL’Y 209, 210 (2003).

<sup>36</sup> Period total fertility rate measures the “current fertility behavior of all women at a given point in time.” *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> In 2003 when Castles published his article, Austria, Greece, Spain, and Italy were also on track to see such a significant decline, with Germany and Japan close behind. *Id.* However, based on the U.N. Population Prospects in Figure 2, it appears that Italy, Germany, and Japan are expected to begin seeing an increase in fertility rates. U.N. WORLD POPULATION PROSPECTS, <https://population.un.org/wpp/DataQuery> (follow “Total fertility (children per women)”) (last visited Dec. 20, 2019).

<sup>39</sup> *Id.*

rate is expected to increase slowly (but steadily) in countries such as the United States, Canada, Germany, Norway, and Japan.<sup>40</sup> Yet, despite its increase, the fertility rate in the United States is still not expected to reach replacement level on its own, indicating the need for policy changes to prevent a population decline. This population decline is worrisome because it poses a significant economic burden to the Social Security system. Decreasing fertility rates are directly correlated with a smaller working age population down the road.<sup>41</sup>

### B. THE DETRIMENT OF AN AGING POPULATION

When a country has a rapidly aging population and lacks policies to counteract those population changes, it can be detrimental to the economy as a whole. This happened in Japan. In 2007, Japan's population was 127.8 million. It is expected to only be 95.1 million by 2050, an annual decline of 1.16 million.<sup>42</sup> The government vowed to tackle the crisis, which began when fertility rates fell below replacement level after the second baby-boomer generation was born in the 1970s. Thus far, it has not been successful.<sup>43</sup> Because the decline is most attributed to social factors, such as people marrying later in life and younger generations feeling less financially stable, the Japanese government chose population-increasing policies which generally involve importing a workforce by increasing immigration quotas.<sup>44</sup> Japan's government is expected to welcome 345,000 workers over a five-year period beginning in April 2019, which will hardly make a dent in the 1.16 million annual population decline.<sup>45</sup> In 2000, the United Nations Population Division released a report that suggested Japan raise the retirement age by seventeen years—from sixty to seventy-seven—in order to maintain the existing ratio between workers and retirees.<sup>46</sup> Japan chose not to raise the retirement age and, nearly ten years later, the OECD suggested that Japan abolish its mandatory retirement system altogether.<sup>47</sup> The International Monetary Fund even reported that Japan's "rapidly aging population and shrinking labour force are hampering growth."<sup>48</sup> It expects the growth in the country's Gross Domestic Product ("GDP") to decrease by one percentage point over the next three decades.<sup>49</sup> In the short term, however, Japan is faced with a labor force too small to maintain current production levels in its biggest industries.<sup>50</sup>

Though population decline in the United States is not this severe, there are still valuable lessons to be learned from the situation in Japan. Namely,

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<sup>40</sup> *Id.*

<sup>41</sup> See *Face Challenges of a Shrinking, Aging Population*, JAPAN TIMES (Jan. 10, 2019), <https://www.japantimes.co.jp/opinion/2019/01/10/editorials/face-challenges-shrinking-aging-population/#.XfudDNZKg3F>.

<sup>42</sup> David Coleman & Bob Rowthorn, *Population Decline – Facing an Inevitable Destiny?*, in FERTILITY RATES AND POPULATION DECLINE 82, 84 (Ann Buchanan & Anna Rotkirch, eds., 2013).

<sup>43</sup> *Face Challenges of a Shrinking, Aging Population*, *supra* note 41.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Simran Walia, *How Does Japan's Aging Society Affect its Economy?*, DIPLOMAT (Nov. 13, 2019), <https://thediplomat.com/2019/11/how-does-japans-aging-society-affect-its-economy>.

<sup>47</sup> *Id.*; *Face Challenges of a Shrinking, Aging Population*, *supra* note 41.

<sup>48</sup> Walia, *supra* note 46.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

that neglecting to make policy changes aimed at increasing the labor force and keeping fertility rates above the replacement rate can pose a significant threat to the economy—whether or not the Social Security system is considered. But, considering the “pig in the snake problem” and the impending deficit that the Social Security fund is facing in the United States, it is not something that can wait. Policies initiated to increase fertility rates take over fifteen years<sup>51</sup> to have any impact on the working age population and the Social Security fund is expected to run a deficit beginning in 2035.<sup>52</sup> This means that each year the “pig in the snake problem” is not seriously addressed, the United States risks facing a fate similar to Japan’s, with a very high retirement age, a decreasing GDP, and not enough laborers to maintain production.

### III. FAMILY-FRIENDLY POLICIES

Ideally, the “pig in the snake problem” would be solved by simultaneously increasing the current number of participants in the labor force and increasing the fertility rate so as to increase the future working age population. Family-friendly policies such as state-mandated<sup>53</sup> maternity leave and publicly funded childcare—which are the focus of this Note—have the potential to make a notable impact on both. Despite the various contributing factors that determine how successful these policies will be, discussed further in this section, the fact of the matter is that the United States is an outlier in its dismal provisions of family-friendly policies when compared to other countries.

Family-friendly policies are a means by which the state absorbs the risks and costs of childbearing.<sup>54</sup> They de-commodify and de-familialize<sup>55</sup> families’ needs, and, by doing so, increase reliance on the state.<sup>56</sup> Ironically, the same policies that increase reliance on the state and take it away from the family are factored into a couple’s consideration of whether or not to have a family. Often, paid maternity leave and publicly funded childcare make that decision easier by alleviating a potential economic burden.

It comes as no surprise then that the way a country implements family-friendly policies is based upon that country’s views surrounding the interaction between state, market, and family. Using Gøsta Esping-Andersen’s welfare regime classification,<sup>57</sup> Christin Hilgeman and Carter T.

<sup>51</sup> This assumes that working age is fifteen, so the children need to be born and come of age, and that there is a delay in the time between when the policies are enacted and begin to be taken advantage of.

<sup>52</sup> Holzmann, *supra* note 18, at 9.

<sup>53</sup> In this Note, “state” refers to nation-state or country.

<sup>54</sup> Vos, *supra* note 31, at 491.

<sup>55</sup> De-familialize here is meant to indicate that the needs of a family are found outside of the family unit because they are provided by the state. In contrast, an increase in familialization would suggest an increased (or sole) reliance on the family unit. De-familializing the risks and costs of childbearing means moving away from an emphasis on self-reliance and individualism and into an avenue by which the state can influence positive change for society as a whole. *See id.*

<sup>56</sup> *Id.*

<sup>57</sup> In 1999, Esping-Andersen categorized welfare regimes based on the following three dimensions: (1) the quality of social rights, (2) the patterns of stratifications fostered by social policies, and (3) the interaction between state, market, and family in providing welfare. He classifies regimes into liberal, social democratic, and conservative. These classifications are often used in comparative analyses of welfare states. Kees van Kersbergen, *What are Welfare State Typologies and How are They Useful, If At All?*, in THE ROUTLEDGE HANDBOOK OF THE WELFARE STATE 115, 119 (Bent Greve, ed., 2019).

Butts specify the core differences in how family policies are implemented globally. Countries classified as liberal regimes, such as the United States and Canada, have a greater focus on individual self-reliance and market-based systems. Thus, despite family policies that focus on gender equity, few provisions for caretaking and benefits, such as maternity leave, are actually provided. These regimes rely on market services to offset low fertility, which is evident in the way policies implemented by the private sector in the United States contribute to increasing fertility rates while no related federal policies exist.<sup>58</sup> In countries classified as social democratic regimes, like Denmark and Sweden, market dependency is minimized in favor of universal entitlement to benefits. Family policies are abundant and include childcare; flexible and part-time employment after childbirth; paid maternity and parental leave; and health benefits.<sup>59</sup> Finally, countries in continental Europe and high-income Asia are classified as conservative regimes. These regimes protect the male's role as breadwinner through job security and a higher income when compared to their female counterparts. Family policies are limited because of the expectation that women will care for the young and elderly rather than enter the workforce, and any benefits that are received are directly correlated with the family's occupational record.<sup>60</sup>

Thus, for family-friendly policies to be most effective, a country needs to have already begun moving away from traditional family values, particularly as they pertain to gender roles at home and in the workplace.<sup>61</sup> In part, this is because, at the end of the day, couples make the ultimate decision about whether or not to have children.<sup>62</sup> Institutional configurations, in the form of the family-friendly policies listed here or others, cannot increase birthrates on their own; they can only influence a couple's decision of whether to have children and when.<sup>63</sup> In countries where the traditional value of women staying home to care for children (and thus not work after having children) are held less closely, couples are more likely to weigh the opportunity cost of having children—how much it will cost to raise a child versus how much the couple could lose from a woman's time away from paid employment.<sup>64</sup>

Societal norms, therefore, impact the core problem behind aging populations as well as how the country responds to family-friendly policies. In countries like Japan and Italy, for example, the cultural expectation that women will return to the “traditional division of labor” of performing household duties and raising children while their husbands are the “breadwinners,” results in women getting married later in life so that they can pursue a career before having a family.<sup>65</sup> And, because it is uncommon for women to have children outside of marriage, childbearing is delayed as

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<sup>58</sup> Christin Hilgeman & Carter T. Butts, *Women's Employment and Fertility: A Welfare Regime Paradox*, 38 SOC. SCI. RES. 103, 107 (2009); Bonoli, *supra* note 34, at 68.

<sup>59</sup> Hilgeman & Butts, *supra* note 58, at 107.

<sup>60</sup> *Id.*

<sup>61</sup> See Vos, *supra* note 31, at 491.

<sup>62</sup> *Id.* at 488, 496–97.

<sup>63</sup> *Id.* at 488.

<sup>64</sup> In countries which uphold traditional values, these considerations are still valid but have a weaker influence on the fertility decision the couple makes. *Id.* at 496–97.

<sup>65</sup> Hilgeman & Butts, *supra* note 58, at 105.

a result of delaying marriage.<sup>66</sup> Delayed childbearing typically results in fewer total children because of challenges that arise from having children later in life. So, while the fertility rate could theoretically remain unchanged (i.e., women could have the same number of children, just later in life), this is not the expected reality.<sup>67</sup> In Japan and Italy, low fertility rates are driven by gender equity progressing in the workplace (i.e., women can pursue careers that were once male-dominated) faster than in the home (i.e., women are still expected to take care of the home and the children).

Such traditional values are at play in the United States as well, though to a lesser extent. Nearly half of American women are their family's main breadwinner.<sup>68</sup> This suggests equity in both the workplace and at home, but it may be a façade. Women are still more likely than men to take time off from work after having a child.<sup>69</sup> Not only that, but women on average take ten times more leave after having a child than men, and are more likely to change to a lower-paying, more flexible career after having a child.<sup>70</sup> These realities could play a major role in the low fertility rate in the United States, just as they do in Italy and Japan.<sup>71</sup> In such a society, introducing family-friendly policies would challenge the distribution of labor in the home. Still, these policies are necessary to attenuate the “pig in the snake problem.”

All of this is to say, it is time for the United States to introduce family-friendly policies and allow societal values and norms to follow.<sup>72</sup> As the following sections will explain, the market-based systems relied on for these policies have not borne well for America. When considering state-mandated, paid maternity leave and publicly funded childcare, the United States pales in comparison to the rest of the industrialized world. Choosing to implement family-friendly policies could mend the dependency gap and resulting Social Security deficit. In Scandinavia (Denmark, Finland, Norway, and Sweden), increasing female workforce participation and providing publicly funded childcare successfully reversed the downward trend in fertility rates.<sup>73</sup> In 1960 and 1980, Scandinavia had the lowest average fertility rates when compared to other OECD countries.<sup>74</sup> From 1980 to 1998, however, it was the only group of OECD countries that experienced an increase in fertility rates (see Figure 3).<sup>75</sup> When this reversal began in the 1980s, these countries

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 104.

<sup>68</sup> Maggie Germano, *Women are Working More Than Ever, But They Still Take on Most Household Responsibilities*, FORBES (Mar. 27, 2019, 12:20 PM), <https://www.forbes.com/sites/maggiegermano/2019/03/27/women-are-working-more-than-ever-but-they-still-take-on-most-household-responsibilities/#143fa05452e9>.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See generally Hilgeman & Butts, *supra* note 58.

<sup>72</sup> This is opposed to the idea that policies that require a willingness to rely on the state should come before policies that encourage, and, to be successful, require, such reliance. While studies do seem to suggest that the success of family-friendly policies depends on a country's existing societal norms, those studies do not suggest that new family-friendly policies cannot be the catalyst to reach new norms. Cf. Claudia Olivetti & Barbara Petrongolo, *The Economic Consequences of Family Policies: Lessons from a Century of Legislation in High-Income Countries* 7 (Nat'l Bureau of Econ. Research, Working Paper No. 23051, 2017), <http://www.nber.org/papers/w23051>.

<sup>73</sup> See Castles, *supra* note 35, at 224.

<sup>74</sup> *Id.* at 213.

<sup>75</sup> *Id.*

also had the highest levels of female employment and made the strongest efforts to expand publicly funded childcare.<sup>76</sup>

Influenced by the success story of Scandinavia, this Note will examine two family-friendly policies: state-mandated maternity leave and publicly funded childcare. Publicly funded childcare has a direct impact on fertility rates, but implementation of both policies results in increased female participation in the workforce. While other family-friendly policies exist, this Note considers these two policies because they can effectively increase both female labor force participation and fertility rates, and, by doing so, effectively aid the Social Security deficit. Moreover, other policies, such as child tax benefits, typically do not financially benefit families with children enough to impact fertility decisions, and policies that are implemented solely for the purpose of raising fertility are perceived as intrusive, while policies that focus on gender equity (i.e., maternity leave) and social welfare (i.e., childcare) are more likely to be accepted and politically supported.<sup>77</sup>

#### IV. PAID MATERNITY LEAVE

The trade-off that women face between maternal desires and professional ambitions is not new.<sup>78</sup> However, the need to increase both the number of women in the workforce and fertility rates has grown as the dependency gap has worsened. As the SSA anticipates tapping into the Social Security fund, it is more important than ever for the United States to implement policies that will encourage and support maternal employment so that the choice women face between a family and a career is less of a compromise.<sup>79</sup> The United States does not federally mandate paid maternity leave, unlike most other countries in the world. However, given the Social Security deficit, it is a prime time to do so.

Before progressing, it is important to briefly address two related family policies: parental leave and paternity leave. Parental leave is job-protected leave that is available to either parent after maternity leave is taken. It is typically unpaid or paid at a lower rate.<sup>80</sup> Specific amounts of parental leave can be allocated to each parent, but women are more likely to use it.<sup>81</sup> Paternity leave, on the other hand, can only be used by fathers. It is often shorter than maternity leave, typically lasting only one to two weeks, but is paid at a higher rate.<sup>82</sup> Twenty-six OECD countries offer paternity leave, and sixteen of those countries guarantee 100 percent salary replacement during

<sup>76</sup> *Id.* at 224.

<sup>77</sup> Anne H. Gauthier, *Governmental Support for Families and Obstacles to Fertility in East Asia and Other Industrialized Regions*, in *LOW FERTILITY, INSTITUTIONS, AND THEIR POLICIES* 283, 293 (Ronald R. Rindfuss & Minja Kim Choe, eds., 2016) [hereinafter *Governmental Support for Families*]; Hilgeman & Butts, *supra* note 58, at 106–07.

<sup>78</sup> See Jeanne Fagnani, *Fertility Rates and Mothers' Employment Behaviour in Comparative Perspective: Similarities and Differences in Six European Countries*, in *WOMEN, MEN, WORK AND FAMILY IN EUROPE* 58, 59 (Rosemary Crompton, Suzan Lewis, & Clare Lyonette, eds., 2007).

<sup>79</sup> *Id.*

<sup>80</sup> Yekaterina Chzhen, Anna Gromada, & Gwyther Rees, *Are the World's Richest Countries Family Friendly? Policy in the OECD and EU*, UNICEF 5 (June 2019), [https://www.unicef-irc.org/publications/pdf/Family-Friendly-Policies-Research\\_UNICEF\\_%202019.pdf](https://www.unicef-irc.org/publications/pdf/Family-Friendly-Policies-Research_UNICEF_%202019.pdf); *Governmental Support for Families*, *supra* note 77, at 295.

<sup>81</sup> Chzhen, Gromada, & Rees, *supra* note 80, at 5.

<sup>82</sup> *Id.* at 10.

the leave taken.<sup>83</sup> Paternity leave helps create equality between parents in taking care of children and helps fathers bond with their children, but it is not always taken when available.<sup>84</sup> The reasons vary, but this decision to not take leave could be the result of understaffing, unfavorable atmospheres, workload, pay loss, or other social and work pressures.<sup>85</sup> The low pay of parental leave and low take-up of paternity leave make both policies relatively inconsequential in terms of the impact this Note intends to consider—namely, mitigating the “pig in the snake problem.” For that reason, the focus will primarily be on maternity leave moving forward.

#### A. THE CURRENT POLICY IN THE UNITED STATES

According to the United Nations, the United States is one of only two countries in the world that does not guarantee some sort of financial support to women during maternity leave.<sup>86</sup> The closest existing policy in the United States is the 1993 Family and Medical Leave Act (“FMLA”). The FMLA requires employers with over fifty employees to give parents (both mothers and fathers) twelve weeks of job-protected leave to care for a new child.<sup>87</sup> Employees are only eligible for the job-protection offered by the Act if they have worked for the employer for a minimum of twelve months before taking leave and if they worked at least 1250 hours in those twelve months.<sup>88</sup> The FMLA protects jobs and ensures that employees continue to receive health insurance, but it is unpaid.<sup>89</sup>

In 2019, Congress passed a Bill that, for the first time, legally guarantees some American parents paid leave to care for a child.<sup>90</sup> Tacked onto the National Defense Authorization Act that was signed by President Donald Trump on December 20, 2019, it was a provision that offers 2.1 million federal government employees paid parental leave beginning in October 2020.<sup>91</sup> The paid leave is offered to federal employees for the twelve weeks of leave mandated by the FMLA.<sup>92</sup> In order to receive the benefit, individuals must be employed by the federal government for at least one year before taking the leave and return for at least twelve weeks after.<sup>93</sup>

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<sup>83</sup> *Id.*

<sup>84</sup> This is largely due to income loss and societal understandings around the male’s role in the family. Even in Japan, which offers fathers the longest paid leave at a full-rate equivalent of thirty weeks, only 5.14 percent of eligible fathers took paternity leave in 2017. *Id.* at 4.

<sup>85</sup> *Id.*

<sup>86</sup> CNN Wire, *Senate Approves Paid Family Leave for Federal Employees*, OKLAHOMA’S NEWS 4 (Dec. 17, 2019, 12:13 PM), <https://kfor.com/2019/12/17/senate-approves-paid-family-leave-for-federal-employees>.

<sup>87</sup> The FMLA also applies to time taken because of a serious health condition or a situation relating to military deployment. WAGE & HOUR DIV., U.S. DEP’T OF LABOR, NEED TIME? THE EMPLOYEE’S GUIDE TO THE FAMILY AND MEDICAL LEAVE ACT 4–5 (2012), <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/employeeguide.pdf>.

<sup>88</sup> *Id.* at 2.

<sup>89</sup> *Id.* at 6.

<sup>90</sup> Hope Yen & Alexandra Olson, *Paid Parental Leave for Fed Workers Could Spur Wider Changes*, ASSOCIATED PRESS NEWS (Dec. 16, 2019), <https://apnews.com/7b5095225350e53850fb05e2b88a0da5>.

<sup>91</sup> *Id.*; U.S. OFFICE OF PERS. MGMT., CPM 2019-29, PAID PARENTAL LEAVE FOR FEDERAL EMPLOYEES (Dec. 27, 2019), <https://www.chcoc.gov/content/paid-parental-leave-federal-employees>.

<sup>92</sup> U.S. OFFICE OF PERS. MGMT., *supra* note 91.

<sup>93</sup> *Id.*

Like the FMLA, the Bill does not distinguish between primary caregivers, supposedly in an effort to balance family responsibilities between mothers and fathers.<sup>94</sup> The lack of distinction is also significant because there is no federal mandate for either men or women to receive paid leave when they have a child. So, while the default societal expectation might be that, like the rest of the world, women will take leave at a disproportionate rate to men, that may not be the case in the United States when one parent is federally employed given that there is no statutory guarantee that the other parent will have the opportunity to take paid leave. In other words, by not distinguishing between primary caregivers, the Bill guarantees that at least one parent will receive paid leave after the birth of a child and that there will be minimal disruption in household income as a result.

Despite this step forward, it is important to remember that the United States introduced this policy as an employer, not as the government. As such, there is no requirement that private or state employers introduce similar policies. The question, then, is whether guaranteeing twelve weeks of paid leave for federal employees will influence other companies to offer similar benefits, not how it might metamorphose into federally mandated paid leave.<sup>95</sup> This furthers the argument made by Hilgeman and Butts that the United States will rely on market provisions to provide maternity leave rather than the state. This is problematic given the government's interest in increasing female workforce participation in light of the impending Social Security deficit. Without a federally mandated paid maternity leave policy—the current reality in the United States—only 9 percent of wage earners in the bottom 25 percent have access to paid family leave.<sup>96</sup>

Overall, in 2019, only 27 percent of United States employers offered paid parental leave.<sup>97</sup> The fourteen best maternity leave policies offered by United States companies range from as few as sixteen weeks paid (e.g., Citigroup, Facebook) to as long as fifty-two weeks paid (e.g., Netflix).<sup>98</sup> For the most part, these benefits are offered in large, global companies, which use these benefits as a recruiting tool to hire the best and brightest employees without risk of losing them if and when they choose to have children. It is also important to note that even companies like Adobe, which offers parents “[sixteen] weeks of paid leave after a new child arrives, plus an additional [ten] weeks for women who give birth,” find themselves frustrated with losing key employees for extended periods of time.<sup>99</sup> This means that there is the risk that, whether paid maternity leave is offered as a company policy or by federal mandate, women may be hesitant to take it because of pressure from their workplaces or a fear of tainting their employment record. Again, we see the drive of the market here because, though companies offer paid

<sup>94</sup> Yen & Olson, *supra* note 90. The Bill also does not distinguish between having biological children and adopting or fostering children. U.S. OFFICE OF PERS. MGMT., *supra* note 91.

<sup>95</sup> See Yen & Olson, *supra* note 90.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*; Swapna Venugopal Ramaswamy et al., *America's Parents Want Paid Family Leave and Affordable Child Care. Why Can't They Get It?*, USA TODAY (Dec. 3, 2019, 1:13 AM), <https://www.usatoday.com/in-depth/news/education/2019/12/02/why-america-doesnt-have-affordable-daycare-maternity-leave-paid-family/2136595001>.

<sup>98</sup> Richard Feloni, *These are the Top 14 US Companies Giving New Parents at Least 4 Months of Paid Time Off*, BUSINESS INSIDER (Jun. 24, 2019, 1:46 PM), <https://www.businessinsider.com/best-parental-leave-policies-from-large-us-companies-2019-6>.

<sup>99</sup> Ramaswamy et al., *supra* note 97.

maternity leave or at least understand that it “is the right thing to do,” they are still skeptical of a federal mandate since it would result in the potential temporary loss of key employees.<sup>100</sup>

### B. THE CASE FOR PAID MATERNITY LEAVE

The United States is an outlier in its market-driven approach to maternity leave. In fact, it is the only OECD country that does not have some form of federally mandated, paid maternity leave. The International Labor Organization (“ILO”) began advocating for maternity leave as early as 1919.<sup>101</sup> In 2000, at the Maternity Protection Convention, the ILO recommended mandating fourteen weeks of maternity leave, during which women should be paid no less than two-thirds of their pre-childbirth income.<sup>102</sup> At least fifteen countries have ratified the convention, and all OECD countries, with the exception of the United States, have nationwide, statutory, paid maternal or parental leave policies in place.<sup>103</sup>

Most countries consider mandated maternity leave necessary, given that, on average, 66 percent of fertile females are employed, but the “employment-to-population ratio of mothers with infants is only 45 percent,” and 90 percent of the career interruptions women face are due to childbirth.<sup>104</sup> In the United States, however, there is no such inclination that maternity leave is important or necessary. Therefore, it should be no surprise that, when compared to other countries, women in the United States receive essentially no paid maternity leave, as illustrated by Figure 4. In other OECD countries, mandated paid leave ranges from Portugal (at the low-end) guaranteeing women 100 percent of their pre-birth salary for ten weeks to Bulgaria (at the high-end) guaranteeing women 90 percent of their pre-birth salary for just under sixty weeks.<sup>105</sup> As the chart demonstrates, some countries pay 100 percent of previous earnings, while others do not. Some may pay a certain percentage up to a cap, some may not have a cap, and some may pay a flat rate.<sup>106</sup>

Aside from catching the United States up to the rest of the industrialized world, providing paid maternity leave could also eliminate some of the disparity of opportunity between the rich and poor. When a couple begins considering whether or not, and when, to have children, the amount of cash benefits a mother is offered while away from work becomes extremely significant.<sup>107</sup> As a family’s income goes down, the cost of raising a child as a proportion of income goes up, so the amount of pay received on maternity

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<sup>100</sup> *Id.*

<sup>101</sup> Olivetti & Petrongolo, *supra* note 72, at 4.

<sup>102</sup> *International Labour Standards on Maternity Protection*, ILO, <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm> (last visited Dec. 20, 2019).

<sup>103</sup> Chzhen, Gromada, & Rees, *supra* note 80, at 7.

<sup>104</sup> Andrés Erosa, Luisa Fuster & Diego Restuccia, *A General Equilibrium Analysis of Parental Leave Policies*, 13 REV. OF ECON. DYNAMICS 742, 750 (2010).

<sup>105</sup> OECD, PARENTAL LEAVE SYSTEMS 5 (2019), [https://www.oecd.org/els/soc/PF2\\_1\\_Parental\\_leave\\_systems.pdf](https://www.oecd.org/els/soc/PF2_1_Parental_leave_systems.pdf).

<sup>106</sup> Chzhen, Gromada, & Rees, *supra* note 80, at 8.

<sup>107</sup> Anne H. Gauthier, *Family Policy and Fertility: Do Policies Make a Difference?*, in *FERTILITY RATES AND POPULATION DECLINE* 269, 278–79 (Ann Buchanan & Anna Rotkirch, eds., 2013) [hereinafter *Family Policy and Fertility*].

leave is an important consideration in terms of if and when to have children. For wealthier families, the economic concern of raising a child may be lower but the wages that they will give up if they plan to leave work to raise children is higher. Paid maternity leave, along with the job-protection it can provide, can eliminate some of the lost opportunity cost for high earning women who want to have children. When paid maternity leave is universally offered in conjunction with paid childcare leave—ideally available as soon as the paid maternity leave ends—it makes the opportunity to have a child more equally available across the economic spectrum.

Paid maternity leave can also have a large impact on women's equality in the work place.<sup>108</sup> When countries offer paid maternity leave, women are less likely to reject job offers because of the fear of being faced with an either-or decision of having a career or having a family.<sup>109</sup> It has the effect of securing a woman's job in the event that she leaves to have children, which helps give women unhindered access to the labor market.<sup>110</sup> It also increases the employment rates of working-age women—which is hugely important in fixing the “pig in the snake problem”—and makes some difference in closing the gender pay gap.<sup>111</sup>

Moreover, if the same number of American women participated in the workforce as those in Canada and Germany, where paid leave is offered for around twenty weeks, the United States economy would increase more than \$500 billion each year.<sup>112</sup> If women entered and stayed in the workforce at the same rate as women in Norway, the American economy would grow by \$1.6 trillion.<sup>113</sup>

Therefore, in the United States, the lack of federally mandated, universal, paid maternity leave impacts the decisions of Americans to have children, impairs women's equality in the workplace by limiting access to job and wage security after having a child, and ultimately hurts the economy. A market-driven response is not enough here. Such a response relies on companies to make tough economic decisions that impact the country as a whole and fails to protect all members of the workforce equally.

### C. PROPOSED MATERNITY LEAVE POLICY

It is without question that the current maternity leave policy in America needs significant amendments, particularly if it is to play any role in solving the “pig in the snake problem.” A 2013 Pew Research Survey found that 39 percent of women took off a significant amount of time at some point in their career to care for children or other family members. An additional 25 percent quit their jobs completely to do so.<sup>114</sup> Right now, the FMLA merely

<sup>108</sup> See, e.g., Bonoli, *supra* note 34, at 67.

<sup>109</sup> See Erosa, Fuster & Restuccia, *supra* note 104, at 755.

<sup>110</sup> *Id.*

<sup>111</sup> Olivier Thévenon & Anne Solaz, *Labour Market Effects of Parental Leave Policies in OECD Countries 40* (OECD Soc., Emp., & Migration Working Paper No. 141, 2012), [https://www.oecd-ilibrary.org/social-issues-migration-health/labour-market-effects-of-parental-leave-policies-in-oecd-countries\\_5k8xb6hw1wjf-en](https://www.oecd-ilibrary.org/social-issues-migration-health/labour-market-effects-of-parental-leave-policies-in-oecd-countries_5k8xb6hw1wjf-en).

<sup>112</sup> Ramaswamy et al., *supra* note 97.

<sup>113</sup> BETH ANN BOVINO & JASON GOLD, THE KEY TO UNLOCKING U.S. GDP GROWTH? WOMEN (2017).

<sup>114</sup> BOVINO & GOLD, *supra* note 113.

guarantees job protection after twelve weeks of leave for having a child and, because of the requirements, a whopping 40 percent of American workers do not qualify for benefits under the FMLA.<sup>115</sup> So, in order for paid maternity leave to effectively increase the number of women in the workforce, it not only needs to be more attainable, but the length should also be extended to more than three months, and pay should be guaranteed for at least some, if not all, of that time. The following questions must be answered: How many months should the mandated maternity leave last? How much pay should women on leave receive? And should the government pay for mandated leave or should companies?

First, mandated maternity leave should last a minimum of six months. Six months, according to The New America Foundation, would be ideal for the health of both mothers and their babies.<sup>116</sup> Second, the amount paid should be progressive, like the existing leave policies in Oregon, the District of Columbia, Norway, and the Netherlands.<sup>117</sup> For women earning below the average weekly wage (“AWW”), their pay during maternity leave should match their salary, while women who earn above the AWW could receive a benefit that is only a portion of their salary.<sup>118</sup> The AWW that is used to determine how much a woman receives on maternity leave needs to take into account housing and living costs, as applying the same AWW to a family in rural Kansas and a family in metropolitan Seattle would have incongruent results. Thus, if the AWW were determined by county or zip code (perhaps through the address used on tax returns), progressive maternity leave payments would be most effective.

Third, maternity leave should be paid for by employer payroll taxes. In the District of Columbia, where “one of the nation’s most generous family-leave laws” was passed at the end of 2016, employers only pay 0.62 percent payroll tax to cover the payments made to parents on leave.<sup>119</sup> Funding family leave through payroll taxes rather than an employer mandate also makes it available for part-time and self-employed workers, which will help increase access to the benefits available.<sup>120</sup>

In short, improving the maternity leave policy in the United States would significantly improve the dependency gap and help to mitigate the impending Social Security deficit. Ideally, the policy would guarantee women (and, potentially, men) six months of paid maternity leave, priced based on their AWW before their leave, and funded by employer payroll taxes.

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<sup>115</sup> Emily Crockett, *Washington, DC, Passed One of the Nation’s Most Generous Paid Family Leave Laws*, VOX (Dec. 22, 2016, 11:59 AM), <https://www.vox.com/identities/2016/12/22/14038812/washington-de-paid-family-leave-trump-blue-states>.

<sup>116</sup> Mary Beth Ferrante, *In the Fight for Paid Parental Leave, 6 Months Should be the Minimum*, FORBES (Jan. 10, 2019, 8:00 AM), <https://www.forbes.com/sites/marybethferrante/2019/01/10/in-the-fight-for-paid-parental-leave-6-months-should-be-the-minimum/#2fdb5cf42073>.

<sup>117</sup> Kali Gant et al., *The Paid Family and Medical Leave Opportunity: What Research Tells us About Designing a Paid Leave Program that Works for All*, GEO. CTR. ON POVERTY & INEQ. 26–27 (2019), [https://static1.squarespace.com/static/56018de2e4b097f984369ce2/t/5d9750e30ff084440928b946/1570197733553/Georgetown\\_PLUS-PaidFamilyMedicalLeaveOpportunity-20190804.pdf](https://static1.squarespace.com/static/56018de2e4b097f984369ce2/t/5d9750e30ff084440928b946/1570197733553/Georgetown_PLUS-PaidFamilyMedicalLeaveOpportunity-20190804.pdf).

<sup>118</sup> *Id.*

<sup>119</sup> Crockett, *supra* note 116.

<sup>120</sup> *Id.*

## V. PUBLICLY FUNDED CHILDCARE

In the United States, policies promoting publicly funded childcare are hindered by a “disconnect between ideals and reality.”<sup>121</sup> Many Americans do not believe it is ideal for children to be raised by two working parents; yet, presumably because of financial need, 93 percent of fathers and 72 percent of mothers with young children are in the workforce.<sup>122</sup> Thus, a tension exists between the cultural ideal of protecting the sanctity of motherhood and the economic reality facing families across the country.<sup>123</sup> Studies also show that providing public childcare for children from birth to age three has one of the highest correlations with increased fertility rates.<sup>124</sup> Increased fertility rates are an essential part of decreasing population aging and eliminating the dependency gap caused by the “pig in the snake problem.” Providing childcare significantly alleviates the economic burden of having children and helps ensure that parents do not have to choose between a career and a family. This allows couples to freely choose to have families and allows mothers to return to work without incurring a massive financial burden.<sup>125</sup>

### A. THE CURRENT POLICY IN THE UNITED STATES

The tension that exists around publicly funded childcare has, inevitably, influenced the policies introduced in the United States. Access to affordable, public childcare was offered only for one temporary period of time in American history. A bill for universal childcare once had bipartisan support in Congress but was vetoed by the President. Additionally, currently existing programs do not benefit the very segments of the population that they were designed to aid.

The only time in the history of the United States that public childcare was provided was during World War II when the Lanham Act mandated high-quality, government run childcare centers.<sup>126</sup> Even when the Act was passed, it was made clear that it was a temporary emergency measure enacted in response to labor mobilization during the war.<sup>127</sup> In communities with defense industries, where women were mobilized for the war effort, all families were eligible for up to six days of childcare each week.<sup>128</sup> It cost only nine to ten dollars per day in today’s dollars and the childcare provided was high quality; there were low student to teacher ratios, meals and snacks were served throughout the day, and children were taught art and other enriching

<sup>121</sup> Claire Cain Miller, *Why the U.S. Has Long Resisted Universal Child Care*, N.Y. TIMES (Aug. 15, 2019), <https://www.nytimes.com/2019/08/15/upshot/why-americans-resist-child-care.html>.

<sup>122</sup> One-third of democrats surveyed also said it was ideal for one parent to stay home, so the difference is not along political lines. *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> See, e.g., Castles, *supra* note 35, at 222; Hilgeman & Butts, *supra* note 58, at 108; Bonoli, *supra* note 34, at 67. This is due, at least in part, to allowing women to return to paid employment more quickly after giving birth with less concern for how to provide care for their child(ren). It is another instance of eliminating financial burdens families face when considering whether or when to have children.

<sup>125</sup> Cf. Olli Kangas & Jon Kvist, *Nordic Welfare States*, in THE ROUTLEDGE HANDBOOK OF THE WELFARE STATE 124, 131 (Bent Greve, ed., 2019).

<sup>126</sup> Betsey Stevenson, *An ‘Experiment’ in Universal Child Care in the United States: Lessons from the Lanham Act*, THE WHITE HOUSE: PRESIDENT BARACK OBAMA (Jan. 22, 2015, 2:23 PM), <https://obamawhitehouse.archives.gov/blog/2015/01/22/experiment-universal-child-care-united-states-lessons-lanham-act>.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

activities.<sup>129</sup> The result was increased employment for mothers and improved long-term outcomes for children.<sup>130</sup> With each additional one hundred dollars in funding to the Lanham Act, graduation rates for both high school and college increased by nearly two percentage points.<sup>131</sup> Plus, children who participated in the program experienced a 1.8 percent average increase in annual income as adults.<sup>132</sup> This indicates that providing high-quality childcare not only benefits parents, but also has a long-term impact on the children who attended.

In 1972, the Comprehensive Childhood Development Act, which offered universal childcare, received strong bipartisan support in Congress but was vetoed by President Richard Nixon because of its “family-weakening implications.”<sup>133</sup> The Act was intended to be the first step toward universal childcare and was seen as necessary because of the societal shift resulting from larger numbers of women entering the workforce.<sup>134</sup> It would have provided access to comprehensive childcare centers on a “sliding scale basis” and the centers would have provided educational, nutritional, and health-related services around the country.<sup>135</sup> The Act provided for locally administered centers funded by the federal government, with an authorization of nearly \$40 billion in 2012 dollars.<sup>136</sup>

Today, no such program exists. Programs for families in poverty are not effectively reaching the majority of the population they are designed to serve. The assistance provided by the government through the child and dependent care tax credit does provide some assistance to families. However, the credit can only be used to offset taxes owed and is therefore of little benefit to low-income families who owe little to no income tax.<sup>137</sup> For families that do benefit, the credit ranges from 20 to 35 percent of the cost of childcare depending on the family’s income, but it is capped at three thousand dollars for one child and six thousand dollars for two or more children.<sup>138</sup> Plus, in order to receive the credit, both parents, or a single parent, must be working or in school.<sup>139</sup> Moreover, if a family lives somewhere without a licensed care center or there are too many children for the spots available at their local care center—which is the situation approximately half of American families find

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*; Miller, *supra* note 122.

<sup>131</sup> Graduation rates for high school students increased by 1.8 percentage points and for college students by 1.9 percentage points. Stevenson, *supra* note 127.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Nancy L. Cohen, *Why America Never Had Universal Child Care*, THE NEW REPUBLIC (Apr. 23, 2013), <https://newrepublic.com/article/113009/child-care-america-was-very-close-universal-day-care>; Jack Rosenthal, *President Vetoes Child Care Plan as Irresponsible*, N.Y. TIMES (Dec. 10, 1971) <https://www.nytimes.com/1971/12/10/archives/president-vetoes-child-care-plan-as-irresponsible-he-terms-bill.html>.

<sup>135</sup> Cohen, *supra* note 135.

<sup>136</sup> “Congress authorized real money for the program – in today’s dollars, the equivalent of five times the 2012 federal budget for Head Start.” *Id.*; ADMIN. FOR CHILD. & FAM., OFFICE OF HEAD START, ACF-PI-HS-12-01, FY 2012 HEAD START FUNDING INCREASE (2012), <https://eclkc.ohs.acf.hhs.gov/sites/default/files/docs/policy-pi/2016-08/ACF-PI-HS-12-01.pdf> (source of 2012 federal Head Start budget).

<sup>137</sup> *Key Elements of the U.S. Tax System*, TAX POL’Y CTR. BRIEFING BOOK, <https://www.taxpolicycenter.org/briefing-book/how-does-tax-system-subsidize-child-care-expenses> (last visited Dec. 20, 2019).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

themselves in—the credit is not helpful.<sup>140</sup> Because of these factors, only 11.8 percent of families with children benefitted from this program in 2018.<sup>141</sup>

Programs such as Head Start and the Child Care and Development Block Grant are means-based programs which typically only benefit families earning less than 85 percent of the state's median income.<sup>142</sup> Children from birth to age five can be enrolled in Early Head Start and Head Start if their family falls below the established Poverty Guidelines, they are in foster care or are homeless, or their family is a recipient of Temporary Assistance for Needy Families or Supplemental Security Income.<sup>143</sup> The 2020 Poverty Guidelines for most of the United States are set at \$17,240 for a family of two (e.g., a single parent and one child), \$21,720 for a family of three, and \$26,200 for a family of four.<sup>144</sup> Twenty-one percent of American children are living in poverty.<sup>145</sup> Yet, this means that only one in five children have access to public childcare. What is even more egregious is the fact that only 11 percent of eligible children under three had access to Early Head Start and only 36 percent of eligible children aged three to five had access to Head Start.<sup>146</sup> This means that the number of children in America—poor or not—who have access to publicly funded childcare is extremely low.

The choice American families face, then, is to either forego one parent's income so that parent can stay home with the children or pay for private childcare. Because of this, most families continue to incur significant costs for childcare—anywhere from 20 percent to 45 percent of household income.<sup>147</sup> Parents pay, on average, \$12,350 to \$13,900 per year on childcare.<sup>148</sup> The amount actually paid varies by state. On the low-end, annual tuition at a childcare center in Arkansas is \$5,721, and on the high-end in the District of Columbia, it is \$15,856.<sup>149</sup> Paying for in-home childcare or for a nanny costs anywhere from \$25,774 per year to \$33,366 per year.<sup>150</sup> At its lowest, the cost of childcare as a percent of minimum wage is 79 percent.<sup>151</sup>

It is no question that the cost of childcare poses a significant burden to families who have, or are considering having, children. This burden can also be detrimental to the size of the workforce and thus the number of people contributing to the Social Security system, as parents make the difficult decision of choosing between expensive childcare or foregoing a career in order to stay home with their children.

<sup>140</sup> Miller, *supra* note 122.

<sup>141</sup> Key Elements of the U.S. Tax System, *supra* note 138.

<sup>142</sup> Mark Zandi & Sophia Koropeckyj, *Universal Child Care and Early Learning Act: Helping Families and the Economy*, MOODY'S ANALYTICS 2 (2019), <https://www.economy.com/mark-zandi/documents/2019-02-18-Child-Care-Act.pdf>.

<sup>143</sup> Head Start and Early Head Start, BENEFITS.GOV, <https://www.benefits.gov/benefit/616> (last visited Mar. 21, 2020).

<sup>144</sup> Poverty guidelines are established for all family sizes but are not included in this Note. Office of the Assistant Sec'y for Planning & Evaluation, *HHS Poverty Guidelines for 2020*, U.S. DEP'T OF HEALTH & HUM. SERV., <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 21, 2020).

<sup>145</sup> Child Poverty, NAT'L CTR. FOR CHILD. IN POVERTY, <http://www.nccp.org/topics/childpoverty.html> (last visited Mar. 21, 2020).

<sup>146</sup> National Head Start Fact Sheet, NAT'L HEAD START ASS'N, <https://www.nhsa.org/national-head-start-fact-sheets> (last visited Mar. 21, 2020).

<sup>147</sup> Explore the Care Index, NEW AMERICA, <https://www.newamerica.org/in-depth/care-report/explore-care-index/> (last visited Mar. 21, 2020).

<sup>148</sup> Ramaswamy et al., *supra* note 97.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

### B. THE CASE FOR PUBLICLY FUNDED CHILDCARE

The United States is often an outlier on the global continuum for publicly funded childcare, much like it is with paid maternity leave. When considering enrollment in early childhood education and care, the United States is in the bottom quarter (see Figure 5)<sup>152</sup> until enrollment of children who are five years old is considered. When considering the enrollment of five-year old children, the United States is on par with other OECD countries (see Figure 6).<sup>153</sup> This is due to the fact that mandatory schooling in the United States begins at five years old. What this indicates, however, is that enrollment rates for American children before reaching mandatory schooling age is low and the likelihood that at least one parent is staying home to take care of the child is high. Each parent staying home is one fewer laborer participating in the workforce.

In Europe, the Barcelona Objectives set a target for childcare provisions because affordable and accessible childcare is seen as a “central element” in encouraging women to participate in the labor force.<sup>154</sup> The goal was to provide childcare for 90 percent of children between three and the mandatory school age and 33 percent of children under three by 2010.<sup>155</sup> Though these goals were not reached by 2010, they were reiterated by the European Commission’s Europe 2020 Strategy to promote employment.<sup>156</sup> Still, more European countries provide at least partially funded childcare for children over three years old.<sup>157</sup> No such program or goal exists in the United States.

When considering the cost of childcare as a percentage of average earnings, the United States is slightly above the OECD average.<sup>158</sup> This, however, depends significantly on the state and, even in the comparison cited, only a region or city was considered, not the country as a whole.<sup>159</sup> When considering the percent of GDP spent on early childhood education and care, the United States falls near the bottom, with only Turkey and Ireland spending less.<sup>160</sup> And, a large portion of what the United States does spend on early childhood education and care goes to pre-primary school rather than childcare (see Figure 7).<sup>161</sup>

If failing to compare to the rest of the world is not enough motivation to implement a new publicly funded childcare policy, perhaps the long-term impact that it would have on children and society as a whole is.<sup>162</sup> It is estimated that every dollar spent on childcare will yield a potential return

<sup>152</sup> OECD, ENROLMENT IN CHILDCARE AND PRE-SCHOOL 2 (2019), [http://www.oecd.org/els/soc/PF3\\_2\\_Enrolment\\_childcare\\_preschool.pdf](http://www.oecd.org/els/soc/PF3_2_Enrolment_childcare_preschool.pdf).

<sup>153</sup> *Id.* at 6.

<sup>154</sup> The Barcelona Objectives were goals related to childcare provision established by the European Council in 2002. *Governmental Support for Families*, *supra* note 77, at 297

<sup>155</sup> *Id.*

<sup>156</sup> By 2011, only six countries had reached both goals and twelve had not reached any. *Id.*

<sup>157</sup> Vos, *supra* note 31, at 495.

<sup>158</sup> OECD, CHILDCARE SUPPORT 2 (2019), [http://www.oecd.org/els/soc/PF3\\_4\\_Childcare\\_support.pdf](http://www.oecd.org/els/soc/PF3_4_Childcare_support.pdf).

<sup>159</sup> *Id.*

<sup>160</sup> OECD, PUBLIC SPENDING ON CHILDCARE AND EARLY EDUCATION 2 (2019), [http://www.oecd.org/els/soc/PF3\\_1\\_Public\\_spending\\_on\\_childcare\\_and\\_early\\_education.pdf](http://www.oecd.org/els/soc/PF3_1_Public_spending_on_childcare_and_early_education.pdf).

<sup>161</sup> *Id.*

<sup>162</sup> *Towards a Positive Equilibrium*, *supra* note 17, at 83.

ranging from five dollars and sixty cents to twelve dollars.<sup>163</sup> Investing in children maximizes their future productivity and benefits society as a whole because of anticipated smaller working-age cohorts.<sup>164</sup> This effect was seen in the United States after the Lanham Act provided affordable childcare to numerous American children.<sup>165</sup>

### C. A PROPOSED POLICY FOR PUBLICLY FUNDED CHILDCARE

Despite the cultural ideal that children should be raised by at least one parent staying home from work, this is not the reality American families are facing. Whether for the sake of relieving the economic burden on families or improving childhood development, a new policy giving all children access to childcare needs to be implemented.

An ideal childcare policy would be cost effective, high quality, and universal. The cost of childcare after a subsidy must be low enough that it is an attractive and affordable option for low-wage households. If not, the employment and fertility rates of high-wage earners will be disproportionately affected by the benefit.<sup>166</sup> Conversely, the quality of childcare offered has to be good enough that wealthy families will also want to enroll their children. Thus, the number of high-quality public preschools must increase along with improved training for caregivers or teachers and frequent inspections of facilities for compliance and hygiene.<sup>167</sup> Since ensuring universal childcare gives an advantage to all children, particularly when they are able to interact with children from different backgrounds, a universal program ought to be implemented.<sup>168</sup> Universal childcare would have the greatest impact on increased labor participation, which would help finance the policy because parents would be allowed to reenter the workforce, thereby increasing their wages and generating more tax revenue.<sup>169</sup>

Grover J. Whitehurst of the Brookings Institution proposed a Childcare and Education Savings Account (“CESA”) to help low-income families pay for childcare.<sup>170</sup> A CESA would be paid through modifications to the charitable deduction, including adjusting the charitable deduction rate to the amount donated rather than the tax rate of the donor’s bracket. Accounts would be set up in children’s names and the amount that the child is entitled to each year would be paid into the account. Parents would then pay childcare providers by debiting from that account. Of the funds deposited, half can carryover and remain in the account for future education.<sup>171</sup> By limiting the

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<sup>163</sup> Gösta Esping-Andersen, *Investing in Early Childhood*, in FERTILITY RATES AND POPULATION DECLINE 288, 297 (Ann Buchanan & Anna Rotkirch, eds., 2013) [hereinafter *Investing in Early Childhood*].

<sup>164</sup> *Id.*; *Towards a Positive Equilibrium*, *supra* note 17, at 83.

<sup>165</sup> Miller, *supra* note 122.

<sup>166</sup> Laurie S. Reijnders, *Child Subsidies and the Cross-Sectional Fertility Pattern*, 22 MACROECONOMIC DYNAMICS 1207, 1223 (2018); see *infra* Section VI.

<sup>167</sup> Jisoo Hwang, Seonyoung Park & Donggyun Shin, *Two Birds with One Stone: Female Labor Supply, Fertility, and Market Childcare*, 90 J. ECON. DYNAMICS & CONTROL 171, 180 (2018).

<sup>168</sup> *Investing in Early Childhood*, *supra* note 164, at 298.

<sup>169</sup> Reijnders, *supra* note 167, at 1209.

<sup>170</sup> Grover J. Whitehurst, *Why the Federal Government Should Subsidize Childcare and How to Pay for It*, BROOKINGS INST. (Mar. 9, 2017), <https://www.brookings.edu/research/why-the-federal-government-should-subsidize-childcare-and-how-to-pay-for-it>.

<sup>171</sup> *Id.*

carryover to half, parents are incentivized to enroll their children in childcare but are also provided a mechanism by which to save for their child's future education expenditures.

Whitehurst estimates that if the government makes a contribution to the CESA that fully covers the cost of childcare for families at or below the poverty level, it would cost anywhere from thirty-two billion dollars to sixty-four billion dollars annually.<sup>172</sup> The current federal annual expenditure on childcare is twenty-six billion dollars,<sup>173</sup> all of which would go to the CESA program. Moreover, the tax expenditure for charitable contributions could be upwards of fifty-five billion dollars, which, even at the high end of the estimate, would fund the policy.<sup>174</sup>

In order to increase fertility rates of higher-wage families as well, it would be necessary to consider a universal CESA. Ideally, it would be dependent on parental income and cost of childcare. It could be progressive and pay more to the accounts of low-income children and less to children of high-earning parents. Even if high-wage parents can afford the costs of childcare, any subsidy on childcare reduces the time costs of children, which increases labor participation.<sup>175</sup> Alongside a universally provided CESA, the United States should fund additional high-quality childcare centers. If tuition were paid through a child's CESA, then opening the centers would be a large upfront cost rather than an annual cost.

Overall, childcare for all children ought to be affordable for all families. Access to affordable, high-quality childcare would free parents to return to work after they have used their parental leave with less concern about the financial burden of childcare.

## VI. EXPECTED IMPACT ON THE PIG IN THE SNAKE PROBLEM

The reality of the United States' lack of paid maternity leave and publicly funded childcare is that both policies "matter[] for both female employment and fertility,"<sup>176</sup> which are of critical importance given the "pig in the snake problem." To briefly reiterate, the number of individuals entering retirement is growing faster than the size of the workforce, leading to a predicted deficit in the Social Security fund by 2035. Increasing the number of individuals in the workforce now, and in the future, is thus imperative.

### A. INCREASE IN FEMALE WORKFORCE PARTICIPATION

As the labor force participation rate in the United States reaches a forty-year low, it is of increasing importance to incentivize more women to participate.<sup>177</sup> Eurostat predicts an increase in the size of the total workforce, despite the decreasing working-age population. Two-thirds of that increase will be the result of educated women entering the labor market.<sup>178</sup> In order

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> Reijnders, *supra* note 167, at 1207.

<sup>176</sup> Castles, *supra* note 35, at 220.

<sup>177</sup> BOVINO & GOLD, *supra* note 113.

<sup>178</sup> Harper, *supra* note 5, at 227.

for this to be true in the United States, measures such as the proposed paid maternity leave and publicly funded childcare policies need to be introduced.

If the United States were to increase maternity leave entitlements from twelve weeks to seventy weeks to match what Sweden has, women's employment would increase by an estimated 1.4 percentage points. This is true even if pay was not guaranteed.<sup>179</sup> The impact of the recommended six months of paid maternity leave followed by publicly funded childcare would likely be even higher than this. Studies have found that female employment rates rise with maternity leave until the length of leave exceeds fifty weeks, at which point female employment rates begin to fall because women are less likely to return to work.<sup>180</sup> The impact on female employment rates in relation to Sweden's seventy-week policy cannot, therefore, be expected to be equivalent to the proposed six-month policy above. There is reason to believe that the impact would be more significant if the guaranteed leave was increased to six months and paid.

Andrés Erosa, Luisa Fuster, and Diego Restuccia considered the employment levels of mothers with infants given different lengths of paid leave. Figure 9 shows that as paid leave increases, the level of employment for women with infants increases while the percent of women working decreases. Each "Paid" indicator is a period of mandated paid maternity leave, with Paid 1 being the lowest and Paid 4 being the highest.<sup>181</sup> In this study, Paid 2 was representative of six months of paid maternity leave. In the chart, employment indicates the percentage of women who are employed and have jobs to return to, whereas working indicates the percentage of women who are actually showing up to work each day in each condition (fertile or with an infant). Though the percentage of women working decreases as maternity leaves increase, this is less concerning because it assumes that those women are still earning money during that time and that they will return to the workforce at a higher rate when their leave ends.

When women's workforce participation increases, childcare provisions can help ensure that fertility rates do not fall when women enter the workforce. Childcare provisions are also the most effective way to increase women's equality in the labor force.<sup>182</sup> As will be shown, childcare subsidies have a greater impact on female labor force participation. However, maternity leave is still necessary because it enables a woman to leave work to have a child to begin with. Maternity leave is far less effective if it is not followed by subsidized childcare, but there would also be significantly less need for publicly funded childcare if it were not preceded by maternity leave.

The impact of public childcare, on its own, is much more pronounced because it reduces the possibility that families will decide that the more cost-effective option for childcare is one parent staying home. This is likely the decision made when childcare costs so much that it is essentially equal to, if not more than, a parent's salary. Even minimal increases in childcare spending can impact employment. A Danish study found that decreasing childcare costs for a family by merely one hundred euros resulted in a 0.8

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<sup>179</sup> Olivetti & Petrongolo, *supra* note 72, at 14.

<sup>180</sup> *Id.*

<sup>181</sup> Erosa, Fuster & Restuccia, *supra* note 104, at 755.

<sup>182</sup> Hilgeman & Butts, *supra* note 58, at 108, 115.

percent increase in employment.<sup>183</sup> Moreover, by increasing publicly funded childcare, the cost per family over time is lower because it decreases the income penalty that women face from taking maternity leave since they are able to return to work more quickly.<sup>184</sup> As Esping-Andersen puts it, “the lifetime income gains and the associated larger tax payments to the exchequer will, over the years, basically defray the initial public subsidy to childcare.”<sup>185</sup>

In 1997, Québec introduced childcare subsidies for children four years old and up. The result was an eight percentage point increase in mothers participating in the workforce and an increase of an additional 231 hours, on average, worked annually.<sup>186</sup> A similar effect was seen, though with a ten percentage point increase, in the District of Columbia when the city began offering public pre-kindergarten.<sup>187</sup> With the policy proposed above, however, families would have access to publicly funded childcare at much earlier ages—presumably at six months when the period allowed for maternity leave expires. Thus, the expected impact could be even greater than that seen in Québec and the District of Columbia.

#### B. INCREASE IN FERTILITY RATES

Higher fertility rates are correlated with higher female employment rates and the existence of policies that provide access to childcare.<sup>188</sup> As demonstrated above, female employment rates have the potential to increase when paid maternity leave and publicly funded childcare are available. Therefore, the two policies discussed in this Note are likely to impact fertility rates simply through the way they impact female participation in the workforce. These family-friendly policies also have a direct impact on fertility rates.

The ease with which women can combine work and family influences how many children they will have; the larger the perceived compromise, the fewer children they will have.<sup>189</sup> When the government has reason to encourage higher fertility rates, like the United States does given the Social Security deficit, it should implement policies aimed at doing so. Jeanne Fagnani found that, “where family-friendly public policy has had a positive impact on fertility levels, the common denominator has been the availability of affordable, high quality childcare, along with legal provisions regulating work leave and work schedules related to children.”<sup>190</sup> Thus, when countries can provide women with the means to purchase services that reduce the additional workload from raising children by providing access to publicly funded childcare and guaranteeing job-protection and compensated leave, it is easier for mothers to combine work and family.<sup>191</sup>

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<sup>183</sup> *Investing in Early Childhood*, *supra* note 164, at 297.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> Olivetti & Petrongolo, *supra* note 72, at 19.

<sup>187</sup> Miller, *supra* note 122.

<sup>188</sup> Bonoli, *supra* note 34, at 67.

<sup>189</sup> Castles, *supra* note 35, at 219.

<sup>190</sup> Fagnani, *supra* note 78, at 79.

<sup>191</sup> Castles, *supra* note 35, at 219.

Fertility decisions are influenced by provisions of both maternity leave and childcare. In environments where maternity leave is short or unpaid and parents do not have access to childcare, a parent will be forced to leave the labor market entirely in order to have children. Often, it is the mother who ends up leaving, which reduces job attachment and labor force participation and results in lost wages and decreased occupational attainment.<sup>192</sup> In other words, if fully paid maternity leave is extended until the point at which publicly funded childcare becomes available, women are more likely to have children while simultaneously improving their own career prospects, eliminating the need to choose between having a family and having a career. Plus, since their working hours decrease following childbirth, maternity leave policies are needed to keep women in the labor force (by securing their job) until their child can take advantage of publicly funded childcare.<sup>193</sup>

When leave entitlements are mandated, they are correlated with higher fertility rates—if, and only if, they are paid.<sup>194</sup> This was seen in Germany when it linked maternity benefits to pre-birth incomes for the first fourteen months after birth. The effect was an increased incentive for high-earning women to take leave to have a child and, with it, an increased fertility rate.<sup>195</sup> Further, while lengthy maternity leaves could ultimately have a negative effect on fertility,<sup>196</sup> extending parental leave in Austria from one to two years resulted in twelve additional children being born to every one hundred women.<sup>197</sup>

Moreover, Francis G. Castles found that the variation in fertility rates of OECD countries was largely attributable to the proportion of children under three years old enrolled in formal childcare.<sup>198</sup> To increase enrollment in childcare, and see the resulting increase in fertility rates, the United States ought to consider spending more to make the cost affordable for families. One additional percentage point of GDP devoted to early childhood spending leads to a 0.2 increase more children born per woman.<sup>199</sup> In countries with particularly low childcare enrollment, a drastic increase in enrollment could have massive effects on the fertility rate. If Italy, for example, increased its childcare enrollment from 6 percent to 64 percent (which is Denmark's enrollment rate), it would see an increase of 0.97 children per woman, on average.<sup>200</sup> Even a smaller increase to only 30 percent enrollment would increase fertility by 0.27 children per woman.<sup>201</sup> Based simply on the numbers of children eligible for Head Start and Early Head Start programs and those who actually have access, a similar effect could be seen through increased enrollment if the United States implemented a publicly funded childcare policy.

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<sup>192</sup> Hilgeman & Butts, *supra* note 58, at 115.

<sup>193</sup> Hwang, Park & Shin, *supra* note 168, at 186.

<sup>194</sup> *Family Policy and Fertility*, *supra* note 107, at 271; Olivetti & Petrongolo, *supra* note 72, at 17.

<sup>195</sup> Olivetti & Petrongolo, *supra* note 72, at 18.

<sup>196</sup> “However, when the duration of the leave and the related cash benefits granted during the leave are examined separately, it appears that long leaves have a negative effect on fertility, while cash benefits have instead a positive or non-significant effect.” *Family Policy and Fertility*, *supra* note 107, at 271.

<sup>197</sup> Olivetti & Petrongolo, *supra* note 72, at 16.

<sup>198</sup> Bonoli, *supra* note 34, at 67; Castles, *supra* note 35, at 222.

<sup>199</sup> Olivetti & Petrongolo, *supra* note 72, at 15.

<sup>200</sup> Hilgeman & Butts, *supra* note 58, at 113.

<sup>201</sup> *Id.*

The United States is in a prime position to see the impacts that paid maternity leave and publicly funded childcare could have on the workforce today (through increasing female participation) and the workforce fifteen years from now (through increased fertility rates). Not only that, but these policies are necessary if the United States is to experience any reprieve in its Social Security deficit.

## VII. CONCLUSION

Modifications to the maternity leave and childcare policies that currently exist in the United States are long past due. Given the aging population, it is more important than ever that the government give serious consideration to overhauling the existing policies and replacing them with far more generous ones. The implementation of these policies, especially if implemented together, would significantly aid the “pig in the snake problem” that the United States is currently facing. The United States faces radical changes if its demographic problems are not addressed before the dependency ratio increases such that the Social Security fund is completely spent, and the contributions made do not cover the amount of benefits paid.

**Figure 1**

Old-age dependency ratio (ratio of population aged 65+ per 100 population 15-64)					
Location	1950	1985	2015	2035	2050
Japan	8.2	14.8	42.7	57.5	74.3
Republic of Korea	5.2	6.8	17.5	47.8	73.2
Ireland	18.1	18.1	19.6	31.0	46.2
Norway	14.5	24.4	24.8	35.2	39.6
Sweden	15.3	26.7	31.1	38.9	41.4
United Kingdom	16.2	23.0	27.9	37.9	42.9
Italy	12.4	19.4	34.1	53.1	68.8
France	17.3	19.6	30.1	44.0	49.3
Germany	14.4	21.0	32.4	49.7	53.2
Canada	12.2	15.0	23.6	38.5	41.3
United States of America	12.6	18.3	22.1	34.5	36.6

UN WORLD POPULATION PROSPECTS, *supra* note 22.

**Figure 2**

Total fertility (children per woman)					
Location	1950 - 1955	1980 - 1985	2010 - 2015	2030 - 2035	2045 - 2050
Japan	2.96	1.76	1.41	1.45	1.55
Republic of Korea	5.65	2.23	1.23	1.18	1.39
Ireland	3.42	2.83	1.97	1.72	1.69
Norway	2.60	1.69	1.82	1.72	1.75
Sweden	2.24	1.64	1.90	1.84	1.83
United Kingdom	2.18	1.78	1.87	1.76	1.77
Italy	2.36	1.52	1.42	1.38	1.49
France	2.76	1.86	1.98	1.84	1.83
Germany	2.13	1.46	1.43	1.65	1.69
Canada	3.64	1.63	1.60	1.50	1.57
United States of America	3.31	1.80	1.88	1.80	1.81

UN WORLD POPULATION PROSPECTS, *supra* note 38.

***Figure 3***

Table 1 Period total fertility rates in 21 OECD countries (1960, 1980, 1998) and change over time

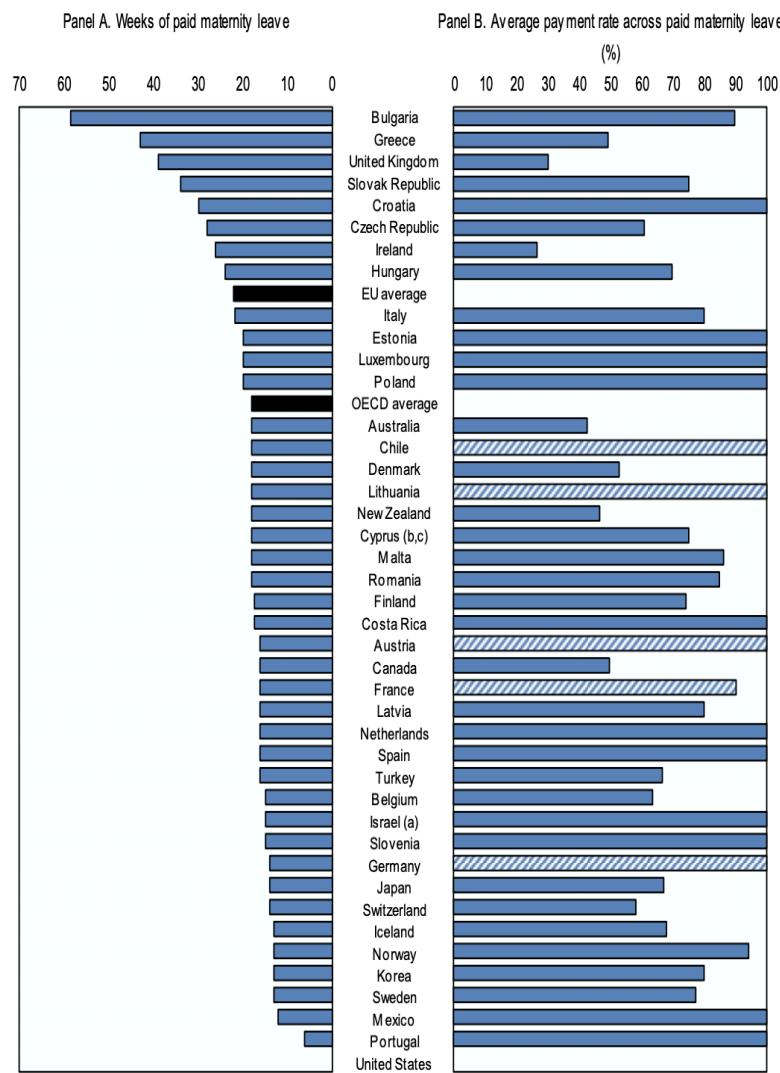
	1960	1980	1998	1960–80	1980–98
Australia	3.48	1.89	1.76	-1.59	-.13
Canada	3.90	1.73	1.62	-2.17	-.11
Ireland	3.73	3.24	1.93	-.49	-1.31
New Zealand	4.24	2.01	1.92	-2.23	-.09
United Kingdom	2.69	1.90	1.71	-.79	-.19
United States	3.65	1.85	2.07	-1.80	.22
Family mean	3.61	2.10	1.83	-1.51	-.28
Denmark	2.54	1.55	1.72	-.99	.17
Finland	2.71	1.63	1.70	-1.08	.07
Norway	2.90	1.72	1.81	-1.18	.09
Sweden	2.13	1.68	1.50	-.45	-.18
Family mean	2.57	1.65	1.69	-.92	.04
Austria	2.69	1.65	1.34	-1.04	-.31
Belgium	2.58	1.68	1.59	-.90	-.09
France	2.73	1.95	1.76	-.78	-.19
Germany	2.36	1.56	1.36	-.80	-.20
Italy	2.41	1.64	1.20	-.77	-.44
Netherlands	3.12	1.60	1.63	-1.52	.03
Family mean	2.65	1.68	1.48	-.97	-.20
Greece	2.28	2.22	1.29	-.06	-.93
Portugal	3.01	2.25	1.46	-.76	-.79
Spain	2.86	2.20	1.16	-.66	-1.04
Family mean	2.72	2.22	1.30	-.50	-.92
Switzerland	2.44	1.55	1.47	-.89	-.08
Japan	2.00	1.75	1.38	-.25	-.37
Overall mean	2.88	1.87	1.59	-1.01	-.28

Sources: 1960 period total fertility rates are from World Health Organization (1993). Figures for 1980 and 1998 are from Sardon (2002).

Castles, *supra* note 35, at 212 tbl. 1.

**Figure 4****Chart PF2.1.A. Paid maternity leave**

Duration of paid maternity leave and the average payment rate across paid maternity leave for an individual on national average earnings, 2018



OECD, *supra* note 5 chart PF2.1.A.

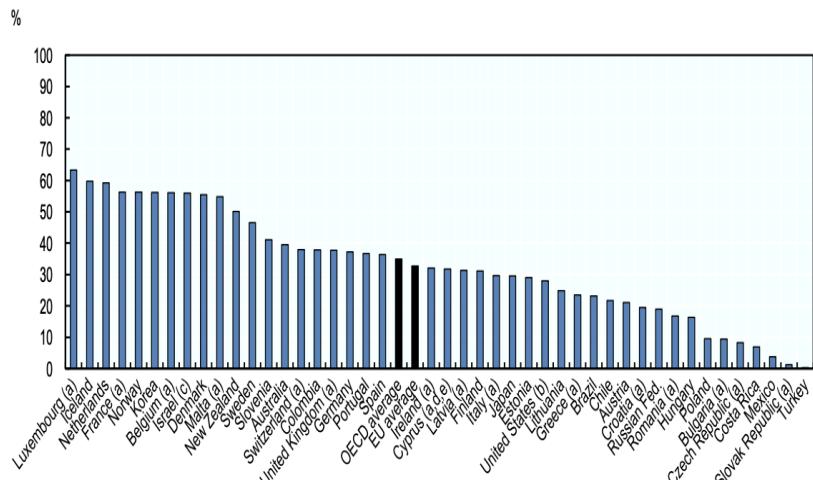
2020]

*Fixing the Pig in the Snake Problem*

191

**Figure 5**

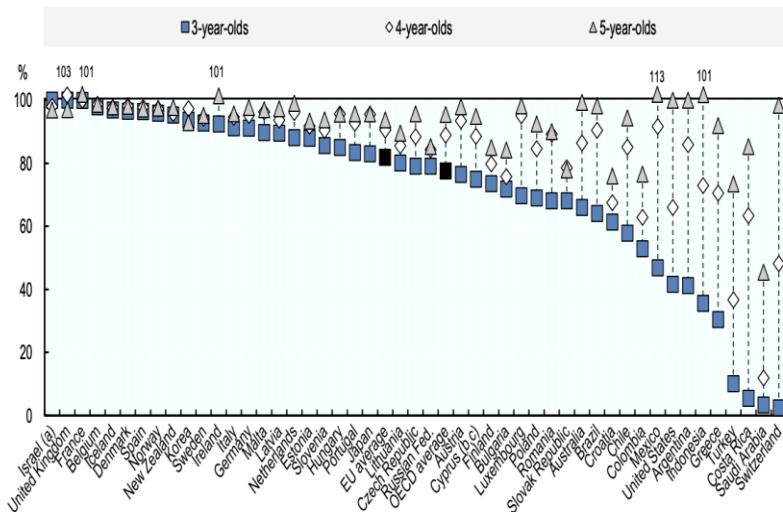
Chart PF3.2.A. Enrolment rates in early childhood education and care services, 0- to 2-year-olds  
 Percent of children enrolled in early childhood education and care services (ISCED 0 and other registered ECEC services), 0- to 2-year-olds, 2017 or latest available



OECD, *supra* note 152, at 2 chart PF3.2.A.

**Figure 6**

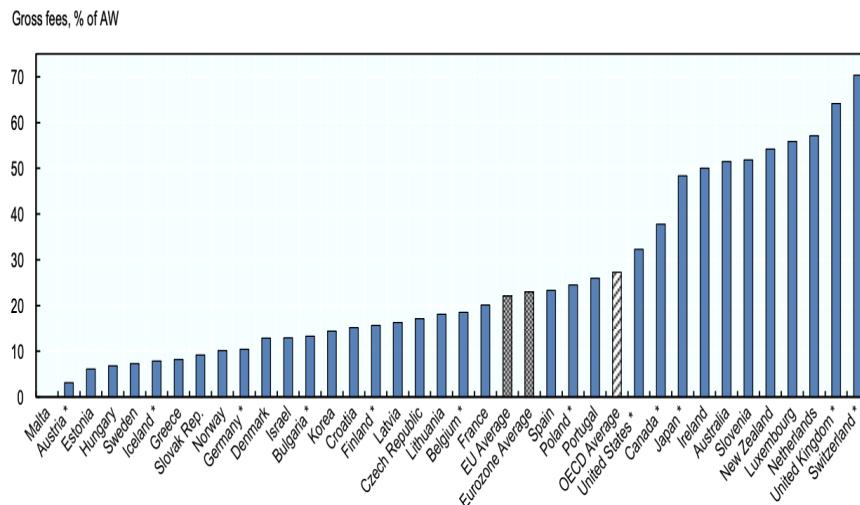
Chart PF3.2.F. Enrolment rates in early childhood education and care services and primary education by year of age, 3- to 5-year-olds  
 Percent of children enrolled in early childhood education and care (ISCED 2011 level 0) or primary education (ISCED 2011 level 1), 3-, 4- and 5-year-olds, 2017 or latest available year



OECD, *supra* note 152, at 6 chart PF3.2.F.

**Figure 7**

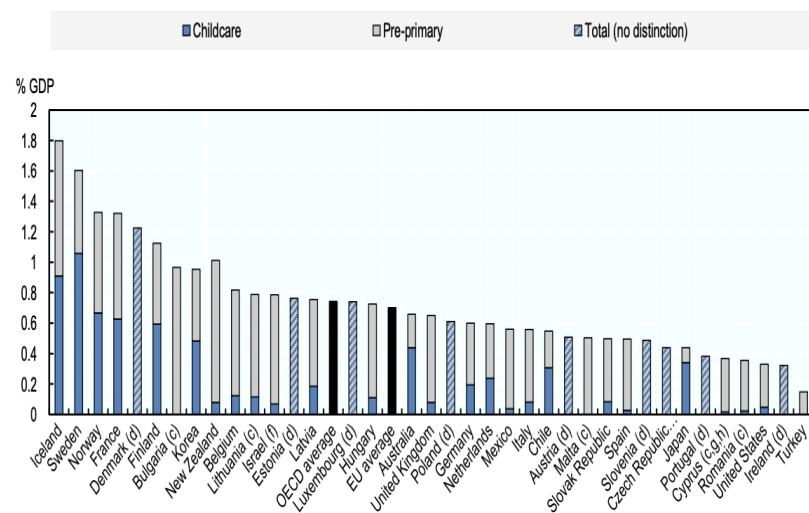
**Chart PF3.4.A. Gross childcare fees**  
 Gross fees for two children (age 2 and 3) attending full-time care at a typical childcare centre, as % of average earnings (AW), 2015



OECD, *supra* note 156, at 2 chart PF3.4.A.

**Figure 8**

**Chart PF3.1.A. Public spending on early childhood education and care**  
 Public expenditure on childcare and pre-primary education and total public expenditure on early childhood education and care, as a % of GDP, 2015 or latest available



OECD, *supra* note 158, at 2 chart PF3.1.A.

**Figure 9**

Ratios of employment and working to population (%).

	Fertile females		Mothers with infants	
	Employment	Working	Employment	Working
Benchmark	66.4	66.0	44.1	40.7
Unpaid 1	66.0	65.3	47.8	41.3
Paid 1	66.6	63.0	64.4	29.5
Paid 2	66.4	61.0	70.6	21.6
Paid 4	66.6	58.6	76.1	13.2

Note: Employment includes all matched individuals (working and on leave), whereas working excludes those on leave.

Erosa, Fuster, & Restuccia, *supra* note 104, at 755 tbl. 11.