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UNEMPLOYMENT INSURANCE MEETS GLOBALIZATION AND THE MODERN WORKFORCE

Deborah Maranville*

True compassion is more than flinging a coin to a beggar; it is not haphazard and superficial. It comes to see that an edifice which produces beggars needs restructuring.

- Martin Luther King, Jr., Declaration of Independence from the War in Vietnam, April 1967

I. INTRODUCTION

Over a decade ago, I published Welfare and Federalism\(^1\) an article that concluded with dual points. My first point built on Paul Peterson’s suggestion that economic development activities can readily be pursued at the city or state level, but income redistribution can be pursued only at the federal level. Why? Because business can choose to relocate in a city or state that imposes lower taxes because it does not engage in redistribution. I argued that if welfare programs are understood as redistribution, assigning funding and administration of such programs to the states must fail. In order to attract business through lower taxation cities and states will forego progressive taxation and wealth redistribution that might fund welfare state activities.\(^2\) This is, of

\* Professor of Law, University of Washington, School of Law, Director, Unemployment Compensation Clinic. Thanks to Angelica Moldenhauer for research assistance, the wonderful reference staff of the Gallagher Law Library, particularly Ann Hemmens for reference assistance, Benjamin Pfeiffer and Carl Slater for assistance with sources, and Benjamin Pfeiffer for reading a draft. Thanks to participants in the University of Washington School of Law faculty colloquium series for thoughtful comments. Special thanks to the Law Review staff of the Santa Clara University School of Law for organizing this wonderful symposium.

2. Id. at 47-50.
course, the well-known "race to the bottom" phenomenon in which states offer corporations incentives to relocate by slashing taxes and social programs.\(^3\)

My second point was that the activities of at least some welfare programs might fruitfully be reconceptualized as economic development. To the extent that such a reconceptualization makes sense to people, it might generate greater support for welfare programs that take place on the state level.\(^4\) Social welfare benefit programs allowing single mothers to stay home with their children, for instance, help produce the next generation of workers, a task critical to the needs of employers.\(^5\)

In the intervening fifteen years since my article was published, the discourse on federalism has given way significantly to the discourse on globalization. Now the question is no longer whether states (in the U.S. sense) can continue to operate social welfare programs, but whether states (in the global sense, i.e. countries) can continue to do so. The "race to the bottom" now takes place on a global, as well as an intranational, scale. Until such a time as either the slogan "one world" becomes a political reality and economic redistribution takes place on the level of a single international government, or the movement towards globalization is reversed, the federalism issues I struggled with fifteen years ago will continue to present themselves in the guise of globalization. The economic pressure to be globally competitive creates an imperative to find intellectual, political, and economic structures centered on equitable development structures responsive to human needs.

With globalization has come the reminder that nominally separate legal specialties such as labor, international trade,

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\(^3\) The existence of "race to the bottom" is both widely accepted and, in some circles, controversial. Richard L. Revesz has argued strenuously against the notion of "race to the bottom," at least in the context of environmental regulation. See, e.g., Richard L. Revesz, The Law and Economics of Federalism: The Race to the Bottom and Federal Environmental Regulation: A Response to Critics, 82 MINN. L. REV. 535 (1997). In my view Brian Langille demolishes Revesz's argument in his book chapter, Brian A. Langille, Competing Conceptions of Regulatory Competition in Debates on Trade Liberalization and Labour Standards, in INTERNATIONAL REGULATORY COMPETITION AND COORDINATION: PERSPECTIVES ON ECONOMIC REGULATION IN EUROPE AND THE UNITED STATES (William Bratton et al. eds., 1996). See infra Part IV.A.

\(^4\) Maranville, supra note 1, at 50-52.

\(^5\) Id.
immigration, and social welfare benefits are inextricably connected. It has long been noted that the law is a seamless web, that it is impossible to study any area of the law in isolation. Dressed up in the language of post-modernism, the insight is now that these areas are “mutually constitutive.” This case study weaves together developments in each of these areas.

The course of globalization has been driven by the neo-liberal “consensus” in favor of certain forms of market-based solutions that favor reducing tariffs, controls on movement of capital, and spending on social benefits. The international trends encompassed by neo-liberal globalization have been paralleled by political and intellectual developments in the United States that have significantly re-shaped social welfare policies. The most visible re-shaping has been the transformation of the Aid to Families with Dependent Children (AFDC) program, providing aid to single mothers, into the Temporary Assistance for Needy Families (TANF) program.

6. See generally LABOUR LAW IN AN ERA OF GLOBALIZATION (Richard Michael Fischl & Karl Klare eds., 2002); see also Lucy A. Williams, Beyond Labour Law’s Parochialism: A Re-envisioning of the Discourse of Redistribution, in LABOUR LAW IN AN ERA OF GLOBALIZATION, supra, at 91. Drawing on her work in the plant closing movement, Fran Ansley has also been a powerful voice linking these issues. See Fran Ansley, Social Movements and Law Reform: Inclusive Boundaries and Other Impossible Paths Toward Community Development in a Global World, 150 U. PA. L. REV. 353 (2001).

7. The saying is variously attributed to the legal historian Frederick Maitland and to Oliver Wendell Holmes, Jr. See Ethan Katsh, Law in a Digital World: Computer Networks and Cyberspace, 38 VILL. L. REV. 403, 403-04 n.3 (1993).

8. A Westlaw search for “mutually w/1 constitutive,” conducted on January 22, 2004, yielded 140 hits. Post-modernism seems to have hit the law review literature full-force in the 1990s, as only seven hits pre-date 1990. The term traces back to none other than the controversial leading light of post-modernism, high theory and “law and literature,” the English Professor Stanley Fish. See Stanley Fish, Working on the Chain Gang: Interpretation in Law and Literature, 60 TEX. L. REV. 551 (1982).


10. Numerous commentators have argued that this consensus is the product of a sustained effort on the part of conservative foundations and corporations. See, e.g., DAVID KORTEN, WHEN CORPORATIONS RULE THE WORLD (1995).

TANF has ended the “entitlement” status of the AFDC program, imposed time limits for the first time, and increased work requirements, while shifting control over program design to the states. As a result of this “reform” those concerned with the poor, as well as those concerned more generally with the economic well-being of women, have focused new attention on such programs as Unemployment Insurance. However, as Martha McCluskey has argued, other social programs have been subject to attacks relying on many of the same intellectual underpinnings as the attack on “welfare.”

In this case study I will describe how the processes of “globalization” paved the way for restrictions in the Washington State unemployment insurance program. Based on this case study, I will draw two conclusions. First, we can no longer study even state-administered programs like unemployment insurance without considering the larger structures of international finance and economic trade law. Absent significant transformation of these structures, they will likely continue to undermine support for unemployment insurance. Second, unemployment insurance cannot be responsive to working families without taking into account the carework that must be done to keep those families functioning. We badly need a theory and rhetoric of payroll taxation that permits us to integrate carework into the framework of unemployment insurance.

II. THE CASE STUDY

Washington State’s 2003 legislative session produced business-sponsored legislation that significantly reduced or restructured unemployment benefits on multiple fronts. The legislation overhauls the structure of the tax system that funds the program, imposes new limits on maximum benefits, duration, and benefits for seasonal workers, and re drafts the
definitions governing the voluntary quit and misconduct disqualifications from receiving benefits. How this legislation came into being is a story of globalization and the multiple threads interweaving international finance, trade, labor, gender, immigration, and social welfare policy.

A. The Background

The unemployment insurance (UI) system in the United States has historically touted twin aims. First, it provides wage replacement benefits to unemployed workers, helping keep them afloat until they can find new employment. Second, it performs a macroeconomic, counter-cyclical stimulus function by pumping money into the economy during periods of high unemployment. Both of these functions are threatened by changes in the world economy, and in the labor force.

As the United States experiences "de-industrialization" with the movement of manufacturing jobs to low-wage countries, opportunities for new employment become scarcer, and new wages lower, making unemployment insurance an increasingly inadequate response to job loss. In addition, the circulation of the money paid out in unemployment insurance still maintains consumer demand, but no longer reliably creates local and national manufacturing jobs. The structure of the U.S. marketplace now means that a significant portion of UI benefits will be spent on imported, cheap consumer goods that fuel the recurrent, massive U.S. trade deficits, or will

15. See infra Part II.E.
16. The system is significantly decentralized as a result of the initial design of the program. In 1934, Congress enacted the Federal Unemployment Tax Act, that imposes a federal payroll tax with a credit to employers for taxes paid under a state unemployment insurance system meeting minimum federal standards. See 26 U.S.C. § 3302 (2000). In response to this Act, by 1939 all states had enacted unemployment programs, typically following the design of either of two model acts drafted by the Committee on Economic Security. See Arthur Larson & Merrill G. Murray, The Development of Unemployment Insurance in the United States, 8 VAND. L. REV. 181, 195 (1955). The state programs continue to exhibit significant commonalities, but the current versions diverge both as to statutory details and implementation in regulations and case law.
17. ADVISORY COUNCIL ON UNEMPLOYMENT INSURANCE IN THE UNITED STATES, BENEFITS, FINANCING, COVERAGE 3 (Feb. 1995).
19. See infra Part II.E.
20. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED
fuel the profits of transnational corporations that no longer pay U.S. taxes or employ U.S. workers.  

B. Boeing and Globalization

Our case study begins with the Boeing Corporation and its role in international trade. The Boeing Corporation has grown from its modest beginnings in Seattle, Washington in 1917 as a builder of training planes for the United States Navy, to a multi-national corporation headquartered in Chicago with manufacturing plants around the U.S. and outsourcing arrangements around the world. Boeing has ranked between ninth and sixteenth on the Fortune 500 list from 1997 to 2002 and was the leading source of exports from the United States.

With the consolidation of the U.S. aircraft industry in the last decade, Airbus became Boeing’s sole major competitor in the commercial aircraft business. Originally founded as a “marketer/distributor of large commercial airplanes,” Airbus became a business “including complete manufacturing responsibility” after “[t]hree major European aerospace companies . . . combined to form the European Aeronautic Defense and Space Company” and became “an 80% owner of Airbus.”

Three characteristics of the aerospace industry are noteworthy. First, because of the massive capital investment re-
quired to develop a new plane—sums exceeding $7 billion,—28 the post-WWII commercial aerospace industry has been dominated by a small number of large corporations.29

Second, both because of its military importance and its potential impact on a country’s balance of payments,30 aerospace is an industry that has always had a close relationship with the government. In the American case, this relationship takes several forms. The U.S. government purchases massive amounts of military aerospace equipment, thus effectively subsidizing significant amounts of intra-corporate research and development. Over much of the history of the industry, the major aerospace corporations have been involved in developing both commercial and military aircraft.31 In addition, about “two-thirds of the money lent by the Export-Import Bank goes to Boeing” to finance its exports of aircraft to other countries.32 In Europe, extensive direct government loans were used to develop Airbus, a consortium of aerospace manufacturers from different European countries33 created under French law as a special form of commercial partnership.34 Both the U.S. and the European countries deploy ex-

28. According to the Wall Street Journal “Boeing hasn’t released its estimates for how much the 7E7 will cost to develop, but people in the industry say $7 billion is a conservative estimate for an all-new airliner project.” Daniel Michaels & J. Lynn Lunsford, Airbus Contends Boeing’s Plan to Fund Plane Break Trade Rules, WALL. ST. J., Dec. 11, 2003, available at 2003 WL-WLSJ 68130713. A more recent article by the same authors cites higher figures: “Airbus has said the A380 will cost about $12 billion by the time the first plane is delivered in 2006 . . . . Boeing won’t say how much it expects to spend on the 7E7, but people in the industry say the plane program could cost between $8 billion and $10 billion.” J. Lynn Lunsford & Daniel Michaels, New Friction Puts Airbus, Boeing on Course for Fresh Trade Battle, WALL. ST. J., June 1, 2004, available at 2004 WL-WLSJ 56930649.

29. See supra note 26.


31. See id. at 866-69.


33. Initially, the consortium consisted of France’s Aerospatiale and Germany’s Deutsche Aerospace as full partners, with Hawker Siddeley and Fokker also associated with the program, and Spain’s CASA becoming a full member in 1971. When it took over Hawker Siddeley, British Aerospace became a full partner in 1979. See http://www.airbus.com/about/history.asp#frstpart (last visited May 25, 2004).

34. See MATTHEW LYNN, BIRDS OF PREY: BOEING VS. AIRBUS: A BATTLE FOR THE SKIES 113 (1995):

Airbus was a “groupement d’interet economique . . .” [a] GIE is not a
tensive diplomatic pressure to “encourage” foreign states to buy the products of their countries’ industry.\textsuperscript{35}

Finally, because the purchasers for large jet airplanes constitute a limited market,\textsuperscript{36} the relationship between airplane manufacturers and commercial buyers, i.e. the airlines, is both exceptionally close and constantly in flux. In some cases, where a manufacturer makes the only plane in a product class, the manufacturer has no competition and can extract monopoly profits. In other cases, the manufacturers are competing head-to-head; here, the competition can be direct and intense.\textsuperscript{37}

The oligopoly, and sometimes monopoly, structure of the commercial aircraft manufacturing industry, and the heavy government role in it are striking. As noted above, the selling manufacturers’ governments exert pressure to “buy American” or “buy European” in return for investment, diplomatic, or military support.\textsuperscript{38} In addition, the buyers occasionally appear to extract agreements to “outsource” manufacture of portions of the airplane in countries that make substantial purchases.\textsuperscript{39} Because these characteristics mean that Boeing is not operating in a market that can remotely be considered one involving “free” trade, in the sense of minimally regulated trade, one might assume that the aerospace environment is not typical of the forces operating in the “globalization” process. However, at least one critic of “globalization” William Greider treats Boeing as quite typical in key respects.\textsuperscript{40}

Greider argues that increased efficiency in production company, and escapes many of the obligations of a company. For example, it does not have to publish accounts nor does it have to pay taxes, unless it chooses to do so . . . . It simply pools the capital contributed by its members, and its results are taken on to the books of its member companies in proportion to their share of the enterprise.

\textit{Id. at} 1-9.

\textsuperscript{35} \textit{Id. at} 1-9.

\textsuperscript{36} According to the International Air Transport Association “over 270 airlines comprises 98% of international scheduled air traffic.” International Air Transport Association, \textit{available at} http://www.iata.org/index.htm. Customers for the large commercial jets comprise a subset of this number: “Airbus has sold . . . to more than 180 customers” according to their website. Airbus website, \textit{available at} http://www.airbus.com/media/press_kits/en/18 about_airbus_basic.asp?3n=19.

\textsuperscript{37} L\textit{YNN, supra} note 34, ch. 9, at 206, 216.

\textsuperscript{38} \textit{Id. at} 156.

\textsuperscript{39} \textit{Id.}

\textsuperscript{40} G\textit{REIDER, supra} note 20, at 46.
due to technological improvements expands output, while depressing profit margins. "The dirty little secret about technological revolution is that it typically depresses a firm's rate of return per unit, whether the firm is making cars or computers. Falling prices, as always, threaten profit margins." Boeing is one of three transnational companies Greider cites as examples of the "productive efficiency" that drives this process. Boeing "sets a hard target of 25 percent reductions in its operating costs." According to Greider, the result of this "world of glutted markets" is that "[t]o gain access to promising markets, multinational firms are engaged, quite literally, in trading away domestic jobs in exchange for sales." Thus, final assembly of Boeing's planes is still done in the United States, but Italy, Japan, and China, to name three countries, make important components, arrangements entered into to ensure Boeing's access to their markets in the form of orders from the state airplanes. For Boeing's 777 the entire fuselage traveled in quarter sections from Japan, shipped by Mitsubishi from Nagoya to Puget Sound... Wingtip assembly came from Korea. Rudders from Australia. Dorsal fins from Brazil. Main landing gears from Canada and France. Flight computers from the United Kingdom. And so on... Assembly parts were dispersed to the foreign producers because the market demanded it, not because these things could be made better or cheaper somewhere else.

Though Boeing and Airbus have been in the thick of the changing legal framework that has fostered increased international trade, capital movement, and outsourcing of manufacturing around the world, it is challenging to tease out the role that changes in the legal structure governing international trade play in Boeing's fortunes. However, three developments in international trade law are worth noting. First, the general reduction in tariffs initiated under GATT was extended to airplanes and airplane parts in the Agreement on Trade in Civil Aircraft, "the only sector-specific agreement

41. Id.
42. Id.
43. Id. at 122.
44. Id. at 123-25.
45. Id. at 129.
covering a manufactured product that was successfully negotiated in the Tokyo round.” That agreement “is in part a zero-for-zero tariff agreement, as signatories agree to eliminate import duties on civil aircraft and the bulk of aircraft parts.” Thus, overseas manufacturers can produce the parts that are incorporated into Boeing planes without having to overcome protectionist tariffs favoring U.S. suppliers. Likewise, Boeing can compete against Airbus in European Union countries without being subject to tariffs that put it at a competitive disadvantage.

Second, “[d]isputes regarding trade in civil aircraft have been a recurring element of trade relations between the U.S. and the EU, reflecting the battle for market share fought between Boeing . . . on the one hand . . . . and Airbus on the other.” Though complaints have periodically been filed with the WTO challenging alleged “subsidies” to Boeing and Airbus, none has yet been pursued to a decision. The question whether either the American or European approach to supporting its civil aircraft industry violates international trade rules remains significantly unresolved. Instead, complaints with the WTO have become one more weapon in the ritualized battle between the two remaining aerospace giants. The possibility looms that one party or the other will gain a significant competitive advantage, if either the U.S. or European approach to government subsidies is outlawed.

Third, under many trade agreements, including NAFTA, transnational corporations like Boeing are increasingly free from government regulation on their foreign investment. As Fran Ansley noted:

Governments are forbidden to adopt a range of “performance requirements” on foreign capital, a prohibition that

47. Id.
48. Id. at 380-81.
49. Ansley, supra note 6, at 379.
51. For example, Greider discusses Boeing’s decision in the 1990s to “establish a foreign subsidiary, Boeing China, based in Beijing with a $600 million commitment of capital.” GREIDER, supra note 20, at 125.
arguably could prohibit measures that encourage or require foreign investors to seek out local suppliers, hire local residents, recirculate locally made profits, or actively promote “back linkages” between the foreign-financed production process and local industry. Governments are forbidden to limit repatriation of profits or to require that foreign investment remain in the jurisdiction for any particular period of time. They are also prohibited from effecting what in U.S. constitutional parlance would be called “regulatory takings.” That is, NAFTA provides that signatory governments may be found liable for trade infractions not only if they move to confiscate an asset or to take title to property of a foreign investor, but also if they enact regulations on corporate activity that come to be seen as “tantamount” to “expropriation” or as constituting “indirect” expropriation.52

C. Washington State and the Bidding War for Boeing

In January 2003, Boeing announced its plans for a new, energy efficient, mid-sized plane to be known as the 7E7.53 In May of the same year, Boeing followed up this announcement with the standards it would use to select a state in which to build the new plane, setting off a nationwide competition to land the 7E7 manufacturing work. Estimates of the “new” jobs to be created by the 7E7 varied between 100 and 150,000;54 cost per job estimates were as high as $150,000 per year per job.55 The higher job creation figures did not seem based on reliable methodology.56 The prospect that Washing-

52. Ansley, supra note 6, at 379 (citations omitted).
54. My low estimate is from Nicole Brodeur, Top o’ the Morning to You, Too, SEATTLE TIMES, Jan. 13, 2004, available at 2004 WL 58920722 (noting rumors that the 7E7 would produce “only 100 new jobs; the rest would be transfers from other areas of the company” (emphasis added)). For the high estimate see Governor Gary Locke, Tax Incentive and Reform Package for 7E7, News Conference (Jun. 9, 2003), available at http://www.governor.wa.gov/speeches/speech-view.asp?SpeechSeq=448.
55. The press typically cited a figure of 800-1200 new jobs. Using the median from that estimate, 1000 jobs, a three billion dollar package of tax incentives over twenty years to create 1000 jobs would produce the figure cited in the text.
56. The higher estimates are presumably based on a job creation multiplier effect on the assumption that the manufacturing jobs created by Boeing would generate additional jobs as the wages paid by Boeing circulated throughout the
ton State might lose the 7E7 generated tremendous angst among government officials who had already watched Boeing's corporate headquarters abandon Seattle for Chicago. Perhaps predictably, in the bidding war that resulted from Boeing's "request for proposals," Washington State went for the preemptive bid: a $3.2 billion package including "a 40 percent reduction in the . . . business and occupations (B&O) tax, as well as providing property tax breaks and research and development tax credits [that] will last for 20 years." Boeing had long complained that Washington's "business climate" was unfriendly, citing high business and occupation taxes, high unemployment taxes, and a congested transportation system. The prospect that the state might lose the Boeing jobs created a climate in which many legislators were prepared to pass whatever legislation business demanded.


57. See discussion supra Part II.B.
58. Carolyn Nielsen, Pleasing Boeing Worth the Price, BELLINGHAM HERALD, June 19, 2003, available at 2003 WL 11648173. The Washington Department of Revenue's Fiscal Note estimated the lost tax receipts at a mere $383 million calculated over six years. On the other hand, newspaper reports cited various figures of $3 billion and $3.2 billion over the twenty-year life of the legislation. See id.
59. See id.
60. The Boeing lobbyist apparently spread the word that Boeing had not actually asked for a tax relief package of the size proposed by the Governor. David Postman, Tax Breaks Could Save Boeing $3 Billion; Legislature 2003: Some Worry that Locke Is Offering Too Much in Rush to Woo Company, SEATTLE TIMES, Jan. 10, 2003, at A1, available at 2003 WL 3630642 ("Even Boeing lobbyists were reportedly uncomfortable. Rep. Jack Cairnes, R-Kent, said a Boeing lobbyist told him yesterday the company did not ask for the tax break and is not lobbying for it.").
Unemployment insurance reform was one of the items that Boeing, supported by its business allies, demanded.\textsuperscript{61}

\textbf{D. The Historical Role of Labor and Social Welfare Advocates in UI Legislation}

Additional players in this case study were organized labor and advocates for social welfare benefits. Legislation concerning unemployment insurance has traditionally involved a battle between business and labor interests. In Washington State, the Washington State Labor Council historically has taken the lead both in opposing business legislation harmful to workers, and in initiating favorable legislation when the legislature was amenable.\textsuperscript{62} Washington State has powerful unions, many of which are associated with Boeing, and their mark can be found on the UI statute.\textsuperscript{63} As with the union movement nationally, however, union membership in Washington State has declined significantly,\textsuperscript{64} and this decline in membership has been accompanied by a decline in political power of unions.

In recent years unemployment insurance has also been found on the agenda of lobbyists for women’s groups and social services organizations.\textsuperscript{65} Women’s groups began to recog-
nize that the unemployment insurance system was designed for workers who fit the typical male model: the full-time, year-round worker with unlimited availability and no care obligations. In the wake of welfare “reform” social services providers became more aware of the important role that unemployment insurance could play in keeping low-wage workers out of poverty.

These groups were the prime movers behind the 2002 legislation that granted benefits to workers who quit work to escape domestic violence, often referred to as the “dv” exception. Over the two previous legislative sessions, the business lobby had vigorously resisted enactment of such legislation. Business carefully acknowledged the harm of domestic violence, but argued that business should not bear the cost of remedying a social problem. Though the legislation eventually passed, business was not reconciled to the provision.

Business was also unhappy with a provision added to the statute in 1993 at the request of the Employment Security Department to allow benefits to “individuals who left work to relocate for the spouse’s employment.” Employer groups

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Law Project, became the lobbyist for the Northwest Women’s Law Center, drawing on her expertise to take the lead in shepherding through the legislature a bill to grant unemployment insurance benefits to workers who quit work to escape domestic violence. Rebecca Smith of NELP, one of whose specialties is unemployment insurance, happens to be married to Jeff Johnson, lobbyist for the Washington State Labor Council.


69. Author’s personal knowledge based on testifying before and observing a legislative hearing on the bill on February 6, 2002.

70. WASH. REV. CODE § 50.20.050(2)(c). Under Ayers v. Employment Sec. Dep’t, 556 P.2d 610 (Wash. 1975) and other Washington case law, such individuals were eligible for benefits until 1977. The 1982 amendments to the statute added a lesser disqualification for quits due to marital status or domestic responsibilities, and a provision limiting good cause to “work-connected factors,” unless specifically authorized. See WASH. REV. CODE § 50.20.050(4); WASH.
viewed many such cases as a "personal choice" by the employee in the context of a statute and case law that normally limited good cause to "work-connected factors" and excluded quits for "personal" reasons. Though relatively few claimants were made eligible by this provision, employer groups sought to narrow the exception. Legislation in 2000 restricted the provision to quits due to "an employer initiated mandatory transfer."

Even before the fight over the "dv exception," advocates had begun raising the question of eligibility for workers who satisfied the attachment to the labor force requirement on the basis of part-time work and were not seeking full-time employment. Thus, the question of how the UI system should accommodate the needs of women workers was very much "on the table" and unresolved entering the 2003 legislative session.

Of course, the interests of unionized workers, low-wage workers, and women are not always congruent, and the tension between the interests of the former groups is reflected in the UI statute. For instance, in 2000, the unions supported an increase in the penalty for the voluntary quit disqualification from receiving benefits in order to obtain retraining benefits that are available only to long-time workers in declining industries.

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71. See supra note 68 and accompanying text.
72. Characterizing quits due to conflict with a supervisor as not connected to work may be a classic example of frameshifting, manipulating legal doctrine by changing the context within which one considers the problem. See Jennifer Jaff, Frame-Shifting: An Empowering Methodology for Teaching and Learning Legal Reasoning, 35 J. LEGAL EDUC. 249, 252-57 (1986); Pierre Schlag, The Aesthetics of American Law, 115 HARV. L.REV. 1047 (2002). I have difficulty recognizing the context in which one can say that a conflict with supervisors is not work connected, even though many such contexts might not justify quitting.
73. The Employment Security Department does not have separate data for how many claimants were eligible under the "quit to follow a spouse" provision between 1992 and 2002. The agency's figures showed between sixteen and twenty-four claimants a year eligible under this provision in the years 2000 through 2003. E-mail to author from Juanita Myers, Unemployment Insurance Rules Coordinator, May 13, 2004, 19.24.10 PST (on file with author).
74. WASH. REV. CODE § 50.20.050(2)(c).
75. Author's personal knowledge based on conversations with lobbyists and other players, including telephone conversation with lobbyist Pamela Crone, May 14, 2004.
76. Id.
E. Boeing & Unemployment Insurance

The design of the unemployment insurance system involves two distinct components: the tax system and the benefit structure. In previous years, Boeing had complained that under the Washington unemployment insurance tax scheme, seasonal employers were not paying their fair share, thus increasing the taxes paid by Boeing and other employers with more stable work forces.78 In the 2002 legislative session, Boeing and other “stable” employers brokered a deal that restructured the unemployment tax system.79 This legislation significantly increased tax rates on seasonal employers.80 However, in order to secure passage of the legislation, the agricultural industry was exempted from the increase,81 leaving the construction industry to absorb the brunt of the costs. Unhappy, the construction industry secured and passed a referendum to overturn the new legislation.82 Thus, even before the bidding started for the 7E7, the legislature was faced with pressure to return to square one on UI taxes. The advent of the 7E7 bidding war provided an opening for employers not only to address the tax side of the UI system, but also to take the opportunity to restructure the benefit side. Boeing’s announcement of its siting standards came well into the legislative session, after the deadline for introduction of new legislation. After the legislative cut-off deadlines, without public hearings, and with minimal input from other players, business proposed a major overhaul of the entire system.83

The major provisions of the business proposal covered a wide range of issues, in which the threads of immigration and gender played supporting roles. Perhaps the most contentious issue in the legislation was known as the “seasonality provision.” Under this provision the worker’s benefits were calculated on the basis of the worker’s average wage over the four most recent quarters (“four-quarter averaging”), rather

80. Id. § 7(5)(b).
81. Id. § 7(5)(c).
82. Referendum Measure 53 (Wash. 2002); see also Timmerman, supra note 78.
than the worker's average wage over the two most recent quarters of the base year ("two-quarter averaging). This proposal was predicted to reduce benefits significantly for seasonal workers, such as construction workers, holiday sales workers, and agricultural workers. Recent immigrants are heavily represented among all these groups, especially the latter. Groups interested in social welfare, as well as the unions, lobbied vigorously against this proposal, going so far as to stage a hunger strike on the steps of the capitol building. In addition to the "seasonality" provision, the proposal specifically denied eligibility for benefits to aliens admitted to the country in order to perform agricultural work.

Among the specific provisions in the business proposal were several reflecting the unresolved struggle over the extent to which employers should bear the costs of accommodating work family problems and other "social issues." First, the business proposal further restricted the "quit to follow spouse" provision, limiting it to "mandatory military transfers." Second, as part of a sweeping revision of the statute governing disqualifications for voluntarily leaving work, the proposal specifically deleted both the twenty-year-old statutory provision limiting good cause to "work-related factors" and a provision allowing individuals who quit due to "marital status or domestic responsibilities" to requalify for benefits more easily than other disqualified workers. Business appeared to view these changes as restricting eligibility for workers who leave their jobs voluntarily.

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87. Id. § 50.20.050(1)(c). Compare id. § 50.20.050(1)(c) with id. § 50.20.050(2); see also supra note 82.
88. WASH. REV. CODE § 50.20.050 (1)(d). Compare RCW 50.20.050(1)(d) & RCW 50.20.050(2).
89. Under a "plain meaning" interpretation, by deleting the provision that limited good cause to work-connected factors, the amendments appear to have caused the statute to revert to the pre-1982 framework in which good cause included quits for compelling personal reasons under In re Bale, 385 P.2d 545 (Wash. 1963). The analyses of the bill provided by business lobbyists did not discuss the implications of these changes, and it seems counterintuitive that the business interests who pushed for this legislation had this result in mind.
hoping to draw the support of key legislators, the business lobby chose not to re-open the fight over domestic violence quits, and it included in its bill a provision to provide benefits for those part-time employees who are available for part-time work of seventeen hours a week or less.90

In the lobbying over the 2003 legislation, fault-lines within the labor movement itself played a key role. Democrats, the traditional union allies, controlled both the governorship and the House of Representatives (52-48), while Republicans controlled the Senate (25-24).91 Thus, despite the momentum in favor of the 7E7 package, at least some legislators would have been reluctant to vote for the UI legislation in the face of unified labor opposition. Having faced Boeing layoffs that reduced the workforce from 39,000 at the end of 1999 to 16,800 at the end of 2003,92 and facing the potential loss of additional jobs if the 7E7 was not built in Everett, Washington, the Machinists Union had broken ranks with the other unions and chose to support the legislation.93 Nonetheless, the House initially failed to pass the bill. Because opposition was fierce, the business proponents of the bill consulted with the Labor Council late in the process, though to little effect. It required an extended session called specifically to enact the bill,94 but the business proposal was enacted with minimal changes.

Thus, this may have been an oversight resulting from the rushed process and lack of legislative hearings, but because of precisely those factors, no legislative history exists to aid in the interpretation of the statute.

90. WASH. REV. CODE § 50.20.119 (2003). The origin of the figure seventeen is a mystery, and it is unclear how many workers will actually benefit from this provision. Most students, the most likely group of individuals for whom part-time work at this level might be desired, are ineligible for benefits under a specific student disqualification. Id. § 50.20.095 (2003).


94. Id.
III. LESSONS

The Santa Clara Law Review’s symposium on the State of Working Families asked the Unemployment Panel the question: “Is America Doing Enough for Working People?” What lessons can be drawn from my case study to attempt an answer to that question? Let me suggest two lessons.

A. Bargaining in the Shadow of Globalization

The 2002 Washington UI legislation presents a sobering lesson in how globalization impacts efforts to maintain social welfare benefits for working families. Globalization increases the incentive for transnational corporations to extort tax breaks in exchange for a promise to site jobs in the taxing jurisdiction, while at the same time making credible the threat to take jobs overseas. The effects of globalization include the often very real pressures on even huge multinational corporations to reduce costs and improve their profitability. These pressures, combined with the creation of an international trade regime designed to facilitate capital mobility, allow major employers like Boeing to extort tax breaks and reductions in unemployment benefits, under threat of taking jobs to other states or overseas.

Richard Revesz has argued that, at least in the environmental context, the “race to the bottom” is a myth, and that the “sale of location rights” does not necessarily lead to underregulation of environmental hazards.

The case study in this article provides a striking illustration of the extent to which Revesz’s sale of location rights analogy is based on a reductionist view of the world that fundamentally misunderstands the workings of political actors and entities like state governments. Washington State’s governor and legislators were not operating as rational economic actors, carefully comparing the costs of the tax subsidies they offered with the benefits that Boeing’s 7E7 assembly plant might bring; rather they were acting as politicians, afraid for their jobs. Writing in 2001, one analyst predicted that Boeing’s “leverage against local and state governments is likely to increase in the next

96. Revesz, supra note 3, at 538.
several years” in light of the mergers with Rockwell and McDonnell Douglas, because “[t]he move will allow Boeing to play one plant location off against another, as the California sites it has acquired are much more credible alternatives for relocation than either Wichita or Huntsville.” \(^{97}\) Despite this prediction, the same analyst suggested that “[t]he region has only to meet Boeing’s marginal propensity to move—make sure the costs of staying are just lower than the costs of moving.” \(^{98}\)

Rather than making such a calculation to determine what would be best for the state in the long run, however, the politicians were operating on the basis of political calculations and hunches, trying to avoid being tarred with the charge that they “lost Boeing.” While insufficient information is available to determine definitively how “economically rational” these politicians were, the preliminary numbers concerning state cost per job obtained suggest: “not very.” Based on tax breaks alone, not counting additional transportation, workforce training or UI subsidies, legislators were willing to offer Boeing tax breaks that by many calculations equal three times the wages that will be directly provided by Boeing. \(^{99}\) As one legislator was quoted, “if they’d wanted a stadium, we would have built them a stadium. If they’d wanted us to bulldoze Mount Rainier so their planes would take off easier, we’d have done it.” \(^{100}\)

Lest the reader think that Washington State’s politicians are unusually susceptible to such pressures, consider William Greider’s claim that in order to attract a small Daimler-Benz automobile factory “[t]he Alabama government put up more than $300 million in tax breaks and subsidies for a plant that would employ only 1,500 people—that is, $200,000 per job.” \(^{101}\)

In the face of such pressures, we will not find it easy to create a fair unemployment compensation system that responds to the needs of working families. On the national and

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97. SELL, supra note 32, at 108.
98. Id.
99. See Fisher, supra note 30 at 866. The Boeing jobs were typically cited as $45,000 per year jobs, though this seems low, especially if one includes benefits.
101. GREIDER, supra note 20, at 93.
UNEMPLOYMENT INSURANCE

international fronts, we must find a way to move from the current neo-liberal market oriented approach to globalization to one that values real increases in well-being among ordinary folks, rather than maximum profits for multinational corporations and cheap electronics for consumers. At this stage in history, unfortunately, such an aspiration can sound like an empty slogan.

If my analysis of welfare and federalism applies to our present situation, we have two options. One is to work towards a system of international law that looks like a true "world government" under which taxation, and thus efforts at "redistribution," may be undertaken on an international scale. Current efforts to obtain meaningful enforcement of labor and environmental "side agreements" arguably constitute small steps towards world government for regulatory activities. No comparable effort is visible in the taxation arena, however.

A second approach would restructure both our economy and our government on a smaller scale. For instance, David Korten, a Harvard M.B.A. and former development expert turned author and activist, argues that our current economy is built on financial markets that have become de-linked from actual productive value, and transnational corporations that have only their own interests at stake. His solution, built on the metaphor of the self-organizing organism, is to focus both economic and political activity on a much more local, and, he claims, ecologically sustainable level. His solution, built on the metaphor of the self-organizing organism, is to focus both economic and political activity on a much more local, and, he claims, ecologically sustainable level. Korten argues that our economic and political institutions should be modeled on cells and more complex organisms that can stay alive only by maintaining the integrity of their boundaries, permeable though those boundaries be.

Whether either vision represents our future, or is merely the twenty-first century version of impractical Wilsonian idealism, or Jeffersonian agrarianism, is not easily discernable.

102. See KORTEN, supra note 10, at 174. Kevin Phillips makes a similar argument in WEALTH AND DEMOCRACY: A POLITICAL HISTORY OF THE AMERICAN RICH drawing on fascinating historical parallels to previous waves of "globalization" under "Spain in the 1500s and early 1600s, Holland in the 1600s and early-to-mid 1700s, and Britain in the 1800s and early 1900s," as well as previous eras of wealth accumulation. PHILLIPS, supra note 21 at 174.

103. KORTEN, supra note 10, at 174.

If not, we must hope that a "third-way" can be found to tame the world financial markets and transnational corporations, drawing on heritages such as U.S. Progressivism and the New Deal, and European social democracy.

B. Unemployment Insurance, Gender & Caretaking

In addition to suggesting that struggles to ensure social benefits cannot be won without altering our approach to globalization, the debate over the Washington UI legislation also reinforces the widespread view that gender and carework are key sites of contention over the design of social welfare programs as we enter the twenty-first century.

Unemployment insurance cannot respond to the needs of working families unless it takes into account the carework that must be done by those employed outside the home. These days working families come in many configurations. In two-parent families, most women work outside the home; with the imposition of time limits under TANF most single parents now have no realistic option except to work for pay, even if that work involves the same tasks they might do at home as unpaid labor. Most women move in and out of the labor force, stepping out temporarily to engage in a variety of carework and a significant percentage of women work part-time. When women quit work, they often do so in response to family emergencies such as illness and children in trouble. Similarly, it is predominantly women who work part-time by choice, and who limit their availability for shift work due to family responsibilities.

These gendered patterns play out in the unemployment insurance system in numerous ways. If quitting work to engage in carework does not count as "good cause," women will

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106. See generally Roberts, supra note 11.
continue to receive fewer benefits than men. If unemployed workers are required to be available for full-time work, it is disproportionately women who will be disqualified from receiving benefits because they work part-time more often than men. If eligibility for unemployment benefits requires workers to be available for all shifts, then women, will again be disproportionately denied benefits, because women more often have care responsibilities that limit their availability for night work.

Financially, the maximum benefit and seasonality provisions of the Washington UI legislation arguably had far more significant implications for both employers and workers than the voluntary quit and availability provisions that implicate women's carework, and the debates reflected the importance of those issues. However, the gender and carework issues generated considerable attention. As Washington State's experience demonstrates, the treatment of workers with care responsibilities has been highly controversial among business interests, and, therefore, in debates over the design of unemployment insurance programs. The fact that business included a provision concerning eligibility of workers seeking part-time work suggests that business recognizes the validity of part-time workers' claims to be recognized within the unemployment insurance system. Yet workers, and their supporters, currently lack either a theoretical rationale or a rhetoric that can reliably overcome the resistance of business interests to work-family concerns.

C. Carework as Development

One potential approach to accommodating carework for children and for other workers is to build on the insight described in *Welfare and Federalism* that the carework culturally assigned to women can be viewed as a necessary form of economic development. In making this claim I do not mean to assert that merely relabelling carework as economic development will change how carework is treated in the world of politics. I do suggest however, that, at least sometimes, by truly reconceptualizing our understanding of a phenomenon we enhance our ability to make arguments that will generate po-

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110. *See supra* notes 79 & 89.
political support for our views. In the space available here, I can only begin to sketch out the possibilities and limitations of such an approach.

The logic goes like this: the economy requires educated workers; those workers do not magically appear out of nowhere, but require significant tending over the course of their childhood and adolescence; because it is necessary to building a strong economy, that work has important economic value. The argument can be extended to the work that is performed to feed and otherwise care for adult workers, once they enter the workforce. These current workers, also, will not be available unless they are fed, clothed, etc. The nature of the argument differs somewhat, however, as children and adolescents more obviously require not just food, clothing and shelter, but also care that assists them educationally and with life skills such as reliability, punctuality, and ability to work with others. I will refer to these two types of carework as "feeding" and "reading" carework. Women have traditionally been assigned both types of carework. Though commodified options for carework now proliferate—take-out and fast food options, child-care centers, tutoring services and personal coaches—women predominate in the low-paid work that provides most of these services.

A long tradition of feminist and Marxist scholarship analyzes the economic contribution of housework. As the debates among feminists demonstrate, attempts to place a higher value on carework take place in the context of serious disagreement about the meaning of and path to equality.

111. Thanks to the participants in the University of Washington School of Law Faculty Colloquium for pointing out the need to clarify this point.


home? Are those questions the salient ones, given race and class differences among women?\textsuperscript{114} I will not rehash that debate here. I simply note that any attempt to accommodate carework in the design of unemployment insurance, or other social benefit programs, by reconceptualizing carework as a form of economic development runs the risk of providing a rationale for limiting women to carework and revitalizing “separate spheres” logic. Thus, in the remainder of this article, I will analyze such a reconceptualization in the context of making unemployment insurance more “family friendly,” keeping this risk in the background.

Three key obstacles stand in the way of conceptualizing carework as a form of economic development. First, carework is so closely intertwined with gender as to “naturalize” women’s role in it, and that intertwining is embedded in the public/private dichotomy that pervades our thinking about gender issues.\textsuperscript{115} Thus, we take carework for granted, devaluing it for its connection to women, and consign it to the private sphere, protected from scrutiny.

Second, our standard measure of economic well-being, Gross Domestic Product (GDP), considers only work that has been commodified. As Marilyn Waring and others have long argued, precisely because women’s work is traditionally performed as unpaid labor, outside the marketplace, it is invisible in calculations of GDP.\textsuperscript{116} Because calculations of GDP do not recognize carework, increases in GDP do not tell us whether individual lives are truly improved, as low-wage market work may simply displace unpaid or subsistence labor.\textsuperscript{117} Because so much policy is driven by GDP and similar numbers, policy makers lack the incentive to recognize the

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\item \textsuperscript{114} One of the early contributions of critical race theory was to criticize the assumption that women were confined to the private sphere of domesticity, on the ground that black women have always been expected to work. \textit{See, e.g.}, Kimberle Crenshaw, \textit{Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Policies}, in \textit{FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER} 57 (Katharine T. Bartlett & Roseanne Kennedy eds., 1991).
\item \textsuperscript{115} \textit{See, e.g.}, Frances Olsen, \textit{The Family and the Market: A Study of Ideology and Legal Reform}, 96 HARV. L. REV. 1497 (1983).
\item \textsuperscript{116} MARYLIN WARING, \textit{COUNTING FOR NOTHING: WHAT MEN VALUE AND WHAT WOMEN ARE WORTH} (1999); MARYLIN WARING, \textit{IF WOMEN COUNTED} (1988). Parallel arguments are made from an environmental stance. \textit{See generally} KORTEN, supra note 104.
\item \textsuperscript{117} \textit{See supra} note 113 and accompanying text.
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value of unpaid carework. Numerous commentators have argued that an important theme in neo-liberal market reforms around the world has been to reduce social supports for women's participation in the labor market, shifting costs of carework to individual women. As a result, official measures of well-being are often inconsistent with the realities of people's lives.

Finally, the blind spot created by gaps in the official numbers is widened by the pressures of international financial capital markets. As critics of globalization emphasize, the speculative nature of these markets leads to an intense focus on short-term profitability. That focus eliminates from view the necessity and importance of carework. In our technologically driven society, children take decades to grow up and contribute to the economy as well-educated workers. Yet the long view is precisely what is lacking for transnational corporations. The prevalent focus on short-term profits distracts businesses from both a long-term perspective and an orientation towards the broader community.

In the near term, pressures both from "above" (employers needing the right workers) and below (workers stressed from performing dual shifts at work and at home) are likely to highlight the importance of issues surrounding carework. It remains to be seen whether these pressures will result in recognizing the economic development value of carework and providing support for that work in social benefit programs, particularly given the class, immigration, and race dimensions of these problem.

Unemployment insurance plays a marginal role in the work lives of educated, upper-middle class women. However, the broader impetus to revalue carework has considerable force in such women's lives and plays out in other contexts such as obtaining paid parental leave, high quality child care centers, and meaningful part-time work. Three phenomena

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118. See, e.g., Kerry Rittach, Feminization and Contingency: Regulating the Stakes of Work for Women, in LABOUR LAW IN AN ERA OF GLOBALIZATION, supra note 6.

119. See supra note 98 and accompanying text.

120. College graduates typically have unemployment rates about 60% of the overall rate and one-third to one-fourth the rate of workers with less than a high school diploma. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2003, tbl. 626 (2003). Though recent unemployment among experienced college graduates has increased in the current recession. See Sylvia
are likely to be critical for educated women: falling birthrates in the western industrialized countries and Japan; the pressures for emigration that result from continuing, though slowed, population growth and the economic turmoil caused by globalization in many developing countries; and job demand for educated workers. If falling birthrates coincide with high demand for educated workers, absent liberal immigration policies employers of educated workers would experience conflicting short-term, middle-term, and long-term pressures: (1) to draw educated women into the labor marker to fill short-term needs; (2) to accommodate such women's caregiving role in order to keep them in the workforce; and (3) to encourage educated women to concentrate on caregiving on the theory that the most educated women are most likely to be able to produce a new generation of highly skilled workers.

In Canada and the U.S. these pressures can be, and currently are, significantly mitigated by legal or illegal immigration of women from poor countries to work as maids and nannies. This is a phenomenon fueled by such factors as the displacement of agricultural workers in poor countries when subsistence farming is replaced by agribusiness and food importing due to the economic pressures resulting from globalization. It is also one of those double-edged phenomenon that both provides opportunities for women desperate to support their families and results in significant exploitation of such women. Upper-middle class women, therefore, have the potential either to be a strong voice in favor of restructuring the workplace and social support programs to be more family friendly, or to expend their energy on ensuring that poor and immigrant women are available to serve their needs.


121. Commentators are divided on this question, with many arguing that "good jobs" are plentiful and need only a sufficient supply of workers to fill them, and others arguing that already college educated workers are found in large numbers in jobs that were formerly filled by the less educated.


123. See supra note 116 and accompanying text.

124. See id.
For middle class working women unemployment insurance plays an important background role as a safety net. Most such women have fewer resources to purchase commodified care services, so immigration is likely to play a lesser role in defusing the demand for accommodation of care needs.\textsuperscript{125} For these women, recognizing the economic development aspect of carework will be significant, because they will typically have less flexibility in the workplace than many upper-middle class women, as well as fewer alternatives to performing carework themselves. Thus, if workforce participation rates of middle class women remain high, middle class women will continue to feel the effects of the double work shift and will be more likely to press for recognition of the economic value of their carework. Their success may depend on whether middle class women remain sought-after members of the workforce. If, as many commentators have argued, the U.S. economy is experiencing a hollowing out of the middle, shedding the middle level white collar jobs formerly held by middle class women, the leverage of middle class women to achieve such changes will likely be limited, as the need for an educated replacement cohort of workers diminishes. Once again the effects of globalization will be critical.

Under current conditions, working class women, as well as poor women being pushed and pulled into the workplace by government welfare policies,\textsuperscript{126} and the immigrant women of the “maid trade,” often perform carework both in the home and as commercial caretakers. Thus, working class women stand to benefit on both fronts from a successful attempt to revalue carework.\textsuperscript{127} In addition, unemployment insurance is particularly significant for working class and poor women, given the lack of flexibility and high turnover in many of the service and manufacturing jobs they perform.\textsuperscript{128} Once again, a key question is what the labor market will look like for this group of women. And again, the outlook is mixed. The

\textsuperscript{125} And at the same time such middle class working women may view immigration as a threat, if it provides a surplus labor pool that has the effect of driving wages down.

\textsuperscript{126} See Karen Syma Czapanskiy, Unemployment Insurance Reform for Moms, 44 SANTA CLARA L. REV. 1093 (2004).


\textsuperscript{128} This is particularly so given the time limits now applicable to TANF. See generally Czapanskiy, supra note 126.
growth of the service industry and the deskilling of many formerly skilled jobs suggest that we will see a growth in demand for the jobs typically performed by working class women. At the same time, if supply increases due to the push and pull of women into the labor market by government policies that Karen Czapanskiy describes elsewhere in this issue\(^\text{129}\) and to the global trends encouraging immigration,\(^\text{130}\) employers will lack incentive to accommodate women.

One final and uncomfortable set of questions must be addressed: To what extent need we distinguish between basic needs carework and education carework in trying to recast carework as economic development? To what extent does the economic development value of carework vary with the education level of the caregiver? And to what extent to the answers to these questions depend on the nature of the economy being developed? Given our experience with the debate on welfare reform,\(^\text{131}\) we can expect that any effort to revalue carework as economic development will face a host of prejudices, especially against the work of poor women. We read too many stories of poor parents who raise large families of highly educated, successful children to believe that only educated parents can produce educated children. At the same time, we know that parental education levels strongly correlate with child academic success. We also know that our economy is becoming technologically ever more complex. Even highly educated parents joke that they cannot help their children with middle school or high school math.

**D. The Need for a Theory of Unemployment Insurance Taxation**

A complementary strategy for attending to carework, at least in the context of unemployment insurance, would build on Karen Czapanskiy's very important work described in this symposium, developing a theory of unemployment insurance taxation that can command broad support for programs designed to meet the needs of working families.\(^\text{132}\) To the extent

\(^{129}\) *Id.*

\(^{130}\) See supra note 5 and accompanying text.


\(^{132}\) See Czapanskiy, supra note 126.
that unemployment taxes are simply passed through to consumers, however, resulting in higher prices for goods and services, such a strategy potentially poses the risk of making locally produced goods (to a much lesser extent services) non-competitive in a global marketplace. Thus, we return to the problem of globalization.

IV. CONCLUSION

The dual phenomena of globalization and the changing workforce present significant challenges for social movements concerned with working families, and for the lawyers involved with them. Support for unemployment insurance has historically come from the union movement, but the union movement has not caught up with the effects of globalization and the changing workforce. Thus, unemployment insurance is unlikely to meet the needs of working families unless the social landscape changes significantly through grass-roots action. The obligatory call for reinvigorated, transformed unions seems like a pipe dream. And yet, I take faint hope in considering the oft-noted parallels between the prior eras of economic transformation and our own positions.133 With work and time, we must create our own version of a “New Deal” for working families, hoping that it does not take a disaster of the magnitude of the Great Depression to get us there.

133. See, e.g., PHILLIPS, supra note 21. Phillips makes historical comparisons on both national and international levels, comparing our current era with the Gilded Age and the Roaring Twenties in the U.S., see id. at ch. 2, and with the world primacy of the Spanish, Dutch and British “in the 1500s and early 1600s, ... the 1660s and early-to-mid 1700s, ... the 1800s and early 1990s” respectively. Id. at 174.