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The Savings Mirage

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Walk into any bookstore's self-help section and you will find a wall of books that were written with one goal: to help Americans figure out how to save money. Saving money is widely considered the cornerstone of how to have a successful life and, perhaps most of all, a relaxing and successful retirement. The titles say it all: "Saving for Retirement Made Easy,"[1] "Winning at Retirement,"[2] "How to Retire Debt-Free & Wealthy,"[3] and so on. The message is clear: It is possible to retire with abundant savings – you just have to learn more and be strategic.

The reality, however, is that retirement savings are an insurmountable aspiration for many Americans, particularly low-wage workers. Indeed, almost one in four Americans has less than $400 in savings.[4] One-third of Black households have zero or negative net worth.[5] But much like the self-help books in the corner of the bookstore, the government's response to this overall lack of savings has been to emphasize the need for individuals to save.[6] Policy initiatives have focused primarily on consumer financial education and nudging people in the "right" direction.

Yet, despite the emphasis on saving for retirement, as Anne Alstott and others have discussed in depth, elderly Americans whose incomes are at the low end of the

1 Guillermo Bermudez, Saving for Retirement Made Easy (2020).

2 Patrick Foley & Kristin Hillsley, Winning at Retirement: A Guide to Health, Wealth & Purpose in the Best Years of Your Life (2018).

3 Christine Ibbotson, How to Retire Debt-Free and Wealthy: A Finance Coach Reveals the Secrets, Tips, and Techniques of How Clients Become Millionaires (2020).

4 *See*, e.g., Alicia Lloro et al., *Economic Well-Being of U.S. Households in 2022*, Bd. of Governors of the Fed. Reserve Sys. (2023), at 31, https://www.federalreserve.gov/publications/files/2022-report-economic-well-being-us-households-202305.pdf.

5 Economic Policy Institute, *The State of Working America*, http://www.stateofworkingamerica.org/index.html%3Fp=4173.html. Among Black families with children, 57.5 percent are net-worth-poor. *See* Christina Gibson-Davis, Lisa A. Keister & Lisa A. Gennetian, *Net Worth Poverty in Child Households by Race and Ethnicity, 1989–2019*, J. Marriage & Fam. 1, 1 (2020).

6 Pamela Foohey & Sara S. Greene, *How Government Rules Prevent Poor Americans from Saving*, Politico (Sep. 3, 2020), https://www.politico.com/news/agenda/2020/09/03/how-government-keeps-poor-from-saving-407839.

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income distribution are increasingly worse off than their higher-income counterparts.[7] They enter old age with little or no savings, medical problems without adequate coverage, a necessity to work in order to eat and have a place to live, and, unsurprisingly, increasing rates of bankruptcy filings.[8]

In the past, retirement years were limited in duration for most Americans, as a brief jaunt of post-work life was soon met with death.[9] Indeed, between 1650 and 1850, elderly Americans were less than 2 percent of the population.[10] Yet, as life expectancies have increased,[11] we are faced with the prospect of elderly Americans living in poverty for decades on end. In other words, in the past the problem of no savings, and thus elderly poverty, was simply less of a problem since Americans, on average, spent fewer years in retirement. This, in turn, meant the financial struggle of the retirement years would also be relatively short. But with the 100-year life becoming a reality for more Americans, an elderly poverty crisis looms.[12]

In this chapter, I unpack the contradiction in the message embedded in our cultural narrative about the moral worth of self-sufficiency and savings against the backdrop of the realities of our existing poverty laws. I show how this is a central and unresolved incongruity in US policy toward the poor and near poor. The government does not provide a solid financial foundation for older Americans who were making poverty- and near-poverty-level wages during their preretirement years, yet the government also does not allow those making low wages (low enough to not even provide for basic necessities such as housing, food, and clothing despite full-time work) to build a nest-egg for retirement. This antisavings policy – enforced through asset limitations for basic safety net programs such as the Supplement Nutrition Assistance Program (SNAP, commonly referred to as "food stamps"), Temporary Assistance for Needy Families (TANF, commonly referred to as "cash welfare"), and Social Security Disability Insurance (SSDI, commonly referred to as "disability") – essentially guarantees that those who are poor will continue to be poor

7 Anne L. Alstott, A New Deal for Old Age 1–2 (2016); Anne Alstott, *Law and the Hundred-Year Life*, 26 Elder L. J. 131, 137–138 (2018). *See also* Deborah Thorne, Pamela Foohey, Robert M. Lawless & Katherine M. Porter, *Graying of U.S. Bankruptcy: Fallout from Life in a Risk Society*, 90 Soc. Inquiry 681, 684–685 (2020).

8 Thorne et al., *supra* note 7, at 685.

9 Alstott, A New Deal, *supra* note 7, at 18, 20; Alstott, *Law and the Hundred-Year Life*, *supra* note 7 at 131, 132; Lynda Gratton & Andrew Scott, The 100-Year Life 1 (2016).

10 Kevin C. Fleming, Jonathan M. Evans & Darryl S. Chutka, *A Cultural and Economic History of Old Age in America*, 78 Mayo Clin. Proc. 914, 914 (2003).

11 Gratton & Scott, *supra* note 9, at 1–4.

12 Anne Alstott provides a fascinating and important discussion of inequality in longevity. People who are poor have significantly lower life expectancies than those who are rich. Thus, there is no doubt that it will take longer for those who are poor to reach the 100-year life benchmark than those who are rich. Nonetheless, the upward trend in longevity holds for all groups. Alstott, A New Deal, *supra* note 7, at 20–21.

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and without savings throughout their extended old age.[13] Therein lies the savings mirage.

I argue that as a society we have to get our story straight. Are we committed to a country in which we require people to save for themselves in order to avoid an old age of hunger and financial instability? If so, we need to implement policies that make it easier to save, not only for those who are middle or upper class but also for those who are low-income throughout their working years. On the other hand, if we are committed to restricting the savings of low-income workers because of our devotion to the notion that public benefits should only go to those who have otherwise stripped themselves of savings, then we need to develop a plan to provide in retirement for those who struggled through their working years, unable to save in part because of strict government policy. But we can't have it both ways. If we continue with the crash course we are on, an elderly poverty epidemic is bound to emerge. New safety net policies show some promise, but this central contradiction in message and policy needs to be recognized in order to promote substantial policy change.

10.1 A SAVINGS SOCIETY

The history of responsibility for the elderly in the US is an evolving one. Life was short in the mid 1800s, with the life expectancy of most white Americans only thirty-nine years.[14] But those who did live into old age and were poor were usually out of luck. The elderly were generally considered a "burden on the local taxes," and many were either sent to poorhouses, which were "dreary, vermin-infested, and laden with human waste," or auctioned off as farm labor.[15] By the late nineteenth and early twentieth centuries, "the status of seniors had reached its nadir," a time when old age was thought of as a disease in and of itself.[16]

After the Great Depression, life expectancies were increasing as were the percentage of elderly Americans living in poverty – by 1935, 50 percent of elderly Americans were poor, and by 1940, almost two-thirds were poor.[17] These staggering numbers, along with the realities of the Great Depression, led to President Franklin D. Roosevelt signing the Social Security Act of 1935 into law.[18] This was the beginning of a significant shift, where American values transformed and the

[13] *See* Foohey & Greene, *supra* note 6. And obtaining a job available to low-wage workers when one is elderly, even if physically able, is elusive as there are almost always younger people in need, ready and willing to work. Research shows that employers prefer (and hire) these younger workers. So, the elderly are left poor and with few options.

[14] Thorne et al., *supra* note 7, at 681, 682.

[15] *Id.*

[16] Fleming et al., *supra* note 10, at 914, 915; Thorne et al., *supra* note 7, at 681, 682.

[17] Fleming et al., *supra* note 10, at 914, 917.

[18] *Id.*

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government began investing in elderly economic security.[19] Indeed, in 1965, Lyndon B. Johnson's administration furthered the goals of Roosevelt by enacting Medicare and Medicaid. At the same time, following World War II, employers began to expand retirement benefits for their full-time employees, providing them with defined benefit pensions and other important benefits for old age. Taking all of these changes together, Americans could in general depend on economic security in their old age.[20]

In the late 1970s and early 1980s, however, the concepts of individualism and self-sufficiency began to pervade US culture and politics.[21] A weakening of the safety net for Americans, including older Americans, followed. Employers began to replace mandatory pension plans with optional higher-risk 401(k) plans that do not guarantee a certain income during retirement, social security payments were reduced, and many more jobs did not provide any avenue at all for retirement savings.[22] Jacob Hacker refers to this as the "Great Risk Shift," one where "a myriad of risks that were once managed and pooled by government and private corporations shifted onto individuals and families."[23]

But people are still getting old, and life expectancies are continuing to increase, with the 100-year life in sight for many Americans. In response to increased longevity, there has been a renewed sense of urgency by the government in setting expectations – expectations that Americans must save for their own retirements. We have transformed into a country that says "take care of yourself" – even when you are old. In 2000, then Treasury Secretary Lawrence Summers gave remarks focusing on the need to encourage Americans to save more.[24] He said that it was critical not only "to our economic health" but also for families "because it influences their capacity to manage what is new in the New Economy: not least, the fact that people are living much longer than before."[25] He went on to discuss the (increased) chances of people living to ninety years old, then concluded that "as people are retiring earlier and living longer, retirement spans for many individuals are approaching half or more of their working lives."[26] Summers acknowledged the challenges that come with longer lifespans and then summarized his goals for the speech as follows:

[19] Thorne et al., *supra* note 7, at 681, 683.
[20] Fleming et al., *supra* note 10, at 914, 917.
[21] Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. Rev. 515, 533 (2013).
[22] Thorne et al., *supra* note 7, at 681, 684.
[23] Jacob Hacker, The Great Risk Shift: The Assault on American Jobs, Families, Health Care, and Retirement and How You Can Fight Back (2006).
[24] Lawrence H. Summers, *Helping America to Save More*, US Dep't of the Treasury (Apr. 4, 2000), https://www.treasury.gov/press-center/press-releases/Pages/ls524.aspx.
[25] *Id.*
[26] *Id.*

1. First, discuss why increasing saving is so crucial both for the American economy as a whole and for the economies of individual American families.
2. Second, discuss our approach to increasing saving based on improving financial literacy and promoting financial access. Recent economic research demonstrates that saving is like any other form of consumer behavior: It is governed by habit, is responsive to social signals, and it can be promoted.
3. Third, discuss the growing problem of borrowing, or negative saving.
4. And fourth, discuss specific legislation that goes beyond existing incentives to further promote savings among Americans who have not had the opportunity to avail themselves of existing incentives.[27]

The government's recent policies and rhetoric indicate that Summers's vision lives on – we must teach Americans how to save and provide behavioral nudges and incentives for doing so.[28] Indeed, in 2015, the Treasury Department released a treasury note entitled "Helping More Americans Save" in part to mark "America Saves Week, an annual opportunity to encourage all Americans to save and a chance for individuals and families to take stock of their financial health and preparedness."[29] The notice, released by J. Mark Iwry, then Senior Advisor to the Secretary of Treasury for Retirement and Health Policy and the Deputy Assistant Secretary for Tax Policy, noted that "[s]avings for retirement is one of the best ways to prepare for a secure financial future."[30] And further, the Treasury Department was "ensuring that more Americans have the knowledge and tools to manage money and credit responsibility because educated and financially capable consumers can better attain their own financial goals and contribute to the strength of our overall county."[31]

There are moralist and paternalistic overtones to both of these releases. The idea is fairly simple: Some Americans are not financially educated and need help "learning" how to save, so the government will do the work to improve "habits,"[32] as Secretary Summers put it. The lesson seems to be that if we create opportunities to save, change habits, and increase social pressure, we will see a difference. There

[27] *Id.*

[28] *See*, e.g., US Dep't of Lab., *Top 10 Ways to Prepare for Retirement* (Sep. 2021), https://files.eric.ed.gov/fulltext/ED496720.pdf; Fin. Literacy & Educ. Comm'n, Taking Ownership of the Future: The National Strategy for Financial Literacy 1–9, 19–28 (2006), https://www.treasury.gov/about/organizational-structure/offices/Domestic-Finance/Documents/Strategyeng.pdf.

[29] J. Mark Iwry, *Helping More Americans Save*, US Dep't of the Treasury (Feb. 26, 2015), https://www.treasury.gov/connect/blog/Pages/Helping-More-Americans-Save.aspx.

[30] *Id.*

[31] *Id.*

[32] Summers, *supra* note 24.

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was little discussion in either release (or others like them)[33] of the structural conditions that make it difficult for Americans to save.

The federal government and federal laws certainly incentivize savings and wealth accumulation. But as others have documented in detail, most of these programs primarily benefit middle- to upper-income white citizens. For instance, our tax code has written into it several savings incentives, but low-income people rarely benefit from these incentives.[34] There are some other programs that are more inclusive, but in general they are small in scale and come and go. For example, Treasury created the "myRA" retirement savings program, which was designed to be a starter retirement savings program. It was supposed to help low-income workers who didn't have access to retirement savings plans through their jobs, but the take-up rate was low, and it was eventually shut down after Treasury found it not to be cost-effective.[35] Other Treasury programs sought to work with employers to create simple retirement plans for workers not covered by existing plans.

Ultimately the social construct of savings as moral, trainable, and the right thing to do pervades the culture in the US. And existing research shows that low-income Americans have adopted this ethic and in fact desperately *want* to save – they even work the existing savings-unfriendly systems to try to force themselves to save.[36] However, their efforts are often in vain, in part because of the underappreciated aspects of our laws and policies that make it almost impossible for the working poor to save. In the next section, I discuss these restrictions.

10.2 RESTRICTIONS ON SAVINGS

There are a plethora of reasons why it is difficult for Americans to save. Wage stagnation and rising expenses are significant factors. A 2019 study found that 53 million Americans, accounting for 44 percent of American workers between the ages of eighteen and sixty-four, qualified as "low-wage" earners.[37] The median hourly wage of those low-wage workers was $10.22, with median annual earnings of about $18,000.[38] Further, over half of low-wage earners were either the only workers in their family or lived in families where all workers were low-wage.[39] While wages

33 *See supra* notes 24, 28, and 29.

34 *See* Alstott, A New Deal, *supra* note 7; Dorothy A. Brown, The Whiteness of Wealth (2021).

35 Kate Lobosco, *Treasury Ends the MyRA, Obama's Retirement Savings Program*, CNN (July 28, 2017), https://money.cnn.com/2017/07/28/retirement/treasury-myra-retirement-account/index.html.

36 *See* Greene, *supra* note 21, at 563–564.

37 Martha Ross & Nicole Bateman, *Low-Wage Work Is More Pervasive Than You Think and There Aren't Enough "Good Jobs" to Go Around*, Brookings (Nov. 21, 2019), https://www.brookings.edu/blog/the-avenue/2019/11/21/low-wage-work-is-more-pervasive-than-you-think-and-there-arent-enough-good-jobs-to-go-around/.

38 *Id.*

39 *Id.*

went up a bit in the midst of the pandemic, a recent study found that in 2022 more than 51.9 million workers, or almost 32 percent of the labor force, made less than $15 per hour.[40]

Such low wages leave families vulnerable to economic insecurity – just one small shock, such as missing work due to an illness, a funeral of a family member, or a needed repair for a car used for transportation to work, can send these workers into financial turmoil and create a need to depend on the scant public safety net that is available.[41] In fact, many low-wage workers even working full time and without experiencing economic shocks must depend on Medicaid and food stamps to get by. Numerous studies and reports confirm that large companies pay their workers such low wages that these workers need public assistance, even when working full time.[42]

Even at times when low-wage workers have the opportunity to save – when perhaps they receive an unexpectedly large tax return, they are given extra hours at work, they receive a stimulus payment/credit, or they sell a prized possession for cash – our poverty laws often prevent these workers from accumulating any meaningful savings. How is this possible in a society that so values saving? It happens through asset limitation laws that affect every major public assistance/antipoverty program (outside of the tax system) that provides money or money-like relief to low-income Americans. These limitations impose rigid restrictions on the amount of cash and assets aid recipients can accumulate. Thus, recipients are in a bind. If they attempt to put away meaningful savings when they receive a lump sum in the form of, for instance, a stimulus check or tax credit, they cannot continue to access the programs they need to survive month to month.

Before Ronald Reagan was elected, states set welfare programs' eligibility requirements. President Reagan, however, campaigned in the early 1980s on a promise to reform welfare by cracking down on "welfare queens" (a term he popularized) who, he claimed, abused the public welfare system. During a 1976 stump speech, Reagan described the welfare queen as follows: "She has eighty names, thirty addresses, twelve Social Security cards and is collecting veterans' benefits on four non-existing deceased husbands. And she's collecting Social Security on her cards. She's got Medicaid, getting food stamps and she is collecting welfare under each of her names. Her tax-free cash income is over $150,000."[43] Welfare recipients were

[40] Kaitlyn Henderson, The Crisis of Low Wages in the US 3 (2022).

[41] *See* Greene, *supra* note 21, at 544–552.

[42] U.S. Gov't Accountability Office, *Federal Social Safety New Programs: Millions of Full-Time Workers Rely on Federal Health Care and Food Assistance Programs* (Oct. 2020), https://www.gao.gov/assets/720/710203.pdf.

[43] Juliet M. Brodie, Clare Pastore, Ezra Rosser & Jeffrey Selbin, Poverty Law, Policy, and Practice 89 (2014).

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portrayed as primarily Black, and the media and other politicians perpetuated this (inaccurate) image.[44]

While Reagan did not succeed in the massive welfare reform he promised, he was able to push through asset restrictions on major welfare programs, which largely remain in place today (though states have regained some control). Reagan did this via the Omnibus Reconciliation Act of 1981, which set asset limits at $1,000 for most welfare programs, a large decrease compared to then-existing state limits. And the federal limits had teeth. A study conducted ten years after Reagan left office showed that low-income single mothers reduced their personal savings by an average of $1,250.[45]

Following Reagan's presidency, the poverty laws in our country moved even further in the direction of building expectations for families to develop and sustain their own safety nets, both during their working years and into their old age. In the mid 1990s, Bill Clinton ran for president on a campaign promise to reform cash welfare (then Aid to Families with Dependent Children – AFDC) into a program that would promote "personal responsibility" and "economic self-sufficiency."[46] When Clinton was elected, welfare reform was indeed passed, transforming AFDC into TANF, stripping away the existing safety net for families, and turning welfare into a bare-bones program with much state control.[47] Further restrictions for eligibility were put on cash welfare, such as more work requirements and a five-year lifetime limit.[48] As part of the changes, states regained control to set asset limits, but only some states made changes.[49]

Asset limitations may seem like small potatoes, but a large percentage of the population is potentially subject to them. Indeed, roughly 20 percent of the US population participates in means-tested government aid programs each month.[50] Generally people move in and out of public assistance programs. Of those who participated in public assistance programs between January 2009 and December 2012, the largest share, 43 percent, stayed in the programs between thirty-seven and

[44] Kathryn J. Edin & H. Luke Schaefer, $2.00 a Day: Living on Almost Nothing in America 15 (2016); Martin Gilens, Why Americans Hate Welfare: Race, Media, and the Politics of Antipoverty Policy 1–32 (2000).

[45] Elizabeth Powers, *Does Means Testing Welfare Discourage Saving? Evidence from a Change in AFDC Policy in the United States*, 68 J. of Pub. Econ. 33, 33–53 (1998).

[46] *See* Vicki Lens, *Public Voices and Public Policy: Changing the Societal Discourse on "Welfare,"* 39 J. Soc. & Soc. Welfare 137, 144–146 (2002).

[47] Sara Sternberg Greene, *The Bootstrap Trap*, 67 Duke L. J. 233, 236–237 (2016).

[48] *Id.*

[49] Leah Hamilton, *The Forgotten 1980s Rule That's Hurting Poor Families Savings*, The Atlantic (Mar. 11, 2015), https://www.theatlantic.com/business/archive/2015/03/the-forgotten-1980s-rule-thats-hurting-poor-families-savings/387373/.

[50] U.S. Dep't of Health and Human Services, *Welfare Indicators and Risk Factors* (Apr. 26, 2022), 33, https://aspe.hhs.gov/sites/default/files/documents/85da9415ece89b2989ad290755d38f7b/welfare-indicators-rtc.pdf.

forty-eight months. Another 31.2 percent of participants stayed in programs between one and twelve months.[51]

Asset limits vary significantly program by program and even state by state. For instance, the Supplemental Security Income (SSI) asset limit, which is controlled at the federal level, is $2,000 for an individual and $3,000 for a couple.[52] Asset limits for SNAP are set by the federal government at $2,750, and $4,250 for households containing a member who is disabled or over sixty.[53] However, states can modify or even eliminate SNAP asset limits through categorical eligibility. TANF limits, now set by states, vary from $1,000 to $10,000 or even no limit, with the average around $1,000–3,000.[54] And Medicaid asset limits again are set by states and most have not increased the dollar limit since 1989.[55] State limitations vary significantly – there are usually none for children, but in about half the states, there are limits for families, usually between $1,000 and $6,000.[56]

For some of these programs, one vehicle (or a certain amount of vehicle value) is excluded from the asset limits, but no more than that. And treatment of retirement savings is "confusing and seemingly arbitrary."[57] When asset tests were first enacted in the 1970s, defined benefit plans such as traditional pensions were common, and asset limitations for some programs (SNAP, for example) did not count such

[51] US Census Bureau, *21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), https://www.census.gov/newsroom/press-releases/2015/cb15-97.html.

[52] Kathleen Romig et al., *The Case for Updating SSI Asset Limits*, Center on Budget and Policy Priorities (Sep. 2023), https://www.ssa.gov/ssi#:~:TEXT = SUPPLEMENTAL%20SECURITY%20INCOME%20(SSI)%20IS,OR%20%243%2C000%20FOR%20A%20COUPLE.

[53] US Dep't of Agriculture, Food and Nutrition Services, *SNAP Eligibility for October 1, 2022–September 30, 2023*, https://www.fns.usda.gov/snap/recipient/eligibility (accessed Jan. 7, 2024). Unlike Medicaid, for example, some retirement and pension plans are excluded from SNAP asset limits. However, most low-wage workers do not have jobs that provide employer-sponsored pension or retirement plans. Further, low-wage workers may rationally be hesitant to tie savings up in retirement plans that have penalties for early withdrawal, given the general instability of their financial lives and the potential for a shock to occur, requiring them to use at least some of their savings to recover from the shock. *See* Greene, *supra* note 21, at 533.

[54] Maureen Pirog, Edwin Gerrish & Lindsey Bullinger, *A Report to the Pew Charitable Trusts: TANF and SNAP Asset Limits and the Financial Behavior of Low-Income Households*, https://www.pewtrusts.org/-/media/assets/2017/09/tanf_and_snap_asset_limits_and_the_financial_behavior_of_low_income_households.pdf.

[55] Noelle Cornelio et al., *Increasing Medicaid's Stagnant Asset Test for People Eligible for Medicare and Medicaid Will Help Vulnerable Seniors*, 40 Health Affs. 1943 (Dec. 2021).

[56] The Retirement Security Project, *Removing Barriers to Retirement Saving in Medicaid and Supplemental Security Income* (2016), at 4, https://www.brookings.edu/wp-content/uploads/2016/07/10_removing_barriers.pdf. Many states do count retirement savings in traditional retirement accounts as assets. American Council on Aging, *How Retirement Savings (IRAs, 401Ks or Pensions) Impact Medicaid Long Term Care Eligibility* (updated Nov. 10, 2023), https://www.medicaidplanningassistance.org/medicaid-eligibility-401k-ira/.

[57] The Retirement Security Project, *supra* note 56, at 4.

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accounts in the asset calculation. But today, most employees, particularly low-income ones, do *not* have access to traditional pension plans. Instead, if they are part of any plan at all, they tend to be part of defined *contribution* plans, such as 401(k)s.[58] And if a worker is laid off from a job that includes a 401(k), that 401(k) will likely be rolled into an IRA, which then *is* counted. Those accounts are *not* exempt from most asset limitation tests for public benefits.[59]

Asset limitations help ensure that the poor remain poor. Indeed, studies have shown that asset limits create disincentives for low-income families to save. Multiple studies have confirmed that families save more when asset limitations are lower or nonexistent, and save less when asset limits are instituted.[60] Further, to the extent that low-income families may find a work-around by saving money "under their mattress" at home, such practices are counter to the fairly well-accepted goal of trying to move more low-income people to be banked rather than unbanked.[61] But if there is a sense among low-income families that their bank accounts will be surveilled and used against them via asset limit investigations, then they are acting rationally by remaining unbanked and outside mainstream financial institutions.

It is important to understand asset limitations for what they are: a significant, though often overlooked, part of America's structural racism that perpetuates the racial wealth gap and disproportionately leaves poor, Black, elderly Americans struggling. While in absolute numbers whites far outnumber Blacks in their receipt of public benefits, *rates* of participation in public assistance programs are higher among Blacks. According to the US Census Bureau, in 2012, 13 percent of white Americans participated in a public assistance program, compared to 42 percent of Black Americans.[62] Thus, asset limitations perpetuate the racial wealth gap by disproportionately preventing Black Americans from accumulating savings or wealth and, thus, also leave Black Americans particularly vulnerable to experiencing poverty in their old age.

58 *Id.*

59 The Retirement Security Project, *Increasing Retirement Savings: Clarifying Food Stamp Asset Test Rules* (2007), at 1, https://www.brookings.edu/wp-content/uploads/2016/07/03_increasing_saving.pdf.

60 Pirog et al., *supra* note 54; Henry Chen & Robert I. Lerman, *Do Asset Limits in Social Programs Affect the Accumulation of Wealth*, The Urban Institute (2005), https://www.urban.org/research/publication/do-asset-limits-social-programs-affect-accumulation-wealth; Erik Hurst & James P. Ziliak, *Do Welfare Asset Limits Affect Household Saving? Evidence from Welfare Reform*, 41 J. Hum. Resources 46 (2006).

61 *See* Michael S. Barr, *Banking the Poor: Policies to Bring Low-Income Americans into the Financial Mainstream*, Brookings Inst. (Sep. 2004), https://www.brookings.edu/wp-content/uploads/2016/06/20041001_Banking.pdf; Mehrsa Baradaran, How the Other Half Banks: Exclusion, Exploitation, and the Threat to Democracy (2015).

62 US Census Bureau, *21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), https://www.census.gov/newsroom/press-releases/2015/cb15-97.html.

10.3 WHERE ARE WE, AND WHERE CAN WE GO FROM HERE?

So where does this leave us? We are at a crossroads, no doubt. While there is a widespread belief that we do in fact take care of our elderly, that Medicare and Social Security cover people in old age, the data show otherwise. The failure of these programs to fully support the poor in old age has been well detailed by others, particularly Anne Alstott in her important book *A New Deal for Old Age*.[63] The data are consistent with Alstott's findings. Being old and poor is not uncommon.[64] One study found that roughly one in three elderly Americans is economically insecure, living at or below 200 percent of the Federal Poverty Line.[65] The data for Black and Latinx elderly Americans are even worse, with half living at or below 200 percent of the Poverty Line.[66] Another study found that 49 percent of older workers and their spouses will experience downward mobility in retirement.[67]

Ultimately, a key problem is that our savings rhetoric largely does not mesh with our law. We pretend that we live in a society that provides structures that enable retirement savings for all, and thus, a policy of "encouraging more low-income Americans to save,"[68] as former Treasury Secretary Lawrence Summers suggested, is a way forward. Encouraging the lowest-paid Americans to save will not cut it, in part because we do not provide realistic structural opportunities for them to do so. Yet we use moralistic overtones around savings to shift responsibility from structures to individuals, all while picking up on Reagan-era tropes about race, potential fraud, and exploitation of government programs in order to support the need for these asset limitation laws.

We must pull out of this false narrative that behavioral interventions are the most promising way forward because savings opportunities are available for low-income workers but often squandered. Once we do so there is much that can be done. Fortunately, the good ideas are abundant, but more attention to this issue is needed. During the height of the COVID pandemic, the Child Tax Credit was improved in multiple ways – increasing the amount per child, broadening the credit's scope, and making it fully refundable. Allocation of the credit was based entirely on income, not assets. The expansion of the Child Tax Credit was not extended, but perhaps as advocates continue to work toward expansion, the ability to save for the long term should be centered in the conversation. The key problem now is that when poor

63 *See* Alstott, A New Deal, *supra* note 7, at 1–2.

64 *See* Alstott, *Law and the Hundred-Year Life*, *supra* note 7, at 141.

65 National Council on Aging, *Get the Facts on Economic Security for Seniors* (Mar. 2021), https://www.ncoa.org/article/get-the-facts-on-economic-security-for-seniors.

66 *Id.*

67 Teresa Ghilarducci, Michael Papadopoulos & Anthony Webb, *40% of Older Workers and Their Spouses Will Experience Downward Mobility in Retirement*, Schwartz Center for Economic Policy Analysis (2018), http://www.economicpolicyresearch.org/images/docs/research/retirement_security/Downward_Mobility_in_Retirement_P_N.pdf.

68 *See* Summers, *supra* note 24.

families gain the opportunity to save, through an expanded social safety net, a promotion at work, or something else, this is a positive change that can help secure their future into old age. But when and if they need to access safety net programs such as SNAP or TANF (or continue receiving help from such programs), the savings will become a burden – something they will have to spend down in order to qualify or continue to qualify.

We can attack the problem in one of two broad categories of change, though the best plan is likely one that pursues both of these avenues. If we want to depend on people to create their own nest-eggs for retirement, then we need to repeal asset limitations and provide benefits and structures, early and often, that allow even our lowest-wage workers to save, and save at a rate that would support them in retirement. Given the very low wages of many Americans, the government would likely have to provide, at a minimum, matching funds, and probably even supplemental funds, in order for such a program to work and make a meaningful difference in retirement savings.

Alternatively, or perhaps in conjunction with an aggressive savings program, reforming social security to truly be progressive can eliminate elderly poverty for many Americans. Such a reform would need to take into account the reality that, at least without change, our structures prohibit many seniors from saving for retirement, and the program would need to provide extensive benefits to these seniors in order to keep them from living an old age of poverty. There are several existing comprehensive plans to reform social security, and an extensive discussion of such plans is not warranted here. However, my broader point is that in order for such plans to gain traction, we need to transform the moralistic narratives around savings that pervade our culture and have been circulating for decades. Indeed, we need to align the national conversation about savings with the realities of the structural systems we have in place – including the laws that prohibit low-income Americans from saving while accessing needed support during their working years.

10.4 CONCLUSION

Ultimately, only when we shift the cultural narrative, peel back the moralistic and judgment-laced rhetoric around poverty, savings, and retirement, and acknowledge existing structural barriers to savings can we then rebuild these structures and circumvent the looming elderly poverty epidemic. If we want the "golden years" to be golden for everyone, it is imperative to attend to this now. As plans and nudges to help Americans save pervade, asset limitations must be addressed in order for these programs to make a meaningful difference in the ability of low-income Americans to save for retirement.