THE TRANSFORMATION OF AID TO FAMILIES WITH DEPENDENT CHILDREN: THE FAMILY SUPPORT ACT IN HISTORICAL CONTEXT

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> The peasants lived in a state of dependence on merchants, towns and nobles, and had scarcely any reserves of their own. They had no solution in case of famine except to turn to the town where they crowded together, begging in the streets and often dying in public squares . . . .
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> The towns soon had to protect themselves against these regular invasions. . . . Beggars from distant provinces appeared in the fields and streets of the town of Troyes in 1573, starving, clothed in rags

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> and covered with fleas and vermin. They were authorized to stay there for only 24 hours. But the rich citizens . . . soon began to fear that 'sedition' might be spread among the poor inside the town or in the surrounding countryside, and 'in order to make them leave, the rich men and the governors . . . were assembled to find the expedient to remedy it. The resolution of this council was that they must be put outside the town. . . .
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> The attitude of the bourgeois hardened considerably towards the end of the sixteenth century, and even more in the seventeenth. The problem was to place the poor in a position where they could do no harm. In Paris the sick and invalid had always been directed to the hospitals, and the fit, chained together in pairs, were employed at the hard, exacting and interminable task of cleaning the drains of the town. In England the Poor Laws, which were in fact laws *against* the poor, appeared at the end of Elizabeth's reign. Houses for the poor and undesirable gradually appeared throughout the West, condemning their occupants to forced labour in workhouses . . . . [I]n Dijon the municipal authorities went so far as to forbid the town's citizens to take in the poor or to exercise private charity. 'In the sixteenth century, the beggar or vagrant would be fed and cared for before he was sent away. In the early seventeenth century, he had his head shaved. Later on, he was whipped; and the end of the century saw the last word in repression — he was turned into a convict.' This was Europe.[1]

INTRODUCTION

That was Europe. How do *we* think about the poor? Do American attitudes towards poverty in the second half of the twentieth century differ significantly from those of sixteenth century Europeans? Certain themes leap from Braudel's description — danger, containment, stigmatization, deterrence. What relevance do these attitudes and responses have to current American welfare policy?

Today, there appears to be a consensus on welfare reform.[2] Congress has just enacted the Family Support Act of 1988 (FSA)[3] which, in customary political rhetoric, is hailed as a major change in welfare policy. Whether or not "reform" is an appropriate term, there appears to be widespread agreement on what changes ought to be made in the Aid to Families with Dependent Children (AFDC) program.[4]

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1. F. BRAUDEL, THE STRUCTURES OF EVERYDAY LIFE, 74-76 (1981) (emphasis in original).

2. *See* Reischauer, *Welfare Reform: Will Consensus Be Enough?*, THE BROOKINGS REV. 3-8 (Summer 1987).

3. Family Support Act, Pub. L. No. 100-485, 102 Stat. 2342 (1988).

4. Social Security Act, ch. 531, §§ 401-406, 49 Stat. 620, 627-29 (1935) (current version at

This Article explores the connection between our attitudes towards the poor and welfare policy. The consensus on welfare reform includes, but is much broader than, the new federal program. There is apparent agreement between liberals and conservatives, the current Administration, most of the states, and several important national organizations on the changes that ought to be made.[5] Robert Reischauer, a senior fellow at the Brookings Institution, has identified five broad themes around which the consensus centers: responsibility, work, family, education, and state discretion.[6] These themes provide a convenient analytical framework. What are the ideas behind this consensus?

My thesis is that the current consensus represents a deep hostility to the female-headed household in poverty. This hostility has always been present in American social welfare history, and the changes in AFDC over the past decades, and especially today, reflect that hostility. The tip-off is workfare. The issue of work — coercive work — has been at the heart of welfare policy at least since the Great Plague in England.

To illustrate my thesis, I will compare the category of poor, female-headed households with other categories of the poor — the aged, the unemployed, childless couples, and singles. As moral attitudes towards particular categories have changed, so have the characteristics of programs directed at the people in those categories. Thus, the characteristics of programs for the aged — Social Security[7] and Supplemental Security Income[8] — are very different from programs designed for the most morally troublesome groups, singles and childless couples. The programs for the aged are inclusive and are relatively condition-free; the others are exclusive and are miserly, harsh, and mean-spirited. The aid to dependent children programs are ambivalent. They fall somewhere between programs for the deserving and undeserving poor, moving, at various points in history, in one direction and then in another.

My analysis takes an historical, comparative approach from which I derive certain constant principles:

The structure of specific social welfare programs reflects fundamental atti-

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42 U.S.C. §§ 601-662 (1982 & Supp. IV 1986). AFDC, which provides cash assistance to female-headed households is not our largest or most expensive social welfare program, but it is our most troublesome program. It is the program most closely associated with the term "welfare" in the public's mind, especially when it is combined with "problem" or "mess."

5. Reischauer points out that the various policy reports promulgated after the Reagan Administration raised the issue of welfare reform in 1986 revealed an unexpected consensus. "Liberals, moderates, and conservatives generally agreed about what is wrong with the current welfare system and what general directions reform should take." Reischauer, *supra* note 2, at 4. Reischauer's consensus includes reports promulgated by The National Governors Association, the American Public Welfare Association, New York Governor Mario Cuomo's Task Force on Poverty and Welfare, the Project on Welfare and Families organized by former Governor Bruce Babbitt of Arizona, and The Working Seminar on Family and American Welfare Policy convened by Marquette University's Institute for Family Studies and the American Enterprise Institute. *Id.* at 3.

6. *Id.* at 3.

7. 42 U.S.C. §§ 301-433.

8. 42 U.S.C. §§ 1381-1383c (1982 & Supp. IV 1986).

tudes towards the category of poor to be served. In developing a social welfare program, the first questions, of necessity, must be why a particular category of persons is poor and what, if anything, should be done about their poverty. Social welfare programs are moral programs. Welfare programs are one way by which society controls inappropriate, "deviant" behavior. Welfare programs, therefore, are structured differently depending on the category of recipients for which the program was designed.

The core issue is whether the applicable category is morally excused from work. If the category is not morally excused from work, then the relief of misery cannot conflict with the moral value of work; either members of the category will be excluded or, if admitted, subject to work requirements.

All social welfare programs are both inclusive and exclusive. The category of persons excluded, and why, may be even more important than the category included. The failure to distinguish between these categories and to focus on the category of the excluded has led to a major misinterpretation of our social attitudes towards the female-headed household in poverty.

The current welfare reform reflects the deeply held, historical attitude that female-headed households in poverty are a deviant category of the poor. As a result of the dramatic changes in AFDC in the post-World War II period, a great struggle has taken place over the direction of the program: should the program emphasize the deserving or undeserving poor? The current welfare reform consensus represents a sharp move towards increased social control. This move, for the most part, reflects, in modern guise, only the reemergence of the persistent themes of threat, containment, stigmatization, and deterrence.

As the social characteristics of the AFDC population changed from white widows to divorced and never-marrieds, the AFDC stereotype became the unmarried, black female-headed household. As poverty became feminized, more particularly, as the specter of the black, unwed female-headed household became fixated in the public consciousness, the current welfare reform consensus slowly emerged. That consensus looks to the social control features of General Relief and seeks to apply them to AFDC. General Relief, our harshest program, was designed for the stereotypical male malingerer, the bum, the deviant. The female-headed household program (the children's program as it is sometimes called) is becoming more like the harsh *male* relief program. AFDC is changing not because our attitudes towards the working mother have changed — poor mothers have *always* had to work — but rather because large numbers of the formerly *excluded* poor mothers (the black unmarrieds), the undeserving poor, have been let into the program.

In addition to work requirements, I emphasize the jurisdictional location of the program — the unit or level of government that has the major administrative responsibility for the particular program. The control of deviant behavior is primarily a local matter. Juries, prosecutors, police — the guts of criminal law enforcement — are local. The moral issues, the dilemmas, the

fears, the hatreds, the passions and compassion that arise out of close contact with deviant behavior are most keenly felt at the local level. Welfare has always involved great moral issues — work, moral redemption, pauperism, vice, crime, delinquency, sex, and race. The anger and hostility among social classes and categories is most keenly felt among those who are the closest in proximity. As a general rule, the more deviant the government considers the social category, the more local the program.[9]

Responses to poverty are designed to perform a number of social purposes. We tend to focus on the practical, social control functions — quell disorder, relieve misery, enforce sanctions. But welfare programs perform other functions which, I think, are even more important. They define values and confirm status; they are expressive and symbolic. The heart of welfare policy is the distinction between the deserving and undeserving. This distinction is a moral one. It affirms the values of the dominant society by stigmatizing the outcasts.

> The conditions that are defined as problems at any time are not facts, but social constructions that reflect and reinforce established beliefs about the self, the other, and the social setting in which we live. . . . [Welfare policy signifies] who is virtuous and useful and who is dangerous or inadequate, which actions will be rewarded and which penalized.[10]

The importance of ideology explains a great deal of the massive disjunctures between the stated goals of welfare policy and the ambiguities of enforcement.

In defending my perspective, I will have to generalize and simplify. Social welfare history is detailed and complex. It is the product of many voices at different historical periods. It is often contradictory, and, at different periods of time, different elements temporarily gain ascendancy. Moreover, as my initial discussion of the contemporary consensus shows, many specific policies are genuinely thought to have important rehabilitative values. Work and independence are valued by all social classes, including mothers in poverty. I emphasize the conservative, social control aspects not only because I think that they have proved to be the major, dominating voice, but also because I think that welfare history has been written primarily by liberals; perhaps in

9. Local control of deviant behavior also suits the institutional needs of state and federal legislatures. Legislatures are busy institutions; they have to deal with the overall budget and other matters that compete for scarce time. Deviant behavior, including welfare, is controversial, and most legislators try to stay away from controversial issues. From time to time, problems boil up at the local level, and various interest groups demand state and/or federal intervention. The favored legislative response is to purport to deal with the problem, but, in reality, the legislature re-delegates back to the local level, sometimes altering local political struggles. There may be more federal or state requirements and more financial incentives, but a close look at actual administration will usually show a great deal of local-level flexibility. For a more general discussion, see NEITHER ANGELS NOR THIEVES: STUDIES IN DEINSTITUTIONALIZATION OF STATUS OFFENDERS, ch. 4 (J. Handler & J. Katz ed. 1982).

10. Edelman, *The Construction of Social Problems as Buttresses of Inequalities*, 42 MIAMI L. REV. 7, 8 (1987).

their optimism, they have put too much of a progressive gloss on the history of AFDC and the treatment of poor women and their children. The story is much more bitter. While I shall be emphasizing the harsh side of welfare, there have always been progressive, humanitarian liberal voices. At times these voices have had importance. The present, however, is not such a time.

In Part I of this Article, I discuss the current consensus on welfare policy. In Part II, I discuss the historical development of our current welfare policy. Through an historical and comparative approach, I argue that there is an important relationship between the structure and jurisdictional location of welfare programs and our moral attitudes towards the categories of poor. Programs for the deserving poor — those who are morally excused from work — are very different from those programs that expect their clientele to work. In Part III, I will analyze the current reform consensus and will focus on the work requirements of the reform legislation. Part IV will continue this analysis by examining the Family Support Act of 1988. Finally, in Part V, I will reflect on the implications of the current reform effort for the future direction of welfare policy.

I.
THE CURRENT CONSENSUS

A. The Five Principal Themes of the Consensus

As previously noted,[11] the current consensus on welfare reform centers around five broad themes: responsibility, work, family, education, and state discretion. This section will examine each of these themes.

1. Responsibility

In contrast to the ideology of entitlement, which characterized the social welfare programs of the 1960s and early 1970s, the reformers now wish to make clear to welfare recipients that in return for support, they too have an obligation to try to become self-sufficient. As Reischauer points out, responsibility involves reciprocal obligations.[12] To encourage responsibility, the reformers recommend that agencies and recipients negotiate contracts spelling out reciprocal obligations, including specific services which the government will provide within specific timetables.[13]

2. Work

Work is the reformers' major recommendation, and their new term is "workfare." Workfare means that all able-bodied recipients will be required

11. *See supra* text accompanying notes 6-7.

12. Reischauer, *supra* note 2, at 4.

13. Such agreements were endorsed in the reports issued by the National Governors Association, the American Public Welfare Association, New York Governor Mario Cuomo's Task Force on Poverty and Welfare, as well as in reports issued by the states of California, Washington, and New Jersey. *See id.* at 5.

to prepare themselves for employment, look for jobs, and accept jobs if offered.[14] If the recipient fails to find a job, she will then be required to accept a public job in return for the welfare grant (work-relief).[15] In terms of task, work-relief jobs may be either make-work or "regular" market jobs. Unlike market jobs, however, work-relief jobs offer a lower "rate of pay," offer no fringe benefits, and offer no job security.

The work obligation is always cast in rehabilitative terms. As Reischauer states:

> Work is seen as more than a way to cut welfare costs and promote self-sufficiency. It confers emotional and psychological benefits on the recipient; it is an opportunity to join the nation's mainstream. The welfare reports portray work as important to the development of personal dignity, self-confidence, and identity, and as favorable to family stability and a healthy home environment.[16]

Historically, required work has been one of the most bitterly contested issues between liberals and conservatives. Why then has a consensus developed now?

The reformers offer two reasons. First, they claim that there has been a fundamental change in our attitudes towards working mothers. Since most mothers of young children are now in the paid labor force, it is also reasonable to expect welfare mothers to be similarly employed.[17] In addition, a bargain has been struck: as part of the workfare package, the government will provide a full range of education, training, and job placement activities as well as adequate day care. Health insurance will also be extended to low-income workers. It is claimed that most participants regard the requirements as fair and agree that the program is a desirable opportunity.[18]

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14. The term "workfare" is controversial. Prior to the current reform initiatives, "workfare" meant only work-relief, which required welfare recipients to work a certain number of hours for their welfare grant. The present package of employment preparation and work requirements is also called "workfare" in the current political debates and by the popular press. I will use the new definition of "workfare"; "workfare" in the old sense will be called "work-relief." For an explanation of the reasons for the new terminology, see Wiseman, *Workfare and Welfare Reform*, in BEYOND WELFARE: NEW APPROACHES TO THE PROBLEM OF POVERTY IN AMERICA 14, 17 (H. Rodgers ed. 1988).

15. The usual method of determining the number of hours spent in the work-relief job is to divide the welfare grant by the minimum or "standard" wage.

16. Reischauer, *supra* note 2, at 5.

17. *See* I. GARFINKEL & S. MCLANAHAN, SINGLE MOTHERS AND THEIR CHILDREN 6 (1986). *See also* Reischauer, *supra* note 2, at 5. The majority of married mothers are, indeed, in the paid labor force. However, only twenty-seven percent work full-time, about forty percent work part-time, and about one-third do not work at all. Ellwood, *Divide and Conquer: Responsible Security for America's Poor*, FORD FOUNDATION PROJECT ON SOCIAL WELFARE AND THE AMERICAN FUTURE, OCCASIONAL PAPER 1, 37 (1987).

18. Reischauer, *supra* note 2, at 5-6. Although there is still insufficient evidence demonstrating any absolute correlation between workfare and employability, workfare demonstration projects (now operating in about three-quarters of the states) have shown modest success in increasing employability. *See* I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 148-50.

3. *Family*

The family issues[19] are directly connected to the feminization of poverty.[20] Implicit in the consensus is the assumption that the effects of being on welfare are harmful to both mothers and children. Marital breakup and out-

19. The family issues are those social problems that undermine the family; such issues include divorce, marital instability, out-of-wedlock births, and teenage pregnancy. *See* Reischauer, *supra* note 2, at 6.

20. In 1983, there were 7.2 million female-headed households accounting for one-fifth of all children. Fifteen percent of all white children and fifty-one percent of all black children were in these households. It is estimated that forty-two percent of all white children and eighty-six percent of all black children born in the late 1970s will spend at least some time in a female-headed household before they reach eighteen years of age. *See* I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 46.

Despite considerable contrary evidence, moreover, it is widely believed that welfare spells are long — for much of the period of child-rearing. *See id.* The evidence supporting these beliefs is inconsistent at best. Upon careful examination, it turns out that the majority of welfare recipients are not long-term recipients. The median length of time on welfare is four years. One-third of all recipients receive welfare for eight or more years, but the same percentage receives welfare for less than two years. Long-term dependency, therefore, represents only a minority of recipients. The welfare experience, moreover, differs depending upon the characteristics of the recipients. Older women with work experience or a high school diploma tend to be short-term recipients; younger, never-marrieds with young children are likely to be long-term recipients. *See* Duncan, Hill & Hoffman, *Welfare Dependence Within and Across Generations*, 239 SCIENCE 467-71 (1988).

Welfare does seem to reduce work effort, although by exactly what amount is unclear. One recent review estimated an average annual reduction of work effort by female heads of 180 hours. *Id.* at 470. Welfare has not been found to have any effect on out-of-wedlock births. There are, however, modest effects on divorce and separation and a somewhat larger effect on independent living. *Id.*

The belief in the intergenerational transmission of welfare dependency is also contradicted by the evidence. While daughters of mothers with welfare backgrounds are more likely to have welfare spells themselves,

> only about one out of five (twenty percent) of the daughters from highly dependent parental families were themselves highly dependent on AFDC in their early 20's; more than three out of five (sixty-four percent) of the daughters with dependent backgrounds received no AFDC during the three-year period. The stereotype of heavy welfare dependence being routinely passed from mother to child is thus contradicted by these data.

Id. at 469. While the incidence of dependence on welfare among women with a welfare background is higher, other factors, such as schooling and neighborhoods, influence dependency. Finally, the evidence is also mixed with regard to the influence of welfare dependency on children's schooling and subsequent earnings and work effort. *See generally, id.*

The growth in female-headed households that occurred during the 1960s and 1970s was approximately the same for blacks and whites. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 48-49. In recent years, these rates have levelled off, but it is not clear whether this trend is permanent. The reasons for the growth differed: for whites, it was primarily the dissolution of marriage; for blacks, it was never marrying. Contrary to popular impression, the rise of the female-headed black family is *not* due to an increase in out-of-wedlock births which have declined for all groups. Rather, it is the sharp decline in the *marriage* rate of blacks. For both whites and blacks, then, the growth in the female-headed household is due primarily to changes in marital behavior. *Id.* at 47.

Whatever the reasons — the rise of the female-headed household, the incidence of poverty and welfare among this group, and beliefs about the apparent harmful effects of this condition on both the parents and the children of these households — there has been a growing concern about the creation and perpetuation of a more-or-less permanent underclass. There is, of

of-wedlock births produce an enormous amount of poverty and welfare dependency.[21] Recent research has shown that for a substantial number of teenage mothers, welfare dependency is long-term, sometimes nine years or more; unfortunately, this period also comprises the formative part of the child's life.[22] The overwhelming majority (eighty-five percent) of AFDC mothers do not work; they are nearly totally dependent on the combination of AFDC, food stamps, Medicaid, and, if available, public housing benefits.[23]

Single mothers report substantially higher rates of anxiety and depression than married mothers.[24] They also use mental health facilities at higher rates.[25] The children of single mothers do less well in school and are less likely to complete high school or to obtain more desirable jobs.[26] Their daughters are more likely than children of two-parent families to marry early, to have children early (both marital and out-of-wedlock if they do not marry), and to get divorced.[27] Single mothers are approximately three times more likely to become welfare recipients themselves.[28]

4. Education

The consensus also includes the belief that educational failure leads to welfare dependency.[29] "High-school dropouts and people with low academic achievement are far more likely to bear a child out of wedlock or to have a failed marriage than are high school graduates with average achievement levels."[30] Many poorly educated female heads of households cannot even qualify for entry-level jobs, and a minimum-wage job provides only three-quarters of the income which a mother and two children need to get out of poverty.[31] Accordingly, the consensus includes recommendations to improve the quality of our public schools and to require teenage welfare mothers to graduate from high school.

5. State Discretion

The final theme that Reischauer identifies as part of the consensus is the

course, little agreement on how to reduce out-of-wedlock births, but there is now a strong consensus on strengthening child support mechanisms.

21. Reischauer cites these familiar statistics: "Half of the nation's poor live in female-headed families and over one-third of those in female-headed families are poor." Reischauer, *supra* note 2, at 6.

22. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 15. *But see* Duncan, Hill & Hoffman, *supra* note 20.

23. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 38.

24. *Id.* at 26-31.

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.* at 27-31. *See generally* McLanahan, *Family Structure and Dependence: Early Transitions to Female Household Headship*, 25 DEMOGRAPHY 1 (1988).

29. Reischauer, *supra* note 2, at 6.

30. *Id.*

31. D. ELLWOOD, POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY 110 (1988).

need to allow states discretion and flexibility over certain aspects of welfare policy.[32] While conservatives have traditionally favored state control over welfare policy, liberals have tended to distrust the states, especially in matters of race. Liberals are now more amenable to state discretion. There is a growing agreement, moreover, that education, training, and employment programs ought to be sensitive to local labor-market conditions.[33]

Those familiar with welfare history will either be puzzled, amused, or cynical about the five areas of consensus. Since the initial enactment of AFDC in the second decade of this century, welfare programs have placed obligations of responsibility on welfare mothers. They had to be "fit and proper," have a "suitable home," and fulfill some sort of work requirement.[34] Throughout various "reform" periods, contracts have been tried as well as various work tests.[35] Twenty-five years ago, an ambitious program of job training and work incentives was enacted.[36] It is true that educational reform is contemporary, but, as I will discuss below, educational reform may be less substantial than the reformers believe. Finally, state discretion is also curious. AFDC started as a state and local program. It is still primarily a state program, financed through grants-in-aid. The states, for example, have always set financial eligibility and the all-important benefit levels. There are federal requirements, but they are not nearly as important as the state provisions.

Political rhetoric aside, there is something happening in welfare reform. The rise of the female-headed household and the incidence of poverty among this group is a serious national problem. However unfortunate the term "underclass," there is a growing perception that large segments of our population are trapped in poverty-stricken, crime- and drug-ridden ghettos and that children growing up in these circumstances have, at best, only a marginal chance of a decent, productive life.[37] Whatever the ideology and content of the current welfare reform impetus, it is impossible to deny that the underlying state of poverty and moral chaos in our urban centers is very real. The contemporary consensus on welfare reform is the most current attempt to try to do something about this deep and frustratingly complex problem.

Currently, the welfare reform consensus includes a feeling of reaction against the ideology of entitlement, the view that welfare is to be had for the asking, and a feeling that easy welfare encourages dependency in mothers, which dependency is then transmitted to children. The consensus also includes the feeling that somehow AFDC families have lost the sense that the social contract includes mutual obligations, that citizens of society ought to

32. *Id.* at 7.

33. *Id.*

34. *See infra* text accompanying notes 61-86.

35. *See* Schorr, *Welfare Reform, Once (or Twice) Again*, TIKKUN 17-18 (Nov.-Dec. 1987).

36. *See infra* text accompanying notes 141-158.

37. This perception is also exaggerated. The ghetto poor are a tiny fraction of the poverty population — less than seven percent. The black ghetto poor are only five percent of the poor. *See* D. ELLWOOD, *supra* note 31, at 193.

contribute as well as receive. If most mothers of young children today are in the paid workforce, why should welfare mothers be excused?[38] It is true that there always have been work tests and other requirements, but, it is believed, they have been weakly enforced and have produced minimal results. In sum, the reform consensus appears tough and is deeply infused with rehabilitative overtones — responsibility, education, training, the moral values of work and independence. In my view, however, the rehabilitative features are mostly rhetoric. The basic elements of the consensus are social control.

II.
THE FORMATIVE PRINCIPLES: NOTHING IS NEW IN WELFARE POLICY

The world has known welfare policy as long as it has known famines and epidemics. The most consistent, animating aspect of welfare policy — the desire to preserve the supply of labor at the bottom — is the basic principle of "less eligible": the conditions of relief had to be made less desirable than the conditions of the lowest paid work.[39] This policy was articulated at least since the reign of Henry VIII when severe penalties were imposed for giving alms to sturdy beggars.[40]

A second enduring principle of welfare policy was that the ability to work was an *individual* rather than a societal responsibility. With rare exceptions, solutions were to be sought in individual behavioral changes rather than in structural, societal changes.[41]

A third principle was that the failure to earn one's living was a moral failure. In the nineteenth century, for example, the fear was the rise of pauperism.[42] The failure to work, it was believed, inevitably led to moral degener-

38. In Hartmann, *Changes in Women's Economic and Family Roles*, in WOMEN, HOUSEHOLDS, AND THE ECONOMY 33 (1987), the author states:

> In general, I believe that most [welfare] benefits should be tied to employment or participation in training programs. As working for wages increasingly becomes the norm for all women, the fact that poor, young minority women are "stockpiled" on welfare programs increasingly disadvantages them. They, like all women, need to learn labor market skills and progress toward self-sufficiency. Of course, not everyone is able to work, and social programs that provide a decent standard of living for those unable to work are needed as well.

Id. at 58. *Compare* L. MEAD, BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP (1986).

39. M. KATZ, IN THE SHADOW OF THE POORHOUSE 33 (1986).

40. G. HIMMELFARB, THE IDEA OF POVERTY: ENGLAND IN THE EARLY INDUSTRIAL AGE 317 (1984).

41. *See* M. KATZ, *supra* note 39, at 211-12.

42. "Pauper" does not have the benign, pathetic, quaint connotation of today — one usually thinks of very old people on the front porches of rural old-age homes. Paupers, in the last century, were equated with criminals, prostitutes, delinquents, vice, corruption, and drunkenness. There was a great deal of social unrest, particularly in the last decades of the nineteenth century. In hard times, wandering bands of poor men went in search of work. They were considered threats to the social order and the cause of crime and bad moral influence. *See id.* at 13.

acy, pauperism, and crime. The goal of nineteenth-century welfare policy, therefore, was to distinguish the worthy poor from the pauper and to prevent the poor from passing over that line.[43]

Although there has always been a duty to relieve misery, welfare policy has also attempted to preserve labor markets and prevent the spread of deviant behavior. Social beliefs as to the cause and consequences of poverty shaped the characteristics of the policy. Because the failure to earn one's living was considered an individual, moral failure and because this failure would lead to other, more serious forms of deviant behavior, welfare policy had to be extremely careful not to encourage the transformation from "deserving poor" to "undeserving poor." Relief would be given *only* to those who would not be encouraged to move along these deviant paths. The *category* of the potentially eligible, those presumptively in the labor market, the able-bodied, were not to be given relief for the asking. The category was presumptively "undeserving" or "unworthy" of public relief. This is not to say that *all* persons within the class were to be denied assistance — the relief of misery was still but one goal — but welfare administrators had to pick and choose carefully whom would be helped, how much, and under what conditions.

Although the policy objectives were clear, their practical application was not so easy. Separating the worthy from the unworthy poor — those who are poor through misfortune and those who are poor from vice — has always been difficult. Outdoor relief, as opposed to relief in the poorhouse, was not only ineffective in separating the worthy from the unworthy poor, it was considered to be particularly dangerous. The popular perception was that outdoor relief was loosely administered and contributed to the rise in pauperism.[44] Accordingly, there were repeated attempts either to confine the poor in institutions or to impose strict work requirements on outdoor relief. A disarmingly simple theory was developed to accomplish the difficult task of separating the worthy from the unworthy poor: the instrument of relief, the poorhouse, would itself become the test of necessity. If family members were willing to deprive themselves of liberty, to be separated, and to subject themselves to often extremely onerous conditions, then they must be truly destitute.[45] Onerous conditions and stigma became deliberate instruments of policy. "Indeed, it is only a slight exaggeration to say that the core of most welfare reform in America since the

43. Even the more enlightened welfare administrators were sure that the poor lived in a morally precarious position and that the indiscriminate giving of aid would prove to be an insurmountable temptation. In the words of a late nineteenth-century administrator:

> When a person comes to me for relief for the first time, I sit down and talk with him kindly. I say to him: Do you know you are throwing your family onto the county, and it will be a disgrace to you as long as you live? Now go home and see if you can't get along.

J. HANDLER & E. HOLLINGSWORTH, THE "DESERVING POOR": A STUDY OF WELFARE ADMINISTRATION 17 n.3 (1971) (quoting Hastings Hart, Secretary of the Minnesota State Board of Charities and Corrections, quoting a local administrator's treatment of an applicant for relief).

44. M. KATZ, *supra* note 39, at 40.

45. G. HIMMELFARB, *supra* note 40, at 165.

early nineteenth century has been a war on the able-bodied poor: an attempt to define, locate, and purge them from the roles of relief."[46] Outdoor relief, abolished in some communities, persisted overall. There were always more people on outdoor relief than in the poorhouses. A compromise was struck in most communities: outdoor relief would be available but under very strict conditions, including a rigorous work test. As one local superintendent stated: "Especially for strangers, nothing would certify worthiness as well as the willingness to break stone."[47]

Four features are worth emphasizing about the formative period of welfare policy which began in the early nineteenth century. First, work — the ability and willingness to work and its moral importance — is the central theme. Work and welfare are inextricably joined. The *undeserving* poor are defined primarily in terms of work; *as a category*, they are not morally excused from work although individual members of the class may be for short periods of time under limited conditions.

Second, there are two aspects to the work requirement, both of which have continuing importance. One is the *administrative* work test. As a condition of receiving relief, the recipient had to engage in some sort of work. In the nineteenth century, this condition applied whether the recipient was in or out of the poorhouse. Like workfare today, a work requirement was *part* of the welfare program. But there is another work requirement that is often ignored, a requirement that I call the "*market* work requirement." If we consider the category of potential applicants for relief, then a work requirement is also imposed on those who are *excluded* from the program. Once entry to welfare is denied, the rejected applicant must somehow get along, most probably by finding some sort of work. By restricting entry, as social control welfare programs do, the market work requirement is being applied to the unworthy poor. In fact, the market work requirement is much more common than the administrative work test. Most of the poor throughout history, including the present, received no cash assistance at all.

The third feature of the formative period of welfare policy is that local, municipal administration had responsibility for the great mass of the poor under very broad discretionary powers. For example, the original Wisconsin welfare statute,[48] which borrowed heavily from Pennsylvania, the Northwest Territory, Ohio, and Michigan, simply stated: "Every town shall relieve and support all poor and indigent persons, lawfully settled therein, whenever they

46. M. KATZ, *supra* note 39, at 18. The poorhouses were never successful. As with many social welfare programs, their goals were contradictory. They provided shelter and relief for the truly destitute while deterring the deviants. In addition, they were poorly administered, unhealthy and otherwise deplorable. They were also more expensive than the dole. For an excellent account of the rise and decline of the poorhouse in America, see generally *id.* at ch. 1.

47. *Id.* at 56.

48. WIS. REV. STAT. ch. 28, § 1 (1849).

shall stand in need thereof."[49] Neither eligibility nor budget was prescribed. The local administrators had complete discretion to decide who was poor and indigent and what, if anything, to do about it. Moral determinations were made at the local level.

Fourth, as Michael Katz has shown,[50] the administration of relief was built upon a hostage theory: those who are truly needy are given relief under such conditions as to deter those capable of work. During the nineteenth and early twentieth centuries, the vast majority of those who actually got relief, either outdoor relief or poorhouse relief, were truly needy — widows, children, old people, the sick, in short, very few who could work. Yet, the conditions of both forms of relief were deliberately made miserable to deter the able-bodied. The truly needy were segregated, stigmatized, and sanctioned. The attacks on outdoor relief coincided with periods of great unemployment, poverty, unrest, and general social distress.[51] Since, it was believed, outdoor relief encouraged idleness, welfare policy had to encourage the able-bodied to find work and discourage outdoor relief as a viable option.

A. The Rise of the Categories

Beginning in the 1830s, the states began to distinguish classes of poor in terms of moral blameworthiness, considering those for whom work was and was not an issue. As part of the more general institutional movement of the nineteenth century, separate state institutions were created for the blind, the deaf, and the insane. Eventually, children were also removed from the poorhouses and placed in orphanages. This development was the start of categorizing the poor, a basic characteristic of social welfare policy that continues today. The morally blameless poor, the "deserving poor," were to be separated from the general mass of unworthy poor.

Separate state institutions were not created primarily for custodial efficiency. They clearly recognized that these unfortunates were to be separated from the baleful influence of the general mass of the poor, the paupers. In Wisconsin, for example, there was initially a means test for residency in the state institutions; the law was quickly repealed on the ground that this class of the poor should not have to obtain "certificates of pauperism."[52] Other examples of separation grew out of the Civil War. State orphanages were created for children of deceased veterans and relief programs were authorized for indigent veterans and their families (needy soldiers are not a "class of professional paupers, but are poor by misfortune").[53]

Another contributing factor to the categorization process was the Child

49. J. HANDLER & E. HOLLINGSWORTH, *supra* note 43, at 18 (quoting WIS. REV. STAT. ch. 28, § 1 (1849)).

50. *See supra* text accompanying note 39.

51. M. KATZ, *supra* note 39, at 42.

52. J. HANDLER & E. HOLLINGSWORTH, *supra* note 43, at 18 (quoting 1889 WISCONSIN STATE BOARD OF CHARITIES & REFORM THIRD BIENNIAL REPORT 1887-88 at 184).

53. *Id.*

Saving Movement.[54] The Child Savers saw close connections between poverty, crime, and the sordid breeding grounds of the urban slum. They were particularly concerned about "predelinquent" children — children growing up in ignorance and vice, who would eventually become paupers and criminals. They argued, ultimately successfully, that the state had the right and the duty to intervene in a bad environment to save the child from delinquency. Initially, the Child Savers were in favor of breaking up the home and separating the impressionable child from her wicked parents, but as the harsh realities of reformatories, of other kinds of institutions, and of shipping children off to Midwestern farms set in, these social reformers switched their emphasis to family preservation. The Child Savers pushed for reforms in education, the abolition of child labor, child and maternal health, juvenile delinquency, and mothers' pensions.[55]

By the end of the century, juvenile courts (or county courts with juvenile court jurisdiction) were created with jurisdiction over delinquent, dependent, and neglected children.[56] These courts further contributed to the categorization process. They interpreted delinquent to mean committing acts that would be criminal if done by an adult. Neglected meant abandoned, either in fact or by poor parental caretaking. Dependent meant poverty that was caused by misconduct. Neglected and dependent were considered predelinquent; the court could intervene to prevent pauperism and crime. It was taken for granted that poverty, drunkenness, and a poor home were causes of delinquency. This conclusion was not a theoretical invention of the juvenile court reform movement but was indicative of the ideology of the time.[57]

Guilt or innocence was not the issue; rather, the judge, as a "kindly father," would inquire about what the child and the family were like, and what was needed to help them. Two new categories of state institutions were created — reformatories and industrial schools for delinquents and state schools for dependents. The judge, in addition to various forms of probation, could order any child to any of the institutions.[58]

While the juvenile court was not considered punitive in the criminal law sense, it certainly was intended to be a strong and effective form of social control. Thus, it is clear that dependent children in families were not considered as part of the deserving poor. Although these children might still be blameless, they were *predelinquent*. Left uncontrolled they were likely to become paupers and criminals. Again, it was the ascribed *cause* of poverty for the category that determined the available program.

At the turn of the present century, just before the birth of the predecessor

54. For a more detailed discussion, see M. KATZ, *supra* note 39, at ch. 5.

55. *Id.* at 113-46.

56. *See generally id.* at 134-37; Sutton, *The Juvenile Court and Social Welfare: Dynamics of Progressive Reform*, 19 LAW & SOC. REV. 112-15 (1985).

57. *See* Sutton, *supra* note 56, at 108 n.1.

58. J. HANDLER & E. HOLLINGSWORTH, *supra* note 43, at 19-20; M. KATZ, *supra* note 39, at 118-21; Sutton, *supra* note 56, at 117-19.

of the present AFDC program, poor children in families received distinctly different treatment from children who were orphans or physically or mentally disabled. The latter group, who were "deserving" and morally blameless, were treated either in state institutions or, in the case of Civil War veterans and their families, in separate programs. *But this was not true for poor children in families.* These children and their parents were still considered to be part of the general mass of poverty, the category that was undeserving. The vast majority of these families survived, as best they could and by whatever means, like the rest of the poor did. In other words — and most significantly — these families, as a category, were in no sense excused from work.[59]

Categorization continued during the first decades of the twentieth century. The three main categories were created before the New Deal period: Aid to Dependent Children (ADC) or Mothers' Pensions, Aid to the Blind, and Old Age Assistance.[60] The latter two are often called the "adult programs" while ADC is referred to as the "children's program." Although the programs were created almost contemporaneously, their characteristics differed and reflected different social attitudes towards the *category* of potential beneficiaries.

1. Aid to Dependent Children

The catalyst for this program is usually attributed to the first White House conference called by President Theodore Roosevelt in 1909.[61] Leading social reformers condemned existing arrangements for children in poverty. In contrast to their prior beliefs that children should be separated from their poor parents, they now declared that "home life is the highest and finest product of civilization . . . [and that] no child should be deprived of his family by reason of poverty alone."[62] Institutions were condemned as failures, and the conferees concluded that public programs should be established to provide financial assistance to children in their own homes. On the other hand, the conferees

59. Throughout this period, and this clearly included the Child Savers, there were strong concerns about deviant behavior and especially about the transmission of the wrong values and habits from the parent to the child. *See* Gordon, *Family Violence, Feminism, and Social Control*, 12 FEMINIST STUDIES 453, 461-62, 466-67 (1986) [hereinafter *Family Violence*]. The poor single mother in poverty was more than just morally suspect. In her study of child neglect between 1880 and 1920, Linda Gordon states flatly that "only one variable other than single motherhood was a better predictor of court-ordered child removal: poverty." Gordon, *Single Mothers and Child Neglect, 1880-1920*, 37 AM. Q. 173, 180 (1985) [hereinafter *Single Mothers*].

60. *See generally*, U.S. COMMITTEE ON ECONOMIC SECURITY, SOCIAL SECURITY BOARD PUBLICATION, NO.20, SOCIAL SECURITY IN AMERICA: THE FACTUAL BACKGROUND OF THE SOCIAL SECURITY ACT AS SUMMARIZED FROM STAFF REPORTS TO THE COMMITTEE ON ECONOMIC SECURITY BY THE SOCIAL SECURITY BOARD ch. 17 (1937).

61. Leff, *Consensus for Reform: The Mothers'-Pension Movement in the Progressive Era*, 47 SOCIAL SERVICE REV. 397 (1983).

62. W. BELL, AID TO DEPENDENT CHILDREN 4 (1965) (quoting PROCEEDINGS OF THE CONFERENCE ON THE CARE OF DEPENDENT CHILDREN, S. DOC. NO. 721, 60th Cong., 2d Sess. 8 (1909)).

were not in favor of weakening the responsibility of the father by giving public aid. Accordingly, their famous recommendation read:

> Children of parents of worthy character, suffering from temporary misfortune, and children of reasonably efficient and deserving mothers who are without the support of the normal breadwinner should, as a rule be kept with their parents, such aid being given as may be necessary to maintain suitable homes for the rearing of children.[63]

Michael Katz calls Roosevelt's White House conference a remarkable flip in public policy. Previously, poverty was considered a prime contributor to deviance; now, the poor, but virtuous, mother was to be supported by public funds. The home was to be preserved, not broken.[64] Irwin Garfinkel and Sara McLanahan state, "In principle, the mothers' pension movement represents a clear reversal of previous expectations that poor mothers should work."[65] In 1911, just two years after the White House conference, Illinois enacted the first statewide statute, the Fund to Parents Act.[66] By 1913, twenty states had similar legislation; within ten years, thirty-nine states had enacted such legislation.[67] Were poor single mothers now to be extricated from the general mass of poverty and placed in the deserving poor class?

When one examines the states' actual experience, however, it is clear that single mothers were *not* removed to the category of the deserving poor. Under the Illinois act, for example, the juvenile court, as part of its jurisdiction over *predelinquent* children, now had an additional remedy.[68] If the parent was found suitable in the sense that poverty was unaccompanied by the usual vices (such as, drunkenness, bad moral habits, a poor environment), she could now be an alternative probation officer. If the mother was found "fit and proper," the juvenile court could allow the child to remain at home instead of going to jail. This new remedy indicates that despite the belief of the White House conferees that single mothers were among the deserving poor, the state courts

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63. *Id.*

64. M. KATZ, *supra* note 39, at 124.

65. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 99.

66. *See infra* note 68.

67. *See* M. KATZ, *supra* note 39, at 128.

68. The Illinois Fund to Parents Act was an amendment to the Juvenile Court Act. Recall that the juvenile court had jurisdiction over "delinquent," "neglected," and "dependent" children. *See supra* text accompanying notes 56-58. The Fund to Parents Act provided:

> If the parent or parents of such *dependent* child or neglected child are poor and unable to properly care for the said child, but are otherwise proper guardians and it is for the welfare of such child to remain at home, the court may enter an order finding such facts and fixing the amount of money necessary to enable the parent or parents to properly care for such child, and thereupon it shall be the duty of the County Board . . . to pay to such parent or parents, at such times as said order may designate the amount so specified for the care of such dependent or neglected child until the further order of the court."

Ch. 23, § 175, [1911] Ill. Laws 126 (emphasis added).

continued to follow the view that the moral worthiness of the poor single mother was still subject to scrutiny.

The incorporation of Illinois' Fund to Parents Act in its Juvenile Court Act was not accidental. For a long time, Illinois' State Charities Commission had been arguing for much stronger public intervention with dependent children to prevent delinquency.[69] During this time, the close connection between poverty and deviance was an unquestioned assumption. Linda Gordon explains:

> Poverty was never alone. The characteristic signs of child neglect in this period — dirty clothing, soiled linen, lice and worms, crowded sleeping conditions, lack of attention and supervision, untreated infections and running sores, rickets and other malformations, truancy, malnutrition, and overwork . . . parental indifference or hostility . . . — were often the results of poverty.[70]

What explains the apparent contradiction between the desire of the White House conference reformers to treat single mothers and their children as the deserving poor — that is, to extricate them from the vicissitudes of the lower depths, to reaffirm the value of the home by excusing them from work — and the actual structure of the state and local programs, such as those in Illinois, which presumed that poor single mothers were in the category of the undeserving poor? How widespread was the effect of the statement "in principle" that poor mothers should not work?

The immediate opposition to the White House resolutions suggests that the reformers who conferred with Roosevelt did not effect a great change in general attitudes towards the single mother in poverty. The Charitable Organization Society, for example, which spearheaded the attack on public outdoor relief and which was a major proponent of the juvenile court, vigorously condemned the proposal of the White House conferees.[71] So, too, did some of the most prominent social reformers of the day. Even more significant was their attitude towards the category of female-headed households in poverty. In 1912, Mary Richmond called the Mothers' Pension schemes "backward": "Public funds not to widows only, mark you, but . . . funds to the families of those who have deserted and are going to desert!"[72] Similarly, Homer Folks said two years later that "to pension desertion or illegitimacy would, undoubtedly, have the effect of a premium upon these crimes against society . . . . It is a great deal more difficult to determine the worthiness of such mothers than of the widow, and a great deal more dangerous for the state to attempt relief on any large scale."[73] Florence Nesbit made the strongest statement, arguing that these programs could not:

69. J. HANDLER & E. HOLLINGSWORTH, *supra* note 43, at 21 n.15.
70. *Single Mothers*, *supra* note 59, at 174, 181-82.
71. *See* M. KATZ, *supra* note 39, at 80.
72. W. BELL, *supra* note 62, at 6.
73. *Id.* at 6-7.

> possibly be considered worth the expenditure of public funds unless there can be reasonable assurance that children will have a home which will provide at least the conditions necessary to make possible a moral, physical and mental development. Ill-trained, ill-nourished children, predisposed to crime and disease, growing into a stunted, ineffective adulthood, are a serious liability, not an asset to society. Perpetuating homes which produce such results would be both uncharitable and unwise.[74]

These social reformers warned of the historically difficult task of separating the worthy poor from the unworthy and, more specifically, of separating the "fit" from the "unfit" mothers.[75]

It was up to the officials on the front line (judges as well as county agencies) to make the day-to-day distinctions, to separate the worthy mothers from the unworthy. Practice, of course, varied, but a few solid generalizations emerge. First, the programs, as administered, were overwhelmingly for white widows.[76] Second, the programs were difficult to administer. With complaints echoing those against the Poor Law Commissioners of England (recommending the substitution of poorhouses for outdoor relief), local administrators complained of the difficulties in administering the vague test of unworthiness. Ultimately, they had to rely on judgment, prejudice, and gossip. Third, the programs required continuing supervision to make sure that the home remained fit and proper.[77] Finally, the programs remained small.[78]

What, then, can we say about the female-headed household in poverty *as a category* at the beginning of the twentieth century? As a category, they were still part of the general mass of poor; the vast majority were not excused from

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74. *Id.* at 6-8. *See also* 2 G. ABBOTT, THE CHILD AND THE STATE: THE DELINQUENT CHILD; THE CHILD OF UNMARRIED PARENTS 232 (1938).

75. *See* W. BELL, *supra* note 62, at 7; G. ABBOTT, *supra* note 74, at 234.

76. Winifred Bell reports that nationwide, widows constituted eighty-two percent of the participants in the program. In a 1931 survey, ninety-six percent of the participating families were white; three percent, black; and one percent, other. About half of the black recipients, moreover, lived in Ohio and Pennsylvania. W. BELL, *supra* note 62, at 9-10.

In North Carolina, there was only one black family enrolled. Houston, Texas, had none even though blacks constituted twenty-one percent of the city's population. In Marion County, Indiana (Indianapolis), where blacks comprised eleven percent of the population, there were no families in the program. In Gary, Indiana, there was one family in the program. *See id.* at 10.

77. Caseworkers were supposed to supervise home management, diet, cleanliness, school attendance, delinquency, and, of course, moral behavior. Sex was a particularly serious offense. Practice varied depending on the availability of staff, their particular moral views, and local community attitudes, but Bell reports more-or-less continuous regulatory control and terminations during this period. *See id.* at 11-13.

78. In 1930, there were 3,792,902 female-headed households. The Children's Bureau conducted a survey in 1931 and reported that 93,620 families were aided in that year, less than three percent of the pool. Tight eligibility requirements and small public budgets combined to reduce the size of the caseload. *See id.* at 14. In addition, according to a 1928 federal survey, more than half of the recipients reported working during the month that they received their grant. Garfinkel and McLanahan claim that this is an underestimation. *See* I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 99.

work. For some, but for only a very small number, ADC was available. But even this program was a highly structured form of social control.[79] It was conditioned (including a work test) on moral behavior. The *excluded* were forced to get along as best they could: they worked, their children worked, and they were hungry and miserable along with the rest of the poor. The White House conferees and the elite participants in the Mothers' Pension Movement[80] may have hailed a dramatic change in social attitudes toward the poor female-headed household, but in the states and local communities, this class of the poor was still clearly in the undifferentiated mass of unworthy poor. Professor Margaret Rosenheim sums up this early period as follows:

> We may mislead ourselves by speaking of the history of AFDC as though the original impetus was to provide a choice between employment and unemployment. It might better be characterized as offering mothers an alternative to institutionalization of their children or to starvation where employment was not a live possibility or brought insufficient income for the entire family. The latter possibility is supported by our knowledge that working women do not represent a new phenomenon, though undeniably our attitudes toward the acceptable reasons for women seeking employment have broadened. Lower-class women generally have been expected to work when the possibility was open to them.[81]

The disjuncture between the rhetoric of the Mothers' Pension Movement and the practice is instructive. While a great deal of the public controversy centered on the struggle over public outdoor relief, conceptions of the family and gender roles also figured prominently in the debate. Both proponents and opponents strongly endorsed the traditional, patriarchal family. They differed, however, as to AFDC's impact on the traditional family. The proponents argued for a particular conception of the home that was gathering force in American domestic policy, the notion that men and women belonged in separate spheres and that motherhood and the home should not be compromised by paid labor.[82] Mothers' pensions, it was argued, would reinforce patriarchy by valuing domesticity and removing the necessity for paid labor. The opposition thought that pensions would weaken traditional family ties,

79. B. Nelson, *The Gender, Race, and Class Origins of Early Welfare Policy and the Welfare State: A Comparison of Workmen's Compensation and Mothers' Aid*, in WOMEN, CHANGE, AND POLITICS (L. Tilly & P. Guria, eds. 1988).

80. The popular term, "mothers' pension," is something of a misnomer. Only about fifteen percent of the early state statutes used the term. The rest of the statutes either said "aid to dependent children" or "aid to mothers of dependent children." The statutes are listed in U.S. DEPARTMENT OF LABOR, CHILDREN'S BUREAU, CHART NO. 3, A TABULAR SUMMARY OF STATE LAWS RELATING TO PUBLIC AID TO CHILDREN IN THEIR OWN HOMES, IN EFFECT JANUARY 1, 1934 (1934).

81. M. Rosenheim, *Vagrancy Concepts in Welfare Law*, in LAW OF THE POOR 187 (J. tenBroek ed. 1966).

82. A. KESSLER-HARRIS, OUT TO WORK: A HISTORY OF WAGE-EARNING WOMEN IN THE UNITED STATES 49-53 (1982).

weaken male responsibility and encourage single motherhood.[83]

It should not be surprising that both sides thought that their position benefitted patriarchy. The deep ambivalence in social attitudes towards motherhood was resolved in familiar terms. Since the programs were restricted, it forced those who were denied entry (the unworthy mothers) to rely on male breadwinners.

To whom were the arguments of the reformers and the opponents addressed, and for what purposes? The importance of women and children in the paid labor force at this time should not be underestimated. Brenner and Ramas argue that we should not confuse middle-class reformers with the actual representation of the capitalist class. The latter have always resisted expanding state responsibility for dependents. Sufficient benefits would be provided to maintain legitimacy and order but not enough to undercut work incentives.[84]

While the rhetoric of reform was the preservation of traditional patriarchy with the wife and mother at home caring for the family full time, the reality for the vast majority of poor women and mothers was work. For many intact working-class families, the male breadwinner's wage was usually insufficient, so the vast majority of poor mothers had to scramble in a variety of paid jobs.[85] The reformers and their opponents — Protestant, white middle-class — were addressing themselves. For themselves, they were defining the norm, the acceptable standards of behavior. In so doing, they were separating themselves from the others, those families where the mothers *had* to engage in paid labor, the lower social classes, the deviants. The Mothers' Pension Movement was symbolic and expressive; it was an exercise in status politics.[86]

2. *The Adult Programs*

Aid to the blind was enacted in the states contemporaneously with ADC, but the contrast between the two programs was striking. By the time of the New Deal, twenty-seven states had programs.[87] The programs were predicated on the theory that blindness itself was a "sufficiently well-defined cause of poverty" as to merit special relief, that is, relief that would be "deserving."[88] The principle underlying this theory was that:

> [t]he blind people themselves have been especially active in initiating and promoting such legislation since they feel that a special allowance, made in consideration of their handicap, is free from the

83. *Single Mothers*, *supra* note 59, at 190-91.

84. J. Brenner & M. Ramas, *Rethinking Women's Oppression*, 144 NEW LEFT REV. 67 (1984).

85. L. GORDON, HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE 96-97 (1988).

86. *See generally* M. EDELMAN, THE SYMBOLIC USES OF POLITICS (1964).

87. Irwin & McKay, *The Social Security Act and the Blind*, 3 LAW & CONTEMP. PROBS. 271, 272 (1936).

88. *Id.*

> stigma commonly attached to "poor relief," and moreover that, by the setting up of special administrative provisions, they are spared the humiliation of investigation by the poor relief authorities who, they feel, do not understand the special needs and problems of blind people.[89]

In addition to blindness, eligibility was based on age, residence, and need. The only conditions were usually that the recipient not be an inmate of a state institution or receiving other public aid. The only moral condition was usually that the applicant not be publicly soliciting alms.[90] The blind are morally excused from work.

During the early twentieth century, there were also a variety of programs, often actively supported by the blind, designed to increase the self-sufficiency of the blind. Only one state, however, required participation as a condition of aid.[91] Aid to the Blind statutes, administered by welfare agencies in almost every state, have always been part of the welfare codes.[92]

By contrast, Old Age Assistance, at least in its initial period, resembled ADC. These programs began to be enacted in the 1920s. At that time, they were viewed with as much suspicion as ADC.[93] Most Americans believed that if one worked hard and saved, one would not be destitute in old age. Such a program, therefore, would serve only to reward the shifty and lazy. Another common belief was that it was the duty of children to support their parents in old age and that relieving this duty would loosen family ties.[94] About thirty states had programs prior to the New Deal, and although they varied, they virtually bristled with moral conditions, including citizenship requirements, long residency requirements, and strict financial eligibility requirements. In addition, some states required the transfer of the recipient's assets to the welfare agency. Almost all provided for liens on the recipient's estate. Some states would deny aid to persons who had deserted their spouses, who had failed to support their wives, who had been convicted of crimes, or who were "habitual tramps, vagrants, or beggars."[95] The old age statutes, more than any of the others, sought to exclude the "morally unfit." As distinguished from the blind, this category was suspicious, so administrators had to pick and choose the morally deserving.

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89. *Id.*

90. This condition existed in ten states. For a more complete discussion, see U.S. COMMITTEE ON ECONOMIC SECURITY, *supra* note 60.

91. Missouri denied benefits to persons who refused training to make them self-sufficient. *Id.* at 308. *See also* Irwin & McKay, *supra* note 87, at 272-73.

92. U.S. COMMITTEE ON ECONOMIC SECURITY, *supra* note 60, at 306-07. In Idaho, the probate court was the administrative agency. In a few other states, courts administered the program but under the supervision of welfare agencies. *Id.*

93. J. HANDLER & E. HOLLINGSORTH, *supra* note 43, at 25.

94. U.S. COMMITTEE ON ECONOMIC SECURITY, *supra* note 60, at 158.

95. *Id.* at 160, 162-63.

B. The New Deal and Subsequent Developments

The New Deal's social welfare legislation furthered the process of categorization along deserving-undeserving lines. The first order of business for the Roosevelt Administration was cash assistance and then work relief. Within a comparatively short time, some eight million households, representing more than twenty percent of the population, were benefiting from various relief programs.[96] Although the Administration was always uncomfortable with federal relief (in its view, welfare was a state matter), the New Deal's major, permanent social welfare achievement was Social Security, a completely federal program. Social Security is the pension and survivors insurance program for those who have made their employment contribution to society and are now morally excused from work. It is similar to a social insurance program. Eligibility is clear cut and does not depend on one's means. Benefits are related to earnings. Social Security recognized and maintained the distinction between the working, "deserving" poor and the non-deserving poor. To the extent that Social Security covers the working poor, this class of poor has been exonerated; they are now deserving.

The New Deal reformers believed that as Social Security covered more and more people in the workforce, the welfare programs would wither.[97] Widows would no longer be dependent on ADC since they would enjoy Social Security benefits. The aged would be Social Security pensioners rather than Old Age recipients.

Meanwhile, the state and local welfare programs were bankrupt. The federal government responded through grants-in-aid. Although there were federal conditions,[98] the three categorical programs — ADC, Aid to the Blind, and Old Age Assistance — were still state- and locally run programs. The states determined the all-important financial levels of eligibility, the benefit levels, and many important substantive conditions, including a work test for ADC.

As with the 1909 White House conference, the importance of the federal decision to participate in the categorical programs in 1935, in many respects, is often exaggerated. The federal government did, of course, provide necessary funds to keep the programs alive. It also established an important principle of federal financial responsibility, but the federal substantive requirements were few, and enforcement was weak. These programs were still primarily state and local. It was at that level that the day-to-day decisions were made which had the greatest impact on the lives of the recipients.

The post-World War II era, then, inherited a bifurcated social welfare

96. M. KATZ, *supra* note 39, at 226.

97. G. STEINER, SOCIAL INSECURITY 18-26 (1966).

98. For example, the federal government required that programs be available in all political subdivisions, that there be fair hearings for aggrieved applicants and recipients, that benefits be paid in cash, and that eligibility be uniform. J. HANDLER & E. HOLLINGSWORTH, *supra* note 43, at 28 n.42, citing Social Security Act of 1935, ch. 531, tit. I, § 2, 49 Stat. 620.

structure. At the top, there was the Social Security program providing benefits to retirees, survivors and their children, and subsequently, to disabled workers. Poor participants in the Social Security system are the deserving poor. They had earlier fulfilled their work requirement and are now morally excused from work. They receive benefits regardless of their means. There is no distinction between poor and non-poor participants. There is no stigma.

Below the Social Security system, and prior to 1974, were the now four categorical programs — AFDC, Aid to the Blind, Old Age Assistance, and Aid to the Permanently and Totally Disabled. These were grants-in-aid programs, but by the early 1970s, considerable changes had occurred. The changes continued to ensure that these programs reflect the moral characteristics that society ascribed to the potential category of eligible.

1. Old Age Assistance

Old Age Assistance underwent a major transformation between the time of its inception in the 1920s and the early 1970s. In the beginning, the program was characterized by suspicion and contained numerous conditions designed to weed out the morally unfit. Legislators were concerned about the moral value of giving cash assistance to the elderly. The aged poor, as a category, were clearly not considered deserving.[99] By the early 1970s, however, Old Age Assistance had been transformed in administration. Old Age Assistance had come to resemble, in practice, the Social Security system.

What accounts for the transformation of the old age program? Our attitudes towards the category had changed. After the experience of the Depression, it was no longer reasonable to suppose that the average working person could protect herself from enormous swings in the economy. Conceptions of the family and family responsibility changed as well. By the early 1970s, the prevailing view was that the elderly had made their contribution to society. The creation and expansion of the Social Security system contributed to the transformation in societal attitudes by incorporating the vast majority of the elderly into the deserving category. In addition, the elderly poor are white, they do not have out-of-wedlock children, and they vote. The transformation was complete in 1974 when the elderly poor became part of a uniform, national federal program: Supplemental Security Income (SSI).[100]

2. Aid for Families with Dependent Children

AFDC also experienced great changes. It took two contradictory paths. Starting about 1960, the program began to expand rapidly. The basis for de-

99. *See supra* text accompanying notes 93-95.

100. 42 U.S.C. §§ 1381-1383(c) (1982 & Supp. IV 1986) (originally P.L. 92-603, Title III § 301, 86 Stat. 1465 (1972)). There is a problem of participation. For reasons that are not entirely clear, and despite outreach, substantial portions of eligible, elderly people do not apply. It could be that those close to the financial eligibility line would receive only a small benefit. The fact of outreach, which is quite extensive, shows the deservedness of this group. SSI strives to be *inclusive.*

pendency changed from widowhood to deserted and never-married. The program's recipients were increasingly black.[101] Benefits became more generous[102] during this period of liberal reform and social movement activity.[103] Many of the overt social control features, such as the "absent father" rules,[104] were invalidated.[105] Considerable effort was made to reduce the discretion of local welfare agencies and their staff. The Department of Health, Education, and Welfare issued a great many regulations on areas previously left to state discretion. The federal courts, moreover, invalidated state rules that were inconsistent with either federal statutes or regulations.[106] Costs and numbers, however, rose steadily. AFDC became massive and appeared out of control. It was popularly referred to as an "administrative nightmare."[107]

The federal and state governments responded by reasserting quality control. Ostensibly designed to address the validity of welfare determinations and the integrity of the system, quality control quickly concentrated on erroneous overpayments. Programs became computerized. Clerical and intake workers replaced social workers and were closely supervised under strict rules. Both the federal and state governments monitored cases for errors in payments. States were to be penalized if their caseloads exceeded a certain error rate. Inevitably, the emphasis on erroneous payments filtered through to individual workers and supervisors whose overall performance could be expected to decline in all but the monitored areas.[108]

The vigorous pursuit of overpayments produced great distortions. Quality control, along with monthly reporting requirements, resulted in a sharp increase in procedural denials.[109] In time, AFDC no longer resembled the

101. *See* M. KATZ, *supra* note 39, at 266-67.

102. *Id.*

103. *See* F. PIVEN & R. CLOWARD, REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE ch. 10 (1971) [hereinafter REGULATING THE POOR]; F. PIVEN, & R. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL ch. 5 (1977).

104. Under the "absent" or "substitute parent" rule, states would deny AFDC payments to the family if the mother "cohabits" in or outside the home with any single or married able-bodied man. These regulations were declared invalid in King v. Smith, 392 U.S. 309 (1968).

105. *See* M. KATZ, *supra* note 39, at 267.

106. *Id.*

107. *See, e.g.*, S. GALM, WELFARE — AN ADMINISTRATIVE NIGHTMARE, STAFF STUDY PREPARED FOR THE SUBCOMMITTEE ON FISCAL POLICY OF THE JOINT ECONOMIC COMMITTEE, CONGRESS OF THE UNITED STATES, STUDIES IN PUBLIC WELFARE, Paper No.5 (Part I) (1972).

108. D. Chassman, The Future of Quality Control in the Management of Public Welfare, 19, 33-34 (1987) (unpublished manuscript).

109. Because of the strict emphasis on overpayments, workers will deny benefits or close cases when recipients fail to comply with procedural rules. Procedural rejections of applications increased almost fifty percent between 1972 and 1984; procedural terminations rose from fourteen percent of all closings in 1972 to forty-one percent in 1984. While these increases are dramatic, and many are reversed on appeal, it is not known how many procedurally denied families are substantively entitled to benefits. *Id.* at 43 (citing HOUSING RIGHTS ORGANIZATION AND MICHIGAN WELFARE RIGHTS ORGANIZATION, CENTER ON SOCIAL WELFARE POLICY AND LAW, QUALITY CONTROL: A DISASTER FOR THE POOR, (1986)). *See also* Brodkin & Lipsky, *Quality Control in AFDC as an Administrative Strategy*, 57 SOC. SERV. REV., 1-31

discretionary, chaotic, arbitrary program of the sixties. Instead, the program became much more bureaucratic and rule-bound.[110] Many of the financial and household composition rules were, in effect, federalized. There was a dramatic tightening of administrative practices.

Quality control resulted in what Michael Lipsky calls "bureaucratic disentitlement" — controlling welfare costs through the hidden, obscure decisions of the bureaucracy, such as increasing the verification requirements, closing cases for paper errors (e.g., missing Social Security numbers, birth certificates, and other required documentation), and closely checking work requirements. There was also an increase in the number of cases in which a second caseworker redetermined a client's eligibility and benefits. One of the important consequences of the quality control effort has been the transformation of the staff. Under great pressure to get the work out correctly, clients with problems became problems. Staff no longer offered assistance or gave full information. Instead, they cut corners to manage the workload and to avoid tasks that would create delays. Clients were placed under greater burdens to produce documentation and to correct errors on their own. They had to get back on welfare but with less assistance from staff workers. Error rates (defined as overpayments) have been sharply reduced. Many of the mistakes are paper errors, so some proportion of clients are restored to the rolls. There are no reliable figures, however, on the more permanent casualties.[111]

The importance of the administrative change in AFDC cannot be exaggerated. To a large extent — but never completely — management gained control over the line staff by reducing to a routine large parts of the program and by asserting strict, monitoring controls. Previously, the administration of AFDC had been characterized as discretionary, if not chaotic, at the field level. There were ample opportunities for the line staff to bend or ignore the rules.[112] The program is now much more rule-bound and supervision is stricter. Whether or not this administrative capacity will be effective in administering the work requirements is still at issue.

In sum, AFDC has changed, but hardly in the direction of the other categorical programs. An important aspect of AFDC — the definition of financial elements — has become federalized, but unlike the other programs where fed-

(1983); Lipsky, *Bureaucratic Disentitlement in Social Welfare Programs,* 58 SOC. SERV. REV., 3-23 (1984). The practice of denying or terminating benefits because of a recipient's non-compliance with specified procedures is widespread in General Relief, and is known as "churning." *See* Dehavenon, *Administrative Closings of Public Assistance Cases: The Rise of Hunger and Homelessness in New York City — Abstract,* 16 N.Y.U. REV. L. & SOC. CHANGE 741, 742 (1987-88); FROM QUALITY CONTROL TO QUALITY IMPROVEMENT IN AFDC AND MEDICAID 125-36 (F. Kramer, ed. 1988).

110. Simon, *The Invention and Reinvention of Welfare Rights,* 44 MD. L. REV. 1, 35 (1985).

111. *See* Lipsky, *supra* note 109; Brodkin & Lipsky, *supra* note 109; D. Chassman, *supra* note 109; Simon, *supra* note 110, at 27; Dehavenon, *supra* note 109.

112. *See* J. HANDLER & E. HOLLINGSWORTH, *supra* note 43, at 131, 208; S. SHEEHAN, THE WELFARE MOTHER 13-14 (1976).

eralization has meant uniformity in favor of liberalizing benefits, federalization of AFDC has meant clamping down and controlling portions of benefits.

In contrast to social attitudes towards the elderly poor, social attitudes towards the female-headed household in poverty — the category eligible for AFDC — have not changed. Despite all of the structural changes in AFDC, it remains a grant-in-aid program. State and local governments continue to make the determinations regarding basic financial eligibility, benefit levels and administration. As a result, important, restrictive, substantive conditions continue to be administered at the state and local level.

Why the continuation and now growth in state and local control? Prior to the 1960s, state and local administrators were able to exclude the vast majority of poor mothers and their families through the market work requirement.[113] In the post-1960 period, those who were formerly excluded could enter the program. The administrators lost their ability to pick and choose. The undeserving poor — black, poor female-headed households — streamed into the program. Societal attitudes towards this category have nevertheless remained the same. The program is now being restructured to conform more nearly to social attitudes. It is taking on additional social control characteristics to conform to its new clientele. The history of the work requirements in the next section illustrates the struggle to reassert control over the program.[114] Before turning to the work requirements, however, it is necessary to complete the survey of current income-maintenance programs to better place the moral position of families receiving AFDC.

3. *General Relief*

General Relief is the program for the undeserving poor. It was the original public program for the general mass of poverty, the program that was inherited from England and that has remained to this day at the local level. It is the program for those who have been left behind, those who for moral reasons have never been classified as the deserving poor. Historically, and today, it is the first line of defense against all of the known and supposed evils of the indiscriminate outdoor relief of poverty — indolence, vagrancy, begging, crime, and delinquency. The stereotypical General Relief applicant is the bum, the male malingerer, the tramp. It is to the General Relief program that we owe the poorhouses, the stone piles, and other forms of harsh work relief. It is the program that best exemplifies the "hostage" theory of relief.[115] Historically, recipients of General Relief, children, the severely disabled, the mentally ill, and the aged, were usually totally unemployable. Today, too, the conditions of relief are made sufficiently onerous as to deter the able-bodied from applying.[116]

113. *See supra* text accompanying notes 61-86.
114. *See infra* text accompanying notes 159-76.
115. *See* M. KATZ, *supra* note 39, at 18, 24. *See also infra* Appendix I.
116. *See* M. KATZ, *supra* note 39, at 283-84.

General Relief today is extremely varied. In major cities, there are usually extensive programs, but in many parts of the country, there is no General Relief program at all. There is also no federal participation at all. In many states, there is not even state-level participation and supervision. Thus, a great many programs are at the county or municipal level. Benefits are rock bottom, for a short term, highly discretionary and, if the applicant is deemed employable, there is a stiff work requirement. Many able-bodied applicants are simply denied aid, except perhaps some temporary emergency assistance for a night or two.

To comprehend what a dehumanizing, bureaucratic nightmare General Welfare has become, I have included a description of Los Angeles County's General Relief system in Appendix I and a case study of one applicant's attempt to traverse it in Appendix II. Los Angeles' system is not representative, but it is the subject of repeated lawsuits and, as a result, has been somewhat liberalized. In addition, the great number of lawsuits has resulted in the availability of much relevant information.

4. Unemployment Insurance

My thesis that the characteristics of the program reflect the moral characteristics that society ascribes to the potential category of eligible recipients explains the structure of unemployment insurance. Unemployment insurance, like the other categorical welfare programs, seeks to discriminate between the deserving and undeserving worker. The Roosevelt Administration failed to enact a national unemployment insurance program. Instead, through complicated mechanisms designed to avoid constitutional problems, the federal government successfully encouraged the states to expand, or develop and improve, state unemployment insurance under federal guidelines.[117] In structure, unemployment insurance is similar to the welfare grant-in-aid programs. The federal government participates financially and establishes guidelines, but the states determine and administer the important substantive conditions. This structure governs unemployment insurance because it is for *deserving* workers, the workers who have had steady work at good jobs. The program either excludes the undeserving worker directly or through a work test.

Unemployment insurance protects only about one-third of the workforce.[118] The excluded workers include those in the less skilled, marginal occupations; those seeking their first job; or those reentering the labor force. All states require a certain period of work prior to eligibility in order to elimi-

117. M. KATZ, *supra* note 39, at 207, 246-47. For a somewhat different interpretation than that in this Article, see Ikenberry & Skocpol, *Expanding Social Benefits: The Role of Social Security*, 107 POL. SCI. Q. 389, 395-96 (1987).

118. *See* J. BICKERMAN, UNEMPLOYED AND UNPROTECTED: A REPORT OF THE STATUS OF UNEMPLOYMENT INSURANCE 3-5 (1985). It is unclear why so few workers are enrolled. It may be due to lack of coverage, the exhaustion of benefits, or the failure to apply. It is also reported that employers are increasingly claiming, successfully, that terminations are for cause. Personal interview with Mark Greenberg, Legal Services attorney, July 14, 1988.

nate the casual or intermittent worker. But even covered workers will not receive benefits if they do not have the proper attitude towards work. Benefits will be denied if covered workers quit without cause, are fired for misconduct, are not available for work, refuse suitable work, or are unemployed because of a labor dispute.[119] Although practice tends to vary by local office and other circumstances, recipients are eventually required to accept lower status jobs, which may ultimately mean any job for which they have the physical capacity. In all cases, benefits eventually terminate, and the unemployed are subject to market work requirements.[120]

Thus, despite its insurance-like features, unemployment insurance resembles AFDC in a number of respects. It is a decentralized, state-run program that leaves a large amount of discretion to local offices. Due to the flexibility in the statutes, rights are not as clear-cut as they are in the Social Security survivor and pension program. To some extent, benefits are conditioned on an official's assessment of character and behavior. Benefits are for those who have a good work record, who diligently try to find work and who, if necessary, are willing to accept jobs of lower skills and pay — in short, the "deserving" worker.

There is considerable variation in field-level administration. In Los Angeles County, for example, administration is relatively benign. In Florida, on the other hand, the opposite seems to be the case. Applicants face huge lines, rude workers, insults about why they left their jobs and about their efforts to find work, and a general tendency to defer to employers in factual disputes.[121]

5. *Food Stamps*

The Foods Stamps[122] program is a major exception to the thesis that social welfare programs distinguish between the deserving and undeserving poor. It is a major federal program (some twenty million recipients) that is non-categorical. It applies to all who are poor, working or not, and to two-parent, single-parent and singles' households. Although local departments of welfare administer the Food Stamps program, it is federally financed and operates under federal rules.[123]

Food Stamps, which was enacted in 1964, is not, however, reflective of any trend away from the distinction between the deserving and undeserving poor. Its expansion and contemporary structure are the result of the excep-

119. *See* J. BICKERMAN, *supra* note 118, at 3.

120. *See supra* text accompanying notes 47-48 for the definition of the market work requirement.

121. Personal interview with Gary Blasi and Mark Greenberg, Legal Services attorneys (July 14, 1988).

122. 7 U.S.C. §§ 2011-2029 (1982 & Supp. V 1987).

123. *See* 42 U.S.C. §§ 2011-2030 (1982 & Supp. IV 1986). The states pay a portion of administrative costs. *See* Lynn, *A Decade of Policy Developments in the Income-Maintenance System* in A DECADE OF FEDERAL ANTIPOVERTY PROGRAMS: ACHIEVEMENTS, FAILURES, AND LESSONS 75 (R. Haveman ed.) (1977).

tional politics of the Nixon Administration; the hunger lobby; and the agricultural lobby.[124] The exceptionalness of its present structure has not gone unnoticed. In the early years of the Reagan Administration, Senator Jesse Helms led a spirited attempt to "return" the program to the states. While this move failed,[125] and the program does remain federal, it has, in the meantime, taken on other moral criteria. It has become significantly tightened, benefits have been cut, and, most significantly, its work test is being more rigorously applied.[126]

A review of the changes in the full range of social welfare programs, therefore, demonstrates the extent of the moral categorization of the poor. The programs for the aged sharply diverge from the rest. They are nationally based, routinely administered, benign, inclusive, and generous. They reflect a half-century of changing attitudes towards senior citizens. At the other end of the spectrum, General Relief has remained the same. It is locally based, harsh, and passionately devoted to exclusion, social control, and preserving local labor markets. It is designed to make sure that the undeserving poor do not choose welfare over work. The Food Stamp program is interesting because of the way it is changing. Perhaps because it is an in-kind program — who can be in favor of hunger? — it is national and non-categorical. Because it also includes the undeserving poor, however, it is rapidly taking on social control features.

AFDC, throughout most of its history, occupied an ambivalent position. When it was able to exclude most of the potential clientele, it looked something like a deserving poor program. Those excluded — the undeserving, female-headed household — were subject to the market work requirement. However, when it lost the capacity to exclude and the characteristics of its clientele changed, its social control features began to predominate. This conclusion is most clearly illustrated by the changing work requirements, historically the most important social control feature of welfare.

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124. *See* M. MCDONALD, FOOD STAMPS AND INCOME MAINTENANCE 9-12 (1977).

125. The program was defended by then Senate majority leader Robert Dole (R. Kansas) in 1983.

126. In Los Angeles County, for example, the Food Stamps program is administered by the same agency which administers General Relief. The same work test, the same work-relief projects, and the sixty-day penalty rule are applied. Despite the fact that Food Stamps are legally available to otherwise eligible persons without regard to their eligibility for other assistance, including General Relief, and that a violation of General Relief requirements is not a reason for termination of Food Stamp benefits, almost invariably persons who are terminated from General Relief are also terminated erroneously from Food Stamps. Practice varies, however, and in some jurisdictions, all three programs — Food Stamps, General Relief, and AFDC — are administered by the same agency. In others, General Relief is separate. Lucie White, a former Legal Services attorney in North Carolina and currently acting Professor of Law at U.C.L.A., reports that in North Carolina, whole families will be terminated from Food Stamps under the sixty-day penalty if one of the parents violates the work test. In this sense, Food Stamps is now much more severe than AFDC.

C. *Work and the Female-Headed Household in Poverty*

During the 1920s and the 1930s, public policy towards the female-headed household in poverty remained generally consistent. The prevailing social attitude — that the wife and mother belonged in the home — never really applied to the poor mother.[127] As a category, female-headed households in poverty were still considered part of the undeserving poor. A select few (a proportion of white widows) were given grants under restrictive conditions which might or might not include a partial or complete exemption from work. The grants, however, were generally so miserly that the mothers still had to scratch out a living. In 1922, it was reported that the judges looked upon the program as primarily one of "plugging up holes in the wall of support."[128] In part, small grants were due to the general reluctance to spend public funds on relief, but the strong aversion to outdoor relief remained as well.[129] Those fortunate enough to be enrolled were hardly excused from work.[130] For virtually the entire category, *both* the administered and the market work requirements were applicable. The spread of these early ADC programs did not signify a change in public attitudes towards the blameworthiness of the female-headed household.

The issue of work did not change in the post-New Deal period. The federal Children's Bureau continued to exhort the states to improve their programs and to discourage work so that mothers could remain at home, but the Bureau was relatively powerless, and its pleas generally fell on deaf ears. Welfare was a matter for state and local government; they imposed work requirements on female-headed households as they saw fit.[131] More than twenty states had statutes with explicit work requirements.[132] In several states, by rule or by regulation, there were presumptive work requirements.[133] The Georgia requirement, for example, stated that "[a]ble-bodied mothers with no children under 1 month of age are expected to find employment if work is

127. *See* A. KESSLER-HARRIS, *supra* note 82, at 122-23, 189, 241, 242, 254, 258, 277.

128. W. BELL, *supra* note 62, at 15.

129. Winifred Bell quotes the secretary of the Massachusetts Society for the Prevention of Cruelty to Children, who feared that outright grants would increase the " 'temptations . . . to spend money recklessly or foolishly, even in some of the better families.' Others were also restrained by their feelings that the 'ability to spend money is in general chastened by the effort to get money.' " Most of the social reformers of this period believed that character was strengthened by hard work and that a heavy dose of adversity did the poor no harm. *Id.* at 16.

130. A 1918 study of AFDC in Harrisburg, Pennsylvania, showed that of 116 families, three-quarters of the mothers and a large proportion of the children (many under sixteen) worked. In other studies, proportions of AFDC mothers who worked varied between twenty percent and seventy percent. In some jurisdictions, there were restrictions on the number of days that the mother could be away from the home and still be eligible. The only way that the family could survive on the low grants would be to take in laundry. *Id.* at 16.

131. *Id.* at 63-65, 239 n.9. *See also* M. ABRAMOVITZ, REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT 318-19 (1988).

132. Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1258 n.27 (1983).

133. *Id.*

available, and so long as work is available in the area, their families are not eligible for AFDC."[134] It was a familiar practice in many counties — and not just in the South — to close down the AFDC rolls when crops had to be harvested. It was expected that entire families, including young children, would go to the fields.[135] Child care was not considered a barrier.[136]

The most important work requirement continued to be the market. Until the expansion of its rolls in the 1960s, AFDC in all parts of the country never came close to meeting need. Patterns of exclusion were based primarily on moral attitudes. There was persistent, widespread racial discrimination.[137]

The other principal form of discrimination was against unwed mothers. The federal definition of eligibility required coverage, but, in practice, the states limited enrollment through their "suitable" home provisions. Several states viewed the presence of out-of-wedlock children on the program with considerable alarm. Particularly in the South, the two prejudices reinforced each other.[138] While modest improvements were made during the 1940s and 1950s, serious discrimination persisted, fueled, as always, by the concern over rising welfare costs. Black migrations during, and after, World War II from rural to urban areas, and from the South to the North, exacerbated the continual fear that AFDC would encourage idleness and sexual immorality. The story of state attacks on welfare benefits for unwed mothers, especially blacks, is well known.[139] While the federal government resisted explicit state denials of aid to unwed mothers, states were able to exclude and terminate thousands of families under "suitable" home rules.[140]

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134. *Id.*

135. REGULATING THE POOR, *supra* note 103, at 124-25. In the 1960s, Madera County, California, for example, required AFDC recipients ten years of age or older to work on the grape harvest or face termination of the family from AFDC benefits. Ramos v. County of Madera, 4 Cal. 3d 685, 282 P.2d 93, 94 Cal. Rptr. 421 (1971).

136. According to reports of the Mississippi State Advisory Commission to the United States Commission on Civil Rights Welfare in Mississippi, caseworkers stated that " 'negro mothers always had farmed out their children to neighbors and relatives . . . Therefore, . . . child care plans were not . . . a problem.' " Law, *supra* note 132, at 1258 n.29.

137. Bell quotes a southern field supervisor's report:

> The number of Negro cases is few due to the unanimous feeling on the part of the staff and board that there are more work opportunities for Negro women and to their intense desire not to interfere with local labor conditions. The attitude that "they have always gotten along," and that "all they'll do is have more children" is definite. . . . There is hesitancy on the part of lay boards to advance too rapidly over the thinking of their own communities, which see no reason why the employable Negro mother should not continue her usually sketchy seasonal labor or indefinite domestic service rather than receive a public assistance grant.

W. BELL, *supra* note 62, at 34-35.

138. *Id.* at 44-45.

139. *See* Parrish v. Civil Service Commission of Alameda County, 66 Cal. 2d 200, 425 P.2d 223 (1967); Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245 (1965); Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963).

140. W. BELL, *supra* note 62, at 67; M. ABRAMOVITZ, *supra* note 131, at 319-29. *See* King v. Smith, 392 U.S. 309 (1968).

III.
THE FORMATION OF THE CURRENT CONSENSUS

A. The Beginning of the Transformation

In the 1960s, AFDC's costs and rolls mushroomed. More significantly, AFDC's rolls became increasingly comprised of black and never-married women.[141] Not coincidentally, the mid-1960s witnessed the start of federal work requirements for AFDC mothers. After the failure of the Kennedy Administration to reduce the welfare rolls through social service rehabilitation,[142] a frustrated and angry Congress passed the first major federal work program for AFDC in 1967.[143] Congress adopted a two-pronged approach — incentives to seek market-place employment, and a coercive, administered work test.[144] By allowing beneficiaries to keep a small part of their earnings and still be eligible for welfare, Congress believed that AFDC recipients would have an incentive to seek work.[145] The administered work test was embodied in the Work Incentive Program (WIN).[146]

B. WIN

WIN involves an initial evaluation of appropriateness for referral by the welfare department to the Local Bureau of Employment Services (under the Department of Labor's supervision) which then reassesses the referrals to determine whether they are immediately employable or need specialized services. If the Local Bureau of Employment Services determines that the referral is inappropriate, they are referred back to the welfare agencies. The assessment team then draws up an employability plan for each recipient. Recipients are further categorized according to those who are deemed immediately employable, those who need additional training, and those who cannot benefit from training or for whom a job cannot be found. The latter are placed in "special works projects" with public or private nonprofit agencies.[147] Until October 1, 1990, when the Family Support Act of 1988 goes into effect, WIN is the only federal work requirement program.[148]

The prevailing view in Congress was that welfare undermined family stability and work incentives. Congress also believed that jobs were available for people willing to take them, but because of welfare, recipients had inappropri-

141. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 53.

142. *See* J. HANDLER & E. HOLLINGSWORTH, *supra* note 43, at 135.

143. Social Security Amendments of 1967, Pub. L. No. 90-248, § 204, 81 Stat. 821, 1002-1012.

144. *See* H.R. REP. NO. 544, 90th Cong., 1st Sess. 103, *reprinted in* S. REP. NO. 744, 90th Cong., 1st Sess. 26, *reprinted in* 1967 U.S. CODE CONG. & ADMIN. NEWS 2834, 2859.

145. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 113.

146. 42 U.S.C. § 602(a)(19) (1982 & Supp. IV 1986).

147. 42 U.S.C. § 602(a)(19)(G) (Supp. IV 1986).

148. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2342, § 204 (to be codified at 42 U.S.C. § 681 note).

ately high standards of what constituted acceptable work.[149] The economy was sufficiently flexible to absorb those who could work, and the jobs that recipients would obtain would enable them to leave the rolls. WIN was mandatory for males (AFDC-U) and voluntary for women.[150]

While WIN participants did demonstrate modest gains in earnings, there is serious doubt as to whether WIN had any effect on the employability of recipients. There is reason to believe that the WIN placements would have occurred without WIN.[151] Similarly, there were only modest decreases in grant levels. It is questionable, moreover, whether the savings would not have been greater without WIN. In any event, the costs associated with the lower grants among WIN participants were greater than the savings.[152]

Not surprisingly, those who were most employable to begin with were the most likely to move from WIN into employment. These recipients, moreover, tended to find their own placements.[153] These findings were the basis for the Talmadge Amendments in 1971 (called WIN II).[154] Again, reacting to sharply rising welfare costs, the 1971 amendments toughened the work requirements.[155] They also changed WIN's focus from education and institutional training to placement services in entry-level jobs. Mothers with children above the age of six were placed in the able-bodied category. All employable recipients were to be referred to the Local Bureau of Employment Services.[156]

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149. *See* Law, *supra* note 132, at n.48, 1262-63.

150. *Id.* at 1262-64.

151. The local WIN offices faced an impossible task: a determinative, yet uncontrollable local labor market, AFDC recipients with multiple barriers to employment, and seriously inadequate resources in view of the demand for services. Faced with these cross-pressures, the local offices responded predictably: they allocated their resources to those most likely to succeed, i.e., those who were most employable to begin with. The local offices were able to do this because the number of volunteers always greatly exceeds the number of available slots. *See* I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 115-16.

152. Gordon, *WIN Research: A Review of the Findings*, in THE WORK EXPERIENCE 67, 77 (Garvin, Smith & Reid eds. 1978).

153. *Id.* at 66.

154. Pub. L. 92-223, § 3(b)(4)(A)-(F), 85 Stat. 806, 807, codified at 42 U.S.C. § 633 (1982 & Supp. IV 1986).

155. The Talmadge Amendments, codifying the sex-based priorities of the regulations, stated that the Department of Labor, in placing appropriate people referred to it by the welfare agency,

> shall accord priority to such individuals in the following order, taking into account employability potential; first, unemployed fathers; second, mothers whether or not required to register pursuant to section 602(a)(19)(A) of the title, who volunteer for participation under a work incentive program; third, other mothers, and pregnant women, registered pursuant to section 602(a)(19)(A) of this title, who are under nineteen years of age; fourth, dependent children and relatives who have attained age sixteen and who are not in school or engaged in work or manpower training; and fifth, all other individuals so certified to him.

Social Security Act, § 433(a), 42 U.S.C. § 633(a) (1982).

156. Y. Hasenfeld, Welfare and Work: The Institutionalization of Moral Ambiguity, 43 (working paper draft 1987) (on file with the New York University Review of Law & Social Change). *See also supra* text accompanying notes 146-48.

WIN II was just as unsuccessful as WIN I. Even though the WIN budget increased to over $300 million by 1974, funds were not nearly sufficient to handle the new registrants, which exceeded one million. When federal funding was at its peak, the average spent per recipient was only $250. Only about forty percent of AFDC recipients were required to register, but even this requirement was only a formality. Only half of those registered were selected to take part in any activity. The rest were on "hold" because of the lack of resources or jobs. Of those who participated, only about one-quarter were placed in jobs, and seventy percent of these said that they found the jobs on their own.[157] In a recent review, Hasenfeld concluded that "under the best scenario WIN was able to remove less than two percent of the AFDC recipients from the rolls and reduced grants by an additional two percent. Finally, of those attaining employment, thirty-three percent were paid less than the minimum wage."[158]

C. *Workfare*

Faced with the evident failure of WIN to reduce welfare dependency, the Reagan Administration reacted by again toughening the work requirements. The 1981 Omnibus Budget Reconciliation Act (OBRA) sought to distinguish sharply between the able-bodied and the non-able-bodied by lowering the eligibility ceiling. It also eliminated the provision of work-related expenses after four months.[159] The Administration sought, unsuccessfully, to mandate work-relief jobs for AFDC.[160] According to Martin Anderson, former President Reagan's Advisor for Domestic Policy, the following principles now guided welfare reform: welfare would be granted only to the "truly needy"; there would be a strict work requirement; and there would be a shift of responsibility to the state and local level and private institutions.[161]

Congress, however, refused to go along with the Reagan Administration's proposals. Instead, it conferred on the states a number of options. These op-

157. *Id.* at 44.

158. *Id.* at 45.

159. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, §§ 2301-2321, 95 Stat. 357, 843-60 (amending the Social Security Act, 42 U.S.C. §§ 601-610 (1976)) (codified at 42 U.S.C. §§ 601-610, 612, 614, 615, 645 (Supp. IV 1986)). The 1981 legislation eliminated the major income deduction (the $30 and one-third deduction) after four months. In 1984, Congress amended the provision so that the one-third deduction (the major one) expires after four months, with the $30 deduction continuing for an additional eight months. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 133.

160. President Reagan's approach to welfare reform reflected his experience with the California workfare program in 1972 when he was Governor. That program required recipients to work off their welfare grant in public or private jobs. He claimed that the rolls were reduced by 350,000, "not by throwing people off, they just disappeared." *Question and Answer Session*, 17 WEEKLY COMP. PRES. DOC. 303 (Mar. 16, 1981). In fact, in most counties in California, the program was never instituted and where it was in operation, it neither reduced rolls or applications nor facilitated employment. Law, *supra* note 132, at 1275-76 nn.105, 106.

161. M. ANDERSON, WELFARE: THE POLITICAL ECONOMY OF WELFARE REFORM IN THE UNITED STATES 153-67 (1978). *See also* Y. Hasenfeld, *supra* note 156, at 48.

tions included having a single state agency operate the WIN program (now called WIN Demonstration), giving the states explicit authority to require recipients to participate in a work-relief job (called the Community Work Experience (CWEP)), and allowing the states to divert a portion of the welfare grant to subsidize employment.[162] At the same time, federal funds for WIN and for public service jobs and training were reduced.[163]

Between 1981 and 1987, WIN funding declined by seventy percent, forcing the states to adopt various options.[164] The states, too, responded to the national consensus by increasing the availability of funds for WIN. By September 1985, thirty-seven states had implemented one or more of the following options: twenty-three had community work experience; twelve had job search; and eleven had work supplementation.[165] While most of these optional programs operated on a demonstration basis only, a few states have adopted statewide programs.[166]

As part of the OBRA compromise,[167] Congress authorized experiments in work-relief in eight states.[168] The programs ranged from voluntary on-the-job training (New Jersey) to straight work-for-relief (West Virginia). The states' cumulative experience with these programs provided the legitimacy for the work requirement in the Family Support Act of 1988. A brief review of West Virginia's and San Diego's experience with work requirements and a lengthier analysis of the programs in California and Massachusetts demonstrates, however, that these state experiments were not nearly as successful as the proponents of the FSA's work requirement have suggested.

In West Virginia, AFDC-U (unemployed males) and mandatory recipients of WIN (primarily mothers with children over six) were required to work for the welfare grant (CWEP). The CWEP assignments were usually lengthy, but often interrupted because of child care needs. The West Virginia program had no effect on the employability or earnings of either the men or the women; few acquired new skills.[169] The program was cost-effective if the value of the work performed is included. Otherwise, it costs the government more to put recipients to work than just to give them the welfare grant.[170] Hasenfeld argues that it is possible to set the poor to work when there is high unemploy-

162. Y. Hasenfeld, *supra* note 156, at 50-51.

163. *Id.*

164. *Id.* at 51.

165. *Id.*

166. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 135. *See also* Y. Hasenfeld, *supra* note 156, at 51.

167. *See supra* text accompanying notes 159-163.

168. My discussion of these experiments is based on Y. Hasenfeld, *supra* note 156, at 65. *See also* Gueron, *Reforming Welfare with Work*, PUBLIC WELFARE 13-25 (Fall 1987); Schulzinger & Roberts, *Welfare Reform in the States: Fact or Fiction? Part I*, 21 CLEARINGHOUSE REV. 695-709 (1987).

169. Y. Hasenfeld, *supra* note 156, at 67.

170. *Id.* With the value of the services included, West Virginia saved $734 per recipient. *Id.* at 67-68.

ment, a very depressed economy, and no pretense of reducing welfare through the employability of the poor.

San Diego's experience provides an interesting example, especially because it had a significant influence on the model California legislation (called Greater Avenues for Independence (GAIN)). San Diego experimented with job search and CWEP follow-up when job search was unsuccessful. It also experienced during this period rapid economic growth, a political climate strongly in favor of denying welfare to the able-bodied, and a recipient population that exceeded the national average in terms of employability.[171]

Fifteen percent of the AFDC population and nineteen percent of the AFDC-U population participated, a high rate by national standards. In addition, San Diego employed sanctions. Almost three-quarters of the CWEP participants were identified as non-compliant, and ten percent were actually penalized.[172] The only real gains from the San Diego experiment — and these were modest — were from job search with AFDC women.[173] Males were not helped in any significant way despite the sanctions.[174]

Large claims were made from the results of the various state and local experiments.[175] In summarizing the results (and the debate), Hasenfeld says the programs can help welfare recipients obtain employment and can achieve some modest savings in welfare costs. The programs, however, with the exception of West Virginia's, were small and experimental, affecting relatively few recipients. A substantial majority will continue to remain on welfare, whether they work or not. In addition, while the experiments were feasible on a small scale, it is an entirely different matter to implement these complicated programs on a statewide basis, especially when there is such little control over

171. *Id.* at 69 (citing B. GOLDMAN, CALIFORNIA — THE DEMONSTRATION OF STATE WORK/WELFARE INITIATIVES: FINDINGS FROM THE SAN DIEGO JOB SEARCH AND WORK EXPERIENCE DEMONSTRATION 4 (1985)).

172. Hasenfeld, *supra* note 156, at 68.

173. The employment rate for AFDC women increased from fifty-five percent to sixty-one percent during the fifteen month post employment follow-up. Gueron, *supra* note 168, at 21.

174. Hasenfeld, *supra* note 156, at 69.

175. For a modest and balanced appraisal by the Manpower Development Research Corporation (MDRC), the principal investigating agency, see *id.*

The latest review, conducted by Duncan, Hill and Hoffman, concludes:

> Taken together, these evaluations suggest that (i) both job search and training programs increase the employment and earnings of individuals participating in them relative to control-group individuals; (ii) the increases in employment and earnings are, however, modest (the fraction of individuals with jobs increases by 3 to 9 percentage points, and individuals' annual earnings increase by $100 to $600, the equivalent of 8 to 36 percent gains); (iii) programs directed at long-term recipient women are typically more successful than programs directed at unemployed men or at women with recent work experience; and (iv) programs administered in rural areas, particularly those areas with very high unemployment, are less successful than programs administered in more benign economic environments. A major open question concerns the relative benefits of lower cost job search programs versus more expensive training programs.

Duncan, Hill & Hoffman, *supra* note 20, at 470. *See also* Wiseman, *supra* note 14, at 22-28.

labor markets.[176]

D. The GAIN Program

California's recently enacted GAIN program is a model example of the new state workfare programs.[177] GAIN combines four programs designed to improve the employability of recipients: job search, education, employment and training, and work-relief. All AFDC-U recipients and all AFDC recipients whose youngest child is six or older are required to participate in GAIN until they become employed or leave AFDC. An initial appraisal determines eligibility. Those not deferred or exempted are evaluated for literacy skills and ability to participate in remedial education. Those who are otherwise eligible and have had employment experience within two years are referred to job search and job clubs.[178]

If the participant does not find a job after the job search, she is reassessed, and a contract is drafted whereby the county and the participant specify their reciprocal obligations.[179] The contract is ideologically important in the current reform climate. Liberals view the contract as a form of empowerment because it allows the recipients to play a meaningful role in their future. It is also a centerpiece of the conservative approach. As Reischauer points out, in contrast to the ideology of the 1960s and 1970s, recipients will now be explicitly informed that in return for cash assistance and services, they now have an obligation to themselves and their families to try to become self-sufficient.[180]

Not surprisingly, social welfare contracts are not a new idea. They have existed in a wide variety of settings, and their success has varied. Some argue that contracts help focus the expectations of both client and staff.[181] Others argue that contracts aid in monitoring staff performance.[182] Still others claim that contracts are useless paperwork at best and that they are easily manipu-

176. Hasenfeld, *supra* note 156, at 62-75. *See also* Duncan, Hill & Hoffman, *supra* note 20, at 470.

177. GAIN is codified at CAL. WELF. & INST. CODE §§ 11320 (1985). For a more complete discussion of GAIN, see C. MCKEEVER & M. GREENBERG, FALSE PREMISES, FALSE PROMISES: A CRITIQUE OF CALIFORNIA'S GREATER AVENUES FOR INDEPENDENCE (GAIN) WORKFARE PROGRAM. Copies are available from the Western Center on Law and Poverty, 3535 West 6th Street, Los Angeles, CA 90020.

178. Job search may be either supervised or unsupervised. Supervised job search generally consists of "job clubs" where participants are given information about jobs and taught how to improve their chances of getting a job (e.g., resumes, appropriate dress, and interviewing skills). Supervised job search usually requires participation in "phone banking" where, under supervision, the participants call prospective employers. It also requires the recipient to go door-to-door looking for a job. Under either approach, failure to participate as required leads to sanctions. Those recipients who have the necessary job finding skills but who have been unable to find a job must still go through the three weeks of job search. C. MCKEEVER & M. GREENBERG, *supra* note 177, at 86.

179. Y. Hasenfeld, *supra* note 156, at 89.

180. Reischauer, *supra* note 2, at 4. *See also* L. MEAD, *supra* note 38.

181. *See generally* D. Nelkin, *The Use of 'Contracts' As a Social Work Technique*, in R. RIDEOUT & J. JOWELL, CURRENT LEGAL PROBLEMS 1987 (1987).

182. *Id.*

lated by the staff to suit their purposes and increase their control over clients.[183]

How are these social contracts likely to work out in the current welfare reform? The county promises cash assistance and employment preparation in return for conscientious participation. This exchange seems reasonable and just. But what are the mutual obligations and responsibilities, and how will they be enforced? The county has a variety of ways of enforcing its end of the bargain. If the participant does not perform as specified, the county can take control of her family's finances, reduce, or eventually terminate the grant. What can the participant do? Suppose that the day care that is offered is not available, or its hours do not fit? Suppose that the participant needs English to upgrade her skills but there is no English class available, and instead, she is offered training for a lower-skilled job or a workfare slot? Basically, the participant has three options — she can accept what is offered; she can leave welfare; or she can invoke the formal grievance procedure. For well-established reasons, the grievance procedure is not an effective remedy for the vast majority of recipients.[184] As a result, the recipient really has only two options — accept the conditions or leave welfare. She cannot hold the county to its part of the bargain.

There will always be two major constraints that affect what the county will offer as its part of the bargain, one substantive and the other administrative. Substantively, there are limits to the amount of resources that the state will make available for the program. In this era of very tight budgets, how much day care, education, and training will be available? In Los Angeles County, for example, forty percent of the mandatory participants do not speak English. Almost eighty percent have less than a high school education.[185] In a study of the first six thousand GAIN participants, it was found that fifty-five percent needed some form of remedial education before they could enter the labor market.[186] Existing resources will have a serious impact on the recruitment, assessment, and placement of the participants. Thus, clients are diagnosed in terms of what is available, not in terms of pre-existing conditions. Will the same pattern emerge here as in the WIN program?

The tendency towards budgetary constraints which limit the effectiveness of the program will be reinforced by existing administrative constraints. As Alvin Schorr reminds us, social contracts were the social work strategy of the 1950s and 1960s.[187] For a variety of reasons, this strategy never worked. Schorr stresses, however, how much human services departments have

183. *Id.*

184. For a more complete discussion of this point, see J. HANDLER, THE CONDITIONS OF DISCRETION: AUTONOMY, COMMUNITY, BUREAUCRACY ch. 2 (1986).

185. Bernstein, Gross, Hertz, Greenberg & Epstein, Comments on Proposed Los Angeles Country GAIN Plan 3 (July 29, 1987) (unpublished manuscript) (on file with the New York University Review of Law & Social Change).

186. *Id.* at 3 n.1.

187. Schorr, *supra* note 35, at 17-18.

changed since the 1950s and 1960s. In testimony before the General Accounting Office, welfare administrators from Cleveland said:

> [M]any human services departments cannot manage to answer the telephone, let alone conduct a civilized interview. They have been stripped of staff; the staff they have has been downgraded — some have only an eighth- or ninth-grade education; and they have been buffeted, blamed, and drowned in impossible regulations and requirements.[188]

How then are these understaffed, undertrained workers going to be able to handle large numbers of AFDC recipients? They will be under severe pressure to process participants — to make assessments, to get contracts signed, to move participants through the system. It is in this environment, an environment of scarce resources and severe administrative constraints, that the ideology of contract, contract as empowerment and contract as moral obligation, is supposed to take root. The reality, of course, is that recipients will be given a set of requirements. The only difference is that at the top of the page there will appear the word "contract" and at the bottom a place for the recipient's signature.

After the contract is signed, the recipient participates in one of a variety of education and training options. These options were the main attraction for the liberals in California who thought that such options would provide opportunities for recipients to become independent. The education and training options, to the extent available, can be genuinely valuable. The problem, however, will be the level of funding and the kinds of programs that the counties choose since the cost of these programs can be staggering.[189]

GAIN employs a priority system to counteract the incentive to cream[190] those who are most employable to begin with. The program favors those who

188. *Id.* at 18.

189. Los Angeles County, with forty percent of the AFDC caseload, is projecting an enrollment of 26,000 participants out of a total of approximately 75,000 potential participants for a participation rate of thirty-five percent when the program is fully implemented in FY 1988-89. For this proportion of the potential participants, the County requested $156 million for FY 1988-89. Conversation with Darrel Schultz, Chief, Budget and Management Services Division, Los Angeles County Dep't of Public Social Services (Apr. 26, 1988). The state informed the County in the spring of 1988 that it would receive $71 million, including $53.4 million in "new" funding and $18.5 million in "existing" resources. Conversation with Sandra Semtner, Chief, GAIN Planning Division, Los Angeles County Dep't of Public Social Services (Mar. 16, 1988). Since then, there have been further budget cuts at the state level. As of August 1988, the County was expecting $44 million in "new" funding and $18 million in "existing" resources. Conversation with Sandra Semtner, *supra* (July 25, 1988).

What the State means by "existing" resources are slots in other agencies that are available for low-income participants — for example, junior college English-as-a-second-language programs. The County Department of Welfare is required to consult with these agencies over the availability of these slots, but these agencies are under no legal obligation to, in fact, make them available for GAIN participants. In other words, the state is counting as available resources what has to be bargained for and may, indeed, not be received.

190. "Creaming" is the standard practice of serving only the most job-ready participants, those who need a job least.

are likely to be long-term welfare recipients. Its training program performance standards, however, may strongly encourage creaming. The statute provides that thirty percent of the "fixed unit price" for job training will be withheld until the participant not only has obtained an unsubsidized job but also has held that job for at least 180 days.[191] While the state is to be commended for creating a performance incentive for local administrators and the employers participating in the program to train people for long-term jobs, this particular incentive may be too high. It may either deter trainers from participating or strongly encourage creaming.

Ultimately, the selection of participants will depend not only on the availability of education and training slots, but even more significantly, on the availability of reasonably well paying jobs which welfare recipients can obtain on a permanent basis. To obtain a job that will equal her benefits (net earnings after deducting taxes, Social Security, union dues, health insurance), a California AFDC recipient would have to have a full-time job paying about $8 per hour. The average starting wage in California is $5.80 per hour.[192]

What are the chances that these jobs will be available to GAIN participants? GAIN's proponents have relied on projections of hundreds of thousands of jobs being created in California over the next decade.[193] There are labor shortages in various parts of the country. While a large proportion of the new entrants in the labor market will be women and minorities, many of the newly created jobs will require levels of education and training that they do not possess. Faced with the lack of appropriate unsubsidized jobs, counselors will discourage participants from considering positions for which there are long waiting lists and will attempt to channel people into the lowest paying, most available positions.

When all else fails — job search, no job after education or training, additional job search — the participant enters work relief (called PREP in California) for a period of one year. Work relief is a source of free labor for public and private nonprofit employers. Hours are usually computed on the basis of the minimum wage although in California, they are computed on the basis of the state's average wage for entry-level positions (currently slightly in excess of $5.00 per hour). The participants in PREP are employees as far as the task is concerned, but they do not qualify for Social Security, unemployment benefits, sick time or vacation leave, or any other benefit associated with employee status. In addition, there are sanctions for "failure to participate."[194] Work discipline is clearly important.

The crucial question is what the work experience in these work relief jobs

191. *See* C. MCKEEVER & M. GREENBERG, *supra* note 177, at 15.

192. The $8.00 would about equal the value of AFDC cash assistance, food stamps, and Medicaid. Personal interview with Tom Brock, Ph.D candidate at UCLA School of Social Welfare who is writing a dissertation on the GAIN program, January 12, 1989. *See also* Y. Hasenfeld, *supra* note 156, at 88.

193. C. MCKEEVER & M. GREENBERG, *supra* note 177, at 7.

194. *Id.* at 16.

is likely to be. Some work relief jobs have been good work experiences. Participants learn, they move on to regular jobs, and they express positive attitudes towards the experience.[195] Others jobs have been mindless, low-skill work, without any pretense of training. All of the jobs are punitive in the sense that participants are forced to perform this labor even though they have fulfilled all of the program's requirements. In California, the PREP job need not be the one for which the participant was trained; it need only be "related" to the training. Thus, recipients may well be required to take work-relief jobs that will not necessarily enhance their employability. If there are no unsubsidized jobs available, they are stuck.

As part of the political compromise over GAIN, the liberals extracted significant improvements in funding for child care. GAIN recognizes the importance of child care to training and employment. Passage of the legislation was, therefore, linked to other legislation designed to increase the supply of child care programs for school-age children throughout the state. Unlike the programs of many other states, GAIN promises to pay market rates for child care.[196]

GAIN strongly encourages recipients to use relatives and other means of child care which are exempt from state licensing laws.[197] This provision benefits the counties. Informal "caregivers" must accept less pay and can be paid only for the hours that they actually worked. Licensed care, in addition to being more expensive, must be compensated for the erratic hours of care which the mother's participation in GAIN (i.e., the training classes and interviews) may require. Most counties will pay only for the exact number of hours during which the parents are occupied, effectively precluding parents from choosing licensed care. Informal care may be satisfactory for the shorter periods of job search, education, and training, but it is probably a less viable

195. The San Diego and West Virginia participants expressed satisfaction. They thought the requirements were fair although the West Virginia participants thought that the employers were getting an unfair advantage. Y. Hasenfeld, *supra* note 156, at 67.

196. The statute reads:

> As provided in the contract pursuant to Section 11320.5, supportive services shall include, but are not limited to, all of the following:
>
> Child care. Paid child care shall be available to every participant with a child under 12 years of age who needs it in order to participate in the program component to which he or she is assigned.

CAL. WELF. & INST. CODE § 11320.3(e)(1) (Deering 1985). *See also* Strassburger, *California's GAIN Program Falls Short in Meeting Child Care Needs*, 12 YOUTH L. NEWS 12-19 (May-June 1987).

When GAIN is fully implemented, it is estimated that $118 million per year will be spent on child care. This estimate is based on a rate of $1.50 per hour to provide care for 50,000 to 90,000 school-age children of the mandatory participants. In addition, there is a one-time appropriation of $22.5 million for capital costs — for example, portable buildings that can be set up on school grounds. Strassburger, *supra*, at 13.

197. Section 11320.3(f) states in part that "[d]ay care by family members shall be encouraged, but the choice between licensed or exempt day care arrangements shall be made by the recipient." CAL. WELF. & INST. CODE § 11320.3(f) (Deering 1985).

solution for long-term, permanent employment.[198]

The real problem with day care will be the limited supply. No area in California currently has sufficient day care facilities to meet the needs of GAIN participants once the program is fully implemented. Licensed facilities are operating at one hundred percent of capacity while family day care homes are operating at eighty-three percent of capacity.[199] The current funding for latch key child care provides for 8000 children. GAIN will add between 50,000 and 90,000 children to the current demand for child care. The state's report supporting the bill estimated that between 620,000 and 815,000 children were in need of this service.[200]

If a recipient does move into permanent employment, GAIN provides "transitional" child care, but for no longer than three months.[201] The question then becomes whether the parent will be able to afford child care after the three-month period is over. Subsidized child care, however, currently serves only seven percent of the eligible families, and there are long waiting lists when places do become available.[202] A parent, moreover, is no longer eligible to receive AFDC if her gross income reaches $1042 per month.[203] The average cost of full-time child care is $260 per month. Before- and after-school care costs approximately $100 per month less, but the parent must still pay for full-time care during her child's vacations. Thus, the cost of child care will take a significant part of the recipient's gross income and an even greater part of the recipient's disposable income.[204]

E. The ET Program

In contrast to California's mandatory GAIN program, Massachusetts has been running an Employment and Training Program (ET) that is predominantly voluntary and does not use work relief.[205] ET is a WIN Demonstration program; consequently, under federal law, all non-exempt AFDC recipients must register.[206] Since recipients understand that participation in ET is voluntary, they have not been reluctant to register. The Massachusetts Department of Public Welfare (DPW) has been able to circumvent the federal mandatory participation requirement by creating a "Future Participation List." AFDC recipients who are in the mandatory category but who nevertheless refuse to participate in ET are placed on this list. They continue to receive information

198. Strassburger, *supra* note 196, at 14, 16.
199. *Id.* at 15.
200. *Id.*
201. CAL. WELF. & INST. CODE § 11320.2(e)(1) (Deering 1985).
202. Strassburger, *supra* note 196, at 15 n.24.
203. *Id.* at 15 n.25.
204. *Id.*
205. For a general discussion of how ET came into being and its current provisions, see Savner, William & Halas, *The Massachusetts Employment and Training Program*, 20 CLEARINGHOUSE REV. 511-19 (1986).
206. MASS. ADMIN. CODE tit. 106, § 307-110 (1985) sets forth the exemption criteria currently in effect in Massachusetts.

about the availability of programs but are not penalized for failing to participate. Thus, Massachusetts does not use its work program either to deter potential welfare recipients or to control behavior through work requirements.[207]

The DPW can maintain this policy as long as it has sufficient volunteers to fill the ET programs and as long as enough participants find jobs through the program to meet its goals. Since these two conditions have been satisfied thus far, the program continues to rely on volunteers.[208]

Under the Massachusetts program, the first step in participation is an "appraisal" out of which an Employment Plan between the staff worker and the recipient is drafted. The Plan is supposed to be the blueprint for future activity in ET. If the participant and the staff worker do not agree on the choices, the participant can request another staff review, a fair hearing, or simply decline to participate further. At any time, the parties can modify the Plan by mutual agreement. Once the Plan is implemented, the participant is entitled to make two complete changes before being required either to complete the choice or to drop out. To assist the participant, Massachusetts offers a full range of services, including extensive education and training, supported work, work experience, and job search.[209]

The success of the Massachusetts program is unclear. Since it is a statewide program, without a control group, its direct impact is difficult to estimate. ET reaches only a small proportion of the total AFDC caseload (nineteen percent of the adults), and it may not be reaching the long-term recipients.[210] More than one-quarter of the participants received jobs, but it is unknown how many of these jobs were gained as a result of the program.[211] Over one-third of all the jobs were part time.

In the short-run, the program is expensive. The Massachusetts Taxpayers Foundation reports that annual costs per participant have been increasing

207. Y. Hasenfeld, *supra* note 156, at 81.

208. It must be kept in mind, however, that the unemployment rate in Massachusetts — less than four percent — is among the lowest in the nation, and the proportion of welfare recipients to the total population in 1985 was 5.9 (as compared to 8.7 in California). In addition, between 1980 and 1983, before ET was implemented, AFDC in Massachusetts declined approximately twenty-nine percent as compared to an increase of 7.6% in California. Both the decline in Massachusetts (to thirty-two percent) and the increase in California (to nine percent) continued throughout 1985. It is relatively easy, therefore, for any Massachusetts workfare program to meet its job-finding goals. *Id.* at 80.

209. Savner, William & Halas, *supra* note 205, at 126-130. Supported work consists of subsidized on-the-job employment in which the state reimburses the employer for part of the participant's wages. Supported work lasts from four to nine months. Work experience consists of twenty to forty hours per week up to twenty-six weeks of volunteer work for a nonprofit employer. Here, the principal offering is the state statutory Commonwealth Service Corps program which places participants in a public or private nonprofit agency where the participant receives a stipend of $120 per month which is excluded from earnings for the purposes of AFDC and Food Stamps. Approximately $20 million has been appropriated for day care vouchers. The state also provides extended health care insurance for one year for employed participants who are not covered. *See id.* at 128.

210. There is no evidence that ET is immune from the creaming process.

211. Savner, William & Halas, *supra* note 205, at 130.

from $1794 for the first year to a projected $5305 as the program tries to reach more long-term recipients.[212] ET is operating in a very tight labor market and provides, at public cost, motivated and trained low-skilled workers. Thus, an unusual number of favorable economic and political conditions, including the replacement of a conservative by a liberal governor, have combined to produce the ET program, including a strong state economy which is capable of satisfying competing programs and interest groups.[213]

Opponents of Massachusetts' voluntary program argue that it will not reach the long-term, hard-to-service recipients. Under the WIN program, this group was also the most cost-effective and the least well served group. The mandatory features of GAIN are defended on this ground — that this program will concentrate on the long-term recipients. In support of its voluntary ET program, Massachusetts' DPW tried to refute this argument in its latest research, but in the absence of a control group, questions about the efficacy of non-mandatory programs remain unanswered.[214]

Massachusetts has managed to avoid the costs associated with a mandatory participation program. The GAIN budget estimates that $4 million will be spent in the program's first year for the operation of sanction-related activities — determining cause, procedures for conciliation, hearings, and imposing sanctions. Another $4.35 million is to be devoted to work relief.[215] In addition, a mandatory program spreads out the resources and strains the organizational capabilities. Los Angeles County, for example, will have to process an estimated 75,000 participants.[216] In contrast, under the Massachusetts program volunteers are accepted as resources become available.

IV.
THE CONSENSUS REDUX: THE FAMILY SUPPORT ACT OF 1988

The latest manifestation of the welfare reform consensus is the newly enacted Family Support Act of 1988.[217] This law requires that every state establish a Job Opportunities and Basic Skills Program (JOBS) by October 1990 and that such programs be fully operational by October 1992.[218] Rather than

212. MASSACHUSETTS TAXPAYERS FOUNDATION SPECIAL REPORT, TRAINING PEOPLE TO LIVE WITHOUT WELFARE ii (1987). *See also* Y. Hasenfeld, *supra* note 156, at 84.

213. Y. Hasenfeld, *supra* note 156, at 84-85.

214. A follow-up study of ET job placements found that seventy-four percent of the participants had been on AFDC for two years or more and that forty percent had received welfare for five years or more. During the first three years that ET has been in place, the number of cases receiving aid for more than five years has declined twenty-six percent as compared to only a six percent decrease for those receiving aid for two to five years, and a 4.5% increase for those receiving aid for less than two years. OFFICE OF RESEARCH, PLANNING, AND EVALUATION, MASSACHUSETTS DEPARTMENT OF PUBLIC WELFARE, FOLLOW-UP SURVEY OF THE FIRST 25,000 ET PLACEMENTS (August 1986).

215. Bernstein, Gross, Hertz, Greenberg & Epstein, *supra* note 185, at 4.

216. Conversation with Darrel Schultz, *supra* note 189.

217. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2342.

218. M. GREENBERG, SUMMARY OF THE FAMILY SUPPORT ACT OF 1988, PUBLIC LAW NO. 100-485, ENACTED OCTOBER 13, 1988, 197 (Children's Defense Fund, ms., Oct.18, 1988).

providing detailed guidance, however, the FSA is just a broad outline. It has so many qualifications and has left so many of the crucial decisions to the states that the new legislation amounts either to little more than a codification of the existing waiver policy or a block grant without much money in the grant.[219]

Who is eligible for JOBS assistance? Under the FSA, work requirements generally apply to mothers with children over age six. The states have been given discretion to lower that age under the waiver program. This delegation continues under the new law. States can lower the age to one year, but if the state exercises that option, it is required both to guarantee child care and to limit the recipient's participation to twenty hours or less per week.[220]

Eligibility for JOBS assistance is also dependent on the eligibility rules for the basic federally funded benefits programs. Thus, the law also requires that all states adopt an AFDC-U program.[221] In those states that do not have such a program, however, (about one-half), the state may elect to terminate benefits after the recipient's first six months in the program.[222] With an AFDC-U family, the state can decide whether the second parent is exempt. At least one parent in the family must participate in either work supplementation, community work experience (work-relief), on-the-job training, a state designed work program approved by the Secretary of HHS or for those under twenty-five who are high school drop outs, educational activity. Subject to qualifications, the parent or parents must participate for at least sixteen hours per week.[223]

The AFDC-U obligation does not go into effect until FY 1994 when states are required to have a forty percent participation rate. The required participation rate increases to seventy-five percent by FY 1998. Even if a state fails to meet these requirements, the Secretary of HHS can waive any penalty if the state has made a good faith effort to comply or if the state has submitted a proposal which is likely to achieve compliance.[224]

Aside from these federal requirements, the states retain the discretion to decide which categories of recipients will participate. To obtain the maximum available federal funding, however, a state must commit fifty-five percent of its JOBS resources to four targeted groups: recipients or applicants who have received aid for at least thirty-six of the preceding sixty months, parents under twenty-four who have either not completed or are not enrolled in high school or have had little or no work experience in the preceding year, and members of

219. The discussion of the provisions of the Family Support Act are based on the recent analysis of Mark Greenberg. M. Greenberg, Requirements, Issues, and Options, Family Support Act of 1988, P.L. 100-485: Job Opportunities and Basic Skills Training Program and Related AFDC Amendments (Center for Law and Social Policy, draft ms., 1988). *See also* M. GREENBERG, *supra* note 218.

220. M. GREENBERG, *supra* note 218, at 7.

221. FSA, § 401(a), (g) (to be codified at 42 U.S.C. § 607). *See* M. GREENBERG, *supra* note 218, at 39.

222. *Id.* § 401(b)(1)(C) (amending 42 U.S.C. § 607(b)(2)(B)).

223. *Id.* § 201(c)(2) (amending Social Security Act, 42 U.S.C. § 603(d)(4)(A)).

224. *Id.* § 201(c)(4) (amending Social Security Act, 42 U.S.C. § 603(d)(4)(B)).

a family in which the youngest child is within two years of being ineligible for AFDC because of age.[225] Even within these targeted groups, there are important definitional issues which will have to be decided either by federal regulation or by the states.

The FSA requires the Secretary of HHS to define "participation,"[226] but the law's only guideline is that registration alone is insufficient to constitute participation.[227] Even if the Secretary establishes a strict definition, the FSA requires the states to achieve a participation rate of only seven percent in FY 1990 and FY 1991. The FSA, moreover, imposes no penalties for a state's failure to meet this goal prior to FY 1991.[228] Under WIN, states have claimed high participation rates even though large numbers of recipients are in varying stages of administrative hold.

The next question facing each state is how extensive a program it will provide, a question largely related to state and federal budgetary constraints. Federal funding is limited and capped, rising from $600 million in FY 1989 to $1 billion in FY 1996 and subsequent years.[229] On the other hand, this allocation of funds is significantly larger than the funding which is currently available for WIN programs. Since the federal government will contribute only matching funds and since many states are now running budget deficits, the funding available for JOBS will be limited. As a result, the states will have to determine the number of recipients who will actually participate in the program. Since the federal participation requirements are low, the states will also be able to decide how extensive their programs will be. On the one hand, serious education and training programs are expensive, implying limited availability to a small number of participants. On the other hand, less expensive programs, such as unsupervised job search and work-relief without training, would allow broad participation.

A state may rely to a large extent on voluntary participation. In fact, volunteers in the federal targeted groups must be served first. If a state chooses to concentrate on volunteers, it will probably save administrative and compliance costs. A volunteers-first program, however, is not the same as a volunteers-only program (like Massachusetts' ET program). Under a volunteers-first program, if a participant fails to comply without good cause, she is subject to sanctions because she still has non-exempt status.[230]

Another aspect of participation is education. Reflecting the "learnfare"

225. In addition, these requirements can be waived on the grounds of infeasibility. It is not clear when one stops being an applicant, or when a person once in the target classification loses that status, or what "little" work experience means. *See* M. GREENBERG, *supra* note 218, at 12.

226. As my discussion about WIN points out, this issue is significant. *See supra* text accompanying notes 147-58.

227. FSA, § 201(c)(2) (to be codified at 42 U.S.C. § 603(l)(3)(B)(iii)). *See* M. GREENBERG, *supra* note 218, at 7.

228. M. GREENBERG, *supra* note 218, at 10.

229. FSA, § 201(c)(1) (to be codified at 42 U.S.C. § 603(l)).

230. *See* Savner, William & Halas, *supra* note 205, at 126.

programs in several states, the federal law requires custodial parents under twenty who have not completed high school or its equivalent to participate in educational activities. This requirement is applicable, however, only if both a program exists in a particular political subdivision, and the state has sufficient resources to cover the costs. Moreover, a loophole exists for this requirement: work or training cannot be required if the recipient already has basic literacy skills or a long-term employment plan which does not require a high school diploma or its equivalent.[231] States are authorized, but not required, to allow persons attending post-high school education to continue working and count this work as JOBS participation, while continuing to receive JOBS-funded child care and transportation.[232]

What kinds of educational services must a state provide? The states must provide the following four services: basic education, high school or its equivalent, and basic literacy and English proficiency programs; job skills training; job readiness activities; and job development and placement.[233] The FSA's emphasis on education is new. If implemented, it could result in significant changes at the state level.

The states must also provide at least two of the following: group and individual job search, on-the-job training, work supplementation, and community work experience (work-relief).[234] The states must decide how many people will participate in each activity. They can concentrate either on education and training for relatively few participants or on job search and work-relief for larger numbers. There are restrictions, however, on community work experience (work-relief). Generally, the maximum number of hours of a recipient's obligation is tied to the federal or applicable state minimum wage.[235]

Apart from the number of hours, the work-relief restrictions are very general. CWEP projects must be limited to some sort of public service (such as, health care, social service, environmental protection, education, development, public safety or day care) and "to the extent possible, the prior training, experience, and skills of a recipient shall be used in making appropriate work experience assignments."[236] Participants are not required to accept a job if that job would result in a net loss of income. States have discretion, however, to supplement a low-wage job if that person would otherwise lose AFDC.[237]

231. FSA, § 201(a) (to be codified at 42 U.S.C. § 602(a)(19)(E)(i)).

232. *Id.* § 201(a) (to be codified at 42 U.S.C. § 602(a)(19)(E)(i), (ii)(I)).

233. *Id.* § 201(b) (to be codified at 42 U.S.C. § 682(d)(1)(A)(i)).

234. *Id.* § 201(b) (to be codified at 42 U.S.C. § 682(d)-(g)).

235. The maximum number of hours is the difference between the AFDC grant and the portion of aid for which the state is reimbursed by a child support collection divided by the greater of the federal or applicable state minimum wage. After six months, the rate of pay for individuals employed in the same or similar occupations by the employer at the same site enters into the calculation. FSA, § 201(b) (to be codified at 42 U.S.C. § 482 (f)(1)(B)(i, ii)). *See* M. GREENBERG, *supra* note 218, at 26.

236. FSA, § 201(b) (to be codified at 42 U.S.C. § 682(f)(1)(A)). *See* M. GREENBERG, *supra* note 218, at 27.

237. FSA, § 201(b) (to be codified at 42 U.S.C. § 682(e)(2)(C), (D)). *See* M. GREENBERG, *supra* note 218, at 25.

Another important aspect of these programs is child care. In addition to expenses for transportation and other work-related expenses, states must guarantee child care if it is necessary for a participant's education, training, or employment. In an important change, federal law requires that states provide child care for up to one year after a recipient of AFDC becomes ineligible because of increased hours of employment, wages, or loss of AFDC earnings disregards as long as the state determines that the extended child care is necessary for the recipient's continued employment.[238]

The state also has the discretion to provide child care directly, through the direct purchase of service, vouchers, reimbursement to the family, or such other arrangements as the state deems appropriate. At the very least, the state must pay the lesser of the actual cost of child care or the amount of the child care disregard (i.e., $175 for a child over two, $200 for a child under two). In any event, the state's rate cannot exceed the local market rate. If the state chooses to pay below the market rate, then recipients will be forced to rely on informal and unlicensed care. The federal government will reimburse the state for its child care expenditures, however, only if the care meets applicable standards of state and local law.[239]

In another important provision, the states must extend Medicaid for up to one year after a recipient loses AFDC eligibility because of her employment. Moreover, even if a state chooses to limit a family to six months per year of AFDC-U assistance, the Medicaid coverage continues for the entire year, thus lessening some of the welfare discrimination against poor children in intact families. There are many details and state options under this provision.[240] Costs and methods of payment vary. Generally, for the first six months, Medicaid is free to the recipient with the state covering the family's costs for the employer-provided health insurance. After six months, states must provide an additional six months of coverage for families with incomes less than 185% of the poverty line, but they can impose a premium on families whose income exceeds the poverty line by one-hundred percent.[241]

As I have noted throughout my discussion, participation and benefits are linked to the question of sanctions. Under the FSA, non-exempt recipients who fail to participate without good cause are subject to sanctions. In one-parent families, the parent's grant is subject to sanction. In AFDC-U families, if only one parent is participating, both parents' grants are subject to sanction.

238. There are some restrictions. The recipient, for example, must continue working (unless she is terminated with good cause), cooperate with child support enforcement, and contribute to the cost of child care under a sliding scale arrangement. FSA, § 302(c) (creating 42 U.S.C. § 602(g)(1)(A)). *See* M. GREENBERG, *supra* note 218, at 35.

239. FSA, § 301 (creating 42 U.S.C. § 602(g)(3)(B)(4)). *See* M. GREENBERG, *supra* note 218, at 32. The government authorized $13 million in grants for FYs 1990 and 1991 for the states to improve their child care licensing and registration requirements and monitoring systems. FSA, § 301 (creating 42 U.S.C. § 602(g)(6)). *See* M. GREENBERG, *supra* note 218, at 32.

240. FSA, § 303 (creating 42 U.S.C. § 1396r-6). *See* M. GREENBERG, *supra* note 218, at 35.

241. M. GREENBERG, *supra* note 218, at 35.

If both parents are participating, then only the grant of the sanctioned parent is affected. For the first violation, the sanction lasts until the recipient complies. For the second violation, the sanction lasts for three months or until the recipient complies. For the third and subsequent violations, the sanction lasts for six months or until the recipient complies.[242] States are required to establish conciliation procedures to resolve disputes and to provide hearings for unresolved disputes. While sanctions are required for non-exempt participants, states have broad discretion to define "good cause," to frame notice provisions, and to provide conciliation services.[243]

The FSA is a byproduct not only of the states' recent experiences with welfare reform as symbolized by the enactment of GAIN and ET but also of the national consensus on welfare reform. As previously noted,[244] this national consensus focuses on five broad themes: responsibility, work, family, education and state discretion. The remainder of this section examines the potential impact that these themes, as they are reflected in the FSA, will have on the AFDC rolls. It concludes that neither work requirements alone nor stricter and more effective enforcement of child support obligations will significantly effect the number of AFDC recipients escaping poverty. The emphasis on educational reform may very well have a negative impact on recipients of AFDC because they are so educationally disadvantaged that the renewed emphasis on higher standards in high school education will only force more of them to drop out. Finally, the FSA's shift in jurisdictional control over most of the significant aspects of the program's administration from the federal to state and local governments reflects the historical pattern of increasingly local control over the administration of welfare programs for the "undeserving" poor.

A. Changing AFDC from Cash Relief to Work Relief: Garfinkel and McLanahan

Having established the basic aspects of the system and the choices which the states may make, the question remains whether these programs are either effective or desirable. So far, current work requirements have been applied to only a few recipients. Many objections have been raised over all aspects of the work requirements, leaving major questions regarding the feasibility of a nationwide program. Irwin Garfinkel and Sara McLanahan argue that work requirements are not only "technically feasible" (even with the unemployment rate of seven percent which existed at the time that they were writing) but also desirable.[245] They claim that work and welfare are inconsistent both theoretically and practically and that AFDC should be transformed into a work-relief

242. FSA § 201(a) (to be codified at 42 U.S.C. § 602(a)(19)(G)(ii)). *See* M. GREENBERG, *supra* note 218, at 17.

243. FSA § 201(a) (to be codified at 42 U.S.C. § 602(a)(19)(G)(iv)). *See* M. GREENBERG, *supra* note 218, at 17.

244. *See supra* text accompanying notes 6-7.

245. *See* I. GARFINKEL & S. MCLANAHAN, *supra* note 17.

program for able-bodied mothers.[246] They also claim that a number of states have demonstrated their ability to find and create jobs.[247] Garfinkel and McLanahan's arguments are especially noteworthy since Garfinkel has long been associated with the Institute for Research on Poverty (indeed, he once served as its director). He has also been on the intellectual and policy forefront of antipoverty efforts and has produced consistently imaginative and humane work.

The real feasibility question concerns cost. Garfinkel and McLanahan argue that the studies of government work and training programs show that while the short-term costs exceed benefits, in the long-run, benefits exceed costs.[248] These studies, however, examined programs which were voluntary and which did not include participants with children under six. The results may vary as the result of the lower productivity of involuntary workers or higher child care costs.[249]

How much better off would recipients be if they worked? According to Garfinkel and McLanahan, the average gain in earnings of single mothers in work and training programs ranges from about $600 to $1200 per year.[250] While this is only about one-third of their poverty gap, it is still a substantial increase in their disposable income. In the Supported Work Demonstration,[251] the average increase was $900 per year, nearly fifty percent over the earnings of the control group. Thus, in general, work programs can be expected to decrease welfare dependence by reducing either the absolute number of recipients or the proportion of total income derived from welfare.[252]

Garfinkel and McLanahan also question how coercive these programs are in fact. They argue that one of the most striking findings from the evaluations of workfare programs in several states is the positive comments of the participating mothers who "liked what they were doing and believed the work requirement was fair."[253] It is possible that rather than being coercive, the program is creating jobs for mothers who already want to work. It may also be that even if coercive, the jobs change the mothers' attitudes concerning the

246. *Id.* at 181.

247. *Id.* at 146.

248. The short-run costs are high because the government must pay the costs of finding or creating jobs in addition to paying the welfare benefits during training or placement. There are also significant child care costs. Garfinkel and McLanahan maintain, however, that the long-run social benefits of work and training for mother-only families nearly always exceed the social costs. The future increases in earnings eventually more than offset the initial costs. The difference, moreover, is usually large. *Id.* at 146-47.

249. *Id.* at 174-75.

250. *Id.* at 149.

251. The Supported Work Demonstration program, which began in 1975, was a research and demonstration program rather than a comprehensive employment program. Its basic goal was to test the theory that providing work experience to individuals with severe employment problems would improve their labor market performance and increase their subsequent earnings. *See* HAVEMAN, POVERTY POLICY AND POVERTY RESEARCH 188 (1987).

252. *Id.* at 150. For a more sober view, see Duncan, Hill & Hoffman, *supra* note 20.

253. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 149.

desirability of work.[254]

There are limits, however, to what these programs can achieve. Even though welfare costs may be reduced, most poor, single mothers will not be able to escape poverty through work. While only a small minority probably cannot work at all, about three-quarters of all welfare recipients cannot get jobs that will pay enough for them to escape poverty even when working full time.[255] Thus, to reduce poverty substantially among mother-only families, Garfinkel and McLanahan argue that it will be necessary to supplement the earnings of single mothers who head families by some form of government transfer.[256]

The key element in making the work requirements effective, according to Garfinkel and McLanahan, is the government's creation or location of jobs. Garfinkel and McLanahan think that such a policy is politically feasible because of changing attitudes towards women and work and because of the expected favorable cost-benefit ratio.[257]

In contrast to the conventional wisdom, Garfinkel and McLanahan argue that work and welfare do not go together. Under the current approach, all AFDC recipients — the able-bodied and those not expected to work —receive the same subsistence benefit which must be high enough to allow those not expected to work to maintain a minimally decent standard of living (which, nevertheless, is well below the poverty line). But when the able-bodied begin to work, the following dilemma is created: if, to maximize incentives, the able-bodied are allowed to keep enough of their earnings without reducing their welfare benefits, then welfare rolls will increase as many of the working poor will become financially eligible for welfare. On the other hand, if there are sharp reductions in the welfare grant as earnings increase, the reductions amount to heavy taxation on earnings and create strong disincentives to work. Garfinkel and McLanahan would avoid this dilemma by creating separate programs for those who are able-bodied and expected to work and for those who are excused from work. Garfinkel and McLanahan also assert that the present combined program sends an ambiguous message:

For a society that values work, a clear distinction reinforces the val-

254. *Id.*

255. For example, a person working 2000 hours at the minimum wage of $3.35 per hour would earn only $6700, which is less than the 1985 poverty level for a family of three ($8850). To earn more than the poverty level for a family of three, the family would have to work 2000 hours per year at more than $4.40 per hour. Large percentages of mothers of small children work part-time. While increased efforts to enforce child support will help prevent some women from going on welfare, most fathers of AFDC children earn too little for their child support contribution to make much of a difference for welfare recipients. *Id.* at 23.

256. *Id.* at 172.

257. "We believe that, in view of the emerging consensus that poor single mothers should be expected to work, the extent to which creating jobs for single mothers has major social benefits is likely to be the principal determinant of its political feasibility in the long run." *Id.* at 148. However, less than one-third of married mothers work full time and about one-third do not work at all. *See* D. ELLWOOD, *supra* note 31, at 193.

> ues of work and independence. . . . With two separate programs . . . those poor single mothers who are physically and mentally capable of work should work enough to be independent of welfare. By creating two separate programs, the social message to those who temporarily cannot find work and therefore must have recourse to welfare is clear: society expects their dependence on welfare to be short term."[258]

How would AFDC look if it were primarily work-relief rather than cash-relief? For those who are expected to work, Garfinkel and McLanahan would provide a universal benefit, one which does not distinguish between the deserving and undeserving poor. The programs should provide lower benefits than AFDC cash-relief and would not be reduced so drastically, as under AFDC, when earnings increase, thus giving the greatest incentive for the poor to work. However, no matter how successful the universal programs may be in drawing mothers into the labor market and off welfare, there will always be a need for a program to provide cash assistance. Some mothers will be unemployed for a time, and others will be incapable of working. For those not disabled, Garfinkel and McLanahan would provide more work relief and less cash relief. The amount of time during which a participant would be eligible to receive cash benefits without either working or proceeding satisfactorily in education or training would be limited by a reasonable allotment of time for placement in a satisfactory job or education program. Garfinkel and McLanahan assert that two or three months would be reasonable, after which time the recipient's welfare benefits would be terminated. But, to make work relief a "reality," there must be a guaranteed job for all who are capable of working.[259]

B. Strengthening the Family: Enforcing the Collection of Child Support

Most observers now agree that poor, mother-only families face serious problems. By instilling the moral obligations of citizenship, reinforcing the work ethic, and providing a role model, it is argued that an improvement over the current culture of entitlements and dependency is attainable. This approach, which focuses on individual character defects rather than on structural or environmental conditions, is, of course, the oldest theme in welfare policy — redirection, not redistribution. However, to the extent that the current welfare reform proposals are, in fact, carried out, structural changes will accompany reformation. The FSA promises jobs and day care. If they are delivered, this program will make a difference.

Child support is one area in which there is strong consensus. As with so many other aspects of welfare reform, increased efforts to collect child support are intimately tied to reducing welfare costs and caseloads. The federal gov-

258. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 178.

259. *Id.* at 185-86. David Ellwood generally supports the Garfinkel/McLanahan plan but would be more generous during the transitional period. *See* D. ELLWOOD, *supra* note 31.

ernment became involved as far back as 1950 when Congress authorized state welfare agencies to notify law enforcement officials, who had the option of prosecuting for failure to provide child support, when an AFDC child was deserted or abandoned.[260] In the 1960s, various statutory changes were designed to strengthen state child support efforts. In 1975, the first significant federal legislation was passed. Sponsored by Senator Russell Long, and explicitly sold on the basis of reducing welfare costs and caseloads, the legislation required the federal government to pay seventy-five percent of the costs of establishing paternity, locating absent fathers, and collecting child support. It also authorized the use of IRS data to aid in collecting support for AFDC recipients. In 1980, the IRS provision was extended to non-welfare families.[261]

The trends of federal assistance in the enforcement of child support obligations accelerated during the Reagan Administration. The 1984 Child Support Amendments[262] broke new ground in that they went beyond the goal of reducing welfare costs since they applied to both welfare and non-welfare parents.[263] The two most important provisions require the states to adopt income-assignment laws which require employers to withhold child support obligations from wages if the noncustodial parent is delinquent for one month and which require the state to appoint a commission to establish statewide standards for child support.[264]

The FSA would strengthen the 1984 Amendments in a number of ways. States would be required to meet new federal standards for establishing paternity, including the establishment of paternity in a certain percentage of cases of children receiving AFDC or child support services.[265] There will be ninety percent federal matching funds for the paternity establishment program. The FSA also requires the withholding of wages for all new child support orders entered on or after January 1, 1994, unless the court finds good cause not to order that wages be withheld or both parties agree in writing to an alternative

260. S. REP. NO. 1356, 93rd Cong., 2d Sess. 16 *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 8133, 8148.

261. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 118-19.

262. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, 98 Stat. 1305.

263. According to Garfinkel and McLanahan, the reason for the inclusion of non-welfare parents is the emerging national consensus that the current child support system condones parental irresponsibility. I. GARFINKEL AND S. MCLANAHAN, *supra* note 17, at 136. In 1985, of the 8.8 million women with at least one child under twenty-one and an absent husband, thirty-nine percent were never awarded child support. Of the 4.4 million women who were supposed to receive money from a child support award, less than half received the full amount owed. Of the rest, about half got less, and half got nothing. *See* Kosterlitz, *Fading Fathers*, NAT'L J., Sept. 19, 1987, at 2337.

264. Pub. L. No. 98-378, §§ 6, 18.

265. The percentage is roughly the ratio obtained by dividing the total number of children born out of wedlock who are receiving AFDC or child support services and have had paternity established by the total number of children born out of wedlock who are receiving AFDC or child support services. There are other provisions designed to make the establishment of paternity easier, including genetic testing, simplified civil procedures, and the extension of the statute of limitations. M. GREENBERG, *supra* note 218, at 32.

arrangement. Courts and other officials are encouraged to establish child support guidelines for setting awards with periodic review. The guidelines present a rebuttable presumption in favor of awards based on the guidelines. Awards which vary from the guidelines must be based on a finding that the guidelines would be unjust or inappropriate. By 1993, states must implement periodic reviews to measure the adequacy of child support awards against the guidelines. States must, at the request of either parent, also determine whether an award should be reviewed.[266]

By October 1, 1995, states are to have in place automated tracking and monitoring systems to increase child or spousal support collections. The Federal Parent Locator Service is to be given access to information about wage and unemployment compensation claims as well as data from the Department of Labor and state employment services. States must require each parent to furnish his or her social security number upon the birth of the child unless there is good cause not to do so. The social security number must also be made available to the state's child support enforcement agency.[267]

Still, it is doubtful whether being tough about child support will have much impact on welfare families because of the small earnings of the fathers. Child support payments have dropped in real terms. According to the latest Census Bureau report, after adjusting for inflation, the average annual child support payment fell from $2528 in 1983 to $2215 in 1985, a drop of 12.4%, while the real average income of male workers rose from $19,630 to $20,650. (There are no data on income for absent fathers alone.)[268] Child support awards had declined by about the same amount as the drop in actual payments.[269] The situation is even worse for the poor. Of all the mothers in poverty, less than one-third were awarded child support, and of this group, minorities, the less well educated, and the young were even worse off. Of the one-third of mothers in poverty who were awarded child support, moreover, more than one-third actually received nothing.[270]

Some critics charge that the collection of child support has declined because the states have been slow in implementing the 1984 law.[271] On the other hand, there is a coincidence in the decline in child support payments, the one-third decline in the income of low-income families, and the fact that the level of child support awarded by judges has been decreasing. "It seems entirely likely that less is being awarded and less is being paid because fathers have less."[272]

Even if all child support payments awarded were collected, the impact on

266. *Id.* at 32-35.
267. *Id.* at 35-36.
268. Kosterlitz, *supra* note 263, at 2338. *Average Child Support Pay Drops by 12.4% From 1983*, N.Y. Times, Aug. 23, 1987, at A15, col. 1.
269. Schorr, *supra* note 35, at 86.
270. *Average Child Support Pay Drops by 12.4% From 1983*, *supra* note 268.
271. Schorr, *supra* note 35, at 86.
272. *Id.*

welfare still might not be significant. According to the projections of the Department of Health and Human Services, higher child support payments would eliminate less than ten percent of all families from the welfare rolls.[273] Others would be prevented from going on welfare. Estimates of savings to the federal government range from $178 million (Congressional Budget Office) to $367 million (the Ways and Means Committee).[274]

How much can absent fathers of AFDC children contribute? A recent study showed that between 1973 and 1984, the average annual income for men between the ages of twenty and twenty-four fell almost thirty percent, from $11,572 to $8072 in 1984 dollars. The decline for young black men was nearly fifty percent.[275] On the other hand, another study showed that young men do contribute.[276] Almost sixty percent reported paying child support, with average annual payments of $2500 — more than half the average annual AFDC payment. Even poor young men reported some contributions. One-fourth reported an annual average contribution of $925.[277]

It should be pointed out that there is strong support for tough child support even though the antipoverty results may be limited, even though it may result in economic hardship to low-income fathers and even though more fundamental problems result from the deplorable economic prospects of young black males. Many believe that the benefits of tough child support measures lie as much in the message they send as in the money collected.[278]

C. Education Reforms

A great deal of effort has also gone into developing the educational aspects of the experimental state programs created in response to OBRA and of the FSA. This development follows a wave of education reform which is broadly based and extends throughout society. In this sense, it is similar to child support. However, unlike child support, which will probably have a minimal impact on the poor, female-headed household, the education reforms, if implemented, could well have a large and *adverse* impact on poor children.

The impetus behind the education reform is the widespread belief that our public schools have failed and that vast numbers of young people are growing up without basic math or reading skills. Today's youth lack the skills necessary for being delivery people, mailmen, clerks, or cashiers, let alone the skills necessary for higher-paying jobs.[279] There are distressingly large numbers of high school dropouts, but even those who complete high school lack a

273. Kosterlitz, *supra* note 263, at 2338.

274. *Id.*

275. *Id.* at 2339 (citing a study by Cliff Johnson and Andrew Sum of the Children's Defense Fund).

276. *Id.* (citing a study by Robert Lerman, a professor at Brandeis University).

277. *Id.*

278. *Id.*

279. N. Glazer, *The Problem with Competence*, in AMERICAN SCHOOLS: THE CASE FOR STANDARDS AND VALUES 216-31 (J. Brunzel ed. 1985).

basic, minimal education. Many believe that the poor and their children will never escape poverty without improving their educational competence. Several states have education and training provisions, including requirements that teenage, welfare mothers graduate from high school (called "Learnfare"). This requirement has now been inserted into the FSA which includes mandatory provisions (subject to state discretion) for young recipients and applicants to attend school or other kinds of training.[280]

Nationwide, the focus of education reform is centered on the public high school. The effort is to implement competency standards for graduation; require more courses in sciences, mathematics, English, and foreign languages; increase the length of the school day and school year; and upgrade textbooks, instructional materials, and teaching.[281] This focus on high school, however, rather than on elementary school, may be undermining the chances of success for important segments of the population.

According to Henry Levin, Professor of Education at Stanford University, a major shortcoming of the proposed reforms is that they have little to offer the "educationally disadvantaged" student.[282] These students are so educationally handicapped by the time they reach high school that the proposed reforms can do little to help them at that stage and much, in fact, that might harm them. Students from minority groups, from immigrant or non-English speaking families, or from poor families tend to have low academic achievement and high dropout rates. Because of poverty, cultural obstacles, and linguistic differences, these children tend to be less successful than children who have adequate shelter and privacy and whose parents have a high school or post-high school education, earn an adequate income, and speak English fluently.

Levin estimates that at least one-third of elementary and secondary students are educationally disadvantaged, that their proportion will rapidly rise, and that one important consequence will be a serious deterioration in the quality of the labor force.[283] High dropout rates, low test scores, and poor academic performance will result in a larger and larger proportion of the school population that will be undereducated for even lower-level service and assembly work. Thus, increasing numbers of our population will face unemployment or employment at menial jobs with low earnings.[284]

While our country seems to have recognized the failure of its public schools, Levin believes that the educational reforms will not only fail to help the educationally disadvantaged but may actually make matters worse. Setting competency standards for high school graduation and increasing the time spent in school may actually increase the dropout rates. The problem is that

280. *See supra* note 219.

281. H. LEVIN, EDUCATIONAL REFORM FOR DISADVANTAGED STUDENTS: AN EMERGING CRISIS, 3-39 (1986).

282. *Id.* at 5.

283. *Id.* at 15.

284. *Id.*

the disadvantaged students enter secondary school already with a two- or three-year handicap,[285] and only a few, most likely, will be able to make up the difference in order to graduate. In the past, schools have met the competency problem by setting very low levels for graduation. But without strong remedial programs, higher competency requirements will just increase the pressure on the disadvantaged to drop out. Increasing the course requirements in high school, when the disadvantaged are already behind, only exacerbates the problem. The problem has to be attacked at the earliest grades with major funding and programs. Otherwise, too many of the disadvantaged will be required to repeat grades at a great cost to the schools or, even worse, to drop out.[286]

To a considerable extent, the education reforms have swept the country. According to a *New York Times* report, forty-five states have raised the minimum requirements for high school graduation, and most states have increased their mathematics and science requirements, tightened discipline, raised teachers' salaries and recognition, and raised taxes to pay for the reforms. There is evidence, moreover, that educational reforms have, in fact, been successful. In California, the number of students taking three or more years of mathematics has increased fifteen percent and the number taking science for three or more years has risen twenty percent. Scores on the Scholastic Aptitude Test (SAT) have risen as well. In South Carolina, standardized test scores in both elementary and secondary schools have increased dramatically. Nationwide, it is said that about seventy percent of the students are benefitting from the reforms.[287] On the other hand, Terrel Bell, who as Secretary of Education commissioned the 1983 report by the National Commission on Excellence in Education, *A Nation at Risk*, reports no significant impact on the thirty percent of students who comprise the low-income minority. In Florida, for example, it is said that the school reforms have increased an already staggering dropout rate. There are also reports of a decline in vocational educational courses.[288]

To the extent that Levin's analysis is correct — and incoming data tend to support his view[289]— the current educational reforms could very well make matters worse for AFDC families. Depending on the amount of state funding, some mothers will receive education and training and might even obtain permanent unsubsidized employment, serving as role models for their children. The current educational reforms, however, to the extent that they are implemented, will tend to work at cross purposes. AFDC children are the educationally disadvantaged and the reforms will provide increased pressure for them to fail.

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285. *Id.* at 19.
286. *Id.*
287. *School Reform: 4 Years of Tumult, Mixed Results*, N.Y. Times, Aug. 10, 1987, at 1, col. 2.
288. *Id.*
289. *Id.*

D. State Discretion

The fifth area of consensus is a shift of responsibility for welfare policy from the federal government to the states. From the time of its first inauguration, the Reagan Administration supported this reallocation of responsibility. It initially tried, but failed, to turn AFDC and Food Stamps completely over to the states. When its effort to require states to institute workfare also stalled, it encouraged the states to seek waivers of federal aid. Most have by now exercised that option. As a result, a considerable share of the funding for work requirements comes from the states.[290] The FSA completes the Reagan victory. Under the guise of federal reform, the states' authority to fashion work and welfare has been codified and increased.[291]

The shift in responsibility has had a number of important political consequences. Conflict is now at the state and local level. As a result, effective national political action on behalf of the poor will be more difficult to sustain. The reallocation of responsibility will also make it more difficult to enforce the legal rights of the poor, and, by shifting costs, to sustain generous nationwide programs.[292] Local communities will have a greater incentive to reduce costs by requiring work. By simultaneously reducing federal funding and granting the states more autonomy, the Reagan Administration forced local interest groups to mobilize in support of workfare. As anticipated, a significant number of states responded by adopting workfare. States varied in their responses depending on their economic and political conditions. States with higher economic growth and lower unemployment tended to emphasize job placement, training, and supportive services and to de-emphasize work-relief.[293] Economically depressed and more rural states tended to emphasize straight work-relief.[294]

The shift in responsibility through the option and waiver policies,[295] and now under the FSA, brings us back full circle to the initial discussion of the allocation of jurisdictional authority over social welfare programs. Initially, I pointed out that the allocation coincided with social and political attitudes towards the category of recipients that the particular program served — those considered deserving were served by a federal program while those considered undeserving were served at the local level. AFDC has been a mixture, although I believe that the weight of the program has always been centered at the state and local level, thus reflecting the undeserving status of poor, mother-only families.

Where does AFDC now stand? Most aspects of AFDC are increasingly state and locally controlled. Categorical eligibility (i.e., the definition of a de-

290. Y. Hasenfeld, *supra* note 156, at 48.

291. *See supra* text accompanying note 220.

292. S. BUTLER, PRIVATIZING FEDERAL SPENDING: A STRATEGY TO ELIMINATE THE DEFICIT 10 (1985); Y. Hasenfeld, *supra* note 156, at 48.

293. Massachusetts is one such state. *See supra* text accompanying notes 205-16.

294. Y. Hasenfeld, *supra* note 156, at 49, 53.

295. *See supra* text accompanying notes 217-225.

pendent child) is still federally controlled. The FSA only partially modifies the state's option to include the unemployed father. However, while there are federal rules governing many aspects of the welfare budget (such as, work expenses, rules defining the composition of a family for purposes of welfare), *financial* eligibility and the all-important level of benefits remain state matters. The amount of benefits has always been at the heart of welfare. And now, a major condition of benefits — the whole complex of work requirements — has also been allocated to the states. The states have lost their discretion over categorical eligibility — for example, since the 1960s, they can no longer exclude women on the basis of race or moral behavior — but over the years, they have been given the authority to regulate and, if necessary, exclude these people for a variety of other reasons. The "undeserving" can be excluded for financial reasons and now for violating work requirements.

The fundamental distinction between the deserving and the undeserving poor is whether the category is morally excused from work. When the category is not excluded as a whole, and distinctions have to be made within the category, the test of eligibility has historically been administered at the local level. Increasing the work requirements for AFDC recipients *and* delegating administration to states makes stunningly clear our social and political attitudes towards poor mothers and their children. The FSA confirms the historic jurisdictional allocation of welfare policy.

CONCLUSION: WHICH DIRECTION?

There are three likely paths for AFDC. The least likely is that the current consensus on welfare reform will be enacted and will work. The program's success depends on sufficient energy, political will, patience, and resources to implement the programs at a reasonable and sustained level. Education and training slots will have to be available. The services rendered will have to be relevant to the skills required by the economy. There will have to be adequate levels of day care *and* a sufficient number of unsubsidized jobs. If this were to happen, then welfare dependency could be reduced, if not eliminated, for a reasonable number of recipients.

If two other important changes had been made, we really would have turned a corner in our welfare policy. There is no justification for the mandatory features of the work programs. They are expensive, and they divert scarce resources. There have always been many more volunteers, even among the so-called hard-to-employ, than available training slots and jobs. Volunteers, moreover, are invariably more successful in these programs.[296] Nor is there any credible evidence that the vast majority of welfare mothers need a "message." What they do need is hope and opportunity, not the threat

296. *See* J. MITCHELL, M. CHADWIN & D. NIGHTINGALE, IMPLEMENTING WELFARE-EMPLOYMENT PROGRAMS (1979).

of sanctions.[297] There are, no doubt, some people who are reluctant to prepare themselves for an independent life — a frequently noted group are teenagers — but special, targeted efforts should be made rather than distorting an entire program. Mandatory workfare is neither fair to the recipients nor cost-effective. It is also unnecessary.

The second change would be a decent income-support system. Garfinkel, McLanahan, and Ellwood have described such a program at length.[298] It is premised on the fact that even with a good work program and good, full-time jobs, most mothers with young children will not be able to support themselves even at poverty levels. Indeed, as noted, only one-third of non-welfare mothers have full-time jobs; the rest either work part time or are not in the paid labor force.[299]

If these two changes were made, along with the creation of a good work program, AFDC would be changed fundamentally. AFDC would be a program of *inclusion* — poor mothers and their children would be treated like the non-poor. They would be given the same choices that other mothers have: full- or part-time paid labor or home child rearing. As with the non-poor, they could choose a single life or marriage. They would not be stigmatized or considered deviant since they would have the same options as the non-poor. And, as with the non-poor, none of the options would be privileged. It is choice, not coercion, that brings the two groups together.

Unfortunately, it is unlikely that a decently funded work program, let alone a good income-support system, will be created. Robert Reischauer, whose description of the consensus on welfare reform is discussed above,[300] doubts that much will change. First, he points out that while there is broad agreement on the major elements of the consensus, there is sharp disagreement on the details of the consensus. It is precisely on the details that policies and programs founder. Second, Reischauer recognizes the fundamental problem of cost. As I have emphasized in my discussion of the work requirements, any kind of serious work and training program, including work relief, will be very expensive, especially when day care and transportation are included. Given the present pressure on public budgets, costs will be a serious obstacle. Third, Reischauer recognizes that it is difficult to administer these kinds of work programs. The technology is uncertain. A great deal of inter-organizational coordination is needed. The participants, moreover, often have significant employability deficits. As stated earlier,[301] the results of even the best work programs, programs that probably could not be replicated nationwide, show

297. L. GOODWIN, CAUSES AND CURES OF WELFARE: NEW EVIDENCE ON THE SOCIAL PSYCHOLOGY OF THE POOR (1983).

298. *See* I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 181-88.

299. *See supra* note 17.

300. *See supra* text accompanying note 2.

301. *See supra* text accompanying notes 205-16 (ET).

only modest success.[302] The final reason, Reischauer notes, depends on the state of the economy. In recessionary periods, there is little that work requirements can do to increase the employment and earnings of welfare recipients.[303]

The second possible path for AFDC is that the current consensus will result in a program whose history resembles the history of the WIN program. The laws and regulations will remain on the books for symbolic reassurance. The overwhelming majority of recipients will somehow be shunted out of the system. They will be declared "inappropriate for referral" or put on hold, and the bureaucrats will go on as before. Faced with fewer options because of reduced funding, agency staff will either have to try to force recipients into unpleasant choices or impose sanctions. But imposing sanctions also involves costs. GAIN, for example, has a very complex sanction and hearing process, requiring much paperwork and energy on the part of the staff.[304] The easier course of action for the staff would be to defer action as they would do under WIN. Deferral has no unpleasant consequences for the recipients (except, of course, if they are looking for work, services, or child care), and more importantly, the task of the staff is far more pleasant. Staff workers will be relieved from making a complicated assessment, searching for a scarce slot, finding day care, trying to persuade or threaten the recipient, and invoking the complicated sanction procedure if there is a refusal.

Sanctions imply failure. A motivated, field-level staff will be insufficient to invoke the sanction process. The highest officers in the welfare bureaucracy must believe that the higher costs which work requirements impose on their agency are justified. Unless the drive behind the current welfare reform consensus is deep and sustained, a likely scenario is that the immediate past — the WIN experience — will reassert itself and not much will change. The FSA tries to prevent this result by stating that registration alone will not count as "participation," but states can use numerous other strategies to satisfy a "registration plus" requirement and still avoid spending scarce resources.[305]

A recent report by the Illinois Conference of Churches on Illinois' Project Chance — also touted as one of the models for the Family Support Act — seems to confirm the prediction that the FSA will be no more successful than WIN.[306] After three years and $43.3 million in spending per year, the Project's results were modest at best. Over 50,000 participants found jobs, but these participants were the easiest to employ because they were primarily

302. For a short review of the literature on human capital investment programs, see Sawhill, *Poverty in the U.S.: Why Is It So Persistent?*, 26 J. OF ECON. LIT. 1073, 1092-97 (1988).

303. Reischauer, *supra* note 2, at 8.

304. *See supra* text accompanying notes 177-204.

305. States, for example, have wide discretion in defining job search. Presumably, they could make the most perfunctory task sufficient to satisfy this requirement. M. GREENBERG, *supra* note 218, at 28-30.

306. Reardon & Silverman, *Welfare-to-Work Plan Fails Neediest*, Chicago Tribune, Oct. 23, 1988, at 1, col. 1.

downstate whites with good job skills. It is estimated that over eighty percent would have obtained jobs without the program.[307] Only one-third of those employed were blacks despite the fact that over seventy percent of the program's caseload is black. Only forty percent of the job holders were from Cook County which claims eighty percent of the participants. One-third of the jobs required additional welfare support. About one-half of the families were still in poverty and about one-third of those who found jobs were back on welfare within eighteen months. The program is seriously understaffed and underbudgeted. By the second year, sanctions were reduced by over two-thirds.[308] With statistics resembling those of the WIN experience, only about one-third of the participants are actively involved in the program (seventeen percent in job search, the cheapest component). The clients must shoulder most of the responsibility, and two-thirds are in various stages of administrative "holding patterns."[309] Instead of concentrating on voluntary, hard-to-employ clients (the most cost-effective), the state still insists on handling a monthly caseload of 150,000 mandatory participants in order to send a proper message.[310]

The Illinois program — the second alternative — is an uncanny echo from the past. The disjuncture between the rhetoric and the reality of the Mothers' Pension Movement was explained in terms of symbolic status politics. As part of the movement to glorify motherhood in the home, both the reformers and the opponents drew a status distinction between the fit and proper mother and the poor, unworthy mother who was excluded from ADC and forced into the paid labor market. Those mothers who conformed —the worthy white widow — received benefits from the program.

Today, the status symbols have been reversed. Now, the working mother is privileged, and the welfare mother is told to work, to become independent, to become worthy. But, as the Illinois program and the past WIN experience demonstrate, most of the poor mothers *cannot* become independent through paid work. As with the select, white widows of the Mothers' Pension days, a few privileged welfare recipients will succeed through the creaming[311] efforts of the bureaucracy. Since they will be those who conform to the expectations of the non-poor — mostly white, better educated, and better skilled, their success will reinforce attitudes towards the unworthy. Thus, the current consensus on welfare reform draws the status line again. The worthy support themselves; dependent people remain the deviant. Non-poor mothers are struggling for independence, choice, and autonomy. The second alternative — a poor, stigmatized income-support system and a poor work and training pro-

307. *Id.*

308. *Id.*

309. Twelve percent are in education; four percent, in work-experience. *Id.*

310. In the words of the director: "Most welfare recipients do not want to be on welfare, but do not know how to get off or, worse, have given up." *Id.*

311. *See supra* note 190.

gram — increase dependency and patriarchy by making reliance on a male breadwinner more attractive.

If the economy begins to falter and poverty and welfare increase, then, given our present budgetary crisis, pressure will increase to cut welfare costs. However, a major impetus behind the current consensus, the desire to reduce welfare costs, is already untenable. The FSA and state workfare programs are too costly in the short run to survive spending cuts while the long-run benefits are uncertain. Perhaps the latest developments in California are prophetic. As noted, the Governor has already significantly reduced the initial state budgetary estimates for GAIN.[312] As a result, private service contractors are now reluctant to bid. Since, as stated earlier, one of the provisions of GAIN is that a portion of contract money is to be withheld depending on the outcome of the employment training and placement,[313] service providers are now claiming that with the small amounts of money available, the risk that they will not be wholly reimbursed for training costs is too great. Several counties petitioned the state for permission to use volunteers to allow the county to cream. Thus far, they have been unsuccessful.

In a declining economy, federal, state, and local governments will most likely reduce expenditures on the service and support aspects of the FSA which the consensus supports. As a result, these aspects of the program may disappear altogether, but the work requirements will remain. The administered work test will be stripped of costly and meaningful services and simplified to a few alternatives. This approach will manifest itself in a number of ways. Job search, for example, will be mandated, but without support. Recipients will be required to produce evidence that they are seeking jobs on pain of sanction, much as we find in General Relief today. Work-relief will spread as public agencies become more amenable to free labor. The sanction rules will be strengthened and imposed more readily for infractions — for example, for failure to perform the required number of job searches or for reporting late to work. The real cost savings will then come from the number of recipients who are eliminated from the rolls during the penalty period.

In a declining economy, then, AFDC will come to resemble General Relief. Under General Relief, welfare agencies use work requirements and sanctions to deter applicants from applying and to reduce the rolls through computer-driven, automatic sanctioning. There is no pretense of attempts to enhance the recipient's skills or of preparing the recipient for the general economy. The administered work test is used to apply the market test.[314]

General Relief not only applies its tough work test to those on the rolls, it also denies entry to those who are considered able-bodied. Unfortunately, AFDC may also be moving in this direction. Perhaps one of the early warning signals was President Carter's still-born Better Jobs and Opportunities pro-

312. *See supra* text accompanying notes 177-204.

313. *See supra* text accompanying notes 177-80.

314. For a description of General Relief in Los Angeles, see Appendix I.

gram for welfare recipients. One of the interesting features of that proposal was the division of AFDC recipients into those who were considered employable and those who were not. The former were to be given only one-half of the AFDC benefit, thus providing a sufficient incentive for the able-bodied to choose work and training over welfare. To make that plan work, under a more liberal political climate, however, there had to be a guarantee of a job. Otherwise, the family would be far below a subsistence level. The expense of funding the jobs sank the proposal.[315]

The significant aspect of Carter's program with respect to my thesis was the legislative division of mothers receiving AFDC into two categories and the presumption that those in the able-bodied category should receive lower benefits. Will we eventually see large segments of poor mothers legislatively declared to be employable and then treated differently from those who are not employable? "Employability" is already being redefined by lowering the age of an AFDC mother's child at which the mother must satisfy the work requirement. WIN, and most current workfare programs, use the age of six. Mothers with children under six are not in the mandatory referral categories. While this provision may make sense in terms of child rearing, it has little impact on the large majority of welfare recipients who have very young children. The change, therefore, does little to reduce welfare costs. In addition, since those recipients who are at greatest risk of falling into long-term dependency are young, never-married women who become AFDC recipients with a child less than three years old,[316] the work requirements must target this group to be most effective.

Many states have moved towards achieving this goal. Under present law, states have the option to lower to two the age of the recipient mother's child at which the mother must satisfy the work requirement. New Jersey has already lowered its qualifying age to two.[317] The FSA gives the states the option to lower the qualifying age to one.[318] However, targeting will neither be easy nor necessarily successful. According to Ellwood, the main route out of welfare for single AFDC mothers is not employment, but marriage. Finally, and probably most importantly, targeting will be expensive in the short-run. Child care costs become increasingly expensive the younger the child.[319]

As previously discussed,[320] government justifies the lower age requirement by arguing that if large numbers of women with very young children are in the paid labor force, as a matter of equity, welfare mothers should not be excused from working. Aside from the fact that the difference between volun-

315. I. GARFINKEL & S. MCLANAHAN, *supra* note 17, at 117.

316. D. ELLWOOD, TARGETING "WOULD-BE" LONG-TERM RECIPIENTS OF AFDC (1986); Y. Hasenfeld, *supra* note 156, at 76; Duncan, Hill & Hoffman, *supra* note 20.

317. N.J.S.A. ch. 44:10-9 et seq. (1988).

318. FSA, § 201(a) (amending 42 U.S.C. § 402(a)(19)(C)(D)). *See* M. GREENBERG, *supra* note 218, at 6, 11.

319. Gordon, *supra* note 152, at 67, 77; Y. Hasenfeld, *supra* note 156, at 77.

320. *See supra* text accompanying notes 153-56, 220.

tary employment and mandatory work requirements in the welfare context is conveniently ignored, this kind of thinking leads liberal social scientists like Garfinkel, McLanahan, and Ellwood to propose that AFDC be converted from a cash-relief into a work-relief program. Under their proposal, AFDC mothers would be legislatively assigned into employable and unemployable (disabled) groups. The former would receive a cash benefit for a limited period of time[321] after which, the grant would be cut off if they were not proceeding satisfactorily in a work or training program or did not find a job.[322] In fairness to Garfinkel, McLanahan, and Ellwood, they make their proposal *only* on the conditions that other income support is available (their child-support allowance and/or universal benefit) *and* that jobs are *guaranteed*. But, looking at the economic future, where are the resources for the income support and appropriate, guaranteed jobs?

Most interestingly, Garfinkel, McLanahan and Ellwood arrive at their reconceptualization from the standard liberal analysis. The mother in poverty was the deserving poor, but now that our attitudes towards mothers of young children have changed so should our attitudes towards poor mothers of young children. Under this conceptual framework, poor mothers are still considered to be one with non-poor mothers. At first they were excused from work, but they are now considered employable with changing norms.

The Reagan Administration came to the same position from an entirely different route. As I have argued, the dominant (non-liberal) view is that the vast bulk of poor mothers have always been considered undeserving, that is, subject to the market work test.[323] Through liberal excesses, they were let into the AFDC program, but now that program must be changed to reflect its participants and become more clearly a program for the undeserving poor. AFDC mothers must be subjected to a clear, simple, effective administered work test, or better still, a market work requirement. Under the conservative view, poor mothers were never, and are not now, the deserving poor.

The Garfinkel-McLanahan-Ellwood approach does have antecedents. A sharply reduced welfare grant means subjecting recipients to the market requirement. States which provide low benefits take the Carter approach, distinguishing AFDC recipients from the "deserving" categories. In many states, the per capita AFDC grant is less than that for other welfare programs. The differences have been justified, and legitimated by the United States Supreme Court, on the ground that recipients of AFDC are more likely than the aged and the disabled to supplement their grants.[324] States which provide low benefits assume that there will be supplementation since the recipients could not survive on the grants alone. AFDC, therefore, is used as a stop-gap, as Bell

321. Garfinkel and McLanahan think a two or three-month period would be sufficient; Ellwood proposes a much longer time.

322. *See supra* text accompanying notes 245-58.

323. *See* text accompanying notes 47-48.

324. *See* Dandridge v. Williams, 397 U.S. 491 (1970); Jefferson v. Hackney, 406 U.S. 535 (1972).

describes the early programs, rather than as a substitute for employment.[325] General Relief performs the same function. It is a temporary program with minimal benefits, not a substitute for work. AFDC, as a work-relief program, with lower, short-term benefits, would do the same.

The third path which AFDC may take adds teeth to the symbolic, status politics of welfare policy. It returns us to the story that Braudel tells in the opening quotation: our attitudes and responses to the visible presence of the poor are danger, containment, stigmatization, and deterrence. The specter of the black mother and her out-of-wedlock children and the growing underclass is not viewed with equanimity. The dark side of the current consensus on welfare reform is no accident. The third alternative will seek to treat the unworthy black mother and her children as it does the single male — containment and exclusion, stigma, the sanctions of the market, and a harsh welfare program.

The third path will not happen tomorrow. Social welfare policy is a complex process. There are many different voices seeking to change it and trying to influence its direction. Much depends on the state of the economy. In good times, we seem to be more generous with the poor. In hard times, the calls for reducing welfare costs and enforcing the work ethic become more insistent. I am impressed by the durability of basic values towards the moral issues of work and welfare and the lack of purchase that the lower social classes, the unfortunates, and deviants have on the larger society.

The deinstitutionalization experience is a grim reminder of the tenuousness of consensus between liberals and conservatives. There, the liberals and conservatives united to remove the mentally ill from the institutions to save money and to enable humane treatment in the community. The coalition fell apart when the mentally ill came home, and community care never materialized. There is some evidence that the consensus over educational reform is beginning to fall apart. The Pennsylvania legislature, for example, has refused to appropriate sufficient money for remedial education even though sixty percent of Philadelphia's students failed to pass the school norm.[326]

The current agreement over AFDC represents another consensus between liberals and conservatives. The conservatives will firmly place poor mothers in the employable category. In return, the liberals have only the promise of services and support. In time, the AFDC program will work itself pure again: a few of the clearly unemployable (the disabled) will be supported, and the rest will be back with the undeserving poor, primarily subject to the market work requirement.

325. *See supra* text accompanying note 62.
326. H. LEVIN, *supra* note 281, at 20.

APPENDIX I
General Relief in Los Angeles[327]

At any one time, there are about forty thousand people in Los Angeles County on General Relief. Each month, about ten thousand, of which six thousand are homeless, apply. Sixty percent of all applicants (a substantially higher percentage of the homeless) are denied assistance. Although four thousand applicants are approved, at the same time, about four thousand are removed from the rolls, so the program has not grown significantly in recent years. To maintain this constant level, the County has devised a sixty-day suspension rule. For any violation that calls for a sanction, there is an automatic suspension for sixty days during which time the recipient is totally barred from any County relief, including emergency assistance, shelter, General Relief, and Food Stamps. This rule ensures that people who are terminated do not immediately reapply.

Since Los Angeles County's entire General Relief system is fully computerized and automatic, a recipient's failure to comply with formal requirements is immediately noticed on the computer and sanctions, including the suspension of the recipient's check, go into effect immediately and automatically. If, for example, a recipient claims a medical disability and fails to file a timely and properly completed form from the specified health professional with the correct worker in the right welfare office, or if that worker fails to make the correct entry, the computer will automatically pick up the violation and simultaneously issue a notice of termination. The recipient's check will also be suspended. The computer is oblivious to the reason — the recipient was no longer disabled, she was negligent in keeping her appointment, the physician did not keep her appointment, the form was mailed to the wrong office, or the worker failed to record the document properly. If the recipient discovers the mistake immediately, it will then take a minimum of three weeks to reissue the check *after* the errors have been corrected. In the meantime, the recipient is totally without funds. In practical, concrete terms, automation is central to the system. The machines work silently and efficiently, but all of the efforts to correct the errors or justify the actions take place in offices that are often hard to reach (especially for the homeless), crowded, noisy, chaotic, and staffed by undertrained, harassed workers, many of whom are not fluent in English or Spanish and certainly not trained in detecting disabilities. The system places the burden on the recipient to work her way back onto it.

The staff has neither the time, the ability, nor the responsibility to assist the recipient's return to the system. Los Angeles' system apparently is not

327. The information on the Los Angeles County General Relief system comes from First Amended Complaint for Equitable Relief, City of Los Angeles v. County of Los Angeles, No. C655274, L.A. County Super. Ct.; Memorandum of Points and Authorities in Support of Motion for Preliminary Injunction, Rensch v. County of Los Angeles, No. C595155, slip. op., L.A. County Super. Ct.; and interviews with Gary Blasi, Los Angeles Legal Services, and Mark Greenberg, Western Center on Law and Poverty, Los Angeles.

unique. In 1987, the New York City Human Resources Administration reported that at least fifteen thousand cases per month are closed for "administrative reasons,"[328] such as a recipient's failure to keep an appointment, a recipient's failure to respond to a questionnaire or an agency error, resulting in considerable hardship. The process has even been officially labeled "churning."[329]

In order to give a flavor of Los Angeles' General Relief process, I have included a case study in Appendix II. It is the story of a lay advocate who spent approximately one hundred hours assisting a developmentally disabled person in negotiating the County's procedures. The process took over two months to complete, during which time the applicant and the advocate had to deal with thirty different people at nine different locations and complete approximately fifteen separate forms. It is a frustrating, complex process. One can only conclude that it is designed to exclude applicants.

The average waiting time for the initial screening interview is seven hours, during which time the person must listen attentively for her name to be called over a loudspeaker (above the noise of the waiting room). If the person is absent from the waiting room and does not hear her name, her application will often be denied, and she must start the process again. During this waiting period, neither amenities nor assistance are provided. The offices are noisy, hostile, and smoke-filled. Security in the waiting rooms is often inadequate. Frequently the offices cannot accommodate all the applicants, so many are required to stand. Workers do not wear any form of identification and do not identify themselves, making it difficult for applicants to complain to supervisors if the workers behave inappropriately.

Those who pass the initial screening interview are required to complete an application packet of more than twenty-five pages which requires a twelfth-grade reading level. The applicant must complete the forms in a specific sequence and without assistance. Many applications go unprocessed because the applicants are unable to complete the packet.

If an applicant lacks the necessary documentary identification, she is required to see a welfare fraud investigator. These officers identify themselves as "peace officers" and display badges. They have the authority to use collateral sources (such as, school records, other records in the DPSS, previous employ-

328. NEW YORK CITY HUMAN RESOURCES ADMINISTRATION, OFFICE OF POLICY AND ECONOMIC RESEARCH, THIRTY-DAY ADMINISTRATIVE CLOSINGS: HOW OFTEN AND TO WHOM? 16, Table 1 (Feb. 1987). The Human Resources Administration Study reported average monthly administrative case closing data for the years 1975 to 1984. Over that ten-year period, the number of case closings for administrative reasons more than doubled, increasing from 6055 per month in 1975 to 15,110 in 1984.

329. *See* Dehavenon, *supra* note 109, at 742. The term "churning" was first used about fifteen years ago. In an effort to reduce the reported number of churned cases, the Human Resources Administration now counts a case only if it had been closed for an administrative reason *twice* in a twelve month period *and* was each time reopened within *30 days*. *Id.* at 742 n.4. For similar practices in AFDC and Medicaid, see FROM QUALITY CONTROL TO QUALITY IMPROVEMENT IN AFDC AND MEDICAID, *supra* note 14.

ers, neighbors) to identify the applicant, but, it is claimed, they usually do not pursue these options. Those who lack documentary identification and have no close family friends or institutional contacts are usually denied assistance.

The next step in the process is the intake-eligibility worker. Despite the regulations, there are widespread complaints that the intake workers do not advise applicants of any rights that they may have, including the right to complain to a supervisor and the right to appeal any adverse decision. Although applicants may make telephone complaints to the supervisors, only pay telephones, if any, are available at the welfare office. The telephone number of the supervisors, moreover, are frequently not disclosed. Staff workers also do not explain the rules and regulations although applicants must sign written acknowledgments that they understand particular rules and regulations.

The intake-eligibility workers have extremely broad discretion in assigning particular work-relief jobs and hotels or shelter facilities. They will use this discretion to retaliate against uncooperative applicants, for example, by sending homeless, female applicants to a particular shelter that is known to be dangerous for unaccompanied women. Intake-eligibility workers may also retaliate by giving to recalcitrant applicants vouchers at distant hotels or work assignments which require considerable travel on public transportation with early reporting times. Applicants are also frequently denied assistance solely because they left a job or had been fired even though they may have resigned with good cause or fired without good cause. The good cause exceptions are not explained.

All applicants for General Relief who are deemed unemployable are required to complete the SSI application process despite the fact that many of them are plainly ineligible for benefits under that program. SSI disability has tight requirements, particularly for people under age fifty (considered "younger" workers) who are mentally disabled. The disability has to be likely to last for a period of at least one year or result in death; thus, many General Relief applicants who are temporarily disabled (for example, by a broken limb) will not qualify. Those who fail to complete the SSI application process are denied General Relief. Many of the DPSS offices are a considerable distance from the nearest Social Security office. No transportation between them is provided.

Applicants who are eligible for General Relief but who have not yet received assistance from other programs (such as, AFDC, unemployment insurance, state disability insurance, and workers compensation) are denied all assistance even though the applicants may have no other resources at that time and the benefits from the other programs may not be due for some time. California's policy flatly denies General Relief for all families on the ground that they may be eligible for AFDC or AFDC-U. The state had to be sued to provide emergency relief to families with children. Prior to the suit, it granted emergency relief to children only if they were separated from the home under

the Child Protection Service.[330]

Those who are unemployable are required to provide medical verification. Many of these applicants have no access to medical care or medical professionals. They are merely given a piece of paper referring them to a particular County medical facility. They are not told how to obtain an appointment, the location of the facility, the type of examination that is required and other essential information. In many cases, applicants cannot obtain an appointment for a period of three months or more; nevertheless, they are routinely denied assistance for failure to cooperate. Applicants who are unemployable as a result of substance abuse are provided with no means of obtaining medical verification of their condition. No facility in the County provides substance abuse assessments; thus, substance abusers are denied aid because of failure to provide medical verification of their unemployability. County mental health workers are the only practical and available means for obtaining medical verification of unemployability because of a psychological disability, but these workers are assigned only to some offices. There are strict rules governing the time and place of filing documentation of the medical verification of unemployability. Failure to keep appointments and return the documents to the right place in a timely fashion results in denial of aid.

Applicants who are considered employable are required to engage in and document a job search immediately. A frequent problem is that intake workers will accept at face value the assertions of disabled people that they can work. Here, too, the rules are strict. Failure to comply results in the sixty-day penalty. Applicants, for example, are required to conduct face-to-face job searches which the eligibility workers then verify. If, however, a prospective employer does not recall that particular applicant's having applied for a job, then the lack of verification may be treated as fraud, and the sixty-day penalty invoked.

Homeless applicants who are classified as employable are assigned to work projects upon receipt of their emergency shelter. They are required to work at the same time that they are required to obtain all the materials necessary for eligibility, but any violation of a work project rule or failure to complete all assigned work results not only in a denial of the application for aid but also in the imposition of the sixty-day penalty. The most frequent work assignments are highway, road or beach gangs (trash and litter collection), custodial (cleaning public buildings), gardening, and assisting in the County crematorium. Very little clerical work is available. The work project sites are frequently located long distances from where the applicants reside, and the applicants are required to use the public transportation system.

Applicants who are deemed employable are required to register at the Employment Development Department to obtain a "pink card." The card establishes only that the applicant has been at the employment office. Failure

330. *See* Hansen v. McMahon, 193 Cal. App. 3d 283 (1987).

to return the card results in the sixty-day penalty. Employable applicants are also required to apply for unemployment insurance even though many are obviously ineligible.

Applicants who lack documentary identification but who succeed in obtaining temporary benefits through independent verification are required to obtain, within fourteen days, a birth certificate or a California Identity Card (which requires a birth certificate). These applicants are given no information or assistance. One significant problem here is that many applicants are unable to obtain a stable return mailing address.

General Relief recipients are required to provide a residence address where they can receive their check. For many recipients, the benefit is not sufficient to obtain a stable address. As a result, each month approximately four thousand checks are not received by those eligible to receive them. The lack of stable addresses also defeats the rules requiring notice of termination of benefits. Even if notices are not in fact received, they are assumed to have been received, and the terminations go into effect.

Participants are required to recertify their eligibility at fixed intervals. If, for example, a person is excused from work because of a medical disability, she must redocument the verification periodically or else the computer will automatically terminate her benefits.

Every recipient of General Relief is required to complete a two-page form (the "CA 7") each month regardless of whether she has experienced any change in circumstances. Failure to submit the form or to complete it properly results in an automatic termination of General Relief and Food Stamps. The CA 7 is detailed and confusing. Again, the lack of a stable address presents a problem. In any given month, many recipients do not receive the form. Problems also arise when forms are misdirected within the local offices and fail to get to the appropriate intake-eligibility workers.

The sixty-day penalty is a fixed and inexorable penalty which is imposed without regard to the severity of the violation or the culpability of the applicant or recipient. According to the regulations, any applicant or recipient can show that she committed the violation inadvertently or with good cause, but these rights are consistently ignored in practice.

One can only conclude that General Relief is designed to deflect applicants. There is no outreach, many of the offices are inaccessible (especially for the physically disabled), and no assistance is given at the various offices. Applicants are required to apply to many different offices and must complete repetitive forms, most of which could be done at a single office. Only a few specialized offices handle the particular problems caused by lack of documentary identification. Needless to say, transportation is a difficult problem in Los Angeles. While there is undoubtedly considerable variation in other jurisdictions, the large number of terminations for administrative reasons in New

York City[331] and in Chicago[332] indicates that Los Angeles may not be unique.

APPENDIX II
Case Study[333]

The following is the story of a lay advocate employed by a public interest law firm who accompanied an applicant through the General Relief process. The applicant, Robert Rensch, is a developmentally disabled homeless person. Although Rensch's case is not completely analogous to cases involving poor mothers, it is nonetheless instructive, since General Relief rules have general applicability.

The advocate spent in excess of one-hundred hours assisting Rensch. The process took two months to complete, from the scheduling of the initial appointment to receiving the first check, in the course of which the applicant had to speak to thirty people at nine different locations and had to complete approximately fifteen separate forms. The applicant, who at the time was twenty-one years old, had been diagnosed by a psychiatrist as mentally retarded. Rensch attended special vocational schools. He obtained his only previous employment through school. None of these jobs lasted more than seven months. Rensch had difficulty reading at grade-school level; consequently, instructions with subparts tended to confuse him. Rensch got frustrated and discouraged easily and frequently failed to ask questions. The advocate said that Rensch was typical of many homeless people in Los Angeles.

The first contact, on August 16, 1985, was to apply for General Relief and food stamps. The local office (Echo Park) gave Rensch a housing voucher for a hotel, meal vouchers, and an appointment for a General Relief intake-screening interview. The interview took place on August 20th (same office), where he was given nine sheets of paper to complete. He could not understand words like "acceptable," "permanent," or "identification." On the referral form for a medical and psychiatric examination, he understood that he had to see a doctor. He did not understand that he had to arrange the appointment or that Los Angeles County's health facility had to complete a medical and psychiatric examination form before the Department of Public Social Services (DPSS) could determine his eligibility for employment.

Under the general income-maintenance conditions, he did not understand such terms as "exhausted," "limited," "property tax," and "substantiate." He did not understand that he was required to have his landlord complete a rent verification form. He also did not understand that the County wanted to know how he supported himself before he applied for General Relief. As to

331. *See supra* note 328 (for New York City).

332. *See* M. SOSIN, P. COLSON AND S. GROSSMAN, HOMELESSNESS IN CHICAGO: POVERTY AND PATHOLOGY, SOCIAL INSTITUTIONS AND SOCIAL CHANGE, ch. 4 (University of Chicago School of Social Service Administration, ms., 1988).

333. *See supra* note 326.

the forms in general, he did not understand most of the instructions or follow the cross-references.

The initial screening interview was over at 10:30 a.m. Rensch was told to wait for his Department of Motor Vehicle voucher (worth $6) which could be used to obtain an identification card from the Department of Motor Vehicles. He waited until 1:30 p.m. to receive the voucher. At that time, he was also given a Food Stamp card, but he did not know how to use it, nor did anyone explain it to him. The Food Stamp card had not been stamped to indicate that Rensch was not required to show a picture identification along with his Food Stamp card until after he obtained his California identification card. Consequently, when he went to the Food Stamp Redemption Center, he was denied Food Stamps because he did not have a picture identification. Rensch did not know what to do. The advocate had to call the Echo Park Office, take Rensch over, and wait another hour to get the card properly stamped.

Rensch then had to go to a Department of Motor Vehicle office to obtain an identity card. The advocate had to locate the office for him, take him, and place him in the correct line. He was incapable of completing the complicated form. He also could not read the word "identification" and did not know what "regular" or "senior" meant.

At the intake interview, Rensch was also given Form PA 214 which specifies the requirements for General Relief. Under "Potential Income" was the notation "DIB" which meant Disability Insurance Benefits. The State Disability Insurance (SDI) Form was not included although the local General Relief office could have the forms. As a result, Rensch was required to go to an Employment Development Department (EDD) office to get one. He was not given the address of an EDD office and had no idea how to find one. The advocate took him to one on August 28th.

At the EDD office, Rensch asked at the information desk where he could register for disability insurance benefits. He was unable to understand when the staff person at the information desk asked him whether he needed to talk to someone in the disability office or just needed a form, so the worker gave him the address of the disability benefits insurance office as well as the form. The advocate told Rensch that he did not have to go the office and that the doctor who examined him would complete the SDI form.

Rensch saw the doctor on August 29th at an ambulatory clinic, but the doctor failed to complete the SDI form. To ensure that Rensch was not penalized for his failure to register with State Disability Insurance, the advocate explained to the eligibility worker that the doctor was responsible for not having completed the form. Without this explanation, Rensch's application would have been terminated for failure to comply with General Relief regulations. Instead, Rensch received another two-week hotel voucher.

On September 6th, the advocate called the doctor to request that he complete the SDI form, but the doctor refused, claiming that he could not complete this type of form. The advocate called the supervisor who then

instructed the doctor to complete the form. The advocate had to go immediately to the clinic because the doctor informed him that he was leaving in an hour and would be unavailable for a few days. Needless to say, Rensch would not have been able to contact the supervisor, convince him to convince the doctor to complete the form, and get to the clinic within an hour. Despite what seemed to be Rensch's apparent disability, he eventually had to undergo five separate physical and mental evaluations between August 20th, when he first applied for General Relief, and September 27th, when his case was terminated for failure to complete the process successfully.

As part of the General Relief application process, Rensch also had to apply for Supplemental Security Income (SSI) through the Department of Rehabilitation where he was evaluated by a psychiatrist and then evaluated for developmental disabilities. A psychologist also tested him. In this particular situation, he could not have found the offices without the help of the advocate.

At the time of the intake-screening interview, each applicant must undergo employability screening. Rensch was provided with a referral form which named the clinic that would perform the screening. In Rensch's case, the clinic was about five miles from the Echo Park office. Rensch did not understand that he was responsible for contacting the clinic and making an appointment within two days of the intake-screening interview. He did not know how to find the clinic. When he got to the clinic, he had to complete another form and supply a number of items of information which proved difficult for him. He did not, for example, understand the phrase "mother's maiden name" nor did he know about his family's health problems. Despite the fact that Rensch had an appointment, the doctor was not in the office. Rensch still had to complete a medical history form which was almost the same as one which he had already filed. Rensch had to return two days later, wait another hour-and-a-half, and have a second interview with a nurse. After examining Rensch, the doctor concluded that he had mental retardation (mild degree). Instead of referring Rensch for a psychiatric exam, however, the doctor noted on the form that Rensch could do part-time, light work and that the expected duration of his restricted employment would last for about two years.

"Light work" is a classification that refers to physical, not mental abilities. Since Rensch was now classified as "employable," he was required to pursue a job search and assigned to work relief. The sixty-day penalty rule would apply for any violation. Since the advocate was convinced that Rensch lacked the ability to obey these rules, the advocate solicited a letter from the psychiatrist who had previously evaluated Rensch, at the request of the advocate, prior to the start of this case study. The advocate took this letter to Rensch's eligibility worker. A psychiatric appointment was arranged on September 9th. At that appointment, Rensch was handed another form asking for his medical and psychiatric history, a form which he did not understand and which he could complete only with the advocate's help.

The following day, the advocate took Rensch for a developmental disability evaluation. There was another interview and a forty-five minute test. Eight days later, the advocate took Rensch to a psychologist for another interview and a test lasting one hour and forty-five minutes.

Rensch then returned to the DPSS office on August 30th. After a two-hour wait, and the advocate's complaint to a supervisor, Rensch saw the eligibility worker only to be told that he did not qualify for General Relief because the State Disability Insurance form had not yet been completed. The eligibility worker also told him that he would receive another hotel voucher. After another two and one-half hour wait, and another complaint by the advocate, Rensch received his voucher a half hour later.

Five days later, Rensch appeared at the advocate's office for help in completing the monthly report form (CA 7). A week later, the advocate called the DPSS office to arrange for another two-week renewal of the hotel voucher. He then accompanied Rensch to pick it up. When the advocate and Rensch arrived to pick up the renewed voucher, after an hour and twenty minute wait, the eligibility worker asked about Rensch's last job. Despite the advocate's explanation that all of Rensch's jobs were obtained through the vocational school for the disabled and that none lasted more than seven months, the worker declared that Rensch was not eligible for General Relief and would have to sign up for Unemployment Insurance benefits even though Rensch's type of job did not qualify him for unemployment benefits. The worker also noted that according to Rensch's evaluation, Rensch was qualified for "light work." After the advocate argued that the evaluation was incorrect and pointed out the psychiatrist's letter, the worker said that Rensch would be given six bus tokens, another appointment (Oct.1st), and another hotel voucher. Two hours later, while waiting for the tokens and the voucher, Rensch was told that his case had been terminated because his last job was not listed on the application. After another hour, the advocate was able to see the supervisor who told him that the case was already terminated, so that Rensch could obtain another hotel voucher only by applying for General Relief again. Later that afternoon, Rensch and the advocate filled out another application packet. He was given another appointment, for October 1st, and a hotel voucher. This episode took the entire day.

At the October 1st appointment, a new eligibility worker wanted Rensch to repeat the entire process. The advocate intervened, telling the worker that the Deputy Director had approved the use of the forms which Rensch had previously completed. On two more occasions, the advocate had to accompany Rensch to obtain hotel vouchers good for one week only.

On October 25th, Rensch was supposed to go to the office to pick up another voucher. The advocate was unable to accompany him but gave him bus fare and explicit instructions. Rensch managed to get to the office. Instead of giving him a voucher, the office approved his case and gave him a check for $68 which was supposed to last from October 25th until November

4th. Because the advocate had not been advised that Rensch's case would be approved, he did not have time to work out a budget for Rensch, arrange for an inexpensive motel, and have his check cashed without paying a fee. When the advocate saw Rensch three days later, he had only a few dollars left and nowhere to stay. The advocate got Rensch into a voluntary shelter on a daily basis until he received his next check. Since then, the advocate has had to intervene on several occasions when Rensch did not get his checks on time.

Rensch is a mentally retarded, homeless single male. It is quite clear that he could not have negotiated the General Relief procedures on his own. This case study explains why, of the thousands of people like Rensch in Los Angeles County, only a small proportion — probably between ten and twenty percent — are on General Relief or any other form of public income maintenance program.[334]

334. Since it is not easy to estimate the number of homeless people in Los Angeles County, it is difficult to know what percentage are on General Relief. There are about five thousand homeless people enrolled, and the usual figure for the homeless population in the County is fifty thousand.