

WELFARE REFORM IN THE UNITED STATES[©]

BY JOEL F. HANDLER*

Advanced countries that are experiencing high unemployment are reconsidering their generous welfare states in light of the American experience. This article sets forth a summary of the principles of the U.S. welfare reform—particularly enforcing work requirements by time-limited welfare—as well as the assumptions, including, principally, that welfare destroys work incentives and that jobs are available for those who want to work. In fact, most welfare recipients have extensive connections to the labour market, but cannot survive on either jobs or welfare. If the reforms are carried out as intended, severe hardship will result. The predicted outcome is that most states and localities will avoid draconian effects, but there will continue to be a significant, largely invisible increase in hardship. Low-wage labour market reforms are proposed.

À la lumière de l'expérience Américaine, les pays industrialisés connaissant un fort taux de chômage remettent en cause la générosité de leurs politiques sociales. Cet article résume les principes de la réforme d'assistance sociale des États Unis—particulièrement l'assistance sociale temporaire pour combler les exigences d'emploi—aussi bien que les mythes—dont le fait que l'assistance sociale réduit les motivations au travail et que l'emploi n'est disponible que pour ceux qui désirent travailler. En fait, la plupart des bénéficiaires d'assistance sociale possèdent les ressources pour accéder au marché du travail, mais ne peuvent vivre d'un emploi ou de l'assistance sociale. Si la réforme est mise de l'avant telle que prévue, les conséquences pourraient être néfastes. Le cas échéant, la plupart des États se soustrairaient aux effets draconiens de cette réforme, sans toutefois être en mesure d'éviter lesdites conséquences. Cette discussion propose une réforme du marché du travail de gens à faible revenu.

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I. INTRODUCTION

The United States economic “miracle” is much in the news these days: the creation of millions of jobs, unemployment below 5 per cent, and no signs of inflation. In contrast, Canada and several Western European countries are suffering from unprecedented high levels of unemployment.¹ Western European governments, because of the budgetary constraints of the impending European currency treaty, cannot expand welfare benefits to meet needs. In fact, somewhat paradoxically, an attractive “solution” to many European policymakers is to emulate the United States by cutting back significantly the welfare state. Since the enactment of the new American welfare law in 1996, the welfare caseloads have dropped by 1.4 million to a twenty-seven-year low.²

What is the connection between welfare reform and a growing economy? True, so-called welfare reform—American style—cuts benefits instead of spending money. But more significantly, from the European perspective, is the idea that a generous welfare state is inconsistent with the labour market flexibility needed for the new economies of the twenty-first century. High unemployment, it is believed, is caused by the high costs of labour, and workers are not willing to take low-cost jobs, and that is the reason that these countries are experiencing unprecedentedly high unemployment rates, increasing inequality of incomes, increasing poverty, and increasing vulnerable populations—for example, single parent families, unemployed youth, and immigrants.

The proposed abandonment of the European and Canadian welfare state is surely dismaying. These welfare states, with their generosity and inclusiveness, represent collectively one of the crowning achievements of the twentieth century. To follow the American lead is not only dismaying, but also puzzling. The American statistics are familiar. While millions of jobs have been created, they are, for the most part, low-wage, contingent, part-time, and with low or no benefits. As a

¹ Unemployment rates in mid-1997 were: Canada (9.1); France (12.6); Germany (11.4); Italy (12.4); Spain (20.9); Sweden (8.8); Denmark (8.1); Netherlands (5.9); Britain (5.7). *The Economist* (2 August 1997) 80.

² M. Healy, “50 States, 1 Rallying Cry: Get Off Aid and Get a Job” *Los Angeles Times* (21 August 1997) 1.

consequence, the United States is experiencing unprecedented wage inequality and persistent poverty, especially among vulnerable groups.³

In this article, I will describe briefly the nature of the most recent so-called reform, why, if carried out as intended, it will produce great harm, the implications for legal and community advocacy, and proposals for new directions.

II. THE CURRENT WELFARE REFORM

Welfare reform was introduced during the 1992 presidential campaign when Candidate Bill Clinton promised to “end welfare as we know it.” Welfare dependency, he said, had become a “way of life.” Clinton was referring to Aid to Families with Dependent Children (AFDC), the welfare program primarily for single mothers and their children. As a candidate, Clinton proposed a two-year time limit on welfare during which the recipient would be required to participate in training. At the end of two years, if the recipient had not been able to secure a job, he or she would be offered a public job for a limited period of time; in any event, welfare would end.

Over the next four years, welfare reform was the subject of partisan politics. Finally, on the eve of the 1996 election, Clinton signed *The Personal Responsibility and Work Opportunity Reconciliation Act of 1996*⁴—a comprehensive bill that formally abolished AFDC, JOBS (the work and training program for welfare recipients), and Emergency Assistance to Families with Children. The *Act* replaced them with a block grant of federal funds given to the states called Temporary Assistance to Needy Families (TANF).

The new legislation can be summarized in terms of four major themes. The first is that it ends the “entitlement status” of welfare by folding that program, along with several other programs, into block grants to the states.⁵ The amount of the grants are based on a formula.

³ See J.F. Handler & Y. Hasenfeld, *We the Poor People: Work, Poverty, and Welfare Reform* (New Haven: Yale University Press, 1997) c. 3 [hereinafter *We The Poor*].

⁴ Pub. L. 104-193, 110 Stat. 2105.

⁵ Under the former law, AFDC is a grant-in-aid; thus, states were always free to refuse to have an AFDC program—as long as they are willing to forgo Federal financial participation—roughly half the costs. However, as a condition of participation, all eligible applicants for AFDC had to be enrolled; the states and the federal government were obligated to appropriate the necessary funds. Under the block grant proposal, states would be given a fixed amount of money by the federal government. If the federal money was exhausted before the end of the fiscal year, a state could either enroll new applicants with its own money, or deny aid until the next fiscal year, or, the states

In return, the states are required to meet a basic maintenance of effort, which is no less than 80 per cent of a "historic spending level."⁶ Ending "entitlement status" is supposed to send the message that recipients can no longer count on welfare. The block grant provision would increase state flexibility by allowing states more easily to reduce the amount of money they spend on welfare or shift funds to other programs. Presumably, states are free to determine which families receive assistance, how much, and under what circumstances; if a state runs out of funds, applicants can be placed on waiting lists or rejected. In other words, there no longer is a guarantee of aid.

The second major theme combines time limits for welfare with work requirements. There are two sets of time limits. First is the two-year time limit. Starting in fiscal year (FY) 1997, a quarter of each state's recipients must participate in "work activities;" the percentage of the caseload increases annually to 50 per cent by FY 2002. Up to 20 per cent of the state's caseload can be exempted from this requirement. The requirements are considerably higher for two-parent families. A state risks a penalty for failure to meet the annual rate.⁷ Second, recognizing that many welfare recipients cycle on and off welfare, there is a cumulative life-time five year limit on welfare.⁸

Third, time-limited welfare addresses the perceived lack of work ethic on the part of welfare recipients. There are other parts of welfare reform that speak to other issues. A cluster of provisions deals with so-called "family values." Unless states specifically opt out, they cannot provide aid to children who were conceived while the mother was on welfare (called "the Family Cap"), or to minor parents unless they are

could go farther. For example, they could end AFDC as a cash program, and use the block grant money for other programs (for example, child care, training) or for vouchers, and so forth. Under these options, AFDC would no longer be an "entitlement;" poor single mothers and their children would no longer have a guarantee of subsistence.

⁶ The federal formula is based on the higher of 1992-94 spending, 1994 spending, or 1995 spending for AFDC, JOBS, and Emergency Assistance. For most states the TANF block grant amount will be frozen through fiscal year 2002. A minority of states will receive an annual 2.5 per cent adjustment. The maintenance of effort requirement is reduced to 75 per cent if a state meets the work participation requirements. If the state does not meet the required spending level, it risks a dollar-for-dollar reduction in the federal grant. See M. Greenberg & S. Savner, *A Detailed Summary of Key Provisions of the Temporary Assistance for Needy Families Block Grant of H.R. 3734* (Washington, D.C.: Center for Law and Social Policy, 1996) at 2.

⁷ The annual rate is based on the average monthly rates for the year. The hours per week required to count as participation starts at twenty and increases to thirty by FY 2000. See Greenberg & Savner, *supra* note 6 at 39.

⁸ There is a third work requirement: unless a state opts out, adults who are not exempt or participating in work activities, must participate in community service after having received assistance for two months; *ibid.* at 3.

attending school (called "Learnfare") and living at home. Also, the states must reduce or eliminate assistance if the family does not cooperate in the establishment of paternity and obtaining child support. States would also have the option to deny aid to mothers under the age of eighteen.

Fourth, there are provisions to deny aid to immigrants, both legal and illegal. For example, future legal immigrants who have not become citizens would be ineligible for most federal welfare benefits during the first five years in the United States. Supplemental Security Income (SSI) and food stamps would end for noncitizens now receiving benefits. There are other provisions that will also impact on poor families. For example, thousands of children will lose SSI disability benefits under stricter standards. Unless a state opts out, people convicted of drug felonies cannot receive assistance.

In the meantime, while welfare reform has been debated in Washington, the states have been reforming welfare on their own under waivers granted by the U.S. Department of Health and Human Services. Almost forty states have either received waivers, or are in the process of applying for waivers which can continue under the new law. Waiver provisions vary, and not all of them are punitive, but the most popular deal with time-limits (usually two years, although some states are opting for shorter periods), increased work requirements, and family values. Several states, for example, along with strict time limits, are mandating quick entry into the low-wage labour market or, in the alternative, requiring recipients to "work off" the welfare grant at community service jobs. Other states have Family Cap provisions. Counting the number and variety of state waivers, it is clear that the country was already in a full-blown welfare reform.

III. THE ASSUMPTIONS BEHIND THE CURRENT WELFARE REFORM

Conservatives became increasingly concerned over the perceived connection between welfare and the lack of work ethic in the Reagan years. It was during that period that Charles Murray popularized the idea that welfare induced people to quit work and to break up homes.⁹ As part of the more general campaign against liberalism and the Great Society of the 1960s, the idea of entitlement to welfare was portrayed as

⁹ C. Murray, *Losing Ground: American Social Policy 1950-1980* (New York: Basic Books, 1984).

a corrupting influence on recipients. Citizens have responsibilities, not entitlements, the Republicans said. The “truly needy” deserve to be helped, but they must also contribute to society by supporting themselves and their families if they could.¹⁰ The theme of responsibility became very popular, and is now endorsed by liberals as well. In fact, time-limited welfare was first proposed by the liberal Left.¹¹ Dependent mothers will be helped—by income and by education and training—but after a reasonable period of time, they must help themselves.

Behind the “new” assumptions there are several long-standing, continuing assumptions as to what is wrong with welfare and what to do about welfare.

First, “dependency,” as used in the welfare context, is not simply being poor. It is not simply being out of work. Rather, welfare dependency is a problem of attitude; specifically, a moral failure to have the proper work ethic. It is a way of life.

Second, the assignment of moral fault is rarely unidimensional. When those with whom we are familiar, who are “like us,” fall on hard times, it is because of “bad luck” or “misfortune.” Moral condemnation is reserved for those who are not only poor, but who are different—in terms of race, ethnicity, country of origin, religion or who violate patriarchal norms. The poverty of our neighbourly, aged, white widow is different from the dependency of the inner-city young black mother or single male, and, increasingly, immigrants. Race and ethnicity have always been fault lines in American history. Although the current welfare reform emphasizes work, it is essential to keep in mind the multiple dimensions of the moral condemnation of welfare recipients.

The third assumption is that providing aid destroys not only the work ethic but other family values as well. Because of the multiple aspects of moral fault, welfare policy is concerned with “reformation” rather than redistribution.

Fourth, welfare reforms (reformation) are directed at changing individual behavior rather than the environment. Self-sufficiency through work is to be achieved by changing the mothers rather than labor markets or other institutional arrangements that contribute towards successful, independent lives. Since “decent” people can find work, it is assumed that people who want to work can find it. Focusing

¹⁰ Probably the most noteworthy statement is L. Mead, *Beyond Entitlement: The Social Obligations of Citizenship* (New York: Free Press, 1988).

¹¹ I. Garfinkel & S. McLanahan, *Single Mothers and Their Children: A New American Dilemma* (Washington, D.C.: Urban Institute Press, 1986); and D. Ellwood, *Poor Support: Poverty in the American Family* (New York: Basic Books, 1988).

on the individual relieves policymakers from confronting the more difficult issues of labor markets, redistribution, or other institutional change. It allows policymakers to isolate the recipient, to blame the victim. It is the politics of exclusion.

Fifth, the reforms are directed at the adult welfare recipients, who, in this case, are almost exclusively women. Despite the obvious importance of men to family support and the socialization of children, men are virtually ignored, except for child support. Despite the origins of AFDC—concern for poor children—and despite the seemingly strong concern for the transmission of deviant values, with relatively few exceptions (for example, requiring school attendance), welfare children are also largely ignored, except when teens become pregnant. From its earliest days, AFDC (then ADC) has been concerned with regulating the mothers. It is easier, of course, to ascribe moral fault and justify punishment for adults and teenagers than it is for infants and toddlers.

The current welfare reforms are being hailed as “new,” that now welfare will be really changed. This sort of political rhetoric, of course, accompanies most legislative changes. In fact, both the underlying assumptions about welfare reform and the remedies seem to be timeless.

IV. THE IMPACT OF THE WELFARE REFORMS

Predictions as to the likely effects of major social legislation are always uncertain. Much depends on the state of the economy and the political climate. First, I will discuss the likely effects if the law is carried out as presently written, both nationally and in California, which is often a bell-wether for the country. Then, I will offer some predictions, based on past experience.

According to an Urban Institute study, AFDC spending would be reduced by \$5.3 billion, with nearly one million families losing all benefits.¹² SSI spending is reduced by nearly \$5 billion (20 per cent) with almost 900,000 people receiving less benefits. About 850,000 families lose food stamps. With all of the cuts, one in ten families will have reductions in total income, averaging \$1,300 per year. About 2.6 million more persons will fall below the poverty line. This includes about 1.1 million children, an increase of 12 per cent. The poverty gap would increase by about \$6 billion for all families. Almost half of these families are already in the labour force. According to the Urban Institute,

¹² S. Zedlowski *et al.*, *Potential Effects of Congressional Welfare Reform Legislation on Family Incomes* (Washington, D.C.: The Urban Institute, 1996) Table 2.

moving welfare families into the paid labour force would not dramatically affect these results, since most welfare recipients who do find work still remain poor.

What would be the impact on California? The state will lose \$11.4 billion over five years—\$2.8 billion from AFDC, \$6.9 billion from the various immigrant provisions; \$1.4 billion from food stamps; and \$230 million from child and SSI provisions.¹³

The idea, of course, is that those subject to the cut-offs will find jobs. How realistic is this assumption? California must move nearly 1 million people off of welfare over the next few years. However, state unemployment is around 7 per cent—with most of the 1 million people currently looking for work not on welfare. An additional 1 million not counted as “unemployed” want to work, and nearly one-half million part-time workers would like to work more hours.

If the state continues to rebound, an average of 300,000 jobs will be created annually. But those on welfare have significant employment deficits—about two-thirds of AFDC adults cannot pass a basic literacy test, half lack a high school diploma, more than 40 per cent are clinically depressed. Then, there are the problems of substance abuse, disabled children and disabled relatives to care for. What do employers want? People with social skills, with employment histories, and not people with potential problems—“attitudes,” women with young children, etc.

In short, the employment prospects for these women are bleak. Even in the most successful program, Riverside, California, at the end of three years, two-thirds of the experimentals were not working, and half of the recipients never worked during the entire demonstration project. The experimentals earned only about twenty dollars more per week than the controls, most continued to receive welfare, and practically all remained poor.¹⁴

In light of the previous discussion about the state of the low-wage labour market, especially in California, but also pretty much true throughout the country, a significant number of welfare recipients will not be able to permanently leave welfare via work. However, how many will actually be cut-off—whether under the two-year or the five-year rule depends, in part, on the size of the rolls. For a long time, AFDC rolls were growing. Now, as the economy continues to improve, rolls are declining. They are declining in California as well, although at

¹³ J.F. Handler, “Welfare Reform: The Impact on California,” in X. Kayden, ed., *California Policy Options 1997* (Los Angeles: UCLA School of Public Policy and Social Research, 1997) 117 at 128.

¹⁴ *Supra* note 3, c. 4.

a slower rate—four per cent versus nine per cent on average. Whether rolls continue to decline or stabilize or increase depends ultimately on the economy.

Assuming that by 2002 there is no net growth in the California AFDC rolls, then of the 1.6 million children, approximately 36 per cent will be long-term recipients. Therefore, AFDC will be terminated for 575,000 children. If the economy slackens, and present AFDC growth resumes, then, in 2005, AFDC will be terminated for 994,000 children.

Again, assuming present growth rates, under the paternity establishment requirements, 588,000 children will lose benefits; under the denial of additional children born to current AFDC recipients, 433,000 children will be denied benefits. In addition, 13,770 children born to unmarried mothers will be denied benefits until the mother turns 18. The combined effects of the AFDC cut-offs will affect 1,158,000 children. Under the SSI provisions, 14,500 disabled children in California will either lose benefits or be ineligible.¹⁵

What will happen to these children? Since the majority of welfare recipients are short-term and leave when they obtain work, we can assume that most of the long-termers will have the most difficulty in finding and keeping a job.¹⁶ Day care will be a significant problem. California already has a waiting list of 225,000 poor children for subsidized day care. Low-income working mothers have waited as long as two years to receive a subsidy for a toddler, and as long as one year for an infant. Not surprisingly, costs influence the quality of day care, and recent studies have shown that there is an extensive amount of poor to mediocre day care, and that children in poor to mediocre full-time day care—especially infants—are increasingly at risk developmentally and physically.¹⁷ Whether working or not, poverty will increase for this group; poverty is the single most important predictor of poor outcomes for children—abuse and neglect, poor health, school failure, teen pregnancy, crime, and delinquency.¹⁸

¹⁵ *Supra* note 13.

¹⁶ Contrary to the popular stereotype, about two-thirds of welfare recipients are connected to the labour force—they are either combining work with welfare or have recently worked—and they leave welfare, mostly via work, within two to four years. However, many return to welfare because jobs end or there is a family crisis. Nevertheless, they still leave welfare permanently in a relatively short time. See *supra* note 13, c. 3.

¹⁷ See W. T. Gormley Jr., *Everybody's Children: Child Care as a Public Problem* (Washington, D.C.: Brookings Institution, 1995).

¹⁸ S. McLanahan & G. Sandefur, *Growing Up With a Single Parent* (Cambridge: Harvard University Press, 1994).

One of the most serious problems—virtually, a time-bomb ready to explode—is the potential impact of the cut-offs on the foster care system. The existing state foster care system is in crisis. It is overloaded and underfunded. For example, at the present time, there are approximately 60,000 children in the Los Angeles child welfare system which is about 20 per cent more children than it was designed to accommodate. When AFDC was cut by 6 per cent in 1992, there was a 20 per cent increase in the number of child abuse cases reported, and a 10 per cent increase in the number of children who entered the child welfare system. If only a fraction of the children subject to the welfare cuts enter the foster care system, the costs will skyrocket. Assuming no change in AFDC rolls, then if half of the children who lose AFDC benefits need foster care, the cost to the state would be \$80 million additional funds per month. If only 10 per cent need foster care, the cost would be \$16 million per month. If five per cent of these children are older, and have to go to group homes, then the cost would be \$81 million additionally each month. The Los Angeles County director of childrens' services was quoted as saying that if only one out of twenty of these children ended up in the child protection service, the cost—for Los Angeles County—would increase by \$185 million. If no additional funds were available, every child protection worker would have to be laid off.¹⁹

And the consequences for children in foster care are not good. Foster care children have higher rates of both acute and chronic medical and mental health problems, higher rates of growth problems, and three times the national average for asthma. In one study in California, nearly 80 per cent of foster care children had emotional, developmental, or behavioural problems. Infants and toddlers were more likely to manifest developmental problems (motor, language, cognitive, and self-help concerns). Various studies have found that up to 60 per cent of foster children suffer from moderate to severe mental health problems, and that 40 per cent have physical health problems. In California, foster children are almost ten times more likely to use mental health services and are likely to be hospitalized almost twice as long as other poor children. While foster children make up only about 4 per cent of

¹⁹ J.F. Handler, "Welfare Reform 1995-1996: The Time-Bomb Ready to Explode on California's Children" (Los Angeles: Southern California Inter-University Consortium on Homelessness and Poverty, 1996); and J. Wolch & H. Sommer, "Los Angeles in an Era of Welfare Reform: Implications for Poor People and Community Well-being" (Los Angeles: Southern California Inter-University Consortium on Homelessness and Poverty, 1997).

California's children, they account for 40 per cent of Medi-Cal mental health expenditures.²⁰

With the increase in poverty, greater numbers of children are entering the foster care system as a consequence of neglect. There is a greater prevalence of drug abuse among the parents and health problems among the children. In California, between 1984 and 1993, the number of children in foster care increased from 37,306 to over 85,000. The children are younger. Forty-one per cent are African-American—an increase of 241 per cent. The most common reason for placement has changed from physical and sexual abuse to neglect and abandonment, and the time in placement has increased by 25 per cent. Increasing numbers of infants are entering the system, but remaining in care longer, thus decreasing their chances for adoption and increasing their chances for multiple placements. Health and mental health problems increase with multiple placements. Adolescents who have been in foster care are at high risk of educational failure, unemployment, emotional disturbance, and other negative outcomes. Although many of these adolescents were at risk before they entered the system, the system is unable to meet their needs or prepare them adequately for adult life. In short, the new welfare reforms will certainly increase the poverty and hardship for hundreds of thousands, if not millions, of California's children. Already these children are at high risk of failing to become successful, productive adults. The odds will now be increased.²¹

The likelihood of significant impacts on the child protection system is not far-fetched when one considers how close to the edge many AFDC families are living. One only has to look at the changing composition of the homeless population. Today, nationwide, more than a third of the homeless are families, an increase of 10 per cent since 1985. Most of these families are headed by women. In addition to poverty and limited employment opportunities, these mothers often have suffered from personal traumas. In a recent study of homeless families in Massachusetts, 91.6 per cent of the homeless and 81.8 per cent of the housed mothers reported physical or sexual abuse at some point in their lives. Using conservative measures (for example, excluding spanking, shoving, slaps), almost two-thirds of both groups reported violence by parents or caretakers. More than 40 per cent were sexually

²⁰ M. Courtney, "The Foster Care Crisis," Institute for Research on Poverty Discussion Paper, (Madison: University of Wisconsin, 1996); and N. Halfon, "Health Status of Children in Foster Care" (April 1995) 149 *Archives of Pediatrics and Adolescent Medicine* 886.

²¹ Halfon, *supra* note 20.

molested, 63 per cent reported assaults by intimate male partners (included being punched, kicked, burned, choked, beaten, threatened, or attacked with a knife or a gun, but excluded pushed, shoved, or slapped fewer than six times), and 25 per cent reported physical or sexual attacks by nonintimates. AFDC provided at least some financial stability; families not on AFDC were far more likely to end up homeless than AFDC families.²²

Who will bear these costs? The families, themselves, of course, but also government. We have not come to the point where mothers and children are turned out of shelters and left to beg and die in the streets. Shelters, foster families, and group homes have to be paid. These are primarily local government costs. Just as the federal government is getting rid of the “welfare problem” by delegating it to the states, so too will state governments delegate the problem to the counties and municipalities. Delegation is a favourite technique of managing conflict in American politics.

V. THE FUTURE?

If the past is any guide, dramatic changes will probably not occur in welfare. Throughout history, welfare policy has always been largely symbolic.²³ Myths and stereotypes gain prominence; drastic reforms are enacted; but actual policy is usually decoupled from administration. There are many reasons, but usually the policies, as enacted, are too draconian and, more importantly, too costly in the end. In the late 19th century, outdoor relief was never really abolished; in the late 20th century, a long series of work reforms has never been implemented. Serious welfare-to-work programs—including community-service jobs—are more expensive than welfare, and so is shelter care and foster care.²⁴

Under the present reforms, there is plenty of room to fudge. AFDC rolls are declining, which relieves a lot of pressure; under the

²² E. Bassuk, A. Browne & J. Buckner, “Single Mothers and Welfare” *Scientific American* (October 1996) 60.

²³ J.F. Handler & Y. Hasenfeld, *The Moral Construction of Poverty: Welfare Reform in America* (Newbury Park, Calif.: Sage, 1991).

²⁴ For example, Wisconsin has launched one of the most ambitious and well-funded welfare-to-work programs. Supporting a family on welfare costs about \$9,700; supporting a welfare family transitioning to work (training, child care, health care, post-employment support, etc.) costs about \$15,700: J. DeParle, “Getting Opal Caples to Work,” *New York Times Magazine* (24 August 1997) 32.

block-grant formulas (based on historic caseloads), states have extra money and the number of recipients that states have to place in work programs is reduced. The states can decide what constitutes work or “best effort,” and can excuse up to 20 per cent of the caseload. Furthermore, even if states do not meet their quotas, federal penalties are not likely. States were rarely, if ever, sanctioned for not meeting quality control requirements. There are always excuses, and state congressional delegations, to press for relief from federal penalties. Similar considerations may well apply within states. Counties and municipalities will resist state-imposed welfare costs. The usual practice in the face of these conflicting pressures is myth and ceremony. Some recipients will find jobs and leave welfare—whether as a result of the programs is another matter, some will be sanctioned and everyone will proclaim success. Politicians, including the president, are already claiming success because of the sharp decline in welfare rolls, even though the law has barely been implemented.

However, while I do not think that dramatic changes will occur, the subtle, low-visibility changes that have been happening over the past two decades will continue, if not increase, and this is very serious. Here, I am referring to the continued, gradual erosion of benefits, either by failing to raise grants or actually imposing percentage cuts in benefits. Other changes are also going on. States can always reduce rolls on the basis of fraud, especially for off-the-books income. Most welfare families supplement their income by off-the-books earnings or by gifts from relatives and friends, including some child support.²⁵ This vital, but extra, income, is not reported; hence, all these families are vulnerable to sanctions. And sanctions reduce welfare costs. Even though poverty-related costs may show up elsewhere in another part of the county budget, that occurs at a different time and a different place.

This low-visibility sanctioning can become increasingly serious if states are successful in privatizing their welfare systems. In Texas, for example, large corporations such as Lockheed and IBM are bidding to privatize the entire welfare system. At the present time, small parts of welfare—work demonstration projects, for example—are sometimes privatized, but here we are talking about intake, verification, monitoring, and sanctioning. This is a really serious development. The history of privatization, which is very extensive in the United States, shows that very quickly private contractors become sole-source bidders and

²⁵ C. Jencks, *Rethinking Social Policy: Race, Poverty, and the Underclass* (Cambridge: Harvard University Press, 1992); and K.M. Harris, “Work and Welfare Among Single Mothers in Poverty” (1993) 99 *Am. J. Soc.* 317.

governments, in effect, become trapped in a monopoly situation. The state governments and their contractors will be under pressure to show a positive cost-benefit ratio. With privatization of services, major cost reductions come through reducing labour costs.²⁶ Then, it is easy to save money in welfare by denying entry, imposing sanctions, and terminating benefits. Finally, it will be very difficult to find out what is going on—to get the data from the private companies, and, increasingly, from public agencies.

This kind of welfare reform—what Michael Lipsky called “bureaucratic disentanglement”²⁷—is particularly insidious because increasingly, the victims have no redress. They no longer have the means to challenge field-level agency decisions. I am not thinking primarily of the end of the formal entitlement status; although not helpful, governments do have to act lawfully. Rather, the poor no longer have legal help. Although technically available, the Legal Services Corporation was never able to handle the need, and now it is badly crippled. In addition to welfare reforms, the Republican Congress—unable to eliminate Legal Services entirely—limited its ability to challenge welfare reform.²⁸

As stated, welfare rolls are finally declining as the economy continues to improve. Hopefully, as Americans begin to feel better about their personal lives, and, as a result of the new legislation, the welfare crisis will begin to recede in the political conscious. Perhaps, then, some of the unfortunate consequences of present policies can be ameliorated.

VI. NEW DIRECTIONS

What direction should we take for welfare reform? Contrary to the stereotype, most welfare recipients are working, or have recently worked, and will leave welfare in a relatively short time via work. They may return to work, when jobs disappear or there is a family crisis, but, even so most will eventually leave via work. In other words, and this is

²⁶ See J.D. Donahue, *The Privatization Decision: Public Ends, Private Means* (New York: Basic Books, 1989); and J.F. Handler, *Down From Bureaucracy: The Ambiguity of Privatization and Empowerment* (Princeton: Princeton University Press, 1996) c. 4.

²⁷ M. Lipsky, “Bureaucratic Disentanglement in Social Welfare Programs” (1984) 58 Soc. Serv. Rev. 3.

²⁸ For example, Legal Services, a publicly funded federal legal-aid system for non-criminal matters, can no longer handle class action lawsuits. The ban applies not only to federal funds, but funds that particular offices receive from any other source.

the crucial point, most welfare recipients are indistinguishable from the low-wage workers—the working poor. For a variety of reasons, they do not qualify for Unemployment Insurance, and therefore use welfare.²⁹ The way to “reform” welfare then is to reform the low-wage labour market: to make more work available, to increase the earnings from employment, to provide post-employment back-up support for breakdowns in child care, transportation, and so forth, to provide subsidies for child care, and to insure health care.³⁰

There are a number of advantages to this approach. First, in contrast to welfare, poverty is a major issue and poverty will be reduced. Moreover, poverty will be reduced by attachment to the paid labour force, which reinforces the work ethic. Second, welfare rolls will be reduced. With a reformed labour market, fewer women will have to rely on welfare in the first place, cycling on and off welfare will be reduced, and exits via work will increase. Third, reforming the low-wage labour market applies to all the working poor. Welfare mothers are reconceptualized as part of the working poor—where they belong. Significantly, men are included, and they have to be part of the anti-poverty program. Fourth, there will be adults who cannot succeed in the labour market, but these numbers will be much smaller than the total number of adult recipients (as well as the present number of un- and under-employed). It is hoped that this may reduce the “crisis” politics of welfare, although this may be wishful thinking.

There has to be jobs. Current welfare policy always assumes that jobs are available and that the “problem” lies with the welfare recipient, but it is simply not true that there are enough jobs. National data are not collected on the actual number of job vacancies but just on the number of people actively seeking work. Even here, we lack good estimates of those who are involuntarily un- or under-employed. However, whenever detailed area studies have been made, they have always shown that applicants outnumber considerably the availability of jobs. Therefore, reforming the low-wage labour market has to include job creation policy. There have been some successful job-creation programs—CWA in the Depression, and CETA—but they arouse opposition and are always short-lived. And today, there is very little talk about disturbing the labour markets.³¹

²⁹ D. Maranville, “Changing Economy, Changing Lives: Unemployment Insurance and the Contingent Workforce,” (1995) 4 B. U. Pub. Int. L.J. 291.

³⁰ These proposals are discussed at length, in *We The Poor*, *supra* note 3, c. 5-6.

³¹ *Ibid.* c. 5.

What kinds of jobs? Ideally, there should be an economy full of well-paying jobs with benefits. But this is unlikely—at least in the near term. The more likely scenario is a world of low-wage, contingent jobs with few benefits. This means that additional income and benefits will have to be supplied. At long last, after considerable doubt and struggle, the minimum wage has been raised modestly. So far, the dire predictions have not come to pass, and it would seem that further, modest raises should be considered. In addition, the Earned Income Credit (EIC) has to be maintained and strengthened. The EIC is the contemporary version of the “negative income tax.” Low-income earners receive money back from the Treasury. The more a person earns, the more he or she receives up to a break-even point, when benefits start to decline until a certain earned income level is reached. At the present time, the EIC is a significant program. Nearly 14 million people receive the EIC, and the benefits are substantial. For a family with two or more children, earning \$8,500 per year, the benefit will be \$3,370, which is just about the federal poverty line. More than 6 million working families below the poverty line are eligible, and the incomes of 1 million workers will be raised above the poverty line.³²

The EIC is expensive. By FY 1998, when fully phased in, it is expected to cost \$24.5 billion per year. Thus far, the EIC has remained popular because it supports workers. However, it is not trouble-free. It is claimed, although there is no clear evidence, that there is a disincentive to work once the break-even point is reached and benefits begin to decline. There are also problems of participation, errors, exploitation by for-profit tax preparers, and fraud. Much can be done to improve the program.³³

Increasing the income from work will help two other major issues: child care and health care. That is, with more income, families will be able to afford better child care and health care. Nevertheless, extensive subsidies will still be necessary. The costs of child care have already been mentioned. What has to be emphasized are the serious risks to the children and to all of society prevalent in the extensive world of poor quality day care. Unless addressed, these risks will steadily

³² R.H. Haveman & J.K. Scholz, “Transfers, Taxes, and Welfare Reform” (1994) 47 *Nat'l Tax J.* 417.

³³ J.K. Scholz, “The Earned Income Tax Credit: Participation, Compliance, and Anti-Poverty Effectiveness” (1994) 47 *Nat'l Tax J.* 3; and A.L. Alstott, “The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform” (1995) 108 *Harv. L. Rev.* 533.

increase as more infants need child care and as more mothers are required to work non-standard shifts.³⁴

The problems of health care have been on the public agenda for several years. Here, I just want to note the connection between poverty, health, and employment. What is usually not considered, but is very important, is the health status of children. Not only are poor children more at risk but when children are sick, mothers cannot work. Yet, more and more low-wage employers either cannot afford the cost of health insurance, are either dropping coverage altogether, or are covering the employee only, or are offering coverage for the employee's family that is too costly for the low-wage worker. The result is that very large numbers of the working poor either lack coverage or have inadequate coverage. For those who are covered, there are increasing problems of information and access to health care, especially with the rise of managed care. For those not covered, there are severe problems in finding and getting free health care and at the same time, trying to hold down a job. These considerations are well known, but, it need hardly be said, reforming the health care system to cover the working poor is exceedingly difficult and costly.³⁵

Other major structural reforms are needed. The Unemployment Insurance system is not designed to cover the low-wage, female labour market, especially when mothers have to quit work because of family crises. The result is that the great majority of welfare recipients who are in and out of the labour market do not receive UI benefits; rather, they treat welfare as UI.³⁶ Many of the working poor and welfare recipients have disabilities which make employment difficult to obtain but are nevertheless not severe enough to qualify for ssi.

Finally, the issues involved in reforming the low-wage labour market remind us once again of the special difficulties facing women. The child care issue, as perhaps no other, illustrates the terrible dilemmas now facing women. They have to work to maintain their independence and the family's standard of living. At the same time, they are forced into the low-wage, discriminatory labour market. Yet, neither

³⁴ *Supra* note 17.

³⁵B. Wolfe, "Reform of Health Care for the Nonelderly Poor" in S.H. Danziger, G.D. Sandefur & D.H. Weinberg, eds., *Confronting Poverty: Prescriptions for Change* (Cambridge: Harvard University Press, 1994) 253.

³⁶ The percentage of unemployed who receive UI has steadily declined to about a third. A principle problem for the mother is that quitting for "good cause" usually means "work connected," not for "family reasons" (for example, a breakdown in child care because of shift work). Another big problem is the lack of fit between temporary jobs and multiple jobs with the requirement of being available for "suitable work": see Maranville, *supra* note 29.

men nor the government recognize their special burdens as mothers. In the United States, mothers are working more, longer hours, spending less time with their children, and suffering more stress and more ill health—and with growing poverty, there is more neglect and abuse. Reforming the low-wage labour market, by increasing income from work and subsidizing, at least in part, child care and health care, can partially alleviate only some of the problems that women workers face. For this reason, mothers of young children should have much more support—paid family leave, for example—and not be required to work on pain of losing benefits.

There are a number of objections to starting reform with the low-wage labour market. Traditional welfare policy starts at the other end—with long-term dependents, for two reasons: first, this group, which is most in need, consumes a disproportionate share of welfare costs; therefore, programs that move these people off of welfare and towards independence will be the most cost effective; and second, recipients at the other end—those more likely to benefit from an improved labour market—will get jobs anyway.

There is considerable logic to this objection, but the problem is the actual experience. In a word, we lack the technology and the political will to do much for many of the long-term dependents. We know that demonstration projects that are successful are also complicated, subtle, expensive, and, most importantly, very difficult to replicate. In the meantime, politicians lose patience with programs focused on the long-term recipient, especially when results are uncertain and costs begin to mount. Programs quickly become harsh and cheap, and those who do not succeed are blamed. In addition, programs which focus on the long-term dependent do not include men, which is a mistake. Finally, these programs do not reduce poverty, which is the major problem. Current welfare reform defines “self-sufficiency” as not being dependent on welfare. This is extremely short-sighted.

Welfare rolls will go down, but not costs, probably not even welfare costs, since long-termers, those who have more difficulties, consume a disproportionate share of the welfare budget. However, the main reason is that reforming the low-wage labour market is very costly. In the area of child care, Barbara Bergmann estimates the costs as follows: first, the subsidies cannot be restricted just to poor families, or just to women coming off of welfare, nor to single parent families. Rather, they have to be extended, on a sliding-scale basis to low- and middle-income families. When these families are included, there are altogether 19 million children under the age of five. Average high-quality child care for preschoolers costs \$4,800 per year; with

sliding scales, this amounts to \$36 billion annually. There are 29 million older children who need care both before and after school and during summers; at \$3,400 each, with sliding scales, the total costs reach a total of \$39 billion.³⁷ Income support, then, involves major redistributions, but the issue is poverty and inequality in America, not welfare.

³⁷ B. Bergmann, "The Economic Support of Child-Raising: Curing Child Poverty in the United States" (1994) 84 *Am. Econ. Rev.* 76 at 79.