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Kathleen Kost

Frank W. Munger
New York Law School, frank.munger@nyls.edu

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FOOLING ALL OF THE PEOPLE SOME OF THE TIME: 1990’s WELFARE REFORM AND THE EXPLOITATION OF AMERICAN VALUES

Kathleen A. Kost* and Frank W. Munger**

I. INTRODUCTION

In 1981, in the wake of President Ronald Reagan’s rollback of federal welfare entitlements, a story circulated in Washington, D.C. that the handouts by White House security officers to beggars on Pennsylvania Avenue constituted the administration’s policy on the homeless. Reagan’s bare-knuckled assault on federal programs for the relief of poverty left little doubt that he intended to offer less to those who survived on handouts from deserving citizens who paid taxes. Reagan’s welfare reform policy was one element of a partisan attack on a broad range of civil rights laws, regulatory agencies, and poverty relief programs established since the New Deal that were portrayed as costly and favoring “special interests.”

Since the early 1980s, however, the rhetoric of welfare reform has taken a new turn. Liberals as well as conservatives proclaim the failure of the federally supported welfare system to end poverty. In the 1990s,

* Assistant Professor of Social Work, State University of New York at Buffalo. M.S.S.W., Ph.D. University of Wisconsin-Madison.
** Professor of Law, State University of New York at Buffalo. J.D., Ph.D. University of Michigan.

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the public discourse of welfare reform communicates a consensus across the political spectrum: welfare is the problem. Welfare not only burdens taxpayers but also cheats the poor themselves of an opportunity to achieve self-sufficiency. Reformers in both parties advocate placing conditions on welfare to change the behavior of welfare recipients. The new and powerful reform rhetoric is aiding a successful effort to connect policy goals that used to stand in opposition to one another: making the welfare system more effective while severely cutting benefits to reduce the burden on taxpayers, and ending poverty while dismantling federal entitlements and allowing state programs to deny benefits to an increasing proportion of the poor.

The message of more work and less welfare has been accepted by both of the major political parties, and the sweeping reform enacted in August 1996, which ended federal entitlements, has received remarkably broad bipartisan support. Because the public debate has not addressed the causes of poverty and the purposes of income support, however, critical questions about the need for reform and the impact of reform proposals have been overlooked. For example, much is assumed but few facts have been offered about who is poor or why they are poor. Little attention is drawn to the plight of the working poor, which includes eighteen percent of the fully employed labor force, many of whom benefit from the programs reformers would severely curtail or eliminate. Further, few reform advocates explain what they mean when they claim that welfare has failed, and they make little mention of the accumulating evidence that the welfare


New Democrats, including President Clinton, also have supported ending entitlements—a politically savvy move to be sure, but unthinkable for a Democrat prior to the 1990s. See Alison Mitchell, President Voices Optimism on Hopes for Welfare Bill, N.Y. Times, Sept. 17, 1995, at 1 [hereinafter Mitchell, President Voices Optimism]. As the 1996 presidential election drew closer, Clinton's willingness to support an end to welfare entitlements became clear and unambiguous. See Robert Pear, President Says Cuts Are Too Deep in Republican Welfare Plan, N.Y. Times, July 18, 1996, at A21. In August 1996, President Clinton signed legislation ending the sixty-year-old federal program that has been the framework for poverty relief since the New Deal. Francis X. Clines, Clinton Signs Bill Cutting Welfare; States in New Role, N.Y. Times, Aug. 23, 1996, at A1.
system neither undermines the desire to work for a living wage, nor encourages early child bearing and single parenting.\(^3\)

In this article, we address some of these unasked questions. In Part II we examine the reasons for the realignment of the political debate about welfare reform and the political origins of the new consensus about reform. First, we describe the New Deal origins of current federal welfare programs and the distinction between programs for the "morally deserving poor," those with a history of appropriate attachment to the labor force through work or marriage, and programs for the "morally undeserving poor," those whose poverty is considered to result from a morally unworthy lifestyle, such as an unexcused failure to work or to belong to a traditional nuclear family. The deserving poor consistently receive higher benefits subject to fewer conditions, while the undeserving poor receive below-poverty benefits and continually are under surveillance for compliance with restrictions on their income, status, and behavior. We note that debates about welfare policy in America rarely challenge this two-track structure, but rather focus on which of the poor are deserving and which are not.

The New Deal marked an emerging understanding among policy makers that in a national economy the federal government alone has the capacity to redistribute resources to relieve both the cyclical poverty created by the national economy and the poverty of relatively depressed regional economies. Since the New Deal, the public consensus supporting the role of the national government in guaranteeing minimum levels of well-being has grown stronger. Until now, even the undeserving poor have been entitled to minimal federal benefits under programs such as Aid to Families with Dependent Children ("AFDC"), Food Stamps, and Medicaid.

In view of the long standing role of the federal government in poverty relief, how have welfare reformers been able to propose such dramatic changes? The public debates about welfare in the 1990s have taken downsizing or eliminating federal welfare programs as a starting point. Although scholars have suggested that welfare policy has important latent functions, such as controlling working class protest,\(^4\)

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3 See infra part III.

4 See Frances F. Piven & Richard A. Cloward, Regulating the Poor: The Functions of Public Welfare 449-66 (2d ed. 1993); Christopher Howard, Protean Lure for the Working
responding to changes in the role of women and the family, 5 and scapegoating problems of the middle and working classes, 6 we believe the success of current welfare reform can be explained by the rhetorical strategies of politicians. We argue that political leaders have a choice about how proposed policies are portrayed and that their portrayals attempt to connect widely shared values to concrete benefits for particular constituencies. Reformers have succeeded in manipulating the categorization of deserving and undeserving poor, claiming that the proposed reforms only target welfare recipients who are undeserving: idle, shiftless, and irresponsible. Further, their proposals advance a larger political agenda of federal government cost-cutting and downsizing embraced by both parties, which is linked to a concrete payoff in the form of genuine tax relief for the wealthy and nominal tax reductions for the middle and working classes. Finally, we see a critical link between this portrayal of welfare reform and the interests of the most economically insecure mainstream political constituencies. Although the explicit focus of welfare reform discourse in the 1990s has been on welfare recipients and the welfare system itself, we explain the success of reform rhetoric in terms of its strong implicit message that welfare recipients simply are being asked to make the same sacrifices for national prosperity already made by the economically insecure American middle and working classes.

Welfare reform proposals have been put forward in a political context in which the most important premises for reform have remained unchallenged. The success of the ideological maneuvering by reformers can continue only as long as these premises remain unquestioned. In Parts III, IV, and V, we examine both the factual premises for and the likely effects of contemporary welfare reforms. Conservatives long have argued that welfare leads to dependency and that the poor, for their own good, should be required to work. Liberals now seem to agree that requiring work is the answer for many poor persons who receive welfare under federal programs. Yet research suggests that the poor who receive welfare do not lack a work ethic.


Poverty is not caused by laziness; it is caused by factors outside the control of poor people, such as segregation and the declining value of the minimum wage. Welfare does not cause poverty, nor does it cause, contrary to popular perception, the problem of teenage pregnancy. Thus, these are not valid reasons for decreasing welfare benefits.

Further, even if empirical evidence justified behavior modification as a means of ending non-work and non-responsibility for some welfare recipients, this rationale seems quite limited, justifying at most restrictions on welfare for those in need of such discipline. Current welfare reforms will make sweeping changes in many federal programs providing income support and poverty relief affecting a broad cross-section of the working poor whether or not they receive assistance under AFDC.

In Part III, we challenge the stereotypes employed by reform advocates to describe the poor and welfare recipients. We describe two of the programs that have been targeted for reform and the populations they serve, AFDC and the Earned Income Tax Credit ("EITC"). We point out that, contrary to political rhetoric, AFDC recipients represent a minority of the federal assistance beneficiaries who will be affected by the proposed reforms. Further, only a tiny fraction of AFDC recipients actually match the reformers' stereotype of an adolescent, unmarried, African-American female. Neither work ethic nor sense of family responsibility is at issue for most of the poor who will be affected by welfare reform. Thus, there is a serious credibility gap between the reasons advanced to justify welfare reform and the

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9 See Mark F. Testa, Introduction to Early Parenthood and Coming of Age in the 1990s 15-16 (Margaret K. Rosenheim & Mark F. Testa eds., 1992).
10 It might be argued that the young African-American male is an even more stereotypical image of the problematic poor, but dependency on welfare is not the chief problem that politicians or the public associates with this group. See generally Douglas S. Massey, Getting Away with Murder: Segregation and Violent Crime in Urban America, 143 U. Pa. L. Rev. 1203 (1995) (discussing and proposing solutions to the increasing rates of violent crime and crime victimization among African-American men). Hence, the image that dominates the discourse on welfare reform is generally, and historically, the female single parent.
proposals being made. Part III concludes with a comment on the relationship between poverty and the declining opportunities for low wage work in our economy.

In Part IV, we examine the likely effects of reform on the poor and non-poor, including the working poor who do not rely on AFDC, but who often rely on other federal poverty relief programs that the proposed reforms will reduce or terminate. Recently enacted welfare reforms will impose a lifetime limit on recipients, but what happens when time runs out? Will there be work? The new law mandates work, but are there jobs? Welfare reforms at the federal level encourage states to impose conditions that address family formation and parenting choices. Are such conditions likely to yield the desired changes in behavior? And what of the reductions in other forms of income support relied on by those who work but remain below the poverty level—what will the effect be of these changes?

We then consider the likely effects of reducing federal financial support of welfare. We discuss the impact of welfare reform on the economies and taxpayers of states and municipalities. We examine the fiscal and political dilemmas that the reforms will force upon states and local governments. Some states will be required to make a choice between reducing welfare and increasing the burdens of state and local taxpayers. The choices will be posed most painfully in municipalities with low average incomes or high percentages of poor persons, often both, and in particular in areas where higher paying jobs have departed and economic security has eroded as a result of domestic and international market forces that other federal policies often encourage. Can states be expected to maintain welfare benefits by increasing administrative efficiency or use of their own resources when necessary? The evidence provided by the states’ use of discretion in setting benefit levels under the existing AFDC program and in modifying welfare regulations where federal regulations have been waived on request, suggests that the promises reformers make to end poverty and dependence on welfare are little more than empty rhetoric.

In Part V we return to the question of values and the goals of welfare reform. We argue that a false consensus underlies the startlingly similar approaches of the major political parties. We attempt to explain why the initially strong public support even now is
rapidly eroding. In public opinion polls Americans do not agree with the most punitive implications of the politically dominant behavior modification theory underlying many proposed welfare reforms. Perhaps it would not surprise members of the public to discover that current welfare reform proposals are supported by superficial arguments; Americans are skeptical of their politicians and the media. What may be more surprising to Americans is how they are being misled about the effects reforms will have on welfare recipients. They will be still more surprised by the effects that welfare reform, when carried to its logical extremes, will have on the middle and working classes. Sentiments supporting tax relief and government downsizing are based on the hope that smaller government and the growing private economy will provide for American well-being; yet, as we argue throughout, the extended logic of welfare reform threatens not only programs that have reduced poverty, but also programs that help support middle and working class families. The contradictions between the current proposals and the most basic expectations of the public regarding the role of the national government in insuring economic security are becoming increasingly apparent.

We conclude by emphasizing the role of political choice in this process. The premises for current reforms are false, the logic weak, and many of the likely effects of reform will actually threaten the well-being of many who are not on welfare. The situation is ripe for yet another change in the political winds of welfare reform. The link between the morality of self-sufficiency and poverty relief insures that welfare policies will always create a dilemma for the public, and provides openings for political leaders who find it useful to exploit the vulnerabilities of recipients of welfare to serve particular policy agendas, often only peripherally related to welfare and poverty relief. The remedy for such policy instability, we believe, is a more informed public. The solution requires that politicians have the courage to offer more accurate portrayals of poverty, by describing the full range of family and individual experiences encountered in living below the poverty line. We trust the public, which judges politicians and the poor alike, to accept the complexity of poverty, and to support reforms that both complement the power of the modern economy to produce great wealth, and offset the economic insecurities of the average, the poor, and the poorest Americans.
II. THE AMERICAN STATE AND THE DISCOURSE OF WELFARE REFORM

Twelve years after President Reagan’s unsuccessful attempt to dismantle federal welfare programs, President Bill Clinton assumed office promising to “end welfare as we know it.” With that statement, Clinton not only promised change but also suggested the existence of a consensus about welfare and welfare recipients. By referring to a shared perception of the welfare system, Clinton invoked stereotypical images of recipients and their position in society, as surely as Reagan’s references to “special interests” and “groups” outside the mainstream in his statements about welfare in the 1980s did so. By using such language, Clinton straddled the traditionally liberal and conservative positions on welfare reform; he addressed the need to help the poor through proposals to “make work pay,” while he attacked welfare by implying that his proposals were aimed at a burdensome group outside the mainstream. The subtle invocation of popular views of welfare dependency helped Clinton make his case for reform, as much as his vision of poverty relief.

Conservatives who took up Clinton’s cause built their own case for reform on Clinton’s assumptions about poverty, welfare recipients, and welfare dependence. Their proposals for time-limited welfare, a family cap, school attendance incentives, and penalties for bearing children out of wedlock further demonstrated their reliance on the logic of welfare dependency. The shadow of these images and the

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11 See DeParle, supra note 2, at A1.
12 See Edsall with Edsall, supra note 1, at 203.
15 Id. § 101 (proposed 42 U.S.C. § 604(a)).
16 Gingrich et al., supra note 13, at 70-71.
17 See Lucy A. Williams, The Ideology of Division: Behavior Modification Welfare Reform Proposals, 102 Yale L.J. 719, 720 (1992). See also id. at 720 nn.6-10 (identifying states where such programs have been proposed or implemented). Many of the plans by individual states to impose behavior modification incentives or penalties are in proposals to modify existing state programs that already have been submitted to the federal government for approval. See Steve Savner & Mark Greenberg, The Clasp Guide to Welfare Waivers: 1992-1995 (Center for L. & Soc. Pol’y, Washington, D.C.), May 1995. One program that
inferences they support about the blameworthiness of those who remain poor has fallen on and endangered all federal programs for poverty relief, including the Food Stamp Program, Medicaid, and the EITC.

Clinton, pressured by his own rhetoric, has moved steadily toward the conservatives’ position on welfare reform. Although he had previously refused to sign legislation ending the federal entitlement to welfare, in August 1996, during his campaign for reelection, he capitulated to the political pressures he had helped create.

The current discourse of welfare reform is as much about establishing starting points as it is about the ultimate course of policies. What Americans “know” about welfare is shaped by their beliefs about the causes and effects of poverty, and by the moral values they apply in judging the poor’s self-sufficiency or dependence on others. Although Americans’ values have been consistent with many different types of poverty relief policies, political rhetoric has quickly narrowed the range of policies under discussion by selectively

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21 See Clines, supra note 2, at A22.
22 We discuss these values below. Of course, we do not claim that all Americans share the same values or agree on the same policies. There is evidence, however, of a persistent and remarkably broad consensus in the United States about the importance of the moral issues of poverty, such as self-sufficiency. These broad value orientations are manipulated to appear consistent with different welfare policies, depending on who is perceived as deserving of public relief and who is not. See infra part II.
emphasizing particular causes and effects of poverty, and connecting those to the values of the populace. In the current welfare reform debate, for example, the rhetoric has been about how welfare programs have failed to end poverty, and have instead created "welfare dependency." Politicians and the media have selected images of welfare recipients that contradict mainstream values of self-sufficiency, work, and fairness. They suggest that poverty is self-inflicted and that receiving welfare benefits leads to continuing poverty, although they do not provide the public with any facts supporting these contentions. The causes of poverty and unemployment are not discussed as part of the discourse. In this rhetorical context, virtually all of the welfare reform proposals ventured by both parties to limit or dismantle existing welfare programs ignore a vast array of relevant information about welfare recipients and the more widespread underlying problems of poverty. Why, we must ask, has this rhetoric carried the day and successfully narrowed the public discourse of welfare?

In the 1990s, welfare reformers in the United States are debating a system of social provision unique among industrialized countries. American programs for social provision do not provide benefits uniformly, but rather limit benefits to those who make contributions to society or who satisfy strict conditions of need. As a result, the United States has no uniform, universal system of old age pensions, no national health care system, and, unlike many European societies, no

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23 Provision for the poor in the United States has been described as "residualist," because it provides only temporary assistance as a last resort for those in extreme need. See Theodore R. Marmor et al., America's Misunderstood Welfare State: Persistent Myths, Enduring Realities 25 (1990). Programs in England and Canada share some of the same qualities as those in United States, but they employ different methods of financing and have different scopes of coverage. See Ann S. Orloff, The Politics of Pensions: A Comparative Analysis of Britain, Canada, and the United States, 1880-1940 20-21 (1993). Other industrialized societies provide welfare on an "institutional" model, which embodies a commitment to meeting the welfare needs of the entire population. Id. at 19.

24 One exhaustive analysis of the development of American social security policy concludes that, "although [OASDI] has developed greatly since 1935, it is still marked by selective coverage, uncertain protection, and regressive financing." Raymond Richards, Closing the Door to Destitution: The Shaping of the Social Security Acts of the United States and New Zealand 165 (1994).

universal family allowance. In the United States, welfare programs are targeted to specifically defined groups, offer support well below the poverty level in all but two states, and impose ongoing checks for compliance with status, financial, and behavioral requirements.

What Americans refer to as welfare is one part of a complex system of social provision. We will follow the American practice of using the term welfare to refer to poverty programs, and we will adopt the term social provision to refer to the larger system of income support, including social security, Medicare, and unemployment insurance, as well as welfare. Understanding the political rhetoric of welfare reform requires understanding the role that welfare programs play in the larger system of social provisions.

A. The Structure Of Poverty Relief: The Deserving And Undeserving Poor

In the United States, social provisions extended at the federal level fall into one of two distinct categories. The first category provides its recipients with long term benefits indexed to inflation with relatively few conditions, and includes programs for old age pensions and Medicare. It guarantees benefits to those who either have maintained an appropriate attachment to the labor force through work or a family relationship to a worker, or who belong to a class of citizens specifically exempted from work. By far the largest amount of federal spending on social provisions supports programs of this type.

27 Marmor et al., supra note 23, at 38-39.
30 See 42 U.S.C. §§ 401-33 (providing federal Old-Age, Survivors, and Disability Insurance benefits); §§ 1395-1395ccc (providing Health Insurance for the Aged and Disabled).
31 Marmor et al., supra note 23, at 33-34.
32 Id. at 35-37.
The second type of federal program is welfare, including AFDC, the Food Stamp program, Medicaid, and a wide range of other programs that primarily fund services rather than provide direct financial support. The beneficiaries of the second track are largely underemployed and unemployed working age men and women and their dependents. This type of provision is intended to be transitional rather than long-term, leading to self-supporting work and independence. Most programs of this type require substantial state or local involvement to set benefit levels, place conditions on assistance, and determine which applicants satisfy those conditions.

There are two types of federal social provision in the United States, because American welfare programs are founded on moral judgments about the poor and the reasons for their poverty. Although the specific perceptions of particular groups of poor and the boundaries of the programs designed to help them have been reshaped by politics, the distinction between the deserving and undeserving poor has been the basis for poverty relief since at least the nineteenth century, resulting in striking differences between poverty relief programs for those deemed morally worthy and those deemed morally unworthy.

33 Id. at 35-38. Means tested programs also include: child nutrition, earned income tax credits, supplemental security income, title XX, low-income energy assistance, and veterans' pensions. 1994 Green Book, supra note 28, at 1262-63.

34 There is an important residual category not covered by programs in these two tracks. The remaining category, the poorest of the poor, consists primarily of single men and women or childless couples, who are able-bodied but unemployed. Marmor et al., supra note 23, at 40. Members of this group may receive federal assistance under the Food Stamp Program and also may be eligible for Medicaid, but they receive no federal income support. Id. As a result, they are dependent on state assistance and on locally funded General Assistance where offered. Joel F. Handler & Yeheskel Hasenfeld, The Moral Construction of Poverty: Welfare Reform in America 126-27 (1991); see infra note 248.

35 See Marmor et al., supra note 23, at 38-39. Federal welfare programs, such as AFDC, clearly are not intended primarily to provide financial security. "[I]f ensuring a minimally adequate income for all were the primary focus of American social welfare policy outside the domain of social insurance, it could have been pursued more readily by other means," such as by enacting a minimum income support program for all who fell below a set standard of need. Id. at 38. Instead, federally supported welfare is a collection of separate programs, subject to individual means tests as well as to other restrictions that set benefits levels and target them to people the policy makers believe need and deserve them. Id. at 39. The obvious purpose of this complex array of means tested, limited benefit programs is to create opportunities for the poor to become productive citizens by removing specific barriers to self-sufficiency. Id.
The earliest poor relief programs in the United States, followed the English pattern, and were locally administered, aimed at minimal relief of misery, and avoided interfering with the labor market. Local administrators ensured that the conditions of relief were such that neither strangers nor those in the community who were perceived as having no morally worthy reason to not work, would seek help. Thus, the amount of relief was always less than the lowest paid worker could earn. The able-bodied who were destitute without morally acceptable reasons were placed in poorhouses, required to work in outdoor relief programs performing demeaning tasks such as breaking rock, or, more typically, were denied relief altogether. From an early point in American history, then, poverty relief has reflected the labor market and the moral code of the community, and benefits have been denied to those who were able-bodied or without a morally acceptable reason for their destitution.

As labor market conditions changed, the moral status of particular groups of poor changed. For example, over the course of the nineteenth and early twentieth centuries, new categories of poor were deemed deserving, and state programs provided benefits for their permanent relief. Civil War veterans were the first to receive old age pensions, followed by civil service workers. By the 1930s, many states had created pension programs for the blind, deaf, mute, or insane, but poverty in old age was still deemed by many to result from

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36 Handler & Hasenfeld, supra note 34, at 45-48. Economic depressions in the late nineteenth century led to increased unemployment. Id. As a result, harsher poverty relief policies, including forcing the poor into poorhouses, ensued. Id.

37 Id. at 45-47. This has been called the “hostage” theory of poor relief. Id. at 47. The aged, widowed, and members of families where the husband was temporarily out of work were deemed to have morally worthy reasons for their poverty. Id.

38 Id. at 47-48.

39 Id. at 46-47.

40 Id. at 47-48. Old age pensions did not expand during this period, however, because of abuses in the Civil War veterans' pension program. The United States thus lagged decades behind other industrialized countries in the creation of a relatively comprehensive old age pension program. See Orloff, supra note 23, at 215-17.

41 Theda Skocpol, Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States 102-03 (1992). Civil War veterans had earned their benefits by serving the public. Id. at 151.

42 Richards, supra note 24, at 23.
improvidence, not inability to work; thus old age pension programs lagged behind other forms of support for the deserving poor.\(^3\) Similarly, the poverty of single mothers was generally considered the just reward of morally deviant women who violated the “domestic code” of the early twentieth century, which emphasized women’s dependence on male breadwinners.\(^4\) The fact that working class women often worked outside the home only reinforced the middle class value of female dependence embraced by the leading reformers of the early twentieth century.\(^5\) Many states enacted mothers’ pension programs, however, so that “deserving” mothers, those who had lost support through the deaths of their husbands, could meet their children’s needs.\(^6\)

Thus, long before the Social Security Act was enacted in 1935, two fundamental principles of poverty relief were firmly established. First, relief would be guaranteed only to those whose reasons for failing to support themselves were morally acceptable. Second, for the morally ambiguous poor: single mothers; the elderly with a marginal work history; and childless able-bodied adults, the determination of whether their poverty was morally worthy or not was based on past or continuing conduct. Such judgments, and thus the control of benefits, were left to local administrators who considered the legal criteria for eligibility, the conduct of individual beneficiaries, and implicitly, the costs and intangibles that mattered to local taxpayers and voters.\(^7\) When massive unemployment hit during the Great Depression, local governments experienced increasing difficulty in redistributing income in order to provide minimum poverty relief.\(^8\) Although the Social Security Act did not change the principles favoring provision for the morally deserving poor and local administration of relief for the

\(^3\) Handler & Hasenfeld, supra note 34, at 80.

\(^4\) See id. at 52. Early feminists who pushed broader programs did not win general acceptance. See id. at 53-63.

\(^5\) See id. at 54-55.


\(^7\) See Handler & Hasenfeld, supra note 34, at 47.

\(^8\) Michael B. Katz, In the Shadow of the Poorhouse 213-14 (1986) [hereinafter Katz, In the Shadow of the Poorhouse].
undeserving poor, the Act recognized the expanding need for poverty relief programs and the states’ inability to guarantee them.

B. Federal Responsibility For Social Provision

The modern American welfare state emerged during the New Deal, and the enactment of the Social Security Act was one of the most significant markers of its arrival. The programs created by the Social Security Act displayed remarkable continuity with the values and structure of existing poverty relief. On one hand, the Roosevelt administration and its business allies fought successfully to create federally guaranteed and administered old age pensions on a carefully limited ideological basis that reinforced the work ethic by guaranteeing benefits to those who “earned” them through their contributions from wages. On the other hand, under the Old Age

49 Handler & Hasenfeld, supra note 34, at 90. The Social Security Act was debated in a context of “traditional attitudes toward relief policy and labor discipline . . . .” Id. The Roosevelt Administration was unwilling to resist business’ demands that states take the primary responsibility for administering relief programs so that the employed would be pressured to remain working and relief payments could be kept below prevailing wages. Id. At Roosevelt’s insistence, the Social Security Act rejected European models of national insurance for the unemployed, in favor of unemployment compensation that was administered locally with no minimum national standards. See id. at 91-93. Again at Roosevelt’s urging, old age pensions established by the Act were based on an insurance model, under which benefits were “earned” by paying a portion of wages into a fund, rather than on alternative proposals for universal old age support that would benefit the poor as well as the middle and working class elderly. See id. at 105. Categorical assistance under the Act, for the aged not covered by the pension program and for single mothers with children, was left in the hands of state and local administrators. Id. Little was done to challenge entrenched state or local prerogatives, although the Aid to Dependent Children Program broadened some guidelines for assisting children in single parent families and required statewide administration of benefits, in effect extending benefits to many minorities in counties without local welfare programs. Id. at 104.

50 See Katz, In the Shadow of the Poorhouse, supra note 48, at 236-37. Roosevelt’s limitations prevailed despite the Council on Economic Security’s recommendation to enact a much broader, redistributive program of social provision to reach all elderly persons. See id. Roosevelt was opposed to any program which resembled the dole and which was redistributive. See id. at 236-37. He argued that legitimacy of the pension program would be enhanced by shielding recipients from the stigma of the dole. See id. at 236. Further, tying benefits to contributions would reduce the likelihood of demands for increased benefits. Id. Agricultural and domestic workers, who were disproportionately African-American, were excluded to satisfy the political interests of Southern states. Jill Quadagno, The Transformation of Old Age Security: Class and Politics in the American Welfare State 115-16 (1988).
Assistance ("OAA"), Aid to Dependent Children ("ADC"), and Unemployment Insurance ("UI") programs created by the Social Security Act, the administration of welfare for the morally ambiguous poor remained in the hands of state and local administrators who could create discretionary standards, such as being a suitable parent or having a good reason for unemployment. Thus, federal social provision under the Social Security Act was built upon the pre-New Deal moral foundation for welfare; the deserving "earn" benefits that are relatively generous, long term, and secure, while the undeserving receive short term, conditional benefits consisting of services and below-poverty financial support administered by local officials who exercise a great deal of discretion.

Passage of the Social Security Act changed the outlook of politicians in ways that have influenced the welfare debate greatly since 1935. It established that the national economy, specifically capitalism, was the "problem" as well as the "solution" to poverty. The Social Security Act, among other New Deal initiatives, signaled the realization by elites that the federal government had to manage this "solution" because state and local regulators had neither the will nor the capacity to do so. Thus, under the Act, the national government assumed responsibility for a redistributive role that the individual states could not fulfill by guaranteeing the economic security of retired workers who played by the rules of the capitalist economy, and by contributing to funding for at least minimal relief for less deserving categories of poor.

Roosevelt successfully resisted efforts to make social provision for the deserving poor universal and more redistributive, while preserving the character of welfare as a locally administered, highly regulatory

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51 Handler & Hasenfeld, supra note 34 at 103-04. OAA had a great deal of support. Id. at 102. Another old age assistance program, which, unlike OAA, was fully federalized, also had strong backing but was resisted by the Roosevelt administration. Id.

52 Id. at 128.

53 President Roosevelt established commissions to define the new character of national development in light of and in relation to the nation's urbanization. See Kenneth Fox, Better City Government: Innovation in American Urban Politics, 1850-1937 163, 166 (1977). The University of Chicago sociologists who wrote the final report to Roosevelt, and who were the leading urban experts of that time, concluded that the federal government would have to assume a substantial and permanent role to maintain urban economies that had lost the capacity to sustain themselves. Id. at 167.
program. But Roosevelt's theory that old age insurance beneficiaries were deserving because they "earned" benefits through contributions from wages,\textsuperscript{54} inverted popular thinking about social provision. In 1935, many educated, middle-class Americans already believed that the elderly deserved benefits because they were in need despite the fact that they had worked.\textsuperscript{55} Although, as Roosevelt predicted, the payroll tax inevitably reinforced workers' sense of entitlement, increasingly, a broader concept of reciprocity took hold. Citizens who were productive workers throughout their lives, or who would have been but for their age or disability, believed they should enjoy no less than a minimum standard of living in old age.\textsuperscript{56} Indeed, the entitlement itself has been expanded continually both to provide minimum benefits to all elderly Americans whether or not they meet the qualifications for old age pensions, and to include benefits beyond direct financial support.\textsuperscript{57} Though the number of Social Security beneficiaries was initially relatively small, today nearly all Americans will receive Social Security benefits at some point in their lives, many under more than one program. The idea that federally guaranteed entitlements have been "earned" by most Americans is accepted by a broad and powerful coalition of interests that the Social Security Act, and its subsequent administration, helped bring into existence.\textsuperscript{58}

\textbf{C. Post-New Deal Growth In Entitlements}

Since the New Deal, the federal old age insurance and welfare programs established by the Social Security Act have evolved along separate lines. The Roosevelt Administration's preference for contributory social insurance, and its simultaneous disapproval of welfare programs, was reflected in its expansion of the old age

\textsuperscript{54} "Earned" was a powerful ideological tool for defining and delimiting the deserving. In truth, social security benefits have never been established on a strict actuarial basis. See Bruno Stein, Social Security Pensions in Transition: Understanding the American Retirement System 244 (1980).

\textsuperscript{55} See Katz, In the Shadow of the Poorhouse, supra note 48, at 204-05.

\textsuperscript{56} See Handler & Hasenfeld, supra note 34, at 106-110.

\textsuperscript{57} See id.

\textsuperscript{58} See infra text accompanying notes 61-65.
insurance program. Administrators of the program were committed to making the program more popular than non-contributory welfare. Coverage regularly was extended or benefits raised, sometimes prior to corresponding increases in contributions. Increases often occurred when public interest in non-contributory welfare rose. By the mid-1950s, old age insurance supported more beneficiaries than did non-contributory welfare programs under the Social Security Act, and enjoyed the support of solid constituencies in Congress and among the public. Social security was supported not only by the elderly who received benefits, but also by the families who otherwise would have had to take care of them, and by younger workers whose retirement plans began with an expectation of Social Security payments.

Growth of federal programs for the elderly illustrates not only the success of federal administrators’ coalition-building in support of programs for the deserving, but also the spread of two broad popular understandings. First, the public supported the idea that the elderly deserved a minimum quality of life, free from the kinds of harassment that typified state-administered welfare programs. Second, the public equated such guarantees with the federal program. Suggesting rollbacks of federal funding and administration for the elderly quickly became a form of political suicide. Following the initial slow growth of the Old Age Assistance program, federal standards and federal administration were made universal in the early 1970s. With the passage of the Supplemental Security Act in 1974, however, benefits for the elderly and disabled poor who were not covered by old age

59 It is ironic that about 17% of social security beneficiaries are the spouses and children of retired or disabled workers, and thus persons who did not earn their benefits through contributions. See 1994 Green Book, supra note 28, at 34-35. The families of favored workers are treated in ways that contrast sharply with the treatment of the families, and the children in particular, of disfavored AFDC recipients. See infra part III, section B.

60 Orloff, supra note 23, at 307.

61 Id.

62 Id.

63 Handler & Hasenfeld, supra note 34, at 109; Orloff, supra note 23, at 307-08.

64 Handler & Hasenfeld, supra note 34, at 109; Orloff, supra note 23, at 307-08.

65 See Richards, supra note 24, at 158.

66 Handler & Hasenfeld, supra note 34, at 108-09.
insurance were fully federalized and indexed to the cost of living.\textsuperscript{67} An emerging national consensus that the elderly poor were "deserving," not simply improvident workers, and that their welfare was the responsibility of the federal government made the Supplemental Security Income and Medicaid programs politically feasible.

In sharp contrast, Aid to Dependent Children ("ADC") remained a much less generous, and often politically contested, program for persons whose poverty was morally ambiguous.\textsuperscript{68} At its creation in 1935, it was considered a white widow's program, not a general relief program for single mothers or poor women.\textsuperscript{69} "Suitable home" requirements often enabled local administrators to exclude mothers who were unmarried or who did not lead exemplary lives.\textsuperscript{70} Indeed, when ADC was added to the legislation that became the Social Security Act, the Roosevelt administration thought the need for ADC would remain quite limited. The realities, however, were that many single mothers were not the widows of working males, and that single parenting would increase over time. The plight of poor women and of single mothers were not seriously considered or deliberated when ADC was incorporated into the Social Security Act, and the state and local limits on the relief of their poverty were left largely intact.\textsuperscript{71}

The tension between the conflicting purposes of the ADC program, to aid children and to provide benefits only to mothers who meet particular moral tests, was heightened further in the 1960s when it became apparent that an increasing proportion of beneficiaries were unmarried, African-American mothers and their children. Poverty among African-Americans who had arrived recently in northern cities

\textsuperscript{67} Id. at 108.

\textsuperscript{68} The irony of treating this program as relief for the undeserving is that the chief beneficiaries, in both spirit and numbers, are children. This is the primary reason for the public's ambivalence about adding harsh conditions and limitations to modify the behavior of parents. See infra part V, section A.


\textsuperscript{71} See Gordon, Pitied But Not Entitled, supra note 46, at 280-81.
initially was poorly understood. Contemporary accounts by journalists and academics described the terrible effects of discrimination and dislocation, however, which created a widespread understanding that conditions in the ghetto fostered a distinct "culture of poverty" that prevented the poor from entering the mainstream.\(^7\) One response to this new understanding was the poverty policy of the Johnson Administration, which established a wide variety of programs providing services, skills, and even work and other forms of social participation, to address the lack of economic opportunities and other barriers to obtaining mainstream jobs.\(^7\) Funding for the Great Society programs soon peaked, however, and since the 1960s, such programs have been subject to progressive cutbacks or to elimination.\(^7\)

Acceptance of the culture of poverty theory also made other arguments possible. Conservatives argued that the behavior of the poor was different from the behavior of citizens in the mainstream, and that as a result, the poor lacked a work ethic suitable for mainstream jobs; in their view, the behaviors induced by the culture of poverty result in continuing, self-inflicted poverty.\(^7\) Popular beliefs that character differences existed between the poor and the mainstream, made easier by the perceived racialization and feminization of poverty in America, lay behind the introduction of work requirements in the AFDC Program in 1967, and the increasing emphasis on work and other regulatory requirements that have attached to welfare benefits from 1967 to the present.\(^7\)

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\(^73\) See Katz, The Undeserving Poor, supra note 72, at 79-81.

\(^74\) See Handler & Hasenfeld, supra note 34, at 133-34.


\(^76\) Handler & Hasenfeld, supra note 34, at 132-142.
While AFDC, the best known federal welfare program, increasingly has become the target of conservative reformers, income support programs for the deserving poor have fared much better. In 1973, Congress sought to remove many federal programs from political infighting, including Social Security, Supplemental Security Income, and Food Stamps, by indexing them to inflation.\(^7\) In addition, the enactment of the EITC in 1975 provided poor wage earners with a small earnings enhancement,\(^8\) and the program has grown steadily without public comment since that time.\(^9\)

In the 1980s, Reagan’s reform proposals introduced two new and significant themes that we will discuss at length below: cost cutting and reducing the size of the federal government.\(^8\) As part of his welfare reform package, Reagan considered making AFDC an entirely state-directed program, thus ending the federal entitlement to welfare, but the proposal was dropped when it appeared to be politically unfeasible.\(^8\) Instead, Reagan submitted a package of reforms to create block grants in the place of several categorical programs funding welfare related services, which would have resulted in reduced AFDC, Medicaid, child nutrition, and Food Stamp benefits.\(^8\) Although Reagan only made incremental modifications to the existing programs, the modifications rendered ineligible a substantial number of welfare recipients by reducing “disregards” for income earned by recipients who were employed but earning wages that left them well below the poverty level.\(^8\) The struggle to enact appropriate work requirements appeared to end in consensus with the enactment of the Family Support Act in 1988 (“FSA”), a sweeping reform of AFDC that made

\(^8\) Howard, supra note 4, at 406-07.
\(^9\) Id. at 404.

\(^8\) Id. at 120.

\(^8\) Timothy Conlan, New Federalism: Intergovernmental Reform from Nixon to Reagan 114-17 (1988).

transition to work a primary goal of welfare. The Job Opportunities for Basic Skills ("JOBS") program enacted as part of the FSA mandated support services and transitional benefits to make work a realistic possibility. Significantly, Congress appropriated only a small amount of funding for services and transitional benefits under JOBS, and a large number of states still have not fully implemented the program.

D. How Welfare Ideology Has Shaped Welfare Reform In The 1990s

In 1993, President Clinton introduced a new work transition program, The Work and Responsibility Act ("WRA"), the central feature of which was a time limit on welfare payments. While Clinton's proposal was carefully balanced with provisions to extend the time limit and provide support services and child care, its effect was to breach the dike that had been restraining more radical welfare reform. For the first time, a Democrat proposed cost containment, transition to work, and time limits on welfare entitlements as principal goals of welfare reform. After the Republican landslide in off-term congressional elections in 1994, however, the WRA quickly was superseded by more extreme proposals. Republicans extended the logic of Clinton's suggested reforms and proposed, among other limitations, time limits, prohibiting payments to mothers under eighteen with illegitimate children, requiring that adolescent mothers live with an adult, and barring welfare for legal aliens. Furthermore,

85 Id. at 503-505.
86 In 1993, Congress allocated a total of one billion dollars for the states to implement their JOBS programs. 1994 Green Book, supra note 28, at 349. As of May 1993, all jurisdictions had implemented the JOBS program statewide, although only 16 states had claimed the entire amount of their federal funds. Id. at 356. On average, only 16% of non-exempt AFDC adult recipients required to participate in the JOBS program did, although there is some suspicion that these figures were overstated. Id. at 356-59.
88 See, e.g., Gingrich et al., supra note 13, at 65-74.
89 Id.
Republicans proposed radical reductions in the federal role by proposing to eliminate the entitlement to welfare and to convert AFDC to a block grant program.\footnote{Id. at 66-67; see supra notes 13-20 and accompanying text.}

While the Republican proposals were more extreme than President Clinton’s initial proposal, they share important underlying premises. Both Democrat and Republican proposals have adopted the moral logic of self-sufficiency.\footnote{The power of the moral logic of self-sufficiency underlying contemporary welfare reform may be measured by the vast scope of the proposed reforms, which extend well beyond repealing the AFDC program to include cutbacks in Medicaid, Food Stamps, school lunch programs, Head Start, child care assistance, and a variety of other programs that offer nutritional supplements, medical care, or other services. See, e.g., Personal Responsibility Act of 1995, supra note 14, § 501(b). This logic has also been extended to EITC which for the first time is being characterized by Republican reformers as a handout because it includes some working welfare recipients and childless adults and because, like many poverty relief programs, it benefits some families who are marginally above the official poverty threshold. See, e.g., Frank James, Tax Credit Plan in Peril: Program Helps Lowest Earners, Chicago Trib., Oct. 9, 1995, at 1.}

Both parties’ proposals have emphasized the limited responsibility of government for the poverty of the able-bodied,\footnote{See supra note 17 and accompanying text.} and have reduced the federal commitment to welfare by cutting funding, limiting eligibility, and transferring far greater discretion to state administrators. As the 1996 presidential election approached, Clinton’s initial rejection of the Republican efforts to end the federal entitlement to welfare altogether\footnote{See Mitchell, President Voices Optimism, supra note 2; See Robert Pear, Senate Approves Sweeping Changes in Welfare Policy, N.Y. Times, July 24, 1996, at A1 [hereinafter Pear, Senate Approves Sweeping Changes in Welfare Policy].} was replaced by his willingness to sign a bill that contained many of the essential features of the Republican block grant proposal.\footnote{See Clines, supra note 2, at A1.} Within just two years, congressional Republicans maneuvered President Clinton into signing legislation that he had opposed initially and that contained key elements of the broad conservative reform agenda, including an end to AFDC, the sixty-year-old framework guaranteeing welfare entitlements and open-ended federal subsidies for state welfare programs.
The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, enacted in August 1996, less than a year after Clinton vetoed similar legislation in November 1995 and January 1996, introduced the most sweeping changes in welfare since the New Deal. This historic legislation not only reduces and caps federal spending for welfare, but as its centerpiece it eliminates the AFDC program’s guarantee that all eligible persons will receive welfare. By replacing AFDC with a new block grant, the Temporary Assistance to Needy Families (“TANF”) block grant, the new law greatly reduces the federal government’s role in setting program priorities and overseeing standards for eligibility, and it ends automatic federal cost-sharing as welfare rolls rise or fall in response to economic and demographic changes in particular states.

In 1988, the Family Support Act (“FSA”), which also emphasized work-for-benefits, was enacted with broad bipartisan support. The FSA increased the federal commitment to assist recipients who were able to make the transition to work while maintaining support for the rest who were not. Only five years elapsed between the adoption of the Family Support Act and the revolution that began with Clinton’s 1993 proposal to “end welfare as we know it” and that unleashed the more conservative proposals inspired by the Contract With America. Why did an altered political rhetoric about the importance of ending

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96 See Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 603(a)(3)(E)).

97 See id. § 103 (to be codified at 42 U.S.C. § 608).

98 Id. § 103 (to be codified at 42 U.S.C. § 603(a)(1)).

99 Polakow, supra note 26, at 60.

100 Handler, supra note 84, at 503. The meager funding appropriated for the FSA programs revealed that the new consensus was much more concerned about limiting the scope of the federal commitment to welfare than with providing welfare recipients with a realistic opportunity to work. See Handler & Hasenfeld, supra note 34, at 234-35. The FSA also placed much greater emphasis on self-sufficiency than on changing the conditions under which welfare recipients exist, and emphasized ending handouts more than ending poverty. Id. at 235.
welfare emerge so quickly, and what allowed it to succeed? Advocates for welfare reform have manipulated the moral logic underlying American welfare for their own purposes. Politicians often say that they are simply following the polls or that welfare reform reflects the deeply entrenched views of the public. Of course, this is true in the sense that welfare policy is broadly framed by deeply felt moral values. The ideology of welfare insures that certain values will be present in the public discussion of welfare; but values alone do not determine political outcomes. It is the combination of those values and the highly selective images of welfare recipients and welfare dependence that give meaning to "welfare as we know it." Nor can the media be blamed for pressuring politicians to propose particular programs. The media, like the welfare policies themselves, reflect images and issues that have acquired their importance and power through the cycle of selective political advocacy and popular response.

101 For example, the New York Times reported that Clinton's campaign promise to end welfare and his administration's subsequent reform proposals originated in campaign polls that suggested that the public strongly supported such measures. DeParle, supra note 2, at A1, A18. At the same time, as the subsequent development of those promises suggests, the initiative to end welfare was subject to radically divergent interpretations within the Clinton administration and was ultimately directed by the ideology of the dominant faction among the President's advisors. Both parties regularly cite polls or election results to justify policies, but they rarely acknowledge their own broad power to shape policies.

102 See supra notes 36-48 and accompanying text.


104 See Lucy A. Williams, Race, Rat Bites and Unfit Mothers: How Media Discourse Informs Welfare Legislation Debate, 22 Fordham Urb. L.J. 1159, 1168-69 (1995) [hereinafter Williams, Race, Rat Bites and Unfit Mothers] (providing an illustration of this phenomenon). There is a large amount of literature exposing the strong bias of the ideology of American welfare policy towards employment, self-sufficiency, patriarchy, and racial supremacy, reflecting deeply ingrained patterns in our history. Some scholars claim that welfare policies reflect these ideologies because they reflect fixed features of American culture. See, e.g., Nancy Fraser & Linda Gordon, A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State, J. Women Culture & Soc'y 309, 325-31 (1994); Handler & Hasenfeld, supra note 34, at 22-27; Skocpol, supra note 41, at 31-34. Yet such ideological determinism underestimates the importance of the role of politics in shaping policies throughout the nineteenth and twentieth centuries, sometimes with strong dissents and competition between quite different proposals. Ideological determinism also makes it
There are enormous gaps in the logic of contemporary reform. By focusing public attention on the qualities that distinguish the stereotypical welfare recipient from the mainstream, reform advocates have been able to shift the emphasis of public discourse away from poverty, to the deviant behavior of recipients. If the public debate had focused on the issue of poverty, the development of policies assisting the large number of working Americans experiencing a loss of economic security would be the central issue in welfare reform. Serious examination of the extent and causes of poverty would expose the weakness of arguments that depend on the incorrect, negative stereotypes of welfare recipients, and would draw attention to the impact of welfare reform on the twenty million working poor in America. Such inquiry also would highlight the fact that the working poor are among those who receive welfare, and the fact that a substantial proportion of welfare recipients typically cycle between low-wage work and welfare.

If there are so many serious gaps in the premises for welfare reform, why has the rhetoric been so effective in controlling public reaction to such extreme proposals, and what are the limits of its power? Poverty is a moral issue, and, as a result, the ideology of welfare always has stressed the need for self-sufficiency. Only those excused from supporting themselves receive welfare, and they are subject to continuing scrutiny because of their status. The critical issue in the public debate about welfare reform is who the beneficiaries are. The images invoked by advocates for reform are selected in order to evoke moral judgments such as outrage and contempt, or sometimes sympathy, but are not chosen to illuminate the complex causes of poverty. Historically, characterizations of welfare recipients have overshadowed close scrutiny of the causes of poverty, precisely because personal qualities carry heavy moral implications about the reasons for poverty. For example, the recipients of the ADC program proposed in 1935 as part of the Social Security Act were presumptively white widows and their legitimate children. This characterization made their need and worthiness self-evident and also

difficult to explain the social movements that have, from time to time, put forward radically different visions of welfare. See, e.g., Richards, supra note 24, at 173.

105 See Williams, Race, Rat Bites and Unfit Mothers, supra note 104, at 1191-95.

106 Id. at 1175.
justified placing conditions on ADC to assure that benefits could be
denied to most unmarried and working poor mothers. As the
classification of American poverty changed in the 1960s, an increasingly
visible minority of recipients were African-American and unmarried,
and images of these welfare mothers began to dominate the rhetoric of
reform, linking welfare to teen pregnancy, illegitimacy, and ghetto
poverty. As a result, widespread assumptions about ghetto poverty
governed reform discussions.

Although the powerful welfare recipient stereotype, established by
the public discourse of welfare in the 1960s, as an unemployed,
African-American, unmarried, illiterate, teen-age resident of the
ghetto, still pervades the reform advocacy today, arguments about the
link between poverty and welfare dependence have taken a new
turn. The stereotype still leads to inferences about the self-infliction of
poverty as before, but it also stands for further widespread and
uncontested assumptions: the welfare system has "failed," and
receiving welfare is itself the chief cause of continuing poverty. This
conclusion was the foundation for the August 1996 law that ended the
federal entitlement to welfare and reduced spending for many poverty
relief programs.

The respectability of the argument for ending national welfare
programs altogether can be attributed largely to Charles Murray's
Losing Ground, a forceful attempt to provide an empirical basis to
reduce benefits for the poor. Murray principally relies on the
showing that the poverty rate stopped declining after the AFDC
program expanded in the 1960s, and has remained at about the same
level since that time. Murray concluded that welfare and affirmative

107 Id. at 1175-76.
108 Id. at 1180-81.
109 Id. The Kerner Commission described at length the mischaracterizations of African-
Americans that prevailed in the media, and which had become the folk wisdom upon which
legislators and the public drew. Id. at 1181-82.
110 See id. at 1185-88.
111 See supra notes 75-76 and accompanying text.
112 See Murray, supra note 75, at 189.
113 See Katz, The Undeserving Poor, supra note 72, at 151-152.
114 Murray, supra note 75, at 56-65.
action have undermined the work ethic and self-esteem of the poor and have contributed to social problems like adolescent childbearing.\textsuperscript{115} As a solution, he recommended ending both affirmative action and welfare.\textsuperscript{116} Although Murray’s failure to take into account the drastic decline in the real dollar value of welfare benefits since the 1970s renders his inference invalid,\textsuperscript{117} this flaw has not weakened the strong appeal of his argument,\textsuperscript{118} or altered the fact that it underlies the reforms put forward by both political parties. The puzzle remains why such a flawed inference has dominated the welfare reform debate.

Murray’s social vision has continuing power, notwithstanding his flawed inferences and the mounting empirical evidence that work requirements will not end welfare.\textsuperscript{119} The appeal of Murray’s vision is explained in part by its consistency with the widely held public stereotype, which is a product of the selective emphasis of gossip, popular memory, and media depictions of welfare recipients.\textsuperscript{120} The underclass stereotype remains forceful in spite of its distortions because it serves other purposes, such as scapegoating the welfare poor for high taxes and social decay.\textsuperscript{121} But the appeal of this theory may be greater now than ever before for historically specific reasons. The justification for contemporary proposals is that welfare is being reformed for the benefit of recipients: reforms will offer the “tough love” that welfare recipients need.\textsuperscript{122} But why is “tough love” a

\begin{itemize}
  \item \textsuperscript{115} Id. at 156-62.
  \item \textsuperscript{116} Id. at 227-30.
  \item \textsuperscript{117} David T. Ellwood, Poor Support: Poverty in the American Family 58-61 (1988) [hereinafter Ellwood, Poor Support].
  \item \textsuperscript{118} See, e.g., Williams, Race, Rat Bites and Unfit Mothers, supra note 104, at 1174 (quoting the Report From the White House Working Group on the Family, which accepted the welfare stereotype as evidence of welfare recipients’ behavior notwithstanding statistical evidence to the contrary).
  \item \textsuperscript{119} See James Q. Wilson, But Who Will Find Them Work?, The Times Literary Supplement, Sept. 20, 1996, at 15.
  \item \textsuperscript{120} See Katz, The Undeserving Poor, supra note 72, at 151.
  \item \textsuperscript{121} Gans, supra note 6, at 7.
  \item \textsuperscript{122} See Malcolm Gladwell, The Poor, Apparently, Will Always Be With Us, Wash. Post Nat’l Wkly. Edition, Dec. 11-17, 1995, at 23 (stating that “[t]he goal [of welfare reform] is to bring about a spiritual rejuvenation of the underclass, not a physical rejuvenation of the streets where they live”).
\end{itemize}
predominant theme of welfare reform rhetoric? Not coincidentally, this stance fits well with another appeal to constituents that welfare reform will not only end the federal government’s misguided previous interventions but will also cut costs and reduce tax burdens at the same time.\footnote{See Gingrich et al., supra note 13, at 65, 74. The contemporary political appeal of Murray’s theory can be better understood in the context of several decades of conservative criticism of welfare, which appealed to those voters who saw themselves struggling economically while “special interest” groups were favored by national social programs. Edsall with Edsall, supra note 1, at 8-10. Conservative electoral strategy in the 1980s linked resistance to civil rights, affirmative action, and tax burdens to big government and liberal programs of the 1960s. Id. at 12. At the same time, liberals failed to offer an alternative explanation for the declining well-being of many American families or a commanding vision of the future. Katz, The Undeserving Poor, supra note 72, at 139. While the public’s support for national social programs has remained strong, see Times-Mirror Center, The People, The Press & Politics: The New Political Landscape 32 (Oct. 1994) [hereinafter Times-Mirror Center], the national political leadership of each party ironically has placed priority on cutting back social programs. Thus, whether or not Democrats agree with Murray’s social vision, their increasing fiscal conservatism drives their policies toward the outcomes Murray advocates. With cost cutting as the primary motive, and with defense and social security untouchable, Congress has had little choice but to cut welfare and related programs. The primacy of cost cutting, and the lack of alternative programs to cut, makes welfare reform rhetoric seem to be an exercise in hypocrisy, but as we explain in the text, cost cutting and poverty relief are connected by more than convenience and are in fact each part of a powerful implicit economic theory employed by reform advocates. See infra part IV.} Welfare reform is obviously a rollback of social programs that have been described by conservatives for a decade as favoring “special interests.” But ending poverty and improving conditions in the ghetto—the most important goals of welfare reform in the 1960s—are far from the current welfare reform agenda.\footnote{See Gingrich et al., supra note 13, at 65-73.} Most importantly, proposals requiring work, imposing conditions on child-rearing and penalizing childbearing reinforce values that many Americans cling to as they struggle to maintain their own quality of life, even while particular welfare reform proposals strike many as too extreme.\footnote{See infra part V.}

Thus, the welfare reformers of the 1990s are indeed addressing the problem of poverty, but indirectly and by speaking to the needs of their constituents who feel the threat of poverty rather than the needs of citizens who are poorest. In the present climate, proposals for welfare reform link poverty and government spending in two ways. First, the proposals appeal to taxpayer self-interest: because the
government must reduce unnecessary spending to relieve the burdens on the middle and working classes, it can no longer afford to provide charity for the undeserving poor. Second, drawing on the theory of political economy underlying Murray’s arguments, reformers suggest that poverty—everyone’s poverty, not just the poverty of the welfare poor—will be solved through the private economy, not through more government spending.  

Most simply stated, to favor greater individual well-being is to oppose government intervention. The theory is driven by a broad moral vision of society, and argues that government intervention has undermined individual initiative and self-sufficiency. The argument appeals to those whose economic security has been seriously eroded in the past two decades and who, at the same time, have felt excluded from and even oppressed by the social and economic costs of highly racialized national social policies associated with “big government” and the Democratic Party, such as civil rights, affirmative action, and poverty relief.

The goals of Clinton’s welfare reform proposals illustrate how extending this logic undermines the social programs the Democratic Party once helped to build. Although his proposal to help welfare recipients attain self-sufficiency is logically consistent with government support for the creation of job opportunities and adequate assistance during the transition to work, in the political environment of the 1990s, the proposal is heard primarily as a call to end handouts, an interpretation strongly suggested by Clinton’s own phrasing—an “end to welfare as we know it.” Further, the message is also clearly intended to valorize the experience of the working poor and the economically declining middle class who have had to be satisfied with the moral rewards offered by jobs that no longer provide economic security. Not coincidentally, these middle and working class voting groups have become increasingly critical constituencies in presidential electoral campaigns.

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126 Blaming government programs for social problems or linking the growth of the private economy to reducing the size of government is historically familiar in conservative thinking. See, e.g., Edward C. Banfield, The Unheavenly City Revisited 265-72 (1974); George F. Gilder, Wealth and Poverty 105-13 (1981).

127 See Edsall with Edsall, supra note 1, at 22-23.

128 Id. at 28, 181. See Richard L. Berke, Clinton Showing Strength Among Michigan’s Voters, N.Y. Times, Dec. 4, 1995, at A1, A14; Frank I. Luntz, They’d Rather Fight Than
Thus, Murray’s theory has ascended largely because it satisfies so many political and ideological needs. It has provided a context of assumptions and starting points for reform proposals by Democrats and Republicans alike who find that the self-interest of the members of the economically insecure mainstream makes them unusually receptive to the suggestion that poverty is self-inflicted, because the poor behave in ways—early single parenthood, ghetto immersion, failure to complete school, refusal to work—that conflict with mainstream values, and are readily attributed to individual choice. All the stereotypes are implicitly associated with racial minorities, an impression reinforced by the media’s selection of issues and contexts that confirm public preconceptions about recipients. Discussion of the causes of poverty is short circuited because each of the morally stigmatizing characteristics of the stereotype carries its own implications about dependency and the causes of poverty.

In addition to suggesting that welfare dependence is self-inflicted by behavior that distinguishes welfare recipients from the mainstream, the moral lens through which the stereotype is viewed narrows the range of solutions that are proposed. Because in this view the problems of welfare recipients are caused by the recipients’ character flaws, not by poverty, work at any wage level and under any conditions is viewed as beneficial to rebuilding character and as a stepping stone to self-sufficiency; generous welfare without conditions that force changes in behavior only hurts the poor. Thus, the ideology of welfare provides a behavioral theory justifying reductions, conditions, and ultimately non-entitlement. In the 1990s, welfare once again has become primarily a matter of policing the poor not because the poor pose a danger to the public, but because the discipline proposed on the poorest reminds many contemporary wage earners that they are rich in moral virtue if short on income.

Enacted on the eve of the 1996 presidential election, the overhaul of federal welfare has been shaped by the way politicians have


130 Williams, Race, Rat Bites and Unfit Mothers, supra note 104, at 1168-71.
described the nature of the problems to be solved by and the way they have connected shared beliefs about our society with the proposed reforms. The rhetoric of welfare failure and welfare dependency has succeeded in establishing a framework of unexamined assumptions about the need for reform, on which both major parties have based their proposals; thus, the public has had little assistance in reaching a deeper, richer, and more accurate understanding of present or proposed poverty policies.

III. STEREOTYPES AND REALITIES: WELFARE RECIPIENTS AND THE POOR

By manipulating the moral framework of American poverty relief, advocates for welfare reform have focused the public’s attention on welfare dependency; they argue that welfare keeps people poor because it encourages habitual dependency. The massive welfare reforms enacted in August 1996, limit poverty relief not only for welfare recipients, however, but also for a much larger group of working poor families. The General Accounting Office has estimated that more than two-thirds of all working poor families who do not receive AFDC rely on one or more additional type of non-cash assistance.131

Reformers support their argument that poverty is self-inflicted through welfare dependency by pervading the rhetoric with references to “babies having babies” and “the ghetto poor,” and by encouraging the public to draw inferences from those descriptions.132 Advocates and the media reinforce the image of the welfare recipient as an adolescent, minority, never-married mother who is unwilling to work. In Part III, we address such stereotypes and the misperceptions of the poor they encourage. First, we describe the poor, and show that they are not like the stereotypes depicting them. Importantly, most of the

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132 According to a 1993 poll, a broad cross section of the public accepts the generally negative views of welfare and welfare recipients that reformers have invoked to justify cutting back welfare programs. Williams, Race, Rat Bites and Unfit Mothers, supra note 104, at 1172 n.69.
poor live in families with working adults,\textsuperscript{133} and thus welfare reforms designed simply to compel welfare recipients to work are not appropriate for the vast majority of the poor. Second, we describe two of the programs that will be terminated or reduced by the recently enacted welfare reforms, AFDC and the EITC, and the persons who receive these benefits.\textsuperscript{134} We describe the age, ethnicity, family size, and employment of AFDC and EITC recipients to show that the vast majority differ from the stereotypical welfare recipient in important ways.

We describe the beneficiaries of poverty programs to demonstrate that the current rhetoric of welfare reform fails to address the needs of most of the poor in our society. For example, AFDC recipients comprise just one-third of all those living in poverty.\textsuperscript{135} As a result, there is a decidedly disingenuous quality to many of the current welfare reforms, which target dependency by reducing and placing strict limitations on benefits. This solution is based on the assumption that welfare recipients cause their own poverty by choosing dependency over self-sufficiency, work, school, forming a two parent family, and responsible childbearing. Further, reforms have been proposed as if the problem of poverty involved only welfare recipients, and as if all welfare recipients are malingering adults taking advantage of welfare by avoiding work. In reality, however, nearly two-thirds of all welfare recipients are children.\textsuperscript{136} Thus, welfare restrictions will affect primarily poor children.


\textsuperscript{134} Contrary to popular opinion, domestic programs that assist poor families constitute a very small part of the federal budget. In 1995, three of the major welfare programs targeted for change, AFDC, Food Stamps, and Supplementary Security Income ("SSI") accounted for only 3.4\% of the federal budget, or $51.2 billion dollars. 1994 Green Book, supra note 28, at 1255. In contrast, the EITC is a tax expenditure, or revenue loss, and as such does not even appear as a budget item. The expenditure for EITC in 1995 was predicted to be $5.1 billion dollars and was expected to increase to only $5.8 billion dollars in 1996. U.S. Dep't of Com., Statistical Abstract of the United States 336 (1994) [hereinafter 1994 Statistical Abstract].

\textsuperscript{135} 1994 Green Book, supra note 28, at 409, 1154.

\textsuperscript{136} Id. at 399.
We are not suggesting that poverty is an easy problem to solve, nor that any particular method is the best way. We are instead pointing out that the proposed reforms do not address the underlying economic causes of poverty. Reform proposals redefine the problem of poverty in terms of dependency and try to fit it into the federal budget, while avoiding the issues of corporate welfare, affordable housing, and a living wage. Furthermore, the proposals side-step the hard reality of those living in poverty and pretend that a tax cut to those earning $200,000 or more will somehow trickle down to those earning $20,000 or less. Real reform works to resolve the problem; it does not make the problem worse.

We conclude this part of our article by placing the reforms in the context of the low wage labor market. We suggest that poverty is not caused by the perverse incentives of welfare, but is instead the result of the lack of educational and employment opportunities for the poor.

A. Who Are the Poor?

Being poor in America is neither about having a hundred dollars to buy your child a pair of new Nikes, nor about being able to buy a home. It has nothing to do with being able to buy tickets to a movie or a fast food dinner, even though these may constitute a poor family’s night out on the town. Rather, poverty is about being unable to afford a dozen oranges, or basic telephone service, now that deregulation has taken the lid off of affordability. Poverty is about being unable to go to the doctor, to repair cracked windows, leaky faucets, and broken furnaces, or to afford the ever-increasing cost of public transportation. It is about growing wage inequality, a lack of jobs for those without a college education, unaffordable day care, and the increasing cost of health care.

1. Measuring Poverty and the Number of Poor

An important issue in the current debate on the government’s role in helping the poor is the definition of poverty. Currently in this country, that definition is based on the poverty threshold. The poverty threshold is defined as three times the income needed for a basic level of nutrition for a specific family size; families with an income below
the threshold are officially poor. In 1992, the poverty threshold for a four person family was $14,335; the threshold for a family of three was $11,186. This official poverty threshold is calculated using all sources of income including cash transfers through such programs as Unemployment Insurance, AFDC, Supplemental Security Income, and Social Security. As a consequence, the pre-transfer poverty rate differs considerably from the post-transfer rate. For example, in 1979, when the country was in the midst of a long recession, the pre-transfer poverty rate was 19.2%, while the post-transfer rate was just 11.6%. By 1992, the pre-transfer rate had risen to 22.5%, while the post-transfer rate was 14.5%; it was estimated that the cash transfers helped over twenty million more people stay above the poverty threshold that year than would have without the transfers. Even using the post-transfer poverty rate, ten million more people lived in poverty in 1993 than in 1980. It is curious that Congress is seeking to abandon the poor at a time when post-transfer poverty is on the rise.

The official definition of the poverty threshold has been the source of intense debate, particularly in the last decade, because there are many ways to measure poverty. The calculation of the poverty threshold, for example, emphasizes income and ignores the role of assets. It is criticized for not taking into account geographic differences in the costs of housing and utilities as some of the

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137 Id. at 1152.
138 Id. at 1155.
141 Id.
142 Id. at 1171.
145 See Nicholas Eberstadt, A Poor Measurement, Wall St. J., April 22, 1996, at A22 (arguing that poverty rates should be based on material deprivation and not income, because the ability to purchase goods and services more accurately identifies the poor, since most Americans’ incomes fluctuate yearly).
alternative measures do.\textsuperscript{146} Further, the threshold is linked only to the number of people in a family and does not account for differences in the age or gender of children or adults younger than sixty-five years of age.

Several alternative measures that more accurately would reflect the needs of families have been proposed. According to these alternative measures, the minimum income needed by a family of four ranges from a low of $13,700 (the cost of a subsistence diet, shelter, clothing, and utilities),\textsuperscript{147} to $22,308 (based on one-half the median before-tax income of a four-person family).\textsuperscript{148} Some of the alternative measures adjust for assets, geography, after-tax income, or some combination thereof.\textsuperscript{149} Because most of the alternative measures are higher than the official poverty threshold,\textsuperscript{150} many more people would be considered poor if these alternative measures of poverty were used. The recently enacted welfare reforms will affect both officially poor families, and near poor families whose incomes, although above the official poverty level, are low enough that they would be considered poor under an alternative definition of poverty. We will limit our consideration here to the families that fall below the official poverty threshold.

2. The Welfare Recipient Stereotype Versus the Reality of Poverty

Relying on little more than stereotypes, welfare reformers have targeted programs that benefit poor families, and have reduced or eliminated them. The reformers have suggested that the poor remain poor through their own actions, especially non-marital childbearing and failure to work. Further, by focusing on welfare recipients, the reformers have avoided discussing the poverty of the majority of the poor, i.e., those who are not AFDC recipients. The picture of poverty painted by advocates of reform has not distinguished between a typical poor person and the stereotypical welfare recipient. By linking this welfare stereotype to the poor, advocates have been able to promote

\textsuperscript{146} See, e.g., Measuring Poverty, supra note 144, at 143.
\textsuperscript{147} Id. at 152.
\textsuperscript{148} See id. at 142.
\textsuperscript{149} Id.
\textsuperscript{150} See id.
the image of someone with a marginal education, with little or no employment experience, who lacks motivation to assist herself or her family to escape poverty. But is this a true description of the poor in America?

In 1992, as shown in Table 1, there were 7.96 million American families with incomes below the poverty line, including 6.1 million families with children under the age of eighteen. Nearly one out of every five American families with children was poor. Over half of all poor families with children were single parent families; forty-three percent of such families were headed by a married couple. Nearly 10.5 million families in America, both poor and non-poor, were headed by one parent in 1992. Nearly nine-tenths of these families were headed by women, and more than sixty percent of the children of these families lived below the poverty line. In 1993, the average family in the U.S. had 3.16 members, while the average poor family in 1992 was only slightly larger with 3.51 members.

152 May, supra note 143, at 23.
154 Id.
155 Id. at 1111.
156 Id.
158 See id. at 63.
159 Id. at 478.
### Table 1

Characteristics of Poverty Population and Welfare Recipients in 1992\(^{160}\)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under 18</td>
<td>39.6%</td>
<td></td>
<td></td>
<td>67.7%</td>
</tr>
<tr>
<td>11-18</td>
<td>N/A</td>
<td></td>
<td>N/A</td>
<td>3.8%</td>
</tr>
<tr>
<td>19-25</td>
<td>N/A</td>
<td></td>
<td>10.7%</td>
<td>33.2%</td>
</tr>
<tr>
<td>26-34</td>
<td>N/A</td>
<td></td>
<td>12.6%</td>
<td>38.9%</td>
</tr>
<tr>
<td>35+</td>
<td>N/A</td>
<td></td>
<td>7.8%</td>
<td>24.0%</td>
</tr>
<tr>
<td>15-24</td>
<td>N/A</td>
<td>13.2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18-24</td>
<td>11.8%</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>25-34</td>
<td>15.0%</td>
<td>35-44</td>
<td></td>
<td></td>
</tr>
<tr>
<td>35-44</td>
<td>10.7%</td>
<td>23.9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>45-54</td>
<td>6.1%</td>
<td>11.3%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>55-64</td>
<td>5.9%</td>
<td>8.3%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>65+</td>
<td>10.8%</td>
<td>11.0%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{160}\) This Table was compiled by the authors from the figures in 1994 Green Book, supra note 28, at 401-02, 409-11; 1994 Statistical Abstract, supra note 134, at 476-79; May, supra note 143, at 15. Columns may not add to 100 due to rounding.
<table>
<thead>
<tr>
<th></th>
<th>Poverty</th>
<th>Welfare</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Individual</td>
<td>Household</td>
</tr>
<tr>
<td></td>
<td>(36.88 mil)</td>
<td>(13.63 mil)</td>
</tr>
<tr>
<td>Ethnicity</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Caucasian</td>
<td>66.5%</td>
<td>38.9%</td>
</tr>
<tr>
<td>African-American</td>
<td>28.8%</td>
<td>37.2%</td>
</tr>
<tr>
<td>Hispanic 161</td>
<td>18.0%</td>
<td>17.8%</td>
</tr>
<tr>
<td>Other Ethnicities</td>
<td>4.7%</td>
<td>6.2%</td>
</tr>
<tr>
<td>Region</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Northeast</td>
<td>16.9%</td>
<td>17.2%</td>
</tr>
<tr>
<td>Midwest</td>
<td>21.6%</td>
<td>21.0%</td>
</tr>
<tr>
<td>South</td>
<td>40.0%</td>
<td>41.7%</td>
</tr>
<tr>
<td>West</td>
<td>21.4%</td>
<td>20.1%</td>
</tr>
<tr>
<td>Household Type</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Families w/ children</td>
<td>67.6%</td>
<td></td>
</tr>
<tr>
<td>Headed by one adult</td>
<td>36.7%</td>
<td>53.7%</td>
</tr>
<tr>
<td>Never married</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Separated/ Divorced</td>
<td></td>
<td>N/A</td>
</tr>
<tr>
<td>Headed by two adults</td>
<td>30.9%</td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td></td>
<td>42.5%</td>
</tr>
<tr>
<td>Other Households</td>
<td></td>
<td>32.4%</td>
</tr>
<tr>
<td>No adult present</td>
<td></td>
<td>3.8%</td>
</tr>
</tbody>
</table>

161 “Hispanic origin may be any race; therefore numbers add to more than 100 percent.”

1994 Green Book, supra note 28, at 1160 n.3.
In contrast to the stereotype, which emphasizes the poverty of young female heads of households, in 1992 about forty percent of the poor were children younger than eighteen years of age.\textsuperscript{162} At that time, the elderly, people sixty-five years of age or older, comprised 10.8\%, or nearly four million of those in poverty.\textsuperscript{163} Thus, slightly more than one-half of all poor people were either over sixty-five or younger than eighteen years of age; neither of these groups is normally expected to work and support a family. In addition, contrary to the rhetoric and

\begin{table}
\centering
\begin{tabular}{|l|c|c|}
\hline
 & Poverty & Welfare \\
 & Individual (36.88 mil) & Household (7.96 mil) & Individual (13.63 mil) & Household (4.77 mil) \\
\hline
Average Size Family & 3.5 & 2.9 \\
Average # of children in families w/ children & 2.2 & 1.9 \\
Education of Household Head & & \\
No High School Diploma & 38.1\% & 23.7\% \\
High School Diploma (no college) & 30.7\% & 22.4\% \\
Some College & 13.7\% & 6.8\% \\
Bachelor’s Degree or more & 4.2\% & 0.5\% \\
Unknown & N/A & 46.6\% \\
Household Head w/ children employed at least part-time & 55.1\% & 6.4\% \\
\hline
\end{tabular}
\end{table}

\textsuperscript{162} Id. at 1154.

\textsuperscript{163} Id.
stereotypes, a majority of the heads of AFDC families are not teenage mothers, but adults older than twenty-five years;\textsuperscript{164} fewer than ten percent of families with incomes below the poverty line have adolescent heads of household.\textsuperscript{165}

Nearly twenty-two percent of all children in the United States live in poverty.\textsuperscript{166} Despite this national disgrace, the proportion of children living in families with incomes below seventy-five percent of the poverty level for more than six years has increased between 1972 and 1986.\textsuperscript{167} What is striking about this trend is that the decade of the 1980s was a period in which education and high school completion increased while family size decreased.\textsuperscript{168} Both of these demographic changes were expected to reduce poverty.\textsuperscript{169} Instead, the risk of living in a persistently poor family has increased. The proportion of African-American children living in families with incomes below seventy-five percent of the poverty threshold for six years or more increased from 16.1\% in the late 1960s and early 1970s, to 26.3\% between 1981 and 1986.\textsuperscript{170} The risk of living in a poor family is not as great for Caucasian children; only about one percent of all Caucasian children lived in families with low incomes for six years or more through the late 1960s and early 1970s.\textsuperscript{171} However, these children also experienced a deterioration in their circumstances, and by the mid-1980s, about three percent lived in persistently poor families.\textsuperscript{172} Only a portion of this deterioration is due to the continued growth in the proportion of female headed families, however; the principal cause is the increase in inequality of the earnings of wage-earners.\textsuperscript{173}

\textsuperscript{164} Id. at 411.
\textsuperscript{165} Id. at 1144, 1146.
\textsuperscript{166} Id. at 1158.
\textsuperscript{168} Id. at 545, 547.
\textsuperscript{169} Id.
\textsuperscript{170} Id. at 543-44.
\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} See Danziger & Gottschalk, supra note 8, at 104-110.
b. Ethnicity and residence

The stereotype suggests that the typical poor person is urban and African-American. While nearly forty-three percent of poor persons live in central cities, about one quarter live in non-metro areas, and the remaining thirty-two percent live outside central city neighborhoods. The relative concentration of urban poor in large northeastern central cities masks the distribution of poverty across the country. While only about seventeen percent live in the Northeast, forty percent live in the South, twenty-one percent in the Midwest, and the remaining twenty-two percent in the West.

About two-thirds of the poor are Caucasian, and less than thirty percent are African-American. The proportions of poor who are Caucasian and African-American have been relatively stable over the past twenty years. As of 1992, the poor were eighteen percent Hispanic; this proportion has increased since 1975. Therefore, in sharp contrast to the stereotype, the majority of poor people live outside the urban ghetto and are white.

c. Family size and structure

Although the stereotypical poor family is large and headed by a single minority woman, poor families are about the same size as the average American family with children. Two-thirds of poor families have two children or less. More than forty-five percent of poor families are headed by a married couple.

Why, then, has so much attention been paid to the poverty of single mother families? The proportion of mother-only families, both

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174 See May, supra note 143, at 29.
175 See id.
176 See id. at 29, 33.
178 Id.
179 Id.
180 Id. According to the Census Bureau, Hispanics can be of any race and thus may be included in the figures for Caucasians and African Americans. See id. at 1160 n.3.
181 May, supra note 143, at 25.
182 Id. at 14.
non-poor and poor, continues to increase.\textsuperscript{183} For example, in 1960, just seven percent of all families were headed by a mother, while today more than twenty-five percent of all families are so comprised.\textsuperscript{184} This demographic change is the result of large economic and social forces that prompted women to seek careers and that changed the expectations of men and women at all income levels.\textsuperscript{185} Families headed by females are more likely to be poor than other family types.\textsuperscript{186} In addition, nearly one-half of these families are poor. There are at least three causes for their poverty: (1) the comparatively low earnings of female household heads;\textsuperscript{187} (2) lack of contribution from other adult family members, such as non-custodial fathers;\textsuperscript{188} and (3) inadequate public transfers to single mothers who do not qualify for survivor benefits through Social Security.\textsuperscript{189}

The political rhetoric largely has neglected the poverty of two-parent families even though forty-three percent of all poor families are composed of a married couple with children.\textsuperscript{190} A small proportion of families with children are headed by a single male, while about twenty-two percent of the poor are unrelated adults.\textsuperscript{191} Although families headed by females are more likely to be poor, a poor child is just as likely to grow up in a two-parent family as in a single-parent family.

\begin{flushleft}
\textsuperscript{183} 1994 Green Book, supra note 28, at 1111; Ellwood, Poor Support, supra note 117, at 45. \\
\textsuperscript{184} 1994 Statistical Abstract, supra note 134, at 62. \\
\textsuperscript{185} See Ellwood, Poor Support, supra note 117, at 47-52. \\
\textsuperscript{187} For example, women who lack high school degrees earn 58% of what men with similar levels of education earn. Rebecca M. Blank, The Employment Strategy: Public Policies to Increase Work and Earnings, in Confronting Poverty: Prescriptions For Change, supra note 186, at 173. \\
\textsuperscript{188} Only approximately 40% of absent Caucasian and 19% of absent African-American fathers pay child support. Irwin Garfinkel & Sara S. McLanahan, Single Mothers and Their Children: A New American Dilemma 24 (1986). \\
\textsuperscript{189} Id. at 25-26. \\
\textsuperscript{190} See 1994 Green Book, supra note 28, at 1154. \\
\end{flushleft}
d. Education and employment

As Table I shows, the heads of poor households typically have achieved only low levels of education. More than two-thirds of the heads of poor households have no college experience, and more than one-third have not graduated from high school or received their General Equivalency Degrees. The limited education of the heads of poor households affects the labor-market opportunities available to them. The demand for less-skilled workers has declined faster than the size of the low-skilled work force, and employers are hiring more skilled workers even though they demand higher wages. Therefore, given the current emphasis on education, a majority of the heads of poor households face decreasing employment opportunities. "[I]t was harder to escape a poor education in 1992 than it was in 1979."

Notwithstanding the declining job market for those with low education and low skills, in 1993, nearly fifty-six percent of the poor and two-thirds of all people living in poor families with children lived in households where someone worked. About twenty-four percent lived in households with someone who worked full-time but could not earn enough to escape poverty. Once again, the stereotype does not hold true. More than one-half of all poor people live with workers who cannot lift their families out of poverty due to a lack of education and due to declining job opportunities, not because of lack of effort. We discuss the job market in greater detail below.

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192 Id. at 478.
193 See id.
195 Id. at 43.
196 Shapiro & Parrott, supra note 133, at 5.
197 Id.
198 See infra part III, section D.
3. Why Do the Poor Remain Poor?

Although the current welfare reform debate ignores poverty, recent evidence suggests that poverty is more persistent than in the past.\textsuperscript{199} The likelihood of exiting poverty has decreased for all groups but is particularly difficult for female-headed families.\textsuperscript{200} Half of those who escape poverty begin another spell within five years.\textsuperscript{201} Fewer than one-third of families who have had periods of poverty of five years or more remain out of poverty for the five years following their exit from welfare.\textsuperscript{202} At any given point, nearly twenty percent of poor families are in the middle of a long spell.\textsuperscript{203} Intuitively this makes sense: the longer a family can stay out of poverty the more likely it is to have secured an income that provides enough to sustain it through financial difficulty, and the less likely the family is to experience another spell of poverty.\textsuperscript{204} While a majority of poverty spells last less than eight months,\textsuperscript{205} single parents and their children are more likely to be poor twelve months out of a year as compared to two-parent families.\textsuperscript{206}

Reformers say the poor remain poor because they lack a work ethic, but the data do not support this description of the vast majority of the poor in the United States. The typical poor family is likely to be white and live in a southern city, with one or two children. A poor child is just as likely to live with both parents who are married, as she or he is to live with one parent. But regardless of the number of parents that reside in the home, at least one of those parents works.

\textsuperscript{199} Duncan & Rodgers, supra note 167, at 542-44.
\textsuperscript{201} Id.
\textsuperscript{202} Id.
\textsuperscript{203} Peter Gottschalk et al., The Dynamics and Intergenerational Transmission of Poverty and Welfare Participation, in Confronting Poverty: Prescriptions for Change, supra note 186, at 91.
\textsuperscript{204} This is not to say that these families earned enough to move them from the lowest quartile in the income distribution. Income mobility has been relatively stable throughout the 1970s and 1980s; only 20% of all poor persons move to a higher quartile from one year to the next. See Danziger & Gottschalk, supra note 8, at 123; Gottschalk et al., supra note 203, at 92.
\textsuperscript{205} Ruggles, supra note 144, at 95-98.
\textsuperscript{206} Id. at 93-95.
Welfare reformers are correct in their claims that poverty persists in spite of rising welfare expenditures, but they are not correct about the causes of poverty. Although most poor households have a wage earner, full-time low-skilled jobs are becoming increasingly scarce, and real wages are declining. Many of the problems of poverty persist because of the scarcity of jobs above the minimum wage available to persons who lack a college degree. We return to the economic causes of poverty below, but next we describe recipients of welfare under the AFDC program.

B. The AFDC Program and Welfare Recipients

The federal cash assistance program AFDC has been the primary focus of reform efforts. AFDC recipients have been held up explicitly as examples of all that is wrong with welfare. Conservatives have argued that AFDC contributes to the deterioration of social mores, the breakdown of two parent families, and male irresponsibility towards family and society. Reformers across the political spectrum have presumed that a majority of AFDC recipients are trapped in a cycle of dependency and will remain continuously on the welfare rolls for years.

The recently enacted reforms not only will terminate AFDC, the long-standing federal framework for welfare, but also will reduce or terminate many other federal entitlement programs. These other programs are being modified because they are perceived as providing “handouts” to persons like those who receive “welfare,” i.e., AFDC recipients. Reform proposals not yet enacted also would reduce the availability of the EITC, an income supplement explicitly for the working poor, because the supplement is likewise characterized as a “handout” to the poor. Like the EITC, many of the programs that

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208 See infra part IV, section F.
have been terminated or cut back, including the Food Stamp program, child care and nutrition programs, and Medicaid, assist both AFDC recipients and the non-AFDC poor. For example, since its establishment in 1965, the Food Stamp program has provided coupons to eligible poor individuals and families for the purchase of nontaxable food items. It is the only means-tested program whose benefit level is based solely on need and not on residence or family structure. Nearly 7.4 million households received food stamps in 1992. Approximately one-half of these households also received AFDC, about one-quarter received Supplementary Security Income ("SSI"), more than one-quarter received Social Security, and more than one-fifth received Medicare. The federal government currently pays the entire cost of Food Stamp benefits and shares administrative costs with the states. Currently, benefits allocate an average of eighty cents per meal for recipients; changes to the Food Stamp program reduce this benefit to an average of sixty-six cents per meal for families receiving cash assistance in a state program, including families with children, the elderly, the disabled, and the working poor. In addition, the Reconciliation Act of 1996 eliminates the eligibility for traditional welfare benefits of legal immigrants seeking citizenship, and limits eligibility of poor, childless adults between fifteen and sixty years of age.

For example, the Medicaid program provides health care coverage to poor families with children and to poor individuals including the elderly and the disabled. See 1994 Green Book, supra note 28, at 333-34. In 1992, 31.15 million people were enrolled in the Medicaid program. U.S. Dep't of Health & Human Services, Social Security Admin., Annual Statistical Supplement to the Social Security Bulletin 320 (1993). Although a majority of recipients are poor children and their parents, nearly 70% of Medicaid costs are for care to the elderly and disabled. 1994 Green Book, supra note 28, at 805-06.

Id. at 768.

Id. at 755.

Id.

Id. at 759-760.

The Depth of the Food Stamp Cuts in the Final Welfare Bill (Center on Budget & Pol'y Priorities, Washington, D.C.), Aug. 12, 1996, at 1 [hereinafter The Depth of the Food Stamp Cuts]. Many households may receive income from more than one of these sources. See 1994 Green Book, supra note 28, at 774.


Id. § 815 (amending 7 U.S.C. § 2015(d)). Individuals between 15 and 60 years of age are ineligible for Food Stamps benefits if they fail to register for work or refuse to
Because reform rhetoric rests heavily on assumptions made about the character of welfare recipients inferred from popular stereotypes, we will compare those stereotypes with data about poor families and families receiving welfare under AFDC.

1. Aid to Families with Dependent Children

The AFDC program originated in the Social Security Act of 1935. The program never was intended to end poverty for poor families; rather it was designed as a safety net to provide support for poor children living in fatherless homes. Assistance was extended to the adult head of the household in 1950. Throughout this early period, never-married mothers rarely were eligible for benefits because they were considered morally unfit to receive aid. Families that had moved recently also were not eligible for assistance because local legislators believed that taxpayers should not have to support transients. Although two-parent families who were poor because of one parent’s unemployment have been eligible to receive benefits through the AFDC-Unemployed Parent (“AFDC-UP”) program since 1962, until the Family Support Act (“FSA”) made these benefits mandatory in 1988, only twenty-six states participated in the two-parent program. Since 1990, all states have been required to provide assistance to eligible two-parent families for at least six months in a thirteen month period.

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218 Id.
219 Id.
220 Katz, In the Shadow of the Poorhouse, supra note 48, at 253.
222 DiNitto, supra note 217, at 169.
The Work Incentive Now ("WIN") program, enacted in 1967, required AFDC recipients to register for work. This requirement reflected the changing expectations for women with children and tracked the increased work effort of mothers occurring throughout society. This work requirement was strengthened by the FSA, which created the Job Opportunity for Basic Skills ("JOBS") program. JOBS required recipients with children over the age of three to participate in employment related activities, including job search, education, and on-the-job training, to increase their self-sufficiency.

224 DiNitto, supra note 217, at 178-79.
225 See Ellwood, Poor Support, supra note 117, at 48-49.
226 The Supreme Court handed down decisions in this period that made it easier for single mothers and their children to collect welfare benefits. See King v. Smith, 392 U.S. 309 (1968) (striking down marital status based restrictions on welfare); Lewis v. Martin, 397 U.S. 552 (1970) (prohibiting states from including the income of a non-adoptive parent when determining the amount of a child's AFDC assistance). The Contract With America and subsequent Republican legislative proposals specifically would have banned assistance to never-married mothers and their children who were born outside of marriage. See, e.g., Personal Responsibility Act of 1995, supra note 14, §101 (proposing to amend 42 U.S.C. § 605(a)(4)). While the Reconciliation Act of 1996 does not prevent a state from providing cash assistance to never-married mothers, it does limit assistance to adolescent mothers. Only adolescent mothers who reside with either their parents or legal guardian, or who live in "second-chance" adult supervised homes, can receive cash assistance. Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 608(a)(5)).

In addition, in 1969, the Supreme Court struck down restrictions on eligibility due to length of residence in a locality, making it possible for poor families who had recently relocated to receive assistance. Shapiro v. Thompson, 394 U.S. 618 (1969); see Sosin, supra note 221, at 270-71. This latter change acknowledged the federal role in providing support by insuring poor people’s right to travel. Shapiro, 394 U.S. at 629-31. Recently, some states have reinstated minimum residency requirements. Courts have struck down some of these requirements. See, e.g., Aumick v. Bane, 612 N.Y.S.2d 766 (N.Y. Sup. Ct. 1994); Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993), cert. denied, 510 U.S. 1081 (1994). Other states are limiting the benefits available to new residents to the level available in the state of their former residence, unless the former state provided a higher level of benefits. The Reconciliation Act of 1996 expressly allows the states to do this for new residents' first 12 months in the state. Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 604(c)). For example, if a family of three moved from Illinois to Wisconsin, and applied for AFDC, the maximum benefit they would receive is $367, the Illinois level, rather than the $517 Wisconsin benefit level. See 1994 Green Book, supra note 28, at 368-69.
2. Program Funding, Benefits, and Eligibility

Federal matching for AFDC benefits ranges from fifty to eighty percent; a few states, like New York, share their remaining costs with counties. The federal government has established general guidelines for administration and eligibility, but the states have discretion to determine their own Standards of Need and level of benefits. Contrary to popular opinion, AFDC benefits have declined in value since 1974, while the number of female-headed families has continued to rise. In 1993, the last year for which data are available, the average monthly AFDC benefit was $373. When adjusted for inflation, this average benefit is just fifty-five percent of the value of the average benefit in 1970.

State administrators set the Standard of Need, the amount of money they believe a family needs to survive in that state. The maximum benefit awarded in most states is well below the Standard of Need, although the proportion varies considerably among states. Table 2 provides examples of the Standard of Need and maximum benefits for a family of three in which the head of household does not work. In 1993, the poverty threshold for such a family was $11,521, which produces a monthly income of $960. Thus the benefit levels in the three states we compare would be reduced if the family had any outside income, whether in the form of earned income or monetary gifts from relatives.

In 1994, the maximum AFDC benefit for a family of three in Alabama, a low benefit state, was $164, or twenty-four percent of its $673 Standard of Need, and just seventeen percent of the poverty

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227 Id.
228 See id. at 386-87.
229 Id. at 324.
232 See id. at 324.
233 See id. at 366-67.
234 Id. at 367 n.4.
threshold. Colorado, considered a median benefit state, provided a maximum of $356 per month to such a family, about eighty-five percent of the $421 Standard of Need, which was thirty-seven percent of the poverty threshold. In sharp contrast, New York, a high benefit state, provided 100% of its $703 Standard of Need in Suffolk county, which was seventy-three percent of the poverty threshold. In all three states, the combined monthly AFDC and Food Stamp benefits are less than the monthly official poverty threshold and the monthly income from a full-time minimum wage job. As Table 2 shows, adding Food Stamps to the benefit package has been important to reducing poverty.

Table 2
The Standard of Need and Benefits for a One-Parent Family of Three in Selected States, 1994

<table>
<thead>
<tr>
<th></th>
<th>Alabama</th>
<th>Colorado</th>
<th>New York</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard of Need</td>
<td>$673</td>
<td>$421</td>
<td>$703</td>
</tr>
<tr>
<td>Max AFDC Benefit</td>
<td>$164</td>
<td>$356</td>
<td>$703</td>
</tr>
<tr>
<td>AFDC + Food Stamp</td>
<td>$459</td>
<td>$645</td>
<td>$904</td>
</tr>
<tr>
<td>Benefits</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gross Income Test</td>
<td>$1245</td>
<td>$779</td>
<td>$1301</td>
</tr>
<tr>
<td>Monthly Gross Income At the Poverty Level</td>
<td></td>
<td></td>
<td>$960</td>
</tr>
<tr>
<td>Monthly Gross Income at Minimum Wage</td>
<td></td>
<td></td>
<td>$731(^{240})</td>
</tr>
</tbody>
</table>

\(^{235}\) See id. at 366.
\(^{236}\) Id.
\(^{237}\) Id.
\(^{238}\) See id.
\(^{239}\) Id. at 366-67.
\(^{240}\) Calculations by the authors based on a minimum wage of $4.25 per hour, for 40 hours a week, and 4.3 weeks per month.
Food Stamp benefits also have had an impact on state funding for AFDC because states have taken into consideration the value of the Food Stamp benefits in determining the maximum AFDC benefit.\footnote{1994 Green Book, supra note 28, at 334.} In part because Food Stamp benefits are funded solely by the federal government, unlike AFDC benefits, which are partially funded by the states, most states have allowed the value of their AFDC benefits to erode over time, knowing that federally funded Food Stamps will make up part of the difference. Notwithstanding the offsetting increases in Food Stamp benefits, the real value of the combined AFDC and Food Stamp benefits for a family of four declined twenty-six percent between 1972 and 1992.\footnote{McLanahan & Sandefur, supra note 230, at 139-40.}

To be eligible for assistance, a single parent family must meet two income tests: a gross income or asset test, and a counted or net income test. The gross income test considers the amount of money the applicant is currently making. In 1994, for example, gross income could not exceed 185% of the Standard of Need.\footnote{See 1994 Green Book, supra note 28, at 366.} Thus a single-parent family would not qualify for assistance if its gross income was greater than $1245 in Alabama, $779 in Colorado, or $1301 in New York's Suffolk County.\footnote{Id.}

The rules governing eligibility for an AFDC-UP family include both the income tests mentioned above as well as an employment test; the principle wage earner, usually the father, must be attached to the labor force as demonstrated with a recent work history.\footnote{See id. at 332.} The wage earner must have earned income in at least six quarters in any thirteen calendar quarters, or have been eligible for or received unemployment compensation within one year of application.\footnote{Id.} Thus if a father has exhausted his unemployment insurance and has been out of work for two years, the family will not be eligible for assistance under this federal program. In addition, AFDC-UP families lose their eligibility if their principal earner works more than 100 hours in a month.\footnote{Id.}
last resort, the family might be eligible for welfare funded exclusively
by the state or local jurisdiction, known as General Assistance
(“GA”). Benefits under GA programs usually are significantly
below the poverty line, however, and often are available only for short
periods of time.249

3. AFDC Recipients: Stereotypes and Realities

Recall that the stereotype suggests that the average AFDC
recipient is an adolescent, minority mother, content to live and raise
her many children in the squalor and destitution of an urban ghetto. In
1992, the program served approximately 4.8 million families, or 13.6
million people.250 In this section we use the information provided in
Table 1 and other data about the characteristics of those who receive
AFDC benefits to determine whether this stereotype of the welfare
recipient is supported by the facts.

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248 General Assistance is a state or locally financed income maintenance program for
persons in need who do not qualify for economic assistance under the federal AFDC and
Supplementary Security Income programs. There are no federal mandates or regulations
requiring states to implement GA or governing its administration. The program provides
assistance primarily to poor single adults and childless couples. Lewin/ICF & James Bell
Associates, State and Local General Assistance Programs: Issues and Changes 10-13
(1990). Historically, state administrators also have used GA as interim support for
individuals awaiting SSI verification and for two-parent families who are not eligible for
AFDC. Id. Some states provide GA benefits for women in their first two trimesters of
pregnancy. Marion Nichols & Kathryn Porter, General Assistance Programs: Gaps in the
Benefits range from cash assistance to fire wood, a bag of groceries to a bus ticket. In 1989,
24 states had ongoing or short-term programs without categorical limits for these groups,
while 16 states had ongoing or short-term programs with categorical limits. Lewin/ICF,
supra, at 11. Administration, eligibility, and benefits vary between and within states that
have GA programs. See id. at 10-27. State and local expenditures for GA programs in 1989
ranged from a high of over one and a half billion dollars in New York state, to just under
$2000 in South Carolina. Id. at 14. Because the cost of these programs is borne entirely by
states or by local jurisdictions, their elimination increasingly has been suggested as a way to
reduce expenditures in an effort to balance budgets. See Sandra K. Danziger & Sherrie A.
Kossoudji, University of Michigan, What Happened to Former GA Recipients?, The Second
Interim Report of The General Assistance Termination Project 1 (1994) (describing the
termination of GA in Michigan). In fiscal year 1992 alone, nearly 450,000 recipients lost
assistance as programs were cut or eligibility was changed. Nichols & Porter, supra, at 49.
The impact of these cuts on recipients was not considered; it was assumed that recipients
would find employment. Id. at 41.

249 Id. at 16-17.

a. Age

The most seriously distorted perception of welfare recipients, that most are the heads of households, when in fact two-thirds of all AFDC recipients are children.\(^{251}\) Almost half of the children supported by AFDC are of pre-school age, i.e., five years of age or less,\(^{252}\) and nearly one-quarter of these children are under the age of three.\(^{253}\)

In sharp contrast to the stereotypical adolescent mother, less than five percent of AFDC household heads are younger than eighteen, and half are older than twenty-five.\(^{254}\) The median age of a male household head is thirty-four.\(^{255}\)

b. Family size and structure

In 1992, the average size of an AFDC family was 2.9 persons; nearly seventy-five percent of families had only one or two children.\(^{256}\) The average size of an AFDC-UP family, which is by definition a two-parent family, was 4.6 persons.\(^{257}\) The stereotype of a welfare household with many children does not hold true for either single parent families or two-parent families receiving welfare. Large families are not the norm but the exception.

While the majority of AFDC households are composed of a single mother and her children, AFDC also assists foster children whose families meet the eligibility criteria. About fifteen percent of households that received AFDC assistance in 1992 were children living with no adult, and seven percent were two-parent families.\(^{258}\)

Much of the rhetoric in support of welfare reform focuses on the stereotype of never-married mothers. However, about sixty percent of all mothers who receive AFDC for the first time are divorced or

\(^{251}\) See id. at 399.

\(^{252}\) See id. at 401.

\(^{253}\) Id.


\(^{256}\) 1994 Green Book, supra note 28, at 401.

\(^{257}\) Id. at 409.

\(^{258}\) See id.
separated, about thirty percent have never been married, and about ten percent are widowed.259 Thus, the majority of women who receive AFDC for the first time have been married previously.

c. Residency, ethnicity, and education

The stereotype of a welfare recipient as a minority urban ghetto dweller conjures up the image of vast, public housing projects in northern cities such as New York, Chicago, and Detroit. Yet once again, the data do not support the stereotype. The typical AFDC family lives in private housing.260 Fewer than twenty-five percent live in public or subsidized housing, and fewer than five percent own their own homes.261 A majority of welfare recipients live in the South.262 Thirty-nine percent of AFDC recipients are Caucasian, thirty-seven percent are African-American, nearly eighteen percent are Hispanic, and the remaining six percent are Asian, Native American, or another ethnic group.263

Although the educational achievement of AFDC household heads has increased since the late 1960s it remains low. In 1969, at least sixty percent of these mothers had not graduated from high school.264 By 1986, only one-half of all mothers who received AFDC for the first time had more than eleven years of education.265 AFDC household heads' limited education gives them a distinct disadvantage in today's labor market.

259 See David T. Ellwood, U.S. Dep't of Health and Human Services, Targeting “Would-Be” Long-Term Recipients of AFDC 42 (1986) [hereinafter Ellwood, Targeting “Would-Be” Long-Term Recipients of AFDC]. These numbers differ considerably from those in Table 1, which take into account only those recipients who currently are receiving assistance. Never-married mothers, on average, remain on AFDC longer than mothers who have been married and therefore comprise a greater proportion of those currently receiving assistance than their initial proportion at entry. See id. at 43.


261 Id.

262 Id. at 391.

263 Id. at 410.

264 Id. at 401.

265 Ellwood, Targeting “Would-Be” Long-Term Recipients of AFDC, supra note 257, at 42. Using 15 years of data from the PSID, Ellwood estimated that nearly 10% of first time recipients had less than nine years of formal education, about 38% had at least some high school experience, and 53% had more than 11 years of school. Id.
d. Length of time on welfare

As stated earlier, the reform rhetoric concentrates on dependency, a code word for the length of time a recipient remains on welfare. Because the stereotype suggests that recipients remain on the dole for most of their lives, reforms seek to impose life-time limits on the length of time aid is available to families. Recent analysis indicates that forty-two percent of new recipients will be on AFDC for two years or less, while about one-third will remain on the rolls for five years or more. About twenty-seven percent will receive assistance for twelve months or less.

In a study conducted by Kathleen M. Harris based on PSID data for 1984-86, more than half the welfare recipients in the sample had multiple spells of welfare within a two-year period. The mean length of the first spell for those who exited welfare to work was 10.4 months, whereas the mean length of the first spell for those who worked their way off welfare, that is, they worked while on welfare, and will continue to work off welfare, was 12.7 months. Harris further found that many former recipients returned to welfare for short periods when they were unable to maintain permanent employment. The average length of this return spell was approximately six months.

267 Id. at 32.
269 Id. at 335.
270 See id. at 334.
271 See id. at 335. About 44% of all spells that were reported monthly ended within 12 months, 51% ended within 18 months, and nearly 64% ended within two years. Id. at 336. In the year that they exit welfare, more than half the women report family incomes below the poverty threshold. Kathleen M. Harris, Life After Welfare: Women, Work, and Repeat Dependency, 61 Am. Soc. Rev. 407, 413 (1996) [hereinafter Harris, Life After Welfare]. After remaining off welfare for a year, however, women are less likely to return. Id. at 412-13. Those beginning welfare will receive AFDC for 6.2 years, on average. Mary Jo Bane & David T. Ellwood, Welfare Realities: From Rhetoric to Reform 64 (1994).
Recall that many families have a difficult time working their way out of poverty, and that many of those that escape it are likely to fall back into poverty once they leave. The same can be said of AFDC families, who may be considered a high-risk subset of this poverty population. In contrast to the stereotype, approximately forty-two percent of recipients who return to AFDC have been employed recently, but either could not earn enough to sustain their family, or lost their jobs and could not find others. Few of these former recipients qualify for compensation under the current rules governing Unemployment Insurance. Nearly forty-six percent who return to AFDC are disabled, adding to the problems they already have experienced in the job market. For such recipients, welfare is a safety net that helps them supplement their low earnings or helps them through periods of unemployment. They neither want nor expect to remain on welfare for their rest of their lives.

e. Employment and work effort

Finally, we address the image of welfare recipients as "slackers"—people who not only shirk their responsibility to support their children, but also expect the rest of society to support them. Efforts to encourage welfare recipients to enter the labor market date back to 1967 to the Work Incentive Now ("WIN") program, which provided economic incentives to recipients who worked. Since 1988, families

272 The group identified as being most at-risk for long term dependency is young, never-married mothers who receive AFDC for the first time when they have a child younger than three years. See Ellwood, Targeting "Would-Be" Long-Term Recipients of AFDC, supra note 259, at 50. These women are also less likely to have either graduated from high school or to have an employment history. Id.

273 Bane & Ellwood, supra note 271, at 44.

274 See id.

275 Id. at 44-45.


277 With the initiation of WIN, AFDC recipients were allowed to keep $30 of their earnings in what was called an income disregard. 1994 Green Book, supra note 28, at 328. Their benefits were reduced $.67 for every dollar they earned over $30; a benefit reduction rate that was in effect a marginal tax rate of 67%. Id. In 1981, under the Omnibus Budget Reconciliation Act ("OBRA"), the Reagan administration limited both the income disregard and the benefit reduction rate. Id. at 328. Eligibility for AFDC was also tightened, effectively eliminating the ability of working poor families who had previously qualified for
have had access to transitional child care funding through the JOBS program and through Medicaid for the first twelve months of earned income.\textsuperscript{278} Conservative reform proposals require employment after two years and a lifetime limit on welfare benefits. But are welfare recipients slackers who deserve such treatment, or are they simply disadvantaged, low-skilled workers?

Research sharply contradicts popular notions of welfare, and provides strong evidence that many welfare recipients are attempting to support themselves and their families despite the disadvantages they face in the labor market because of their limited education and skills. More than one-half of the parents in Harris' sample worked while on welfare.\textsuperscript{279} Women with welfare spells of six months or less were likely to work about one and a half months, or twenty-five percent of the time they received welfare, and mothers receiving welfare for seven to twelve month spells worked thirty-eight percent of that time.\textsuperscript{280} Furthermore, more than two-thirds of all welfare exits are due to employment.\textsuperscript{281} Some recipients are severely disadvantaged in the job market because of their extremely low education and limited work experience. Those who receive welfare the longest are the most disadvantaged in the competition for low-skilled jobs. More than sixty assistance. Id. at 328. In 1984, the income disregard of $30 was reinstated for up to 12 months of earnings while the benefit reduction rate was reinstated for up to four months of earned income. Id. at 329. As Table 2 indicates, it does not take much income for a family to lose its eligibility because of earnings.

\textsuperscript{278} See 1994 Green Book, supra note 28, at 549. After 12 months of consecutive employment, the family would have been eligible for child care assistance through the At-Risk Child Care block grant. See id. at 550-51. The parent or parents would have lost their Medicaid eligibility, but children under age 19, who were born after September 30, 1983, would remain eligible until her family's income exceeded the federal poverty level. Id. at 784-85.

Eligibility for transitional child care through both AFDC and the At-Risk Child Care Block Grant was eliminated as of October 1, 1996. Reconciliation Act of 1996, supra note 20, §§ 103(c) (amending 42 U.S.C. § 602), 116(a)(4) (stating that the amendment in § 103(c) will take effect on October 1, 1996). If a state chooses to participate in the Temporary Assistance to Needy Families, it is not required to submit a state plan until July 1, 1997. Id. § 103 (to be codified at 42 U.S.C. §116(a)(1)). It thus remains to be seen how states will treat previously entitled poor families and their children.

\textsuperscript{279} Harris, Work and Welfare Among Single Mothers in Poverty, supra note 268, at 329.

\textsuperscript{280} Id. at 330.

\textsuperscript{281} Id. at 333.
percent of household heads who receive assistance for five years or more have not graduated from high school, and only one-half of these long-term recipients worked the year prior to receiving welfare.\textsuperscript{282}

4. Conclusion

The stereotype of the AFDC recipients as an adolescent, never-married, minority woman with several children, who resides in an urban ghetto and has little interest in bettering her situation, is not supported by the facts. The typical family receiving welfare is as likely to be Caucasian as African-American. By definition, it will be headed by a single parent, but this parent is likely to have been married and to be in her late 20s.

Unlike the image portrayed by the stereotype, the typical head of an AFDC family works for at least a portion of the time her family receives cash assistance. In fact, she is likely to rely on welfare only when work is unavailable, or when she desires to combine work and welfare during the one to two consecutive years the family receives welfare. However, given her limited education and the skill demands of the labor market, she probably earns the minimum wage or a little more, without health benefits. Because of her child care responsibilities and the cost of day care, once transitional benefits end, she is likely to work only part-time. Furthermore, the combination of the loss of child care funding, lack of employer-provided health insurance, and low income, will make it difficult for the family to survive.\textsuperscript{283} As a result, this family is likely to return to the welfare rolls at least once more for at least a short period.\textsuperscript{284}

The benefits a welfare recipient receives are not generous. She cannot save for a “rainy day” once welfare ends. In fact, if she works while on welfare, she bears an effective marginal tax rate of sixty-seven percent on her benefits.\textsuperscript{285} In most cases, she is using her

\textsuperscript{282} Pavetti, supra note 266, at 33.

\textsuperscript{283} Welfare recipients face a tax rate of 63.7\% in 1994, the first year of a full-time minimum wage job under the EITC rules, and a rate of 53.8\% if the 1993 amendments are phased in during 1996 as currently planned. See Gene Steuerle, Economic Perspective: Combined Tax Rates and AFDC Recipients, Tax Notes, Oct. 23, 1995, at 502 [hereinafter Steuerle, Combined Tax Rates].

\textsuperscript{284} See Harris, Life After Welfare, supra note 271, at 412-13.

\textsuperscript{285} See supra note 277.
meager welfare check to pay for fair market rent, and not the reduced rent available only in subsidized housing. Her Food Stamps will not cover the cost of shampoo, laundry detergent, diapers, or toilet paper because these are taxable items. She is not living off the fat of the land; she is struggling to survive on the scraps we provide.

C. The Earned Income Tax Credit

A second program targeted for reform is the Earned Income Tax Credit ("EITC"). Unlike AFDC, the EITC has been supported historically by both conservatives and liberals as a way to assist poor working families. Also unlike the AFDC program, which has an extensive federal and state bureaucracy scrutinizing eligibility, the EITC is administratively inexpensive because it operates through the tax code. Adopted as part of the Tax Reduction Act of 1975, the credit was designed to supplement the wages of the working poor, in part to offset the rising burdens of regressive taxes such as the Social Security tax and excise taxes such as the gasoline tax. In order to receive the tax credit, a household head must be working and have at least one dependent child who lives with the taxpayer for more than half the year. Approximately thirteen million families with children received benefits from the EITC in 1990.

1. EITC Program Administration and Benefits

A principal feature of the current EITC is that the credit is paid whether or not it is greater than the actual tax on the taxpayer's earned income, and thus it supplements the low wages of many workers. As originally proposed, the credit equaled ten percent of earnings up to a maximum credit of $400 and phased out with incomes between

286 See Howard, supra note 4, at 404.
287 Comm. on Ways and Means, 103d Cong., 1st Sess., Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means 1053 (Comm. Print 1993) [hereinafter 1993 Green Book].
288 Id. at 1061.
$4000 and $8000.\footnote{1994 Green Book, supra note 28, at 1052. The EITC was reauthorized periodically, until the Revenue Act of 1978 made it a permanent part of the tax code. See 26 U.S.C. § 32.} In 1978, the maximum benefit was increased to $500, and the phase-out range was extended to $10,000.\footnote{Howard, supra note 4, at 416.} Changes to the EITC program in 1986 resulted from reports by the General Accounting Office (GAO) and the Treasury Department determining that many of the tax and budget policies instituted by the Reagan Administration disproportionately and adversely affected poor families.\footnote{Id. at 417-22.} These reports highlighted traditional American concerns about distributional neutrality and fairness. The reports noted that the incomes of wealthy taxpayers had increased since President Reagan took office, while poor families' incomes had decreased.\footnote{Id. at 432.}

As a result, in 1990, the EITC was increased to cover the cost of child care for workers supporting families. The maximum tax credit was scheduled to increase over a four-year period, from $953 in 1990 to $1702 in 1994.\footnote{Id.} In addition, for the first time the credit was indexed for family size.\footnote{Id.}

In 1993, changes to the EITC were introduced as part of a deficit reduction package that increased gasoline taxes. Congress and the Clinton Administration again cited the American tradition of distributional neutrality to protect poor families as justification for increasing the EITC.\footnote{Id. at 432-33.} By 1996, a family of three will receive a thirty-four percent credit on its first $6340 in income, producing a maximum credit of $2158.\footnote{Robert Greenstein, The Earned Income Tax Credit: A Target for Budget Cuts? (Center on Budget & Pol’y Priorities, Washington, D.C.), June 1995, at 6 [hereinafter Greenstein, The Earned Income Tax Credit].} That maximum credit will remain constant until the family’s income surpasses $11,620, at which time the credit will decrease, eventually phasing out at $25,109.\footnote{Id.} Families of four will receive a forty percent credit for earnings up to $8900,
producing a maximum credit of $3560. The maximum credit will apply until the family's income reaches $11,620, and then the credit will decrease until it phases out at $28,524.

One criticism of the AFDC program is that it provides little incentive for recipients to work because of its high marginal tax rate, which makes it difficult for recipients to work their way off of welfare. So as not to exacerbate this problem, the 1993 legislation extended the EITC to families on welfare who worked for at least a portion of the year, but disregarded income received through EITC in determining welfare eligibility. This change was expected to provide an incentive for welfare recipients to work. In addition to these changes, the 1993 legislation provides a tax credit for working, childless individuals with low incomes between twenty-five and sixty-four years of age. It is estimated that taxpayers in the bottom twenty percent of the income distribution have experienced a thirty-eight percent increase in their tax burden since 1980, while childless taxpayers in the top twenty percent have experienced a three percent decrease in their tax burdens.

2. Anti-Poverty Effectiveness of the EITC

As the above discussion indicates, many poor and near-poor working families with children, and poor, working, childless individuals, will be eligible for the EITC if the 1993 amendments are fully phased in during 1996. Approximately eleven percent of income tax returns in the United States claimed the credit in 1990.

The effectiveness of the EITC in reducing poverty for working families is significant. About half these credit payments go to families...
who earn less than the poverty threshold for their family size.\textsuperscript{305} Recall that there are about 6.5 million poor families with children under eighteen years of age.\textsuperscript{306} This subsidy will take twenty-five percent of these EITC eligible families out of poverty, effectively closing the poverty gap between their earnings and the poverty threshold for their family size.\textsuperscript{307} These latest changes to EITC, combined with the Food Stamp program before the 1996 reforms, would have provided a large enough subsidy to lift all poor families with a full-time worker out of poverty.\textsuperscript{308}

3. Why Is the EITC Under Attack?

Like the AFDC program, the EITC has been criticized recently by conservatives who argue that the program encourages rampant abuse and fraud. These charges stem from a recent GAO report that cited the tax credit’s noncompliance with the tax code. However, GAO also found that EITC noncompliance was less than that of self-employed taxpayers.\textsuperscript{309} The administrative costs associated with EITC fraud are about one percent of the cost of the program.\textsuperscript{310} Both the Treasury Department and the Internal Revenue Service have instituted changes in their accounting procedures to limit the risk of EITC noncompliance.\textsuperscript{311}

The EITC is thus a potentially important part of America’s antipoverty policy. Unlike AFDC, the EITC is a provision in the tax code and applies only to those who work.\textsuperscript{312} Therefore, the EITC does not carry the stigma of a welfare program even though it has the same effect of reducing poverty. EITC beneficiaries are low-income, working taxpayers.\textsuperscript{313} In this respect, conservatives’ efforts to brand the EITC as a welfare program seem unlikely to convince the

\textsuperscript{305} See Scholz, supra note 289, at 30.
\textsuperscript{306} May, supra note 143, at 23.
\textsuperscript{307} Authors’ calculations based on estimates in Scholz, supra note 289, at 33-34.
\textsuperscript{308} Blank, Outlook for the U.S. Labor Market, supra note 194, at 61.
\textsuperscript{309} Greenstein, The Earned Income Tax Credit, supra note 297, at 19.
\textsuperscript{310} Id.
\textsuperscript{311} Id. at 15-18.
\textsuperscript{312} 1994 Green Book, supra note 28, at 700.
\textsuperscript{313} Id.
Perhaps because the public favors helping the working class, and the EITC is a reward for working, the revised welfare reform legislation, enacted in August 1996, omitted the provisions in prior bills to reduce the availability of the EITC to the working poor. As the following discussion demonstrates, in the present labor market the typical family head who benefits from the EITC has little opportunity to raise his or her income above the poverty level without the assistance of this tax credit.

D. Declining Labor Market Opportunity and the Erosion of Wages

Our descriptions show that neither the typical working poor nor typical welfare families, who also may work, are like the stereotypes on which welfare reformers rely. We do not think that these families could escape poverty if they just worked harder. The increase in income inequality during the 1980s and 1990s primarily is due to an erosion of wages for less-skilled workers, technological changes, continued deindustrialization, and the increased use of contingent workers. None of the proposed reforms addresses these labor market problems facing low-skilled workers.

1. Declining Labor Market Opportunity

Although changes in labor market opportunity are different in rural and urban areas, they threaten workers’ security everywhere. Many rural areas in the South and West experienced an expansion of manufacturing and industrial jobs throughout the 1970s, but economic

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314 A recent Times-Mirror survey showed that 68% of the public would oppose ending the EITC. Times-Mirror Center for the People & the Press, Strong Female Opposition to GOP Lifts Clinton Chances 45 (1995).

315 See Danziger & Gottschalk, supra note 8, at 127-148. In 1973, the median male worker who lacked a high school degree earned $24,079 in 1989 dollars. Scholz, supra note 289, at 1. By 1989, this same worker’s income had decreased to $14,439. Id. The median male worker with only a high school degree also suffered a loss in income during this period, dropping from $30,252 in 1973, to $21,650 in 1989. Id.

316 It is truly surprising that the advice of William Julius Wilson, America’s most knowledgeable sociologist of ghetto poverty, has had such little impact on the discussion of the continuing poverty of welfare recipients and the underclass. Wilson’s principal finding, based on extensive empirical research, is that the continuing poverty and isolation of the poor is the result of ghetto conditions that make employment extremely difficult. William Julius Wilson, The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy 140-164 (1987).
downturns in the 1980s reversed much of the growth that had occurred in farming, energy, and mining, leaving a less diverse economy that provides little opportunity for advancement.\textsuperscript{317} About forty-two percent of rural workers earned less than $11,600 in 1987 (the poverty threshold for a family of four), compared to only twenty-nine percent of urban workers.\textsuperscript{318}

In contrast to the rural expansion during the 1970s, many cities in the Northeast experienced severe cutbacks in their industrial work force throughout the 1970s and 1980s, likewise reducing the employment opportunities of low-skilled workers.\textsuperscript{319} For example, across the country, domestic employment in manufacturing declined from twenty-six percent in 1970 to eighteen percent in 1990, and is expected to decline to just twelve percent by the year 2005.\textsuperscript{320} The sharp decline in manufacturing and wholesale jobs in the central cities of the Northeast and Midwest was accompanied by an increase in service sector jobs during the 1980s.\textsuperscript{321} Many firms in the service sector use contingent labor, however, so that they can pay lower hourly wages, and forgo providing benefits such as retirement plans and health benefits.\textsuperscript{322}


\textsuperscript{318} See 1994 Green Book, supra note 28, at 1155 (providing the 1987 poverty threshold for a family of four); Gorham, supra note 317, at 24. Many people employed on farms full-time, for example, are paid less than minimum wages, and do not receive compensation for room and board. Cornelia B. Flora, The New Poor in Midwestern Farming Communities, \textit{in} Rural Poverty in America, supra note 317, at 206.

\textsuperscript{319} See Danziger & Gottschalk, supra note 8, at 125.


2. The Erosion of the Minimum Wage and Low-Wage Income

The erosion of the value of the minimum wage has contributed further to this increased poverty. Since the end of World War II, the minimum wage had been between forty-five and sixty percent of the average hourly wage.323 As inflation increased in the 1970s and early 1980s, its value began to erode.324 Prior to its increase in 1987, the minimum wage had fallen to just thirty-eight percent of the average hourly wage.325 Throughout the 1960s and 1970s, a family head who worked full-time and earned the minimum wage was able to keep a family of three above the poverty threshold. Today, the minimum wage is twenty-six percent less than its average value in the 1970s, leaving many working people and their families in poverty.326 Today, a person who works at the minimum wage full-time, year round, has a gross income of $731 a month, or about $8800 a year, $300 less than the poverty threshold for a two-person family, or nearly $2400 less than the poverty threshold for the average poor family.

323 Howard, supra note 4, at 424 n.64; Shapiro & Parrott, supra note 133, at 11-15.
324 Howard, supra note 4, at 424.
325 Id. at 424 n.64. Not all industries are required to pay their workers minimum wage. For example, many workers in agriculture, small retail trade establishments, and the service sector are not guaranteed minimum wages. See Isaac Shapiro, No Escape: The Minimum Wage and Poverty (Center on Budget & Pol’y Priorities, Washington, D.C.), June 1987, at 7, 20. President Clinton signed legislation that will raise the minimum wage to $4.75 an hour on October 1, 1996, and to $5.15 an hour on September 1, 1997. See Pub. L. No. 104-188, § 2104(b), 110 Stat. 1755 (1996) (to be codified at 29 U.S.C. § 206(a)). This 90 cent increase, along with the current EITC refundable credit and Food Stamp benefits, should raise a family of four with one full-time worker to the poverty level by 1998. Robert Greenstein, Raising Families with a Full-Time Worker Out of Poverty: The Role of An Increase in the Minimum Wage (Center on Budget & Pol’y Priorities, Washington, D.C.), June 28, 1996, at 5. However, both the EITC and the Food Stamp program have been targets for reform. While the EITC did not undergo the major changes originally proposed by reformers, the income thresholds and phaseout amounts were slightly reduced, Reconciliation Act of 1996, supra note 20, § 909(a)(3) (to be codified at 26 U.S.C. § 32(b)(2)), and the average food stamp benefits will be reduced by $394 in fiscal year 1998 and by $488 by fiscal year 2002. The Depth of the Food Stamp Cuts, supra note 214, at 4. The amount of the reduction varies across states. If we use our earlier state examples for these years, the average Food Stamp household in Alabama will have their yearly Food Stamp benefit cut by $253 in 1998 and $356 in 2002 compared to what they received prior to the changes. Id. In Colorado, the average family’s yearly benefit will be reduced by $344 in 1998 and $443 in 2002, and in New York the household will experience a loss of $629 in 1998 and $704 in 2002. Id.
326 See Shapiro & Parrott, supra note 133, at 14.
The erosion of wages has occurred across all educational levels and within all industrial sectors. Employers across industrial sectors are hiring more college graduates, leaving those with less education, regardless of their employment histories, unemployed or underemployed. Changes in the distribution of incomes, particularly those of male heads of households, increased poverty between 1973 and 1991. The increase in the incidence of low earnings was greatest for minority men, and occurred regardless of their educational attainment. In durable manufacturing, for example, college educated African-American and Hispanic men’s earnings declined by four percent and six percent respectively between 1979 and 1987, while the earnings of male Caucasian college graduates increased by ten percent. Recent reform efforts make no attempt to address the low earnings of men, many of whom are the heads of households. And many non-federal employment programs have been less successful in helping men than women.

A simple comparison of the minimum wage to the poverty level for a single parent family of three illustrates the effect of a low wage job on family poverty. A single parent with two children working full time year round at the minimum wage has a gap of more than $2000 between what she earns and what she should have for her family to survive according to the official poverty threshold. In addition, she can expect to spend about twenty-seven percent of her income for child care. In sharp contradiction to the stereotype, poor single parent families derived less than thirty-two percent of their income from welfare sources in 1990.332

327 See Kevin M. Murphy & Finis Welch, Industrial Change and the Rising Importance of Skill, in Uneven Tides: Rising Inequality In America 101, 120-129 (Sheldon Danziger & Peter Gottschalk eds., 1993).

328 See Danziger & Gottschalk, supra note 8, at 108-110.


330 See Nichols & Porter, supra note 248, at 31-33 (noting that employment programs for men have not been as successful as those for women).


3. Income Inequality and Marginal Tax Rates of the Rich and Poor

Table 3 provides information on the distribution of income in 1993 by quintiles. The program changes we have discussed affect those in the lowest and second lowest quintiles of the income distribution. As the table indicates, those near the bottom of the income distribution have seen a decrease in their incomes over the last thirteen years compared to those in the highest two quintiles, with the lowest quintile experiencing the greatest decline.\textsuperscript{333} The proposed reforms do not address the disparity of income within quintiles for different ethnic groups, nor will they reverse the erosion of income that has occurred for those in the lowest quintiles compared to a nearly twenty-three percent increase in the incomes of those in the highest quintile.\textsuperscript{334}

\begin{table}
\centering
\begin{tabular}{|c|c|c|c|c|c|}
\hline
Quintiles: & Lowest & Second & Third & Fourth & Highest \\
\hline
Average & $9735 & $23,378 & $37,056 & $54,929 & $107,471 \\
Caucasian & $11,452 & $25,529 & $39,270 & $56,987 & $110,774 \\
African-American & $4438 & $11,694 & $21,572 & $35,931 & $75,426 \\
Hispanic & $6315 & $14,695 & $23,687 & $36,003 & $73,354 \\
Change 1980-93 & -10.0\% & -3.8\% & 0.7\% & 7.5\% & 22.9\% \\
\hline
\end{tabular}
\caption{Distribution of Income for the Average Family, 1993\textsuperscript{335}}
\end{table}

One reason for the deterioration of earnings for the lowest quintile is that workers in the lowest two quintiles have been affected disproportionately by corporate downsizing. Heads of households in the lowest quintile experienced forty percent of all reported weeks of

\textsuperscript{333} See May, supra note 143, at 59 (citing U.S. Bureau of the Census, Current Population Reports, unpublished data, March 1994 and prior reports).
\textsuperscript{334} Id.
\textsuperscript{335} Id. at 59-62.
unemployment in 1991. These workers are more likely to have a limited education, and thus are less able to compete for scarce jobs with people with some college education. Nearly twenty-five percent of adults who did not complete high school earn less than five dollars an hour. Because the welfare reform proposals target programs that provide benefits and services to families below the poverty level as well as to those at 185% of the poverty threshold, they will worsen the economic situation of those in the lowest two quintiles. This is a clear violation of the principles of economic neutrality and fairness valued by most Americans.

Although there is evidence that other industrialized countries have experienced similar trends in the distribution of earnings, nowhere is the disparity between those at the bottom and those at the top as great as in the United States. For example, Canada and the United States had similar poverty rates throughout the 1970s. However, when these countries both experienced economic downturns in the 1980s, the Canadian government increased public transfers to poor families by 9.6% in order to offset their decrease in income, while the United States government decreased public transfers to these families by 6.4%.

Another reason for the deterioration of the income of the lower quintiles is that workers in the lowest two quintiles face higher marginal tax rates than those in the other three groups. As we have noted, social welfare policies and programs use a piecemeal approach to helping the poor and near poor. As a result, those with low incomes face high marginal tax rates when the loss of benefits is combined

336 Blank, Outlook for the U.S. Labor Market, supra note 194, at 37.
337 Id. at 43.
338 See Danziger & Gottschalk, supra note 8, at 118-20.
339 See Maria J. Hanratty & Rebecca M. Blank, Down and Out In North America: Recent Trends In Poverty Rates in the U.S. and Canada 15-24 (Nat'l Bureau of Econ. Res. Working Paper No. 3462, 1990). It should be noted that Canada had a substantially higher growth rate during this period. Id. at 16.
340 Id. at 23.
with federal income tax and Social Security tax payments. In fact, a single mother with two children under the age of eleven may face an incremental tax rate as high as twelve percent, as the income from her full-time employment increases from 150 to 200% of the minimum wage, and when the loss of AFDC, Food Stamps, and Medicaid is combined with the EITC, allowable transportation, child care deductions and credits, Social Security taxes, and federal income tax.

The 1996 welfare reforms do nothing to address the lack of jobs for those with few skills, nor do they address income inequality or the high tax burdens of the poor. They do nothing to address the needs of poor children living in families that have been affected by the economic trends we have discussed. "The problem [low skilled workers and welfare recipients] face is not a surplus of bad jobs, as widely assumed, but a surplus of less-skilled workers in a market requiring more skill than ever." Conservative welfare reform legislation only exacerbates the problems of poverty created by the present labor market.

IV. THE IMPACT OF WELFARE REFORM: WHO BENEFITS?

By claiming that poverty is caused by dependency, welfare reformers have justified the broadest possible cutbacks in federal poverty relief programs. After resisting the efforts of majorities in both the House and the Senate for over a year, in August 1996, President Clinton signed the Personal Responsibility and Work Opportunity Act of 1996, welfare reform legislation that eliminates the federal entitlement to cash assistance by replacing AFDC with a block grant program. The block grant will cap federal funding for welfare, place a greater emphasis on work while eliminating the mandate for employment related services, place a lifetime limit on receiving welfare, and give the states much greater control over eligibility and

342 Id. Because states vary in their use of state income taxes, these are not included in our discussion.

343 Steuerle, Combined Tax Rates, supra note 283, at 501-03.


345 See Reconciliation Act of 1996, supra note 20, § 103.
But the attack on welfare does not stop with the AFDC program. Majorities in the House and Senate not only would place more conditions and harsher limits on welfare and end the federal entitlement to AFDC, but also would terminate a broad range of federal entitlement programs that address nutrition, infant and maternal health, child care assistance, energy assistance, and many other needs of a much larger class of working poor Americans. As we noted in Part III, more than fifty percent of all working poor Americans who do not participate in AFDC receive at least one type of assistance that would be affected by the proposed welfare reforms. Conservatives have pushed Congress to apply the same reasoning to the EITC. Under proposals that Congress so far has been unable to persuade Clinton to sign, the EITC supplement for the working poor would be rolled back, and the childless working poor and those who work and also receive welfare benefits would be made ineligible for the EITC.

In Part II, we showed that welfare reform advocates claim that everyone will benefit from the proposed cutbacks in federal programs. They claim that taxpayers will benefit because less money will be spent, and therefore taxes will be reduced. States will benefit by regaining the authority to set spending priorities. Most importantly, they claim, the poor will benefit because the tough new limits will help them end their habitual dependency on welfare. Yet the federal role in poverty relief has expanded continuously since the 1930s in response to the inability of individuals, businesses, and states to manage poverty relief, particularly in depressed regional economies.

In Part III, we described two programs targeted by reform advocates: AFDC, which supports poor families, and the EITC, which
supplements the incomes of the working poor. As we demonstrated, the welfare poor and the working poor overlap because most poor families have a member who works but cannot earn enough to raise the family out of poverty. The stereotypes invoked to support welfare reforms are woefully misleading in view of the actual composition and experience of the two groups.

Part IV examines the impact of welfare reforms on welfare recipients and the working poor, as well as on others who will be affected. First, we describe the program which will replace AFDC on July 1, 1997, the Temporary Assistance for Needy Families (hereinafter TANF) block grant. Although nearly identical legislation was vetoed by Clinton in November 1995, the 1996 TANF block grant contains many elements that have been accepted in principle by moderates of both parties as well as by conservatives. Second, we examine the probable effects of the block grant’s work mandates, time limits, and behavioral conditions, intended to force young recipients to stay at home and go to school, and to discourage recipients from having additional children. Third, we consider the effects of restructuring welfare financing in the form of block grants. Finally, we discuss the broader impact of the TANF block grant and other provisions of the Reconciliation Act on American society, the working poor, the economically insecure near-poor, and state and local taxpayers.

A. The Temporary Assistance For Needy Families Block Grant

Federal welfare programs, such as AFDC, Food Stamps, and Medicaid, are categorical grant programs that make federal funds available to the states for specific purposes. States choose whether

350 Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. §§ 601 et seq.).

351 See Robert Pear, As Welfare Compromise Emerges, Clinton Aide Says Veto is Certain, N.Y. Times, Nov. 13, 1995, at A1. After voicing support for the more moderate Senate bill ending welfare entitlements, Clinton refused to sign the more extreme House and Senate bill. Id. at A1, A20. A shift in public opinion after the release of an Office of Management and Budget Report that projected that the reforms would move at least 1.2 million children into poverty apparently influenced Clinton to veto the bill. See Alison Mitchell, Greater Poverty Toll Is Seen in Welfare Bill, N.Y. Times, Nov. 10, 1995, at A27.

to participate in grant programs, but by accepting federal money, a state becomes bound by federal regulations. Regulations for the AFDC program, for example, specify many eligibility criteria, types of benefits, and procedural requirements.

AFDC has been the program at the eye of the hurricane because it creates an entitlement—all applicants who meet eligibility criteria must receive welfare. Under the program, the federal and state governments must each provide part of the support for these benefits as specified by a formula under which a state receives a higher proportion of federal funding the lower its per-capita income. Federal funding for AFDC is thus open-ended because every eligible applicant is entitled to benefits. Moreover, federal regulations notwithstanding, states determine their own income eligibility thresholds and maximum benefit payments. Thus, while federal regulations create an entitlement to welfare, each state can regulate its overall financial commitment, and that of the federal government, to the AFDC program. Because AFDC provides open-ended federal

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Special Report No. 61, 1995) [hereinafter Inst. for Res. on Poverty Special Report No. 61]. States are not required to participate in or accept money under categorical grant programs. Although all states participate in the AFDC program, for example, optional categories of spending are sometimes refused because of matching cost requirements or administrative burdens that states cannot meet. A formula tied to average income levels determines the proportion of each state’s program expenses to be paid by the federal government. Cong. Res. Service, Welfare Reform: Financing Welfare Through Block Grants 2 n.3 (1995) [hereinafter Financing Welfare Through Block Grants]. For example in Fiscal Year 1995, the federal government paid nearly 79% of Mississippi’s AFDC expenditures and 50% of the expenses of high income states. Id. at 1. No upper limit is placed on the dollar amount that will be spent. See id. at 2. See generally, Thomas J. Madden, Terms and Conditions of Federal Grants, 18 Urb. Law. 551 (1986) (analyzing the jurisprudence of congressional grants).


354 The states set need and benefit levels. See supra note 233 and accompanying text.


356 Id. at 4.

357 The federal government’s commitment to share up to 83% of the cost of welfare, depending on a state’s income level, intentionally creates an incentive to extend benefits to recipients, because each dollar spent by a state has much more than a dollar of impact when augmented by the automatic federal contribution. See id. at 2-3. Further, the federal government pays half of all state administrative costs. Id. at 3. In 1993, the federal share of administrative costs was $1.5 billion, or 12% of all federal AFDC expenditures. See 1994
support for AFDC benefits, the program operates as a form of federal financial assistance to each state when poverty rises during economic recessions or as a result of demographic changes.\textsuperscript{358} The potential counter-cyclic role of AFDC was part of the motivation for including the program in the Social Security Act in 1935.

Conservatives won the long battle to end the entitlement to welfare guaranteed by AFDC when President Clinton signed the Personal Responsibility and Work Opportunity Act in August 1996, converting the federal welfare program to a block grant.\textsuperscript{359} Block grants provide the states with funding for programs addressing a range of social policy goals, but give the states broad discretion in determining how the goals are to be achieved and how block grant funding will be spent.\textsuperscript{360} The welfare block grant replaces the existing categorical program by making a lump sum available to each state with few strings attached to be used for the same types of benefits and services. The TANF Block Grant terminates AFDC, ends the federal entitlement to benefits, caps federal funding, and leaves the states free to establish welfare goals and funding priorities within broad limits.\textsuperscript{361} In addition to replacing the AFDC program, the TANF eliminates the Job Opportunities for Basic Skills program (JOBS),\textsuperscript{362} a job training and placement program enacted by the Family Support Act of 1988. The TANF block grant does not require states to maintain prior levels of state spending for welfare; states may use the block grant to replace a substantial portion of state funding.\textsuperscript{363}

\textsuperscript{358} For example, independent of economic trends, the number of families headed by single women grew at an annual rate of 2.3\% between 1987 and 1991. Wayne Vroman, Rainy Day Funds: Contingency Funding for Welfare Block Grants, \textit{in} Welfare Reform: An Analysis of the Issues, supra note 266, at 11-12. Indeed, changing demography is the chief cause of fluctuations in welfare payments. Id.

\textsuperscript{359} See Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. §§ 601 et seq.).

\textsuperscript{360} See Financing Welfare Through Block Grants, supra note 352, at 7-8.

\textsuperscript{361} See Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. §§ 601, 603).

\textsuperscript{362} Id. § 110(n) (amending 29 U.S.C. §§ 1501 et seq.).

\textsuperscript{363} Id. § 103 (to be codified at 42 U.S.C. § 604(e)). The states would be required to spend at least 80\% of the amount spent during 1995. The maintenance of effort requirement is only
The TANF is not entirely free of strings, however, and its requirements are important in assessing the costs of state funding for administration and benefits under the block grant. While giving states a great deal of freedom to set goals, allocate funds, establish rules and regulations, and administer welfare, the block grant requires compliance with significant new limitations on eligibility, including work requirements,\textsuperscript{364} time limits,\textsuperscript{365} and mandatory school\textsuperscript{366} and adult supervision for teen welfare recipients under eighteen,\textsuperscript{367} among other restrictions.\textsuperscript{368} In addition, the TANF block grant creates a strong financial incentive to reduce a state’s “illegitimacy ratio,” the proportion of illegitimate children born in a given year, by increasing the block grant funding received by states that achieve a simultaneous reduction in illegitimacy and abortions.\textsuperscript{369}

Less obvious, but potentially costly for the states, the TANF block grant diminishes the redistributive role of the federal government, a role fundamental to poverty relief since the New Deal. The TANF block grant freezes annual federal funding for welfare for five years at the fiscal year 1994 level of $16.4 billion.\textsuperscript{370} The change from open-ended cost sharing to a capped block grant has important consequences for states facing shrinking revenues due to increased pressure from local taxpayers to reduce tax burdens. To meet

\textsuperscript{75}\% for states meeting the TANF’s work participation requirements. Id. § 103 (to be codified at 42 U.S.C. § 609(a)(7)).

\textsuperscript{364} Id. § 103 (to be codified at 42 U.S.C. §§ 602(a)(1)(A)(ii), 607(a)-(d)).

\textsuperscript{365} Id. § 103 (to be codified at 42 U.S.C. § 608(a)(9)).

\textsuperscript{366} Id. § 103 (to be codified at 42 U.S.C. § 608(a)(4)).

\textsuperscript{367} Id. § 103 (to be codified at 42 U.S.C. § 608(a)(5)).

\textsuperscript{368} Among the most controversial limits are the restrictions on providing welfare to legal immigrants. Id. § 403 (to be codified at 8 U.S.C. § 1613). We do not propose to consider the effects of those limits here.

\textsuperscript{369} Id. § 103 (to be codified at 42 U.S.C. § 403(a)(2)).

\textsuperscript{370} For each state, TANF funding is based on recent federal spending for the state’s AFDC, AFDC administration, JOBS, and Emergency Assistance programs. Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 603(a)(3)). Each state will receive the highest of three alternative amounts described in the statute. Id. The Congressional Budget Office calculated the amount of the grants to all fifty states under this formula to be $16.4 billion each year until Fiscal Year 2002. Letter from Congressional Budget Office to Hon. Pete V. Domenici, Chairman, Committee on the Budget, U.S. Senate, Aug. 1, 1996 (on file with authors).
extraordinary economic contingencies due to changing economic conditions or to changing the demography, the block grant contains two small contingency funds from which states may borrow a limited amount of additional funding subject to repayment.\textsuperscript{371}

We discuss the probable effects of four principal welfare reforms of the TANF block grant: work requirements, mandatory time limits, behavioral conditions mandated for welfare recipients, and non-entitlement funding. With respect to each proposed reform we find insufficient attention has been paid to the probable effects on welfare recipients and on state and local administrators. The net result, we think, is that the poor will not find work, poverty will rise, and, if current benefits are to be maintained, welfare will become much more troublesome and costly for many states. The negative outcomes that we describe should come as no surprise. There is considerable research on poverty, welfare recipients, and the impact of previous block grants that point to these conclusions. The problems these block grants will create already are being anticipated at the state level, and state leaders have objected to some of the most significant changes.\textsuperscript{372} The relative indifference of reformers to the effects which can be foreseen underscores the strong ideology which underlies the legislation.\textsuperscript{373}

\textsuperscript{371} Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 603(b)).


\textsuperscript{373} This indifference is demonstrated by two TANF incentives to reduce welfare spending. The first is a provision that allows a state to lower the costs of meeting the federal work participation rate in a given year by reducing its caseload in any period beginning with fiscal year 1995. Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 607(b)(3)). For example, by changing the eligibility for cash assistance, a state may make some families ineligible, thus reducing the caseload in its TANF funded program. This caseload reduction credit takes the form of a reduction in the state’s required work participation rate, which is based on the number of recipients it had between September 1, 1995 and the year in which it applies for the credit. See id. § 103 (to be codified at 42 U.S.C. § 607(a)(3)). The second incentive to spend less is a provision allowing states to reserve or save current TANF monies for future fiscal years without limitation. Unlike the AFDC program in which a state was required to spend its federal allocation in the fiscal year received, TANF legislation provides an incentive for a state to delay spending by enabling the state to earn interest income from the TANF funding it reserves for the future. Id. § 103 (to be codified at 42 U.S.C. § 604(e)). Both examples demonstrate possible state tactics to divest funding from currently eligible beneficiaries. We return to this theme in part V, infra. See also Mary B. Sanger, Welfare Reform Within a
B. What Happens When There Is an Employment Program But No Jobs?

The TANF block grant eliminates the employment related assistance and transitional benefits provided through the JOBS program and requires that the household head of an AFDC family obtain employment after twenty-four months. Under the block grant, states are no longer required to assist recipients required to work by providing training, job search support, or education, nor are they obligated to continue cash assistance where no job is available. Welfare recipients will be required to move into the job market quickly since they can receive welfare for only twenty-four months without working. In addition, the statute establishes mandatory goals for progressive program implementation requiring each state to have fifty percent of all eligible single parent AFDC recipients participating in work activity by the year 2002, a participation rate which far exceeds the performance by the states under the current JOBS program.

The JOBS program provides for important job-related education including basic remediation and job skill training, as well as job development and placement activities for welfare recipients. The program targets those heads of household who are most at risk of becoming long-term recipients as well as those who are currently

374 The Reconciliation Act of 1996 repealed the JOBS program, which required that such services be provided to recipients required to work. Reconciliation Act of 1996, supra note 20, § 110(n) (amending 29 U.S.C. §§ 1501 et seq.) Moreover, those who do not find work, for whatever reason other than inability to obtain child care, may have their aid reduced or terminated. Id. § 103 (to be codified at 42 U.S.C. § 607(e)(1)).

375 Id. § 103 (to be codified at 42 U.S.C. § 602(a)(1)(A)(ii)).

376 Id. § 103 (to be codified at 42 U.S.C. § 607(a)(1)).

377 See 1994 Green Book, supra note 28, at 340-41. The TANF block grant does not require states to provide any type of education or training to recipients, nor does it require them to place recipients in unsubsidized work activity. Unlike the JOBS program, the TANF grant limits the number of recipients eligible to be placed in vocational training to 20% of their caseload. Id. § 103 (to be codified at 42 U.S.C. § 607(c)(2)(D)). Further, under TANF, states may require adults between the ages of 20 and 51 to obtain their high school diploma or GED as a condition of eligibility. Id. § 103 (to be codified at 42 U.S.C. § 604(j)).
long-term recipients. As noted in Part III, all AFDC recipients with children older than three are required to participate in a job related activity unless exempted by the state. In addition, the JOBS program mandates transitional benefits, a mandate based on the results of employment demonstration projects administered during the early 1980s that recommended giving states discretion in designing their welfare to work programs to match local job markets. These studies further found that child care assistance and health insurance were crucial to a single mother's ability to maintain employment.

Since its inception in 1988, the JOBS program has provided discretion to state administrators to design employment programs responsive to their individual labor markets. The federal government provides fifty to ninety percent of the cost of the programs. Although the federal government made one billion dollars available to states for this purpose in 1993, the states have found it difficult to fully implement the JOBS program due to constraints on their own budgets. In 1993, only sixteen states used their full federal allocation for the program, and only eighteen states had placed fifty percent or more of their mandatory AFDC recipients in some JOBS related

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379 See id. at 340-41.
381 See, e.g., id. at summary (providing information about the welfare to work evaluations conducted by the Manpower Demonstration Research Corporation); David Greenberg & Michael Wiseman, What Did the OBRA Demonstration Do?, in Evaluating Welfare and Training Programs (Charles Manski & Irwin Garfinkel eds., 1992) (detailing the results of 24 welfare to work demonstrations across the country). Evaluations of employment programs have shown that services providing job search assistance for AFDC recipients have not been as effective in the long-term in increasing the earnings of those who are the least job ready, i.e., long-term recipients, as programs that provide cash management and more intensive employment related services. See Kathryn H. Porter, Making Jobs Work: What The Research Says About Effective Employment Programs For AFDC Recipients (Center on Budget & Pol'y Priorities, Washington, D.C.), March 1990, at 36-40.
383 See id. at 356. States exempted household heads with transportation difficulties, such as when there was no public transportation to available job sites or training centers; child care problems, such as when there were inadequate placements available; and disabilities. Id. at 341.
activity. In 1992, some states exempted seventy to eighty percent of AFDC recipients from JOBS participation, evidence of the states' unwillingness to assume full responsibility for job training and placement activities for welfare recipients in a tight low-wage labor market. In fact, only seven percent of all adult recipients participated in the JOBS program nationwide that year. As we demonstrated in Part III, the current labor market has little to offer the millions of low-skilled mothers with limited work histories and low levels of education who have limited employment options due to child care responsibilities.

The TANF block grant requires recipients to work after receiving benefits for twenty-four consecutive months, and the states may require participants to work as a condition of eligibility after two months of assistance. This solution does not address the education and training needs of welfare recipients, many of whom lack a high school diploma, nor does it require states to provide assistance with job searches or placement. Every head of household, regardless of the age of the youngest child, the availability of adequate and safe child care, or the availability of transportation to employment, is required to obtain a job after receiving welfare for two years.

The average long-term recipient, i.e., one who receives assistance for five years or more, is likely to be a high school dropout in her early to mid-twenties with little or no work history. Full time earnings for these women fell nearly twenty percent between 1979 and 1989, and have continued this downward trend in the 1990s. In Part III, we showed that the children of these recipients are likely to be less than six years of age and in need of child care if the mother is to secure and retain full-time employment. Participants in the JOBS

384 See id. at 356-59. Mandatory recipients are those required to be in the JOBS program by federal regulations, i.e., all non-exempt AFDC recipients. See id. at 340.
385 Bane & Ellwood, supra note 271, at 24-25.
386 Id. at 25.
388 See supra note 193 and accompanying text.
389 See Pavetti, supra note 266, at 33.
390 Burtless, supra note 344, at 72.
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A program could receive child care assistance for one year after obtaining employment. After that year they could have been eligible for child care assistance through the At-Risk Child Care Program or the Child Care and Development Block Grant. These transitional benefits are eliminated in the TANF block grant, and most recipients will be unable to replace these services without subsidy. A recent GAO report noted that poor families who pay for their own child care spend approximately twenty-seven percent of their income on that service.

The low-earnings capability of these recipients will make it difficult for them to support their families at a subsistence level. About one-half of all women who received AFDC between 1979 and 1981 would earn less than ninety percent of the poverty level today if they worked full-time year round. Long-term recipients who find work are likely to earn only the minimum wage, or less, per hour. This is not to say welfare recipients should stay on the dole, nor that they should not have to obtain employment to support their families. Rather, welfare recipients need education, training, transitional services, and support while their incomes increase to a subsistence level. Many who find jobs remain in poverty because of their limited level of education, lack of support from other family members, and low earnings. A majority of low-skilled jobs involve communication skills and cognitive activity such as writing, computation, and computer skills. Because most former AFDC recipients lack such

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393 1994 GAO Report on Child Care, supra note 331, at 2. The block grant does not provide transitional assistance for child care. Parents with children younger than six years of age must prove that they have been unable to find child care in order to be exempt from the 24 month work participation requirement. See Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 607(e)(2)).
394 Burtless, supra note 344, at 85.
395 See id. at 86.
skills, they are likely to experience long periods of unemployment and high job turnover. Given our discussion of the availability of low-skilled employment, it is unlikely that many of these mothers will compete successfully for scarce jobs.

C. What Happens When There Is No Job and Time Runs Out?

Another important aspect of the TANF block grant is its imposition of time limits on receiving welfare. Reform advocates have claimed that welfare creates dependency. Yet, as we demonstrated in Part III, many recipients who leave welfare in order to work often return to the rolls when the job is lost. The TANF block grant does not require states to provide assistance to needy families for any minimum length of time, nor does it require states to assist recipients to find work. In addition to its failure to address the training, job search, and transition needs of recipients, the block grant limits the time that recipients can receive welfare without being in a work program to twenty-four consecutive months. If a recipient is unable to find employment, she may be eligible for additional assistance if she is willing to work in exchange for her benefits. However even this workfare option is limited. The TANF block grant also places a five year cumulative lifetime limit on federally funded welfare. States may exempt only twenty percent of their caseload from these restrictions and then only in cases of extreme hardship. The Congressional Budget Office estimates that, even with the twenty percent hardship exemption, by 2004, between 2.5 and 3.5 million children will be adversely affected by the sixty month lifetime limit on receipt of welfare.

The implicit assumption underlying the time limits is that without welfare, poor single mothers will either work or get married. States are

397 Id. at 17-18.
398 Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 608(a)(7)(A)). Within the first year of enactment, a state may require a mother to participate in a minimum of 20 hours per week. Id. § 103 (to be codified at 42 U.S.C. § 607(c)(1)(A)).
399 Id. § 103 (to be codified at 42 U.S.C. § 608(a)(7)(C)).
not required to provide a safety net, however, for recipients who remain unemployed after five years on welfare, despite their searches for work. The reforms do not address the lack of jobs and affordable day care in the present labor market for women with limited education.\footnote{These reforms also do not address another major part of the problem of family poverty, namely the decline in employment opportunities available to low skilled men, many of whom are the fathers of children receiving welfare.}

In Part III, we noted that until 1988, only twenty-six states participated in the AFDC-UP program, which provides assistance to poor, two-parent families. As Table 1 in Part III indicated, because of eligibility restrictions, few two-parent families currently receive assistance through this program. Yet in 1993, forty-six percent of all the poor in families lived in households headed by a married couple.\footnote{May, supra note 143, at 14.} The TANF block grant requires states to phase in work requirements more quickly for two-parent families than for single parents, but leaves states free to continue the eligibility restrictions that limit the impact of the AFDC-UP program. None of the reforms address the declining employment prospects of the men in these families.\footnote{See supra part III, section D.}

When all their welfare spells are included, nearly forty percent of AFDC recipients, or 1.9 million families, have been on welfare for sixty months or more.\footnote{Robert Haveman, The Wage Labor Market, in Inst. for Res. on Poverty Special Report No. 65, supra note 396, at 33.} Under the TANF block grant, these families have exceeded their life-time limit for assistance. Regardless of the ages of the children, states would not be permitted to use block grant funds to assist them. About ten to fifteen percent of these families may be able to secure an adequate income through work.\footnote{Id. at 34.} However, these household heads are unlikely to receive any state assistance for child care because states often prioritize availability, thereby limiting assistance to low-income workers.\footnote{See Clark & Long, supra note 392, at 25, 26.} As a consequence, at least some mothers would be forced to leave their children at home alone while they work. In addition to those who find work, another seventy
percent of families who lose their eligibility because of the five year lifetime limit will survive but will be severely disadvantaged.\textsuperscript{[407]} The remaining ten to fifteen percent of the terminated welfare recipients will be destitute; between 300,000 and 400,000 women and children will fall into this last category.\textsuperscript{[408]} Furthermore, the elimination of the Emergency Assistance program, which provides a one time grant to families experiencing a crisis, suggests that these families will have no safety net, making it likely that at least some will become homeless. Recent analysis predicts that many of the children in these families will be removed from their homes, increasing the numbers of children in the foster care system.\textsuperscript{[409]}

\textit{D. What Happens When a Parent Breaks the Parenting or Childbearing Rules?}

The TANF block grant provides the states with relative freedom to design welfare programs without federal oversight, but, as we have described, the legislation also imposes severe limits on the use of block grant money.\textsuperscript{[410]} We have described the provisions designed to force welfare recipients into the job market as quickly as possible. In addition, the TANF block grant imposes conditions intended to force adolescent recipients to stay at home and to remain in school, and to require states to deal with issues such as childbearing and abortion. With limited exceptions, TANF funds may not be used to provide welfare to a recipient eighteen or younger who is not in school or not living under adult supervision.\textsuperscript{[411]} Finally, the block grant creates an incentive for improving a state’s "illegitimacy ratio" by increasing the

\textsuperscript{407} Haveman, supra note 404, at 34. In contrast to those who have a better chance of securing an income upon exit, severely disadvantaged families are those whose heads are more likely to be without a high school diploma or work history. Id.

\textsuperscript{408} See id.


\textsuperscript{410} See supra notes 352-73 and accompanying text.

\textsuperscript{411} Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 608(a)(4), (5)).
state’s block grant if the proportion of illegitimate births declines while pregnancy terminations drop.412

Each of these requirements and funding incentives reflects conservative views of welfare dependency and its causes. Thus, the conditions designed to make teens stay at home and in school, and the financial incentives for states to reduce illegitimacy, encourage use of welfare payments to induce behavior that conforms to the reformers’ conceptions of mainstream behavior. Single parenting is not part of the reformers’ conception of the mainstream, even though single parenting has risen steadily in all income groups. Using welfare payments to induce conformity is consistent with the conservative view that welfare creates the problems of the poor by providing incentives to become pregnant, leave home, and forego work at an early age. Yet, extensive research suggests that the image of the “typical welfare recipient” is incorrect, as we explained at length in Part III, and that the reasons for early pregnancy, failing to finish school, and not working, do not lie in the incentives created by welfare. Barbara Wolfe, Director of the Institute for Research on Poverty, summarized an exhaustive review of empirical evidence on teenage births in this way:

The best empirical evidence on the determinants of teenage childbearing and of teenage non-marital births suggests that the generosity of welfare benefits has little or no effect on the probability of such a birth. This statement is based on the fact that current differences across states in welfare generosity are not related to increases or reductions in the number of births (or illegitimate births alone) to teenagers.413

If welfare benefits have no effect on births, other factors have been shown to be important, such as the availability of family planning services, labor market opportunities, and the quality of parenting.414

412 Id. § 103 (to be codified at 42 U.S.C. § 603(a)(2)).
414 Id. at 23-24.
While the summary of research quoted above is based on studies of differences in welfare benefits between states, it does not cover the effects of eliminating benefits altogether. Conservatives have encouraged states to use their discretion to impose conditions such as the controversial "family cap," which bars welfare benefits for any child born to a mother on welfare. Such provisions have been adopted in a number of states under the waiver provisions of the existing AFDC program. Research on the impact of the family cap implemented in New Jersey shows that, contrary to the expectations of welfare reformers, the family cap does not affect the birth rate. Thus, these provisions, which raise significant humanitarian objections, are likely to be ineffective for the purposes for which they were intended.

Other provisions intended to keep teens in school and at home will be difficult to implement. The feasibility of school may depend on the quality of day care available through the mother's family, unless the state is prepared to provide day care funding. Further, home may not be the most appropriate environment for a teen, especially one raising a family. Ironically, some have objected to federal regulatory oversight both in welfare provisions and in other matters because of the federal government's "one size fits all" treatment of such policies that could have been adapted better at a lower level of government. Conservatives have created a new federal regulatory structure based on what they think they "know" about teens in poor families. This knowledge, however, seems to bear little relationship to the actual experiences of teen welfare recipients.

**E. Refinancing Welfare: Who Benefits From Federal Cost Cutting?**

Contemporary welfare reform proposals have remained remarkably true to the interpretation of poverty captured in the stereotype of the willfully poor welfare recipient. These images, which

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415 Congress included such a provision in legislation vetoed by the President. See Personal Responsibility Act of 1995, supra note 14, § 101 (proposed 42 U.S.C. § 605(a)(4)(A)).

416 See infra note 432.

417 Michael C. Laracy, Anne E. Casey Found., If It Seems Too Good To Be True, It Probably Is: Observations On Rutgers University's Initial Evaluation Findings That New Jersey's Child Exclusion Law Has Not Reduced AFDC Birth Rates... Contrary to Previous Claims by Its Supporters 1, 6 (1995).
reduce the public's sense of responsibility for the well-being of welfare recipients, are being made to serve other political ends as well. Negative images of welfare recipients are as old as welfare itself. Welfare reform in the 1990s acquires its unique bite from its emphasis on the need to cut the size and cost of the federal government, and from its solution to do this by reducing the federal budget for welfare programs and by transferring responsibility for welfare from the federal government to the states. Few could miss the connection between welfare reform and cost cutting in the promise to "end welfare as we know it." Indeed, a closer look suggests that cost cutting, not relief of poverty, drives many of the proposals.

Once exclusively a centerpiece of conservative fiscal reform, reducing the size of the federal government has become the prime consideration in the public discourse of both major parties and an uncontested ground upon which policies are framed in the 1990s. Strategies for reducing the size of the federal government include downsizing or eliminating regulatory agencies, privatizing services, and shifting responsibilities to state and local governments. Welfare reform, with bipartisan support, has followed this pattern, by cutting federal funding, ending federal entitlements, and transferring some or all of the responsibility for welfare to state governments.

418 For example, President Clinton called for an end to "[t]he era of big government" in his 1996 State of the Union Address. Excerpts From the President's Speech, Chi. Trib., Jan. 24, 1996, at 8.

419 President Clinton's December 1994 budget reduction proposal included a $60 billion tax cut and $16 billion in program cuts, including significant reductions in funding for the Departments of Energy, Housing, and Transportation. Robert H. Freilich et al., Federal Mandates or State and Local Initiatives: Contract and Constitutional Status in the Gingrich Era, 27 Urb. Law. 635, 648-49 (1995). The Republican proposal to eliminate the federal deficit in seven years would terminate 180 programs and eliminate 13% of the federal government's discretionary spending on education, labor, and health in fiscal year 1996. Id. at 651. The 1995 House Republican budget proposals would have cut federal welfare programs by $69 billion over five years, leaving the administration of most welfare programs to the states. Id. at 647.

420 Republicans long have supported ending federal welfare entitlements, and even before the November 1994 Republican congressional landslide, some Democrats also favored reducing or ending entitlements. President Clinton supported the Senate proposal to end federal welfare entitlements in September 1995, Mitchell, President Voices Optimism, supra note 2, at 1, later changing his mind in response to public pressure. In July, 1996, President Clinton again voiced support for proposals ending the entitlement to welfare, Pear, Senate Approves Sweeping Changes in Welfare Policy, supra note 93, at A1, and eventually signed legislation providing for such in August 1996. Clines, supra note 2, at A1.
for reform argue that savings will be achieved through increased efficiency in two ways: (1) unnecessary and expensive federal bureaucracy will be eliminated; and (2) state and local administrators will improve upon misguided federal programs that have kept recipients dependent instead of getting them off of welfare.421

Cost cutting itself is a symbolic issue. The talk about reducing the size and cost of government not only plays on the public's increasing mistrust of federal government but also on fears that the middle and working classes will suffer greater economic hardship if attempts at cutting the federal budget and at relieving tax burdens are thwarted. The cost cutting rhetoric employed by both parties reaffirms a grand vision of the American economy in which lower taxes and fewer government regulations unleash entrepreneurship, redeeming a declining standard of living from the threat of global competition and offering well-being for those who are willing to work.422 This vision of the private economy and of American well-being has provided the foundation for a conservative legislative agenda that reduces funding for welfare, deregulates industries, and reforms taxes to offer larger tax breaks for the wealthy than for the middle class or working poor.423 Although the rhetoric of welfare cost cutting masks complex

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421 See, e.g., Gingrich et al., supra note 13, at 72-74. Reforms shift the responsibility to make and administer welfare policy to the states, and, at the same time, reduce the federal share of welfare funding. The savings resulting from reduced benefits do not reflect greater efficiency in administration, however.

422 Smaller government has been an article of conservative faith in recent decades. See David Brooks, Introduction to Backward and Upward: The New Conservative Writing xviii (David Brooks ed., 1995). No respectable economist believes that jobs are being lost primarily to international competition, however; jobs are being lost as a result of corporate restructuring to create a larger bottom line. The number of jobs is increasing, but not at wage levels sufficient to help out those with the fewest skills. See Paul R. Krugman & Robert Z. Lawrence, Trade, Jobs and Wages, 270 Sci. Am. 44 (1994).

423 See Gingrich et al., supra note 13, at 125-41. See also Iris J. Lav, Reconciliation Bill Tax Breaks for Upper-Income Taxpayers Mushroom After 2002 (Center on Budget & Pol'y Priorities, Washington, D.C.), Nov. 21, 1995 [hereinafter Lav, Reconciliation Bill Tax Breaks]. Notwithstanding the rhetoric of investment leading to an improved economy, reforms offered in the name of cost-cutting clearly serve political purposes, namely shifting power and wealth among constituencies. The distributive effects of changes in taxation, including the capital gains tax reduction, child assistance tax credit, and reduction in the EITC would greatly favor higher income families. See id. The net effect on middle or low income families would be neutral or negative. Id.; see Latest Republican Budget Offer Hits Low-Income Programs Twice As Hard As Other Programs (Center on Budget & Pol'y Priorities, Washington, D.C.), 1996. Further, congressional cuts to discretionary spending
mottoes, the merit of the reforms as cost cutting measures should be judged by whether the savings promised are likely to be realized without sacrificing the benefits promised to the poor.

1. Will Devolution of Welfare Programs Save Money?

Reform advocates have justified reducing the amount states receive for welfare programs in part by claiming that savings will occur at the state level from better, innovative administrative practices. Under the AFDC program, the federal government pays half of all state administrative costs. In 1993, the federal share of administrative costs was $1.5 billion, or twelve percent of all federal AFDC expenditures. The annual amount that the federal government may make available to each state is capped by the TANF block grant at approximately the current level through the year 2002, to pay for benefits and administrative costs even though virtually all the proposals also require states to assume new administrative responsibilities. There is little hard evidence that state governments programs have fallen far more heavily on programs benefiting the poor than programs providing benefits to the middle classes or to businesses. See Congress Cuts Low-Income Discretionary Programs Far More Heavily Than Other Discretionary Programs (Center on Budget & Pol'y Priorities, Washington, D.C.); see Iris J. Lav & Richard May, Still Holding the Bag: State and Local Governments are Squeezed in the Budget Plan Passed by Congress (Center on Budget & Pol'y Priorities, Washington, D.C.), Nov. 28, 1995 [hereinafter Lav & May, Still Holding the Bag]. Cost cutting can take many forms and may be defended in many ways. Many liberals defend cutting the deficit and reducing some federal expenditures, but the redistributive effects of their proposals are quite different from the cost cutting which has been proposed by conservatives and New Democrats who control the current legislative agenda. See Freilich et al., supra note 419, at 648-52.

See Gingrich et al., supra note 13, at 73, 77. See also Robert B. Carleson, State and Local Government Program Design and Administration—The Only True Welfare Reform, in Welfare Reform: Consensus or Conflict? 43, 43-47 (James S. Denton ed., 1988) (advocating delegating welfare programs to state and local governments). It is apparent, however, that some legislators seek to reduce welfare funding to achieve moral rather than fiscal goals. See, e.g., Tim Poor, Rep. Talent Speaks Out Against Welfare Offer, St. Louis Post-Dispatch, Feb. 15, 1996, at A8. Benefits should remain at their present levels to test administrative efficiency gains, but the argument that federal administration is wasteful is often conflated with misguided assertions that the federal government spends too much on the poor.


See supra note 357.

Federal funding for the TANF block grant for a state is frozen at the highest of three levels: an average of its spending for fiscal years 1992, 1993 and 1994, its fiscal year 1994 spending, or its fiscal year 1995 spending. See Reconciliation Act of 1996, supra note 20,
can administer the same benefits more cheaply. Many states already forgo participation in some aspects of federal welfare programs because they lack the administrative capacity or financial resources to meet the matching funds requirement. Local officials, who are in a position to be most concerned and most knowledgeable about the impact of proposed reforms, have been critical of congressional efforts to create block grants that shift responsibility for welfare programs to the states and reduce federal funding at the same time. Some state

§ 103 (to be codified at 42 U.S.C. § 603(a)(1)). States may use no more than 15% of their block grant allocation for administration. Id. § 103 (to be codified at 42 U.S.C. § 604(b)(1)). Under the programs being replaced, the Congressional Budget Office has estimated that TANF will provide the states $1.2 billion less over the next six years than the states would have received from the federal government for cash assistance and work. Super et al., supra note 400, at 6. The Congressional Budget Office further estimates that most of the savings achieved by welfare reform will be derived by terminating the eligibility of legal aliens ($23.7 billion), and by reducing the Food Stamp program ($23 billion). Vee Burke, Cong. Res. Service, Welfare Reform, summary (1996). See Reconciliation Act of 1996, supra note 20, Title IV (restricting welfare and public benefits for aliens), Title VIII (regarding Food Stamps and commodity distribution).

428 Previous block grant experience suggests that the states will make some effort to maintain programs that serve more than the interests of the poor, e.g., child protection services or economic development programs, but will not maintain programs targeted solely at poverty relief, e.g., income maintenance programs or educational programs for children from deprived backgrounds. See George E. Peterson et al., The Reagan Block Grants: What Have We Learned? 18-21 (1986). Previous conversions of federal categorical grants to block grants affected far fewer programs and concerned programs with less impact than the safety net programs which will be affected now.


430 See Freilich et al., supra note 419, at 645-46. See also, Robert Pear, G.O.P. Bills to Overhaul Welfare Worry City and County Officials, N.Y. Times, May 18, 1995, at A1, B12 (describing local officials’ opposition to proposed Republican welfare reforms). The National Governors’ Association, a bipartisan organization, has proposed maintaining federal funding for child care and other services for welfare recipients at levels above those proposed by conservatives in Congress. The Governors’ Welfare Proposal (Center on Budget & Pol’y Priorities, Washington, D.C.), Feb. 8, 1996 [hereinafter The Governors’ Welfare Proposal]. Further, the Association does not want Medicaid devolved to the states, and would support devolution of welfare only if maintenance of effort requirements were reduced. See id. The U.S. Conference of Mayors expressed “serious concerns about how successful [welfare] reform will be under either the House or Senate-passed bill” in a letter to the House and Senate conferees drafting the Reconciliation Act of 1996. Elected Officials Criticize Welfare Bill, CLASP Update (Center for L. & Soc. Pol’y, Washington, D.C.), Aug. 9, 1996, at 4.
and local officials frankly acknowledge that states lack the capacity to manage new programs.\footnote{On December 12, 1995, the National Conference of State Legislators sent a letter to President Clinton urging postponement of welfare reform and expressing specific concerns about the adequacy of contingency funds and the overestimated savings from state level administration. State Legislators Urge Delayed Welfare Implementation, CLASP Update (Center for L. & Soc. Pol'y, Washington, D.C.), Dec. 21, 1995, at 8-9. A National League of Cities survey of major American cities shows that the governments of the nation's urban areas are overwhelmingly opposed to many of the proposed reforms, including ending entitlements, that they are skeptical of their state's ability to redesign welfare, and that they expect welfare reform to increase the burden placed on local communities. See Herbert L. Green, Jr., The Impacts of Welfare Reform in America's Cities and Towns (Center for Res. & Program Dev., Nat'l League of Cities), June 1995.}

Notwithstanding the concerns expressed by state and local officials, it is plausible to argue that improvements in welfare administration, as well as improvements in benefit packages, can result from state experimentation and innovation.\footnote{States may apply for waivers of federal AFDC regulations to experiment in delivering welfare benefits. 42 U.S.C. § 1315(a) (1991). Under the waiver program initiated during the Reagan Administration, states were required to submit proposals for welfare demonstrations in specific areas, such as employment and training, that met requirements for federal cost-neutrality, i.e., states had to utilize existing federal monies and ensure that costs for the demonstration did not exceed the amount they would have had without the project. Michael E. Fishman & Daniel H. Weinberg, The Role of Evaluation in State Welfare Reform Waiver Demonstrations, \textit{in} Evaluating Welfare and Training Programs, supra note 381, at 118-19. In most cases, states were required to utilize an experimental design for the evaluation of the net effects of their waiver demonstration project. Id. at 118-19. Between July 1987 and October 1988, 26 states applied for waivers. Id. at 119. However, only 16 states had their demonstrations projects approved. Id. Many states withdrew their applications because of the requirement to use rigorous experimental methods within the evaluation of the demonstration's net effects. See id. at 125.}

Under the Bush Administration in 1992, the waiver process expanded the number of categories in which projects could be approved, thereby increasing state initiatives. See Mark Greenberg, Welfare Reform in an Uncertain Environment, \textit{in} Report II: Planning a State Welfare Strategy Under Waivers or Block Grants 22 (Sheila B. Kamerman & Alfred J. Kahn eds., 1996). Both the Bush and Clinton Administrations sought to maintain the requirements of cost neutrality and the use of rigorous evaluation designs while encouraging state experimentation. See id. As a consequence, 42 states have submitted applications for waiver demonstrations since 1992; projects in 36 of these 42 states have been approved. Id. Approval and subsequent implementation of these projects has not been limited, however, by the federal government's emphasis on evaluation methods so much as it has by states' willingness to spend their own resources. Id. at 29. The available data do not suggest that cost cutting and improved delivery can occur simultaneously. See id. at 27-29. For example, the primary justification for the low participation rate of AFDC recipients in JOBS activities (only 13% nation-wide participated in 1994) is due to states' unwillingness to allocate resources to fund their portion of child care costs. Id. at 29.
resources requires accurate knowledge of the costs and benefits of particular allocations. In this respect, state and local welfare administrators may have some significant advantages over their federal counterparts who have, heretofore, drafted regulations for welfare programs. For example, support services for welfare recipients including day care, parent training, or job search assistance are often delivered through local providers. State and local administrators may be in a better position to coordinate welfare benefits with locally provided services. Similarly, with greater emphasis being placed on transition to work, regulations governing job placement and training will be particularly important. Appropriate guidelines may be easier to construct based on the knowledge possessed by state or local administrators about local labor market and employer needs. These advantages may help, but will they offset the costs of administering new and expanded responsibilities?\footnote{433}

Offsetting state and local administrators' advantages in mobilizing community resources and matching welfare programs with recipients' needs, current proposals will subject welfare benefits to new constraints of unprecedented complexity, which the states will have to administer. As we have described, the new law has many conditions, including: limiting benefits to legal aliens; limiting the time on which a recipient can accept welfare; requiring a much larger number of welfare recipients to work than ever before, which requires the

The Reconciliation Act of 1996 allows states whose waivers have been approved, or are in the process of being approved, to continue their program. Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 615(a)). Under this provision, states with a "family cap" approved under the waiver program could continue to limit benefits to children born to a mother receiving cash assistance.

\footnote{433} In fact, we are skeptical of the claims concerning the efficiency of local knowledge. As we have already noted, state and local government administrators' knowledge of local service providers and employers may be advantageous in some respects. Other local differences, such as the cost of living, are readily accessible to outsiders. It may be argued that different states will perceive recipients' needs differently from federal administrators, since they are in some sense closer to or more familiar with potential beneficiaries. This is in part what the "community values" rhetoric is about. We doubt that state or local administrators are in fact "closer" to welfare recipients, however. In any event, we believe that personal needs are indeed personal in the sense that they vary from individual to individual, not from community to community. Normative differences, such as preference for generous or stingy benefits, are not "knowledge" upon which efficiency claims can be founded; they are simply positions based on dominant political interests within a community, and, as such, have no special standing in our national policy debates.
development and administration of training, placement, and other work-related programs; coordination of rewards; and sanctions for compliance with programs that currently are administered separately. These requirements will increase greatly the record keeping and decision making burdens of local administrators. For example, administrators will have to qualify beneficiaries under the complex criteria for total time receiving welfare in any state, for compliance with work, learning, or other behavior requirements, and for the beneficiary’s immigrant status. New and costly national systems will have to be created to track recipients and their awards and to coordinate benefits under different programs. Federal administrators will not be relieved of the responsibility to interpret such requirements and monitor state compliance with them. The administrative and

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434 Telephone Interview with Catherine C. Foster, National Association of Child Advocates (Feb. 7, 1996); see Margaret Trostel & Kelly Thompson, Welfare Reform and Information Systems 39 (1995); Evelyn Z. Brodkin, Administrative Capacity and Welfare Reform, in Looking Before We Leap: Social Science and Welfare Reform 75, 79-83 (R. Kent Weaver & William Dickens eds., 1995) (noting that implementing such systems will be particularly problematic for large cities). Indeed, the recent experience in implementing creditable welfare reform at the state level in Wisconsin under the welfare waiver program, see supra note 432, suggests that achieving reductions in the number of welfare recipients has cost the state more than the existing AFDC program. Michael Wiseman, State Strategies For Welfare Reform: The Wisconsin Story (Inst. for Res. on Poverty Discussion Paper No. 1066-95, 1995). See also Peter T. Kilborn, With Welfare Overhaul Now Law, States Grapple with the Consequences, N.Y. Times, Aug. 23, 1996, A22 (reporting that state officials believe that the new welfare reforms are tougher on recipients and less flexible for state governments than hoped); Robert Pear, A Computer Gap is Likely to Slow Welfare Changes, N.Y. Times, Sept. 2, 1996, at A1 (describing the practical problems states will face in complying with the five-year lifetime limit on welfare payments).

435 For example, the TANF block grant requires each state to submit a plan for implementing, among other things, time limits and work requirements. Reconciliation Act of 1996, supra note 20, §103 (to be codified at 42 U.S.C. § 602(a)(1)(A)). The terms of the block are dependent upon state performance, as well, which requires continued monitoring by the federal government. For example, a state must maintain funding from its own sources at 80% of previous levels unless it meets the work participation requirements, at which point its maintenance of effort requirement drops to 75%. Id. § 103 (to be codified at 42 U.S.C. § 609(a)(7)). Further, the block grant authorizes supplemental grants and payments from a contingency fund based on complex criteria. Id. § 103 (to be codified at 42 U.S.C. § 602(b)). Implementation of the terms of the grants is a serious concern for both federal and state government because violation of the terms can result in reduction of future grant money. Id. § 103 (to be codified at 42 U.S.C. § 609(a)). Thus, funding in subsequent years is dependent upon meeting grant requirements in preceding years. Procedures for adjudicating non-compliance and penalties are specified in the legislation. See id. § 103 (to be codified at 42 U.S.C. §§ 609-10). Given the complexities of administering four separate types of supplemental grants and the contingency fund, implementing the time limits,
cost implications of the new time, work, and status limits largely have
gone unnoticed in the public debate about welfare reform. This is
particularly ironic in the context of political pressure for mandate
governments”).}

It is difficult to estimate the precise impact of welfare reform on
the costs of federal, state, and local administrations. While the federal
share of administrative costs will be reduced, the states will have to
take up the responsibilities shifted to them by the federal government
and at the same time attempt to manage a reworked welfare program
that requires more complex record keeping and decision making.
Under such circumstances it is not reasonable to predict significant
administrative cost savings in the near future.\footnote{Although states found that a paper work reduction accompanied the shift from
categorical programs to block grant programs, see Peterson et al., supra note 428, at 23-24, significant savings more likely would have occurred if a fully developed state
administration already performing similar tasks had assumed responsibility. Further, even in the best case scenarios states continue to experience the same administrative costs, not
reduced costs. See Brodkin, supra note 434, at 75-90 (assessing state administrative
capacities to assume the responsibility for providing welfare benefits). As we have noted,
the proposed block grants will require new administrative systems at the local and state
levels.}

2. Ending the Federal Role In Redistributing Costs of Welfare

The proposed welfare block grants are structured to cut the federal
costs of welfare as well as to delegate control of the programs to the
states.\footnote{The Congressional Budget Office estimated in early 1995 that implementing the
Republican Contract With America could require states to enact double digit tax increases
to make up for lost federal grant money. Freilich et al., supra note 419, at 650. New York
and California would lose the most in federal grants each year, losing $26.4 and $38.5
billion, respectively. Id. The Senate Welfare Reform Proposal approved by President
Clinton sought to save $70 billion in welfare spending over seven years. Mitchell, President
Voices Optimism, supra note 2, at 20. The bill passed by both the House and the Senate in
November 1995, would have reduced welfare spending by 7.4% by the year 2002. Lav &
May, Still Holding the Bag, supra note 423, at 5. The Congressional Budget Office
estimates that the Reconciliation Bill of 1996 will reduce federal welfare spending by $54
billion through fiscal year 2002. Burke, supra note 427, at summary. Converting federal
will be capped at about the current (fiscal year 1995) funding level.\textsuperscript{439} States may apply for a supplemental grant to handle contingencies created by economic downswings or demographic changes.\textsuperscript{440}

While block grants are attractive to fiscally conservative politicians because they reduce federal spending, the TANF block grant runs against the grain of two important post-New Deal realities of American political economy: (1) the strong public commitment to poverty relief for the truly needy, which we examine further in Part V, and (2) the vital redistributive role of the federal government in supporting the private economy.\textsuperscript{441}

Since the New Deal, the federal government has played an important role in redistributing the costs of poverty, which are an inevitable by-product of the national economy.\textsuperscript{442} The private

\textsuperscript{439} See supra note 427.

\textsuperscript{440} Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 603(a)(3)). See Robert D. Reischauer & R. Kent Weaver, Financing Welfare: Are Block Grants the Answer?, in Looking Before We Leap: Social Science and Welfare Reform, supra note 434, at 24-25 (stating that federal-state programs should share financial risks to protect against economic downturns).


\textsuperscript{442} All federal programs for social provision, including the Social Security program, redistribute the costs of keeping people out of poverty. The old age pension program created by the Social Security Act not only modestly redistributes benefits from wealthier workers to the less wealthy, but also redistributes the costs of pensions across regions. Social Security differs actuarially from private insurance. Pension payments are not funded directly by past payments but by a reserve fund that is replenished through deductions from
economy may provide for the needs of most Americans, but it does so unevenly over time and, even more importantly, unevenly across regions of the country. While some regions prosper, others experience depression. Since the 1930s, the federal role in poverty relief has expanded continuously in recognition of the inability of individuals, businesses, and taxpayers, particularly in depressed regional and local economies, to manage poverty relief without federal assistance.

Prior to the 1930s, welfare programs were funded inadequately and often failed during economically hard times, just when they were needed most. The Great Depression's exacerbation of the chronic structural problems of unemployment and poverty relief generated massive political support for legislation establishing a federal role. All of the Social Security Act's programs created federally administered mechanisms for redistributing the costs of poverty relief by directly subsidizing state programs, creating national reserves or contingency funds, and organizing the efforts of wage earners, employers, and states to reduce the effects of competition that would otherwise undermine provision on a subnational scale. The AFDC program clearly was designed to be counter-cyclic, creating a federal entitlement for individuals and, more important politically, a guarantee to states that federal funding for poverty relief would be available at precisely the times it was needed most.

Since the 1930s, the need for national poverty relief programs has become increasingly apparent. Federal poverty programs of the 1960s were created largely because some regional and local economies were failing in the midst of great prosperity for most Americans. Similarly, the Supplemental Security Income program created in 1972 converted Old Age Assistance and Aid to the Blind and Disabled to a wholly

the wages of currently employed persons. Ultimate dependence on current payments into the fund, the fact that payments are not strictly related to contributions, and the involuntary nature of the payroll tax, make social security similar to tax supported welfare, but with a dedicated source rather than a private insurance policy owned by the purchaser.

Freemarket economists believe that a healthy economy is one in which businesses can move freely to find the best raw materials, transportation, and labor. John D. Kasarda, Urban Change and Minority Opportunities, in The New Urban Reality 33, 36-39 (Paul Peterson ed., 1985). The economy prospers when businesses seize opportunities to profit from regional differences. As a result, some regions benefit from such decisions while others suffer severe losses in terms of jobs and tax base. See id. at 33-49, 65-66.

See Fox, supra note 53, at 166-68; Paul Peterson, City Limits 85-86 (1981).
federally funded, cost of living indexed, income support program. The federal role in the Unemployment Insurance system, a program with an important potential counter-cyclic function like welfare, has been expanded greatly over the years to guarantee supplemental federally funded benefits during lengthy economic downturns.\[445\] Significantly, an earlier version of the TANF block grant was opposed vigorously by the National Governors’ Association because it left states largely on their own to deal with the effects of demographic change and economic contingency.\[446\]

The TANF block grant proposes two ways to address the concerns of state administrators about contingencies that might increase the costs of welfare unpredictably. First, TANF permits states to apply for a supplemental grant if population growth has exceeded the national average and if the per capita level of welfare spending by the state is below the national average.\[447\] A state automatically qualifies if its population growth is above ten percent between 1990 and 1994, or if its per capita level of welfare spending is below thirty-five percent of


\[447\] Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 603(a)(3)).
the national average.\(^{448}\) The Act allocates a maximum of $800 million for all states for the fiscal years 1998 through 2001 for these supplemental grants.\(^{449}\) Second, TANF permits "needy states" to apply for up to twenty percent more money from the federal government on a month-by-month basis, to cover welfare expenses above the level of "historic state expenditures."\(^{450}\) A state is needy if its unemployment exceeds 6.5% for the past three months or is at least 110% of the unemployment rate during the corresponding period in recent years.\(^{451}\) A state is also deemed needy if the number of individuals participating in the Food Stamp program exceeds the number of Food Stamp program participants over the same three month period in recent years by ten percent (taking into account the exclusion of immigrants and other Food Stamp program restrictions enacted by the Reconciliation Act of 1996).\(^{452}\) The Act appropriates to the contingency fund a maximum of $2 billion for the use of all states for the fiscal years 1997 through 2001.\(^{453}\)

Although the amounts appropriated to cover demographic and economic contingency under TANF were increased significantly in response to pressure from the National Governors' Association and other groups, the amounts provided are manifestly inadequate. For example, between 1988 and 1993, state spending for AFDC increased by thirty-two percent as a result of demographic changes and the recession of 1990-91.\(^{454}\) During this time, federal AFDC funding increased by $6 billion over the 1989 level.\(^{455}\) The Center on Social Welfare Policy and Law has estimated that if funding had been capped in 1989, as it will by TANF, states would have had to increase welfare spending from their own funds by seventy-six percent to maintain

\(^{448}\) Id. § 103 (to be codified at 42 U.S.C. § 603(a)(3)(C)).
\(^{449}\) Id. § 103 (to be codified at 42 U.S.C. § 603(a)(3)(E)).
\(^{450}\) Id. § 103 (to be codified at 42 U.S.C. § 603(b)).
\(^{451}\) Id. § 103 (to be codified at 42 U.S.C. § 603(b)(6)).
\(^{452}\) Id. § 103 (to be codified at 42 U.S.C. § 603(b)(6)(B)).
\(^{453}\) Id. § 103 (to be codified at 42 U.S.C. § 603(b)(2)).
\(^{454}\) Left to the Tender Mercies of the States: The Fate of Poor Families Under A Cash Assistance Block Grant 8 (Center on Soc. Welfare Pol'y & L. Pub. No. 813, 1995) [hereinafter Left to the Tender Mercies of the States].
\(^{455}\) Super et al., supra note 400, at 7.
benefits between 1989 and 1993. Even if the TANF contingency fund had an unlimited appropriation, the twenty percent limit on additional funding would have been inadequate to provide funding for such a contingency, or to match the support provided by the federal government under AFDC. In fact, the $2 billion contingency fund appropriation, which covers the next five years, amounts to just two percent of total block grant funding. It appears that such an amount will fall far short of meeting the requests of the states during the next recession, even under the formula which limits aid to twenty percent of the basic grant.

Further, the most important factor affecting state program costs is demographic change—increasing populations and an increasing proportion of single parent households at all income levels. According to the Center on Budget and Policy Priorities, national population growth is projected to be about 4.6% between 1997 and 2002, the period covered by the supplemental grant provisions of TANF. However, the supplemental grant fund would provide at most $800 million over four years, or an average of a one percent increase in basic TANF block grants, capping withdrawals far short of the funding states are likely to require. The threshold criteria which a state must satisfy to qualify for the supplemental grant—lower than average welfare costs plus above average population increase, a recent ten percent population increase, or very low welfare spending—will further limit the availability of federal funds to states experiencing higher costs due to demographic changes.

Funding for the proposed welfare block grants cuts against the grain of twentieth century experience by reducing the federal safety

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456 Left to the Tender Mercies of the States, supra note 454, at 8.
457 Super et al., supra note 400, at 7.
458 See id. The Unemployment Insurance program of the Social Security Act provides an instructive comparison. Unemployment Insurance plays a counter-cyclical role not unlike welfare. Reischauer & Weaver, supra note 440, at 24. The importance of the federal role in distributing the risk of job loss due to the unevenness of the economy over time among regions of the country is evidenced by the structure of the program, which has federally guaranteed safeguards against economic contingency that far exceed those proposed for the block grants that will fund welfare. Id. at 24-25.
459 Super et al., supra note 400, at 7.
460 Id.
net for state and local economies. Only a national program of social provision can redistribute the changing costs of poverty borne by different states in a properly working private economy.\footnote{Our economy continues to produce economically depressed areas where there are insufficient numbers of jobs for those willing to work. See, e.g., Virginia Carlson & Nikolas Theodore, Illinois Job Gap Project, Are There Enough Jobs?—Welfare Reform and Labor Market Reality (1995); Jobs Now Coalition, Is Minnesota Creating Enough Jobs that Pay a Livable Wage? Phase Four: Underemployment (1996). Nationally, increasing numbers of jobs are low wage, have minimal health care or other benefits, and are considered contingent, i.e., the companies have little commitment to maintaining the jobs over the long run, and they provide few incentives to workers seeking to build a career or to become upwardly mobile. See Jared Bernstein & Lawrence Mishel, The Growth of the Low-Wage Labor Market: Who, What, and Why, 3 Kan. J. L. & Pub. Pol'y 12 (1994). In 1973, a minimum wage job could maintain an employee at about the poverty level. In 1996, a minimum wage job provides only about two-thirds of what is required to maintain an individual at the poverty level, and, of course, far less than that required by a family. Since 1980, the number of low wage workers has increased, while the real value of their wages has fallen. See Burtless, supra note 344, at 88, 91-92.} By failing to make adequate provisions for economic downturns or for demographic change, block grants increase the risks and costs of poverty to individual states.\footnote{Paul Peterson, State Response to Welfare Reform: A Race to the Bottom?, in Welfare Reform: An Analysis of the Issues, supra note 266, at 9; Vroman, supra note 358, at 11-12.} States will bear widely differing burdens in dealing with poverty and will experience pressure to begin a "race to the bottom" to discourage low income migrants from seeking higher welfare benefits,\footnote{See Reischauer & Weaver, supra note 440, at 19-22.} and to keep taxation for welfare programs low in a competitive economic environment.\footnote{The empirical evidence supporting the actual effects of state tax rates on business migration is modest and suggests a much greater effect on business relocation within metropolitan regions than relocation between states. Timothy J. Bartik, Who Benefits From State and Local Economic Development Policies? 36-44 (1991). Whatever the empirical evidence shows, the perceptions of political leaders and the public have an important impact on tax policies.}  

3. Will the States Maintain Adequate Welfare Benefits?  

Under existing categorical programs, “maintenance-of-effort” provisions require continuation of state funding in order to prevent use of federal funds simply to replace state welfare spending.\footnote{Maintenance of effort provisions have not prevented states from allowing the value of benefits to decline as long as the nominal dollar value is not reduced. See infra note 475 and accompanying text.} Maintenance-of-effort provisions for the new block grants have been
the subject of intense dispute. While Senate proposals and the Clinton Administration have argued for high maintenance-of-effort standards, the House and the National Governors’ Association have pressed to relax the requirements. The National Governors’ Association proposal, offered in February 1996 as a possible compromise, would have eliminated the maintenance-of-effort requirement altogether while recommending increased overall federal funding, which the states would be free to use to replace, rather than to supplement, their own spending for welfare.\(^{466}\) The TANF block grant requires states to maintain only seventy-five percent of their 1995 funding, and permits the states to transfer up to thirty percent of the federal share to pay for supplementary services currently paid for by the states.\(^{467}\) Thus, the net reduction in required state contributions to cost-sharing under TANF may be large. The Center on Budget and Policy Priorities estimates that states could divert as much as $40 billion from low-income programs between 1997 and 2001.\(^{468}\)

Ending federal entitlements by creating block grants will not end all poverty programs, but merely end the federal guarantee of welfare benefits. Similarly, capping block grant funding below the actual costs of welfare programs and making limited provision for contingencies in times of economic downturn merely reduces the importance of the federal role in funding welfare. Under the block grant programs, states will have the responsibility to determine the scope of poverty relief and will shoulder both an increasing share of the funding for welfare and all but exclusive responsibility for dealing with economic contingencies. If this places a greater potential strain on state fiscal resources, states will now have the discretion to reduce that stress through direct changes in programs and benefits. Responsibility for creating poverty policy will be left to state governments, which, like the federal government, broker competing values and interests.

It is unclear that the political brokering process at the state level will result in welfare administration that is efficient or in policies that

\(^{466}\) The Governors’ Welfare Proposal, supra note 430.

\(^{467}\) Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 609(a)(7)). States failing to meet mandated work participation goals will be required to maintain 80% of prior funding. Id.

\(^{468}\) Super, et al., supra note 400, at 2.
will address the needs of the poor more effectively.\textsuperscript{469} Faced with reduced funding and no easy way to achieve more efficient welfare administration, each state's commitment to providing for the poor will be tested.\textsuperscript{470} Cutting benefits may be defended as a means of achieving efficiency only if poverty relief can actually be achieved more effectively by that means.

It may be argued that state administrators will perceive recipients' needs differently than will federal administrators. That is, in part, what President Reagan intended to convey when he employed rhetoric about bringing "government closer to the people" to introduce his block grant proposals in 1981.\textsuperscript{471} Normative differences, however, such as preferences for generous or stingy welfare benefits, are not evidence of greater or lesser efficiency; they are simply positions based on dominant political interests within a community, and, as such, should have no special standing in national policy debates.

\textsuperscript{469} But see Peterson et al., supra note 428, at 23-25 (finding that handling welfare on the state level will be more efficient). Professor Anthony Szczyciel, an expert on Medicaid funding, concludes that if Medicaid funding falls to the states under a similar block grant program, then the financing of welfare will be even trickier because of the strong constituencies, such as the medical profession and health care organizations, that are invested in Medicaid but not in welfare payments. Private communication from Professor Szczyciel, State University of New York at Buffalo, School of Law (Feb. 28, 1996) (on file with authors).

\textsuperscript{470} In the present political climate, devolution will move programs out of the hands of federal administrators who are committed to the continued existence of entitlements and into the hands of cost-conscious state and local constituencies, or more accurately, largely into the hands of Republican-controlled state legislatures. Although each state's commitment to maintaining welfare benefits after devolution depends both on financial capacity and political will, reformers often have deflected questions about capacity and will in the public debate about reform by invoking democratic values, e.g., a government that is closer to the people is better government. In 1981, President Reagan introduced proposals for devolution of responsibility for welfare by drawing on general themes of his campaign, including promises to reduce the size of the federal government and to return government to the people. See Peterson et al., supra note 428, at 5. Proposals to "return government to the people" and claims that local communities do things "better" appeal not only because of the public's widespread mistrust of the federal government, but because of the strong faith in local values. These phrases evoke images of a caring community with a strong sense of family values, personal responsibility, and social ties without directly addressing how these characteristics apply to provision for the poor. We may agree that welfare policy should be more closely linked to community values, but to whose community? Neither President Reagan's proposals in the early 1980s to return welfare responsibility to the states, nor the underfunded welfare reform mandates of the 1990s help to resolve these difficult issues.

\textsuperscript{471} See Peterson et al., supra note 428, at 5.
“Community values” may express regional or local preferences and needs for social provision, but they also embody historic exclusions, such as racial discrimination.\textsuperscript{472} Although the Social Security Act primarily left administrative responsibility for welfare in the hands of state and local administrators, federal requirements forced the states to extend programs to counties in which minorities resided and gradually became a strong bulwark barring arbitrary exclusions.\textsuperscript{473} If control over welfare programs was delegated downward to local government, these and other historically significant factors would be likely to dominate. While local control of programs may in principle create opportunities for effective use of local knowledge, the interest that most frequently prevails is that of the property owner and taxpayer. Nor should we expect adjacent communities willingly to pool resources to resolve problems of regional and urban poverty that are beyond the capacity of taxpayers in a single community. If social provision is devolved to the community level, can we realistically expect communities to pay more attention to poverty relief than they have been willing to bestow on the needs of school children or low-income families seeking homes?\textsuperscript{474}


\textsuperscript{473} See Katz, In the Shadow of the Poorhouse, supra note 48, at 244-45 (stating that although the New Deal failed to prohibit racial discrimination, the programs did not exclude blacks from benefits).

\textsuperscript{474} The 1995 National League of Cities survey shows that 80% of the nation’s largest and middle sized cities already feel burdened by welfare. Green, supra note 431, at 1. Communitarians present an appealing argument in favor of placing greater trust in communities and less in absolute rights and entitlements. See, e.g., Mary A. Glendon, Rights Talk: The Impoverishment of Political Discourse (1991) (arguing that reliance on rights exacerbates Americans’ historical concentration on the individual and the state, at the expense of groups, dialogue, and community). While the appeal of devolution is based in part on the Communitarian vision, Communitarians do not account for the effects of
The best evidence of what states are likely to do with greater discretion is what they have done in the past with the discretion permitted under the AFDC program. Unlike Social Security, Food Stamps, and SSI, AFDC benefit levels are set by the states and are not automatically adjusted for inflation. While federal maintenance-of-effort requirements have prevented reduction in the nominal dollar amount spent by each state, the federal government has not required states to increase benefits to keep pace with inflation. Under the program, each state dollar spent is enhanced by matching federal dollars, creating an incentive to spend more on the poor, but even this incentive has not induced states to increase benefits to offset inflation. Benefit levels were more generous in the 1970s. During the early 1980s, combined state and federal expenditures declined even though more families were receiving aid. Spending increased in the late 1980s in response to the interest shown in welfare by passage of the 1988 Family Support Act, but recent spending for AFDC declined again even though the number of families receiving assistance was greater then than ever before. The pattern of increasing caseloads and declining benefits dramatizes the states’ lack of commitment to maintaining benefit levels. Between 1970 and 1993, the real value of welfare benefits declined by forty-five percent.

Further, under the Family Support Act of 1988, states were granted expanded permission to apply for waivers of federal

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475 By limiting maintenance of effort requirements and capping federal funding for welfare block grants, the financial incentives to maintain or extend welfare to the needy will end. Indeed, because the quality of a state’s welfare program depends on federal funding to a large extent, the declining value built into the block grant will insure that benefits rapidly deteriorate. See Reischauer & Weaver, supra note 440, at 19-22. Because the block grant does not require states to maintain their previous cash benefit contributions and does not create any incentive for them to do so, states may be tempted to save money by limiting eligibility and reducing state funding. See id. at 19-20. Block grants may thus create an incentive for states to reduce benefits. Id. at 20. When AFDC benefits declined in value between 1970 and 1993 due to inflation, the difference was partially made up by increases in Food Stamp benefits. Id. at 19. If such federal programs continue to take on this burden, states will have an additional incentive to use their newly acquired discretion to set benefit levels lower. See id. at 20.

requirements in order to experiment with welfare administration and benefits. The waivers granted to the states typically reduced or limited welfare benefits, strongly suggesting that benefit reform rather than administrative reform will dominate state program changes under block grants.477 As we already have mentioned, many states have chosen not to participate fully in federal programs already authorized due to lack of state administrative or fiscal capacity.478

The pattern established by the declining value of benefits and the use of discretion to restrict access to welfare suggests that powerful incentives were already at work to reduce welfare expenditures in each state prior to the recent round of conservative welfare reform proposals. Many state and local officials have expressed concerns that the elimination of federal entitlements will pressure states to cut benefits, in order to stay ahead in a tax-saving "race to the bottom," and to avoid the risk of becoming a welfare magnet.479 While research has left unanswered the question of whether a state with relatively high welfare benefits becomes a "welfare magnet,"480 perceptions drive politics.481 Some states already have lowered benefit levels,

477 See Liz McNichol & Iris J. Lav, Will States Maintain the Safety Net? Evidence From Bad Times and Good (Center on Budget & Pol'y Priorities, Washington, D.C.), Feb. 20, 1996, at 1. See also Racing to the Bottom?: Recent State Welfare Initiatives Present Cause for Concern (Center for L. & Soc. Pol'y, Washington, D.C.), Feb. 21, 1996 (expressing concern that proposals to eliminate AFDC with a federal block grant would encourage states to sharply reduce the availability of assistance to poor families). The TANF block grant allows a state whose waiver is approved before July 1, 1997, or is in the process of being approved before its state plan for a program funded under the TANF is submitted, to maintain its program until its waiver would have expired, even if that waiver program does not conform with the current statute. See Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 615(a)(2)(A)).

478 See supra note 86.

479 See supra notes 430-31 and accompanying text.

480 See Paul E. Peterson & Mark C. Rom, Welfare Magnets: A New Case for a National Standard 50-83 (1990) (concluding that state and local governments provide fewer welfare benefits than a national government would because each state government would prefer other governments to provide the services, and fears that it will become attractive to the poor if it provides greater benefits); Inst. for Res. on Poverty Special Report No. 61, supra note 352, at 25-26 (stating that the evidence shows that welfare magnets do not affect poor families).

481 See Rebecca M. Blank et al., A Primer on Welfare Reform, in Looking Before We Leap: Social Science and Welfare Reform, supra note 434, at 73.
while others are proposing to do so in order to reduce their attractiveness relative to neighboring states with lower benefits.482

What seems abundantly clear is that by reducing federal funding, welfare reform will require each state to pay more for welfare or to reduce the cost of welfare by upgrading administrative efficiency or by reducing benefits. The present political climate suggests that spending more on welfare will be difficult unless the public discourse of reform is recast by political leaders so that the welfare issue is reframed as a problem of poverty relief for the deserving poor, a risky political undertaking because of welfare's identification with increased taxes and special interests. In the alternative, experience suggests that achieving greater administrative efficiency is far less predictable483 and offers fewer political rewards than simply cutting benefits to the poor. At least one governor has proposed ducking these choices altogether by proposing to offer counties the option of receiving block grants from the state to support welfare and services484—there is quick learning in the devolution game.

States may respond differently to the fiscal and political pressures described above, but the process of devolution creates few incentives and many disincentives to giving priority to poverty relief over tax relief, and to giving priority to long term solutions over a short term reduction of state responsibilities for welfare. Further, states face financial hurdles not faced by the federal government. States lack the capacity to redistribute the costs of alleviating poverty and maintaining quality of life over the entire national economy. Significantly, the redistributive effects of welfare reform will leave many states at a relative disadvantage in managing regional or local problems of poverty that are inevitable in a successful national economy; the reform may encourage the states with relatively depressed economies or relatively high welfare expenses to begin the race to the bottom.


483 See Peterson et al., supra note 428, at 23-24.

F. Reforming the EITC: Raising the Taxes on the Poor

Redistributing the burden of taxation has been a leading issue in the politics of the 1990s. Much of the appeal of cost cutting through welfare reform and other government downsizing is its promise of reduced taxation and improved economic opportunity. While tax relief for the wealthy is a certainty if the conservative agenda embodied in the Contract With America is enacted, tax relief for the middle and working classes will be illusive. For example, the child tax credit enacted by both houses of Congress as part of the Balanced Budget Act of 1995 would have had little or no effect on working class wage earners because they earn too little to take advantage of the full credit. Between 1995 and 2000, the wealthiest twenty percent of taxpayers would have received $38 billion more from the credit than the bottom forty percent.

The EITC, a measure affecting only poor and near-poor members of the working class and welfare recipients, also will be reduced. The EITC is an important part of the safety net for poor working families. As poverty has increased, both Congress and the President have attempted to use the tax code to increase the after tax income of poor workers with this refundable credit. Although the Reconciliation Act of 1996 did not cut the EITC, the program remains vulnerable. Conservatives in Congress have proposed to limit eligibility and reduce the amount of the tax credit. This change will not correct the abuses that conservatives have criticized, however. In fact, the complaints about abuses largely have been rectified by the IRS since


486 Lav, Reconciliation Bill Tax Breaks, supra note 423.


488 Id. at 4. Figures released by the Joint Tax Committee show that under the EITC modifications included in the Balanced Budget Act of 1995, taxpayers with incomes up to $10,000 would lose $2.7 billion by 2000, while taxpayers with incomes between $10,000 and $30,000 would gain about $1.7 billion dollars. Id. at 3.

489 See supra part III, section C.

the 1995 GAO study. Cutting the EITC would not assist poor working families, particularly former welfare recipients trying to retain employment.

Recall that the 1993 EITC expansions increased the credit available to families with one child and incomes between $6340 and $11,620 to $2158, and for those with two or more children and incomes between $8900 and $11,620, to $3560.\textsuperscript{491} These credit increases effectively brought a family of four with a full-time minimum wage worker to the poverty threshold, provided the family also received Food Stamps.\textsuperscript{492} In addition, the 1993 legislation allowed poor single individuals and welfare recipients who worked during the year to receive the transfer. When finally phased in, the 1993 legislation will provide poor working families with two or more children with a credit of forty percent of their first $8640 in earnings.\textsuperscript{493} Reform proposals would have ended under the EITC’s disregard for purposes of determining welfare eligibility, eliminated the credit for poor individuals without children, stopped indexing the EITC it for inflation, and reduced the credit for families with children. The proposed reforms would have lowered the credit to thirty-five percent, effectively reducing the benefit they received by $356.\textsuperscript{494} The credit for those with one child and earnings below $7150 would have been reduced by nearly $244.\textsuperscript{495} As a consequence, if these rollbacks had been enacted, the antipoverty effectiveness of the EITC would have been reduced greatly.

The national and global nature of the economy continues to encourage companies to restructure their work forces. The importance of a federal presence in the coordination of assistance and services to people adversely affected by these changes cannot be ignored. State and local jurisdictions find themselves competing for jobs and chasing scarce dollars to maintain basic services. The national trend is that of growing income inequality and the erosion of low skilled jobs that provide adequate income and health benefits. More than fourteen

\textsuperscript{491} 26 U.S.C. § 32(b); Greenstein, The Earned Income Tax Credit, supra note 297, at 6.
\textsuperscript{492} Id. at 27.
\textsuperscript{493} Id. at 31.
\textsuperscript{494} Id.
\textsuperscript{495} Id.
million poor households with workers would have been affected adversely by the proposed changes to the EITC alone. These changes would not reduce poverty for working families; they would increase it.

G. How the Least Able Will Pay for Welfare Reform: Taxpayers and Low Wage Workers

While achieving overall cost reduction has been an explicit goal of welfare reform proposals, the proposals also will redistribute the costs of welfare among the states and among different classes of taxpayers, just as they will place more responsibility for bearing the costs of poverty on the poor. The public has paid little attention to the redistributive effects of welfare reform, although these effects will be substantial. The conservative vision of economic reform in the Contract With America inspired proposals which were purposefully redistributive to increase incentives for investment, entrepreneurship, and labor force participation. By contrast, much of the redistribution of economic burdens caused by welfare reforms will result from block grant funding formulas and indirect “trickle-down” effects of cuts in

496 Id. at 30.

497 These direct redistributive effects have received very little attention in the public debates about welfare because issues of block grant funding are technical and difficult; local tax equity is an arcane subject even among legal experts.

498 For example, both the House and Senate proposed large tax breaks for the wealthy and for corporations, very modest tax relief for the middle classes, and, ironically, a greatly increased effective tax rate for many working poor families. The Clinton Administration found that these tax proposals, when linked to proposed welfare changes, would affect the bottom 40% of households disproportionately, those with incomes less than $30,000 a year. See The Administration Releases New Estimates, supra note 485, at 2, 10. On average the incomes of these households would be reduced by $893 per year under the House proposal and $801 a year under the Senate proposal. Id. at 10. Those with incomes between $30,000 and $50,000, the next 21% of households, would lose only $43 a year under the House and $136 under the Senate proposals. Id. at 10-11. In sharp contrast, households with incomes above $50,000 would experience an increase in their after tax income. Households with incomes between $50,000 and $100,000, the next 27% of households, would gain an average of $488 per year under the House measure, while under the Senate version their incomes would increase an average of $439 a year. Id. at 11. The remaining 12% of households, those with incomes exceeding $100,000 a year, would reap the highest benefit from these reform and tax proposals. Under the House package, the incomes of these households would increase on average by $1458; under the Senate measure they would gain $1266. Id.
services, increased local taxes, and a lower floor for low-wage jobs—effects that are too far removed from the public debate to receive attention from the media or the public.

In economic terms, the reforms will change welfare from a national cost sharing system to a system in which the costs of poverty created by the national economy will be borne by those least able to bear them. States and localities experiencing greater poverty increasingly will be left to deal with their burdens. Families in economic distress will have a smaller public safety net to rely on, and thus will have to rely on themselves or on private charity. The movement of vast numbers of welfare recipients into the labor market particularly will affect the most neglected of the poor, the working poor, who will face greater competition for jobs and who will, as a result, receive lower wages.

1. Poorer Taxpayers Will Pay More

As we already have described, the changes proposed in the form of tax reductions, tax credits, and the EITC reduction would reduce the tax burdens on the wealthiest taxpayers while increasing the effective tax rates of poor and near-poor workers and working welfare recipients. The indirect effects of welfare reform on tax burdens will also be substantial. The changes in welfare will alter tax burdens on the states and within states at the local level. The alternative to drastic cuts in benefits is making up the lost revenues from state sources, primarily taxation. As we already have explained, these burdens will fall disproportionately on states with large numbers of poor families and states that experience economic downturns, and the "rainy day" fund provided in the block grant proposals is inadequate. Virtually all of the increase in the cost of welfare due to increasing administrative responsibilities or due to recessions would be borne by the individual state and its taxpayers.

499 Shifting financial responsibility from state to local governments will cause costs to be borne by the most regressive system of taxation, local property taxes, and thus will yield enormous inter-community inequities similar to those already apparent in local school financing. See Richard Briffault, Our Localism: Part I--The Structure of Local Government Law, 90 Colum. L. Rev. 1, 24-39 (1990) (describing constitutional challenges to the local property tax financing of public schools).

500 See supra notes 398-401 and accompanying text.

501 See supra part IV, section F.
The net losses in state revenues due to welfare and related federal program reductions will be large. For example, The Center on Budget and Policy Priorities has estimated that under the block grant provisions of the Balanced Budget Act of 1995, which would have provided funding at levels similar to TANF, the net loses of revenues to New York would have been about $3.5 billion, or eleven percent of projected state revenue from sales, personal, and corporate taxes combined. Colorado would have lost an estimated $428 million (eleven percent of revenues), Louisiana an estimated $2.1 billion (sixty percent of revenues), and Michigan an estimated $915 million (eight percent of revenues).\textsuperscript{502} The Congressional Budget Office estimates that the federal government will save more than $54 billion from reforms in the Reconciliation Act of 1996.\textsuperscript{503} For reasons already explained, however, it is very unlikely that this reduction in federal funding will be compensated for by increased efficiency in state administration. If welfare benefits are reduced proportionately, already meager benefits will erode further. States that require counties to share the costs of welfare and Medicaid automatically pass a proportion of the increased costs of welfare to local taxpayers, primarily to local property owners, and distribute the rest of the increased costs among state taxpayers. Local property taxation for state welfare mandates will increase, limiting revenues available for other purposes.\textsuperscript{504}

Not only will the proposed welfare reforms reduce services and benefits available to working poor and middle class families, but they will also place new burdens on state and local taxpayers.\textsuperscript{505} Taxpayers want lower taxes. Instead, they may get higher local property taxes as states shift welfare costs downward. Property taxes have a regressive impact, and consequently the least able will pay the most.


\textsuperscript{503} Burke, supra note 427, at summary.

\textsuperscript{504} See Lav & May, Still Holding the Bag, supra note 423. As we have noted, some states already have greatly reduced welfare benefits as a cost reduction measure. See supra note 432. Counties in some states have the option of maintaining assistance and have chosen to do so, but like state governments being pressed to begin a race to the bottom, counties will experience pressure from local taxpayers to avoid becoming a welfare magnet within the state. See State Notes, CLASP Update (Center for L. & Soc. Pol'y, Washington, D.C.), Dec. 21, 1995, at 13.

\textsuperscript{505} See Lav & May, Still Holding the Bag, supra note 423.
2. Low Wage Workers Will Face Increasing Competition For Jobs and Wages

A hidden cost of the new welfare to work requirements, which will be imposed on a larger number of welfare recipients than ever before, is the impact they will have on the low-wage labor market. A twenty-five year decline in the value of the minimum wage, combined with falling real wages for low wage workers, has swelled the numbers of working poor. In 1990, there was an average of two million job vacancies, and a gap between the supply of jobs and demand for employment of more than ten million jobs. The ratio of heads of families receiving welfare to job vacancies would have been more than three to one (see Table 1). The TANF block grant requires a thirty percent participation rate by 1998, increasing to a fifty percent participation rate by 2002, in a workforce program for a single parent family, and a seventy-five percent participation rate in 1998, increasing to ninety percent by 2002, for two parent families. More than a million welfare recipients will be required to find some form of work within two years of the effective date of the block grant, and will compete for jobs with a large number of workers who already are underpaid and, often, underemployed. According to estimates of the Economic Policy Institute, welfare reform could cause a greater than ten percent decline in the wages of low-wage workers nationally.


507 Reconciliation Act of 1996, supra note 20, § 103 (to be codified at 42 U.S.C. § 607(a)). In 1996, participation for a single parent household is defined as 20 hours per week in a work related activity, and for a two parent family as 35 hours per week. Work related activities are more narrowly defined in TANF than in the JOBS program, so that education and on-the-job training are restricted to no more than the first four weeks of participation. Eligible activities under TANF include unsubsidized employment, subsidized employment in the private sector or in the public sector, and work experience. Id. § 103 (to be codified at 42 U.S.C. § 607(d)).

508 See Burtless, supra note 344, at 92-94.

509 Lawrence Mischel & John Schmitt, Cutting Wages by Cutting Welfare: The Impact of Reform on the Low-Wage Labor Market 5 (Econ. Pol'y Inst. Briefing Paper, 1995). In some states the effect would be much greater. For example the estimated decline in low wage levels in New York could be as high as 17%. Id.
H. The Questionable Benefits of Welfare Reform

Welfare reforms are said to benefit welfare recipients; yet most recipients are children, and the federal funding for many programs benefiting children will be reduced sharply by the reforms. The explanation is always that greater efficiency will be achieved and children will benefit. However, close examination shows that gains in efficiency, which might make delivery of the same or better benefits for less money possible, are unlikely to result from the proposed welfare reforms. If any reduction in cost is achieved, it will result primarily from cuts in benefits.

Moreover, states which maintain benefits will be required to bear the increased costs, placing new burdens on state taxpayers. States' and localities' burdens in the new world of welfare program devolution will be uneven, and the federal government will no longer redistribute risks or costs associated with maintaining the economic safety net provided by welfare across the entire economy. Welfare reform also will redistribute tax burdens among families of varying levels of wealth, placing disproportionate burdens on families with less wealth. Finally, welfare to work reform, as proposed, will lower wages significantly for the lowest wage workers in the American labor force.

While the talk of welfare cost cutting reinforces concerns about economic security, it is far from clear whether the proposed reductions in benefits and services, and redistribution of responsibilities among federal, state, and local governments, will reduce the overall cost of welfare or increase the economic security of Americans most concerned about this issue. Indeed, even for many who do not depend on welfare, the proposed reform packages may lead to new tax burdens as well as other costs, including the costs of replacing lost government services and subsidies, lower wages, and increased risk of personal disaster in times of economic instability.

The bottom line is that there are many unknowns about the effects of reform, and there are many reasons to doubt the claimed benefits of the welfare to work proposals, other behavior modification proposals, and in particular the shift to state and local financing and control.
V. THE UNDESERVING POOR: A FALSE CONSENSUS

Our arguments about welfare reform are addressed primarily to those who make the law. We have criticized contemporary welfare reform by comparing the claims and assumptions underlying welfare reform proposals with a multitude of facts established by economic, social science, and historical research. We have found that the rhetoric of politicians mischaracterizes and stereotypes both the poor and those who receive welfare. We showed that the reforms are unlikely to have the promised benefits for welfare recipients or for society. Federal welfare programs have many defects, but restricting or terminating them in the manner proposed will not remedy the defects and instead will cast the poor into the private economy where no relief from poverty awaits them.

The final refuge of the politician confronted with the irrationality of policies is that the public dictates what legislatures do. If this transfer of responsibility is accepted, on grounds that the public is the final arbiter of public policy, the facts we describe are just the views of another special interest, irrelevant until accepted by the mainstream public. Some critics of contemporary welfare reform, on the other hand, claim that the false impressions about welfare recipients and the poor which are held by the public and legislators alike have been strongly influenced by the media's selective reproduction of images.\textsuperscript{510} The media, for its part, describes its activities as reporting, rather than

\textsuperscript{510} Here we part company with Lucy Williams, on whose research we have placed so much value and cited extensively in this article. Professor Williams' analysis of the role of media images in public perceptions and policy making seems to make the media the prime movers in what seems to us a far more complex historical process of value and fact creation. We find support for our argument that politicians themselves play a critical role in the formation of political agendas. As Deborah Stone has argued:

Problem definition is a process of image making, where the images have to do fundamentally with attributing cause, blame, and responsibility. Conditions, difficulties, or issues thus do not have inherent properties that make them more or less likely to be seen as problems or to be expanded. Rather, political actors \textit{deliberately portray} them in ways calculated to gain support for their side. And political actors, in turn, do not simply accept causal models that are given from science or popular culture or any other source. They compose stories that describe harms and difficulties, attribute them to actions of other individuals or organizations, and thereby claim the right to invoke government power to stop the harm.

making, what is newsworthy. They claim that what is newsworthy is what draws viewers, and is a product of public tastes and perceptions of issues. At worst, the media may argue, it exploits the public's misperceptions of welfare recipients, but it does not create them.

Behind these conflicting apologetics and explanations lies the reality of politics. The responsibility for providing leadership in directing public debate, we argue, lies with political figures, who manipulate issues for their own purposes, reflecting the partisan and entrepreneurial realities of our political system. Although often claiming they merely follow the polls, political leaders are likely to take more extreme positions than the public on carefully selected issues to distinguish themselves from other candidates, and to do so by choosing issues that appeal widely in order to create as broad a consensus as possible. In the abstract, welfare reform is ideal for the 1990s because it appeals to critical swing voters—white working and middle class Americans. Additionally few members of the public favor welfare while many have negative associations with welfare recipients. To enhance this appeal both Republicans and New Democrats subtly have linked welfare reform to widespread concerns about economic well-being among the middle and working classes. Both parties have tended toward the same strategy for constituency building, appealing to the same swing voters, ignoring the racial and class implications that would have differentiated their traditional constituencies and which had, in past times, pushed the parties in different directions and towards more complete representation of societal interests.

As a result of this political convergence, we have argued, critical issues have been left out of the discussion. In this concluding section, we address some political consequences of leaving those issues out of the public debates. We argue that the logic of welfare dependency has pushed the proposals for welfare reform to such an extreme that public reaction is now likely to return the debate to the historical mainstream. The historical mainstream, including federal entitlement to and cost sharing for welfare, is becoming more attractive, not because of the array of research findings we have cited, but because the extreme proposals that dominate present discussion no longer accord with the public's common sense. We focus on the emerging public view of welfare reform and the political consequences that are likely to follow. In American politics, common sense is a better ally than academic
research, but the two are converging. We hope that conscientious political leaders will discover ways of mobilizing both for the common good.

A. The Limit of Stereotypes: Moral Judgments About Welfare Recipients

Even though the public seems to have been persuaded by the new "get tough" philosophy of welfare reformers in both main parties, a majority of Americans oppose many of the specific reforms that have been proposed. Shortly after the 1994 mid-term elections that gave Republicans control of both houses of Congress, a Times/CBS poll showed that the public favored reducing spending for "welfare" by a four to one margin. The same poll also showed that six in ten favored better job training for the unemployed even if it meant raising taxes, while seven in ten opposed time limits on welfare as long as welfare recipients worked for their benefits. Other polls have shown that the public supports providing day care for welfare recipients and continuing benefits for adolescent mothers. Thus, even at the height of the reformers' political strength, a majority of the public believed that benefits should continue for a great number of persons whom the reformers' theory of welfare dependency brands as morally undeserving. This apparent contradiction has received too little attention in the current debates. When confronted with welfare dependency in the abstract, Americans are disapproving and punitive in their policy preferences, but when the public considers specific

511 The public has a negative view of welfare in general. The public is in favor of denying benefits for additional children born to welfare mothers. Even welfare recipients support such a limit, belying the claim that welfare recipients have values differing from the mainstream. The use of the word welfare triggers very negative responses. In some polls, a majority of the public believes that recipients could get along without welfare and by a four to one margin favor reducing funding for welfare. When the question is worded to ask about funding for relief of children's poverty, the same poll showed strong support for increased funding by a five to one margin. Maureen Dowd, Americans Like G.O.P. Agenda But Split on How to Reach Goals, N.Y. Times, Dec. 15, 1994, at A1, A24.

512 This paradox was evident beginning with polls taken shortly after the Republican landslide in the 1994 mid-term elections. Id. at A24.

513 Id.

needs and barriers encountered by the poor, common sense seems to suggest many of the same conclusions suggested by extensive social science research.

Even if welfare recipients matched their stereotype, the qualities on which the stereotype is built say little about the real causes of poverty or the redeeming qualities individuals possess now or may display at later points in their lives. Bearing a child, being an African-American teenager, being unemployed, or failing to finish school does not mean that the life of the individual has been or will be misspent or unproductive. Moreover, even if they signal a life at-risk because of the serious social problems associated with each, they are not caused by welfare. The moral qualities and dilemmas of welfare recipients are more complex than the stereotype. The public’s rejection of many of the implications of the stereotype reflects the false note sounded by welfare reformers in relying upon the stereotype.

Even if the welfare recipient stereotype accurately portrays public suspicion of particular social groups and the disfavor in which particular behavior is held, the public’s continuing support for the relief of poverty suggests a more sophisticated understanding of its causes than the stereotype implies. The public’s support for a broad range of services that ease the situation of welfare mothers and make transition to work more compatible with child-rearing suggests that many Americans understand that the difficulties experienced by working welfare mothers are similar to those experienced by mothers not receiving welfare. The deserving and undeserving share a common framework of need.

There is sound evidence that the public recognizes that at least some of the stereotyped characteristics relied on by the reformers are not true of welfare recipients generally. While the stereotype suggests that welfare recipients lack motivation to work, polls show that the public ranks lack of motivation last among causes of poverty and gives greater weight, by a two to one margin, to lack of jobs and single parenting. When the image of the poor is stripped of its

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515 In general, hostility to welfare and to mothers who do not match mainstream norms is undeniably high. The break-up of the traditional family troubles the public the most, accurately pin-pointing an area of great general tension in American culture, hardly limited to the situation of welfare recipients. Id. at 112.

516 Id. at 116.
stereotypical qualities, a substantial majority of the public support
government relief for those who cannot take care of themselves and
support guaranteeing every citizen enough to eat and a place to
sleep.517

As successful as the theory that welfare produces dependency has
been in eclipsing alternative perspectives on poverty, the very breadth
of the theory carries the seeds of its own destruction. Welfare policies
are always fraught with inherent tensions.518 However, the moral
theory driving current reforms has supported proposals that are so
extreme that they run counter to values held by the public, and they
are being met with great ambivalence. One explanation for the
public’s ambivalence is that while the reforms reinforce the strongly
held moral value of self-sufficiency, the public is quite discriminating
about lack of opportunity and its impact on the deservingness of the
poor. In other words, the public appears to have a much more nuanced
moral theory than advocates for many of the current reform proposals.

B. The Invisible Poor: Low-Wage Workers

The stereotype holds that the poor are dependent welfare
recipients. The reality is that widespread poverty among low-wage
workers who do not receive AFDC forces a large number of
Americans to rely on federally funded poverty relief programs such as
Food Stamps and Medicaid.519 Confounding Roosevelt’s careful
distinction between programs for the deserving and undeserving, many
working Americans in fact rely on public assistance during their
working careers to supplement low wages or as a form of poor
person’s unemployment compensation.520 Widespread poverty among

517 Times-Mirror Center, supra note 123, at 32.
518 See generally R. Kent Weaver, The Politics of Welfare Reform, in Looking Before We
Leap: Social Science and Welfare Reform, supra note 434, 93-104 (describing the inherent
tensions in welfare due to conflicts between, among other things, the needs of parents and
children, short term and long term political payoffs, and federal and state interests).
519 See supra part III.
520 Until the late 1980s, the Unemployment Insurance program covered more than 40% of
unemployed workers. Marion Nichols & Isaac Shapiro, Unemployment Insurance
Protection in 1994 1 (Center on Budget & Pol’y Priorities, Washington, D.C.), May 15,
1995, at 1. At the height of the recession in the mid-1970s, with an unemployment rate of
8.5%, coverage reached a high of 75.5% of unemployed workers. Id. at 7. With the advent
of the Reagan Administration this coverage began to erode; only 45.3% of unemployed
full-time workers and reliance on welfare programs creates a problem for simple moral labeling of the welfare poor. If failure to work or failure of individual responsibility was to blame for working class poverty, then treatment of the working poor as undeserving would be consistent with our moral values. But if joblessness, low wages, and underemployment are at the causes of poverty, then the New Deal solution for the deserving—entitlement to federal assistance adequate for maintaining a minimum standard of living—becomes more compelling.

Conservative welfare reformers have ignored the tension between policies for the working poor and policies they have designed for stereotypical welfare recipients. Further, they have attacked income supplements for the working poor directly, greatly weakening the logic of their reforms. Conservatives have not stopped at rollbacks of AFDC, Food Stamps, Medicaid, and other welfare entitlements, but also have proposed reducing the EITC. Because the EITC offers a wage supplement for some workers above the official poverty level and will be costly as the subsidy rises to its scheduled maximum in 1996, conservatives claim that it is a handout that is too expensive and that it too is likely to undermine the work effort of wage earners who are perfectly capable of supporting their families.

Cutting welfare for the poor, a group the public deems deserving, and proposing to reduce the EITC reveal a deep contradiction between the extreme view of welfare taken by the most conservative contemporary reformers and mainstream values. There is little doubt about public support for programs for the deserving—those who work or who have been excused from work by reason of age or disability. Contributory social insurance receives nearly unanimous support. Any

workers received UI benefits in 1982, even though the unemployment rate was 9.7%, the highest it had been in nearly 30 years. Id. In the late 1980s, less than one-third of unemployed workers received UI in an average month. Id. at 6-7. Over time federal law has increased state discretion in the design and administration of the UI program. As a consequence in late 1994 less than 25% of unemployed workers in 14 states received UI during an average month. Id. at 2.

As we have explained in part III, supra, the EITC was first proposed in 1975 on a limited basis as a subsidy for families with children. By 1996, the amount returned to the working poor will be greatly increased as a result of the 1993 amendments, and the program will include the childless and working welfare recipients in order "make work pay." See Greenstein, The Earned Income Tax Credit, supra note 297, at 26-28.
rollbacks in Medicare benefits or increase in Social Security premiums will be politically costly because they attack entitlements the mainstream does not question. But the element of contribution is no longer essential to public support for entitlements. The entitlement of the elderly poor to a federally financed minimum income has been supported by a public consensus for two decades.522 A majority of the public has favored national health care since the 1930s.523 There has been long standing (if only slightly less universal) public support for governmental relief of poverty, shorn of negative stereotypical characteristics.524 Clearly, this is evidence that the ranks of the deserving are not limited to a technically defined class of contributors to Social Security and Medicaid.525 More recently, polls show that sixty-eight percent of Americans favor continuing the EITC.526

The dilemma that contemporary welfare reformers face in dealing with the working poor is two-fold. First, while the moral logic of the reformers depends on making a sharp distinction between deserving and undeserving poverty, the welfare poor are in fact indistinguishable from the working poor. The welfare poor are both undeserving and deserving—morally undeserving because they are receiving welfare and yet deserving because many do work, many more want to work, and after child rearing, they will work. Indeed, as workers and potential workers, most recipients of welfare should be in the ranks of the morally deserving but for the stigma of receiving welfare. The discovery that most welfare recipients either work or want to work, and that joblessness and below poverty wages are a major factor in creating the need for welfare, means that many welfare recipients properly should be viewed as unemployed or under-employed.

523 See Richards, supra note 24, at xii.
524 Times-Mirror Center, supra note 123, at 152-53.
525 The public strictly equates benefits and contributions under these programs. Even Social Security benefits have been transformed by public pressure from contractual rights to retirement wages based on need rather than individual payments. See Handler & Hasenfeld, supra note 34, at 109.
526 See supra note 315.
workers, not self-willed dependents. Second, to acknowledge that the problems of those receiving welfare and the problems of economic insecurity of low wage workers and their families are closely related is to acknowledge the enormity of the problem of poverty and the critical nature of the federal government’s role in poverty relief. Such an acknowledgment would require admitting that the private economy will not solve the problem of poverty and that poverty relief will be costly. These two problems render the approach being taken by reformers incompatible with the needs of the poor.

C. The Subtext of Welfare Reform: Disciplining the Mainstream

The attack on poverty-relief programs now threatens many Americans who count themselves among the deserving. So far the public has been receptive to reform rhetoric emphasizing the failure of welfare. Why has a political strategy that avoids public discussion of poverty and joblessness by focusing on the moral deviance of welfare recipients succeeded? As we discussed in Part II, the arguments of reformers have succeeded in part because they offer an implicit reason for the plight of many impoverished working Americans not receiving welfare—namely blaming tax burdens and ghetto poverty on those who are perceived as deliberately living off of others’ hard work. They also have succeeded in part because both major political parties have presented government cost cutting as the general solution to poverty, and there is as yet no public pressure to deal with poverty through government intervention as there was during the 1960s. The logic of welfare reform and cost-cutting, however, has overlooked the strong ideological foundation for social provision for the deserving, which is on a collision course with present welfare reforms.

As we described in Part IV, the mainstream is likely to be affected both directly and indirectly by many of the proposed rollbacks. Many non-poor families have annual incomes which are only marginally

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527 Our concept of deserving has expanded so that it is possible to argue that even reliance on welfare should not render the working poor undeserving. Indeed, a majority of the public would support continuing welfare benefits for the working poor. See Dowd, supra note 511, at A24. As the ranks of the working poor have grown, it has become more clear that the problem of welfare is synonymous with the problem of poverty, i.e., for many, the private economy does not provide enough resources to raise a family. The growing numbers who work and receive welfare now create enormous tension as the boundary between deserving and undeserving poor threatens to dissolve.
above poverty. In 1993, nearly sixteen percent of all American households had incomes below 125% of poverty, and the number of such families has increased greatly in the past fifteen years.\footnote{In 1977, about 7.7 million families had incomes 125% or less than the official poverty threshold, while in 1992, more than 10.7 million had incomes this low. 1994 Statistical Abstract, supra note 134, at 479.} These families often slip below the poverty line if, for example, a family member loses a job or becomes seriously ill. A family with an income only slightly above the poverty level is often eligible for benefits under programs such as Food Stamps, Medicaid, and the school lunch program.\footnote{Families with incomes less than 130% of the poverty level are eligible for Food Stamps and free school lunches. Families with incomes between 130 and 185% of the poverty level can receive partially subsidized school lunches. 1994 Green Book, supra note 28, at 824. Medicaid eligibility is linked to qualifying for benefits under AFDC or Supplemental Security Income (“SSI”), or established by state standards for optional benefits to the medically needy. Id. at 783, 787. Both groups included members whose incomes are above the poverty level. Id. at 788. AFDC and SSI recipients receive Medicaid automatically. Id. at 784-85. In addition, all states are required to cover pregnant women and children under the age of six whose family income is less than 133% of the poverty level. Id. at 784. Since 1991, states also have been required to provide Medicaid coverage to all children less than 19 years of age whose families have incomes less than 100% of the poverty level. Id. at 785. States also may cover pregnant women and infants under the age of one year whose family incomes are below a state established level that is between 133 and 185% of the poverty level. Id. Slightly more than 11% of the U.S. population received Medicaid coverage in 1992, and 47% of those had incomes below the poverty level that year. Id. at 787.} Families with incomes above the official poverty threshold are among the most numerous beneficiaries of the EITC. These programs are intended, in part, to help marginally non-poor households maintain economic stability. Similarly, the EITC is intended in part to maintain the income of working poor families which might otherwise experience substantial spells of poverty as a result of irregular employment.

Many non-poor families will be affected indirectly by the proposed reductions in federal programs. Medicaid is the largest single source of benefits for the elderly in nursing homes;\footnote{Anthony Szczygiel, Long Term Care Coverage: The Role of Advocacy, 44 U. Kan. L. Rev. 721, 733 (1996). In addition to paying a substantial part of the cost of nursing home care and in home care, the federal government provides regulatory oversight. Id. at 734.} if these beneficiaries lose benefits, their families will bear the burden of making up the difference. Least direct, but bearing the largest price tag, will be the devolution of welfare programs to the states with reduced federal
support. Even if decentralization reduces the cost of administering welfare, as reformers promise, a greater share of the funding for benefits will be borne by state and local taxpayers, with a disproportionate burden being borne by the poorest regions and by the least affluent property owners.

Legislators are applying rhetoric appropriate for programs for the undeserving poor to benefits that affect the mainstream. Such a strategy seems to have worked well historically to curb expansion of public benefits. Unlike the successful strategies which defeated earlier welfare proposals, however, contemporary reformers are attempting to do something quite different. They are attempting to justify cutting back benefits on which many working Americans have come to rely by calling the benefits welfare. Characterization of benefits that affect the well-being of families of the middle and working classes as welfare accords the middle and working class citizens the status of undeserving welfare recipients, and this is deeply at odds with their beliefs.

VI. CONCLUSION

The welfare reforms proposed for the 1990s will not achieve the goal of reducing poverty while lowering the cost of welfare for taxpayers. The promised benefits of welfare reform are based on false characterizations of the poor and welfare recipients and on improbable claims about the efficiency of decentralizing control and funding of welfare. On the contrary, the welfare reforms proposed by conservatives are likely to leave welfare recipients worse off than they were.

531 During debates about earlier welfare reforms, characterizations of beneficiaries as deserving or undeserving played a critical role. A strong appeal was made by advocates of the well-supported Townsend Movement in 1935 to extend benefits under the Social Security Act to all elderly poor, but Roosevelt's argument—that only those who "earned" benefits by making contributions were deserving—successfully narrowed his program to exclude the non-contributing elderly poor. See Katz, In the Shadow of the Poorhouse, supra note 48, at 235-38. Nixon's Family Assistance Plan proposed in 1971 would have provided a social wage to the working poor as well as the unemployed welfare poor.

532 There already is evidence that fear of loss of benefits under federal programs is turning working class voters away from the Republican Party or third party alternatives and is increasing their support for President Clinton, who recently has begun to respond to the backlash to conservative cuts in the safety net. See Berke, Clinton Showing Strength Among Michigan's Voters, supra note 128, at A1, A14.
are now, without jobs or welfare, or with jobs which pay a below poverty wage and have no future. If the proposed block grants replace current federal welfare programs, the states will have to manage with a smaller and less redistributive federal subsidy, and many will have to increase welfare expenditures or decrease welfare benefits, a choice falling particularly on states with rapidly rising numbers of poor.

Anti-welfare rhetoric has always made good politics, but in the 1990s this anti-welfarism has gone much further than before. Ending welfare became a lightening rod for the economic insecurities of large numbers of lower and middle income Americans who lost ground in the 1980s. Welfare reformers have exploited the prevailing economic insecurity of the non-poor by suggesting that all federal programs for the poor are morally suspect, both because they are unfair to those who work and are still insecure and because they hurt the poor themselves by increasing their dependency. Like a bus out of control, the first proposals have been superseded by others that threaten to repeal a large part of the federally supported safety net because it is said to be a cause of welfare dependency. The problems that will be created by this expanded concept of welfare reform do not stop with the effects they are likely to have on the poor. Programs which will be downsized in the name of ending welfare dependency will hurt a large number of working class families that often rely on Food Stamps, the EITC, or Medicaid.

The prevailing welfare reform rhetoric contains the seeds of its own destruction. As we have demonstrated, the implications of the welfare dependency ideology and its support for the punitive administration of welfare is contradicted by research and increasingly is at odds with the opinions of a majority of Americans who have been polled about the desirability of specific reforms. While we believe that the research we have presented on the effects of the proposed welfare reforms speaks the truth, we also have great faith in common sense. The moral sense of the American public requires self-help and condemns dependency on welfare, but it also understands the plight of the poor who remain poor because they do not have realistic opportunities for self-improvement—similar to an increasing number of the working poor and formerly middle class who have lost ground economically in the last decade. We believe that many Americans not only perceive welfare reforms as too punitive but also are beginning to understand the threat posed to themselves by the dismantling of the
welfare state and by the false promise that the private economy will eventually provide the security and benefits which they currently lack.

Accountability for dismantling the welfare state rests squarely with the politicians who have supported it, deploying welfare dependency in aid of a much larger agenda of tax reduction and redistribution, and government downsizing that is favored by entrepreneurial and investor constituencies. The false note in welfare reform that ignores the extreme shortage of living wage jobs and the diverging futures of high wage and low wage work has been noticed by many members of the public, and the question is where will politicians lead us next. It is time to have a conversation about a system of social provision that distributes economic burdens fairly, and, with appropriate political leadership, the issues, problems, and dilemmas of poverty may now receive the attention they deserve.