

THE WELFARE DEBATE: GETTING PAST THE BUMPER STICKERS

PETER B. EDELMAN*

Welfare reform has been the recurrent subject of heated debate in the United States, culminating in far-reaching legislation in 1996.¹ Taking the measure of that legislation requires attention both to the broader context of which welfare policy is a part and to the merits of the 1996 law itself.

I. WELFARE POLICY IN CONTEXT

Welfare policy, cash assistance for families with children, should not be considered in isolation. It is certainly true that bad welfare policy hurts people, and good welfare policy helps. But it is wrong to discuss it, or legislate about it, in a vacuum. Unfortunately, that is what occurred in 1996, and it is occurring again as we debate the reauthorization of the 1996 law.

Viewing welfare in a vacuum errs in two ways. First, appropriate action to reduce the number of people in or near poverty (in ways that would also reduce welfare dependency) has to go well beyond welfare policy. Undue focus on welfare to the exclusion of other relevant matters draws attention away from the larger agenda. Without attention to a broader policy agenda, measures directed at reducing the size of the welfare rolls tend to have more punitive side effects, especially when jobs are scarce. More jobs, better jobs, increased income from work, broader health coverage, additional child care assistance, and improved education for children are only some of the policies that would reduce both poverty and welfare, and also result in people being better off than they were when on welfare.

Second, it is important to ask why so much poverty exists in this

* Professor of Law, Georgetown University Law Center

1. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended primarily in scattered sections of 42 U.S.C.).

very wealthy nation. Conservative critics of welfare focus heavily on individual behavior and reject or ignore broader issues of economic and societal structure. Individual behavior should be considered, but not to the exclusion of these other matters.

Almost no one argues for a pure income guarantee approach to poverty policy.² So perhaps there is no need for me to argue that poverty policy must include elements other than cash assistance. I have long argued for a welfare policy based on the centrality of work, with appropriate support structures to assist people in getting and keeping the best possible jobs, and to be responsible parents at the same time.³ Everyone who has children faces this set of issues, but only some people are fortunate enough to be able to afford their own support systems.

If cash by itself is a nonstarter, what is the right combination of policies? I offer a basic premise: welfare should be a residual policy. For some people, especially children, welfare is an essential safety net. Nevertheless, policies should endeavor to keep the number of people on welfare at an absolute minimum. It should be reserved for when our other policies fail, or when it is not appropriate to expect a parent or parents, in practice often a single mother, to work outside the home. Welfare is essential in recessions, in places where there are no jobs, in circumstances where women have special caregiving responsibilities, in cases where there is functional disability, and in a manner that supplements unemployment insurance.

However, I would like to note my basic policy assumption that nearly every parent can do something useful outside her home for some period of time each week. The question that divides me from others who agree with this statement is how to accomplish this. The details are critical. Bumper stickers, slogans, and flat ideological positions do not provide the answer.

Welfare policy should consider whether it genuinely promotes work and protects children. As to the former, are we helping people to get and keep jobs and move up the job ladder? As to the latter, are we

2. Amy L. Wax, *Something for Nothing: Liberal Justice and Welfare Work Requirements*, 52 EMORY L.J. 1 (2003).

3. See e.g., Jonah Edelman et al., *The Inaugural Meyer Elkin Address: A Family Commitment to Families and Children*, 37 FAM. & CONCILIATION COURTS REV. 8 13-17 (1999); Peter B. Edelman, *Promoting Family by Promoting Work: The Hole in Martha Fineman's Doughnut*, 8 AM. U. J. GENDER SOC. POL'Y & L. 85 (200); Peter B. Edelman, *The Next Century of Our Constitution: Rethinking Our Duty to the Poor*, 39 HASTINGS L.J. 1 (1987).

meeting children's needs and making careful decisions about how much work to require from their parents as a condition of receiving cash assistance?

If we want to promote work, a crucial mix of policies more costly than current welfare legislation is needed:

- education and training for the parents involved;
- adequate child care, the lack of which forces many mothers back onto the welfare rolls;
- and above all, universal health coverage, the lack of which remains a disincentive for many to leave welfare, where they have Medicaid coverage.

Additionally, people should earn an adequate income from working: a decent wage, and if this is not forthcoming, support from the public treasury for income supplementation to compensate for the failure of the labor market to produce a decent wage. The fact that there are so many jobs that do not pay enough to live on is due to two overlapping trends, extant for the last thirty years. One is the stunting of wages at the lower end of the labor market. The other is the increase in incomes at the upper end of the spectrum.⁴

Lawrence Mead suggests that the Great Society is the root of the problem, providing income transfers without any demand for an assumption of personal responsibility in return, resulting in negative consequences for the poor.⁵ I disagree. Fundamentally, the performance of the American economy, including its massive restructuring since 1973, should bear the blame for weakening the position of the poor, exacerbated by continuing race discrimination and complicated further by the concentrated poverty of the inner city.

The loss of manufacturing jobs to globalization and automation and their replacement (fortunately they were replaced) by lower-paying service jobs caused wages to stagnate throughout the lower reaches of the labor market. A few statistics illustrate this point. The median wage for a job in the United States in 1973 was \$12.06 an hour (in 2001 dollars). In 2001 it was \$12.87.⁶ A Congressional Budget Office

4. See JARED BERNSTEIN ET AL., *ECONOMIC POL'Y INST., PULLING APART: A STATE-BY-STATE ANALYSIS OF INCOME TRENDS* 8, 9 (2000); KEVIN P. PHILLIPS, *WEALTH AND DEMOCRACY: THE POLITICS OF THE AMERICAN RICH* 129, 137 (2002).

5. LAWRENCE MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* 46-47 (1985).

6. Telephone Interview with Heather Boushey, Economist, Economic Policy Institute (Nov. 14, 2002); see also LAWRENCE MISHEL ET AL., *ECONOMIC POL'Y INST., THE STATE OF WORKING AMERICA 2002/2003*, at tbl.2.6, <http://www.epinet.org/>

study showed that from 1979 to 1997 the average income of the bottom twenty percent of Americans went down \$100, from \$10,900 to \$10,800 (in 1997 dollars).⁷ Meanwhile, the cost of living increased much faster than the rate of inflation for people at the bottom of the income continuum.⁸ The cost of rental housing has skyrocketed. In Washington, D.C., for example, the fair market rent for a two-bedroom apartment is now \$1,154.00 a month.⁹

If low-wage workers have had difficulties generally, those in the inner city have fared even worse. This population includes the stereotypical welfare recipient. The flight of the African-American middle class from the inner city after the urban violence of the 1960s, enabled by the Fair Housing Act of 1968,¹⁰ turned economically integrated, relatively healthy, disproportionately poor, racially segregated neighborhoods into economically (and still racially) segregated, isolated neighborhoods with extraordinarily high poverty levels. Between 1970 and 1990 the number of urban poor people living in census tracts with more than forty percent poverty nearly doubled and approximately half of those living in such circumstances were African-American.¹¹

What happened in inner cities was deeply troubling. Beginning in the 1970s, unmarried teen and other unmarried birth rates shot up in inner cities (although they also went up around the industrialized world and across income and racial lines (remember Murphy Brown)).¹² So, too, did drug use, crime and violence, and school dropout rates.¹³ These facts are the fodder for the story that welfare

datazone/02/deciles_2_6r.pdf.

7. ISAAC SHAPIRO ET AL., CTR. ON BUDGET & POL'Y PRIORITIES, PATHBREAKING CBO STUDY SHOWS DRAMATIC INCREASES IN INCOME DISPARITIES IN 1980S AND 1990S: AN ANALYSIS OF CBO DATA 5 (2001), <http://www.cbpp.org/5-31-01tax.pdf>; see also CONGRESSIONAL BUDGET OFFICE, EFFECTIVE FEDERAL TAX RATES 1979-1997, at Table G-1c (2001), <ftp://ftp.cbo.gov/30xx/doc3089/EffectiveTaxRate.pdf>.

8. See generally HEATHER BOUSHEY ET AL., ECONOMIC POL'Y INST., HARDSHIPS IN AMERICA: THE REAL STORY OF WORKING FAMILIES (2001), <http://www.epinet.org/books/hardships.pdf>; see also NATIONAL RESEARCH COUNCIL, MEASURING POVERTY, A NEW APPROACH, at xv-xvii, 1-5 (Constance F. Citro & Robert T. Michael eds., 1995).

9. METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, HOUSING & PLANNING, PAYMENT STANDARDS AND INCOME LIMITS, <http://www.mwcog.org/planning/housing/voucher/standards.asp> (last visited Apr. 20, 2003).

10. 42 U.S.C. §§ 3601-3631 (2000).

11. See PAUL A. JARGOWSKY, RUSSELL SAGE FOUND., POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY 38-39 (1997).

12. U.S. DEP'T OF HEALTH AND HUMAN SERVS., BIRTHS TO UNMARRIED MOTHERS: UNITED STATES, 1980-1992, at 3 (1995).

13. See SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN., U.S. DEP'T OF HEALTH & HUMAN SERVS., RESULTS FROM THE 2001 NATIONAL HOUSEHOLD SURVEY

and other giveaways caused the problem.

Facts must be faced, but the true story behind the facts is a combination of the structural history of the United States economy and the complex interaction of race discrimination and poverty, including the geographic concentration of poor people. Given this history, the remedy needs to emphasize personal responsibility (although it is also correct that personal responsibility is a value to be pursued in public policy generally), but it also must address the broader structural issues.

The deteriorating situation of people at the bottom of the economic ladder is even more troubling when viewed in the context of what has happened to the economy as a whole. The United States has about twice the income, in real, inflation-adjusted terms, as it did in the late 1970s.¹⁴ Yet about half the American people are no better off than they were then, and many are actually worse off.¹⁵ However, between 1979 and 1997, the average income of the top one percent went up by \$414,200—from \$263,700 to \$677,900.¹⁶

II. THE WELFARE REFORM ACT OF 1996

Although it is a mistake to discuss welfare in a vacuum, it is also the case that there is good and bad welfare policy. It is my view that the 1996 welfare law was bad welfare policy. The welfare rolls did decline by more than 50 percent from their peak in 1994,¹⁷ and the employment rate of single mothers did go up from 59 percent to 73 percent.¹⁸ However, the precipitous decrease in welfare rolls does not tell us much, without knowing what happened to the women involved

ON DRUG ABUSE: VOLUME I. SUMMARY OF NATIONAL FINDINGS 82 (2002), http://www.samhsa.gov/oas/nhsda/2knhsda/pdf/01sof/chp9_w.pdf (regarding drug use trends in the 1970s); BUREAU OF JUSTICE STATISTICS, NATIONAL CRIME VICTIMIZATION SURVEY, VIOLENT CRIME TRENDS, 1973-2001, at <http://www.ojp.usdoj.gov/bjs/>; PHILLIP KAUFMAN ET AL., NAT'L CTR FOR EDUC. STATISTICS, DROPOUT RATES IN THE UNITED STATES: 2000 (2001).

14. ECONOMIC REPORT OF THE PRESIDENT 322 (2002), http://w3.access.gpo.gov/usbudget/fy2004/pdf/2003_erp.pdf.

15. PHILLIPS, *supra* note 4, at 127-137.

16. SHAPIRO ET AL., *supra* note 7, at 3.

17. ADMIN. FOR CHILDREN AND FAMILIES, PERCENT CHANGE IN AFDC/TANF FAMILIES AND RECIPIENTS AUGUST 1996-SEPTEMBER 2001 (2001), at <http://www.acf.hhs.gov/news/stats/afdc.htm>.

18. Demetra Smith Nightingale, *Work Opportunities for People Leaving Welfare, in WELFARE REFORM: THE NEXT ACT* 104 (Alan Weil & Kenneth Finegold, eds., 2002); see also *Jobs and Wages Up Sharply for Single Moms, Gains Especially High After Welfare Reform*, SINGLE PARENTS' EARNINGS MONITOR (The Urban Institute, Washington D.C.), July 25, 2001, at 2.

and their children. The increase in employment of single mothers tells more, and is in and of itself a positive fact, but we still need to know more. Moreover, how much of the increase in employment is attributable to the welfare law is a hotly contested question. Clearly, the unforeseen economic boom which featured unemployment at low levels not seen since the 1960s¹⁹ was a *sine qua non*. People do not go to work when jobs are not available, and conversely, when jobs are available, people generally want to go to work.

Besides the economic upturn, two other factors played a role in the declining welfare rolls. One, the Earned Income Tax Credit (EITC), is widely believed to have had an incentive effect.²⁰ Many people understood that if they took a minimum wage job, the EITC would add \$4000 to their income if they were the custodial parent or parents of two or more children. Second, the welfare law played some role: some people, knowing their welfare eligibility was now time-limited, were moved to look for the work that was now available. It is impossible to quantify how much effect these additional incentives (one positive and one negative) had, but they had some effect.

I continue to believe the 1996 law is bad public policy for three reasons. First, most of those who found jobs did not escape poverty.²¹ This is because there are too many low-wage jobs and there is not enough wage supplementation. I hasten to say that if this were the only problem, the way to fix it is obvious.

Second, the 1996 law badly hurt large numbers of women and children. More than one million former welfare recipients (who have more than two million children) have neither a job nor any cash assistance on any given day.²² Many of these women were forced off welfare by tough sanctioning policies or were not allowed on welfare because of so-called diversion policies. These women have no or only intermittent work.²³ This group has actually lost economic ground, as

19. BUREAU OF LABOR STATISTICS, HOUSEHOLD DATA ANNUAL AVERAGES, 1. EMPLOYMENT STATUS OF THE CIVILIAN NONINSTITUTIONAL POPULATION, 1940 TO DATE (2003), <http://www.bls.gov/cps.cpsaat.pdf>.

20. ROBERT GREENSTEIN & ISAAC SHAPIRO, CTR. ON BUDGET & POLICY PRIORITIES, NEW RESEARCH FINDINGS ON THE EFFECTS OF THE EARNED INCOME TAX CREDIT (1998), <http://www.cbpp.org>.

21. Pamela J. Loprest, *Making the Transition from Welfare to Work: Successes but Continuing Concerns*, in WELFARE REFORM: THE NEXT ACT, *supra* note 18, at 24; HEATHER BOUSHEY, ECONOMIC POL'Y INST., FORMER WELFARE FAMILIES NEED MORE HELP 2 (2002), http://www.epinet.org/briefing_papers/123/bp123.pdf.

22. Loprest, *supra* note 21, at 24-25.

23. Barbara Vobejda & Judith Havemann, *States' Welfare Shift: Stop It Before It Starts*;

they have lost more in benefits (primarily welfare and food stamps) than they have gained in earnings.²⁴ The average income of people in “extreme” poverty, that is the 40% of the poor (about 12 million people) who have incomes below half the poverty line (below about \$7,500 for a family of three), actually decreased over the latter half of the 1990s.²⁵

Third, state policies are strikingly uneven. The 1996 law is a block grant that affords states great flexibility.²⁶ Some states are extremely punitive, utilizing short time limits and sanctions policies that are not only tough but are often applied mistakenly or without any interest in the facts of the particular case.²⁷ The 1996 law destroyed what little protection there was for people at the very bottom of the economic ladder. It not only created a five-year time limit for people to receive federally financed cash assistance, but also left states free to impose shorter time limits as they chose. Many states took up the offer.²⁸ The 1996 law also gave states complete freedom to have sanction and termination policies of any degree of strictness.²⁹ Idaho is a prime example on both points, imposing a two-year lifetime time limit and a three strikes sanctions policy, which means that three infractions renders the entire family ineligible for life.³⁰

III. CONCLUSION

Much of the good that has been achieved with the 1996 law could

'Diversion' to Alternatives Cuts Caseload, WASH. POST, Aug. 12, 1998, at A1; NAT'L CAMPAIGN FOR JOBS AND INCOME SUPPORT, *THE WEAKENING LINK: UNEMPLOYMENT AND WELFARE CASELOADS 6* (2002), <http://www.nationalcampaign.org/download/caseloadsreport.pdf>.

24. KATHRYN H. PORTER & ALLEN DUPREE, CTR. ON BUDGET & POL'Y PRIORITIES, *POVERTY TRENDS FOR FAMILIES HEADED BY WORKING SINGLE MOTHERS 1993 TO 1999*, at iii-v (2001), <http://www.cbpp.org/8-16-01wel.pdf>; ZOE NEUBERGER ET AL., CTR. ON BUDGET & POLICY PRIORITIES, *FUNDING ISSUES IN TANF REAUTHORIZATION 4* (2002).

25. Sheila R. Zedlewski, *Family Incomes: Rising, Falling or Holding Steady?*, WELFARE REFORM: THE NEXT ACT, *supra* note 18, at 68; *see also* MICHAEL B. KATZ, *THE PRICE OF CITIZENSHIP: REDEFINING THE AMERICAN WELFARE STATE* 338-39 (2001).

26. MARTHA COVEN, CTR. ON BUDGET & POL'Y PRIORITIES, *AN INTRODUCTION TO TANF* (rev. 2003), *available at* <http://www.cbpp.org/1-22-02tanf2.pdf>; *see generally* Sheila R Zedlewski et al., *TANF Funding and Spending across the States*, in WELFARE REFORM: THE NEXT ACT, *supra* note 18, at 6.

27. NAT'L CAMPAIGN FOR JOBS & INCOME SUPPORT, *STATES BEHAVING BADLY: AMERICA'S TEN WORST WELFARE STATES* 4, 6-7, 13-14 (2002), *available at* <http://www.nationalcampaign.org/download/ngareport.pdf>.

28. *Id.* at 4.

29. *Id.* at 13.

30. *Id.* at 4, 13.

have been achieved without the flexibility it accorded states to be unduly punitive. States were already implementing interesting welfare-to-work initiatives under “waivers” granted to them by the federal Department of Health and Human Services (HHS).³¹ The former law allowed HHS to let states experiment on a case-by-case basis, so long as the result would not increase the cost to the federal government.³² About thirty-five states had received such waivers,³³ and these included many thoughtful policy initiatives that could have been the basis for widespread replication, without the need for new national legislation.

As our national debate continues, it is my hope that we can get past the bumper stickers and the slogans, and instead have a debate that addresses welfare policy itself in a more realistic way, placing the discussion of welfare in the context of broader issues of social, economic and racial justice.

31. See JOEL F. HANDLER, *THE POVERTY OF WELFARE REFORM 95-98* (1995).

32. 42 U.S.C. § 1315 (2000) (amended 1996); HANDLER, *supra* note 31, at 8.

33. HANDLER, *supra* note 31, at 8.