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## Introductory Remarks: Is the Issue Welfare or Poverty?

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## Introductory Remarks: Is the Issue Welfare or Poverty?

### Cover Page Footnote

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## INTRODUCTORY REMARKS: IS THE ISSUE WELFARE OR POVERTY?

by Matthew Diller\*

It is my privilege to welcome you this morning on behalf of the two co-sponsors of today's symposium: The Stein Center and the *Fordham Urban Law Journal*.

The Stein Center was established three years ago through the generosity of Louis Stein of the class of 1926. It sponsors a wide range of programs for the benefit of law students, practitioners and the public on issues concerning public interest law and ethics. The *Fordham Urban Law Journal* is now in its 23rd year. It was also established through the generosity of Mr. Stein. It is a student-run journal that publishes four issues a year of scholarship concerning contemporary legal matters affecting American cities.

The subject of today's symposium is welfare reform—an issue that is bound to have direct ramifications for the future of American cities. Currently, over 14 million Americans receive welfare under the Aid to Families with Dependent Children (AFDC) program.<sup>1</sup> Two-thirds of these recipients are children.<sup>2</sup> The goal of creating a better future for these children is one of the central problems facing American society.

This conference could not be more timely. Our nation is now embarking upon a massive effort to rethink and transform our system of providing aid to the poorest among us. As we meet, Congress is engaged in the task of “ending welfare as we know it.”<sup>3</sup> In addition, state and local governments around the country are enacting comprehensive changes to the social safety net.<sup>4</sup> If one added up the number of news stories, articles and opinion pieces written about welfare over the past six months, the total would be in the thousands.

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1. HOUSE COMM. ON WAYS AND MEANS, 1994 GREEN BOOK: OVERVIEW OF ENTITLEMENT PROGRAMS 395 (Comm. Print 1994) [hereinafter, 1994 GREEN BOOK].

2. *Id.*

3. See Gerald F. Seib, *Welfare Reform: Hot-Button Issue of New Order*, WALL ST. J., Nov. 16, 1994, at A30.

4. See, e.g., WIS. STAT. ANN. § 49.19 (West 1993); N.J. REV. STAT. ANN. § 44:10—3.5 (West 1993); see generally, Michael Wiseman, *Welfare Reform in the States: The Bush Legacy*, FOCUS, Spring 1993, at 23-25 (citing state welfare reform proposals in California, Georgia, Maryland, Michigan, Missouri and Wisconsin).

This reexamination will not end when Congressional consideration of various reform measures concludes. Because all the proposals in Congress shift significant responsibility for setting welfare policy to the state level,<sup>5</sup> critical decisions will be made in state capitols around the country over the next several years.

The issue of welfare implicates basic questions about how our society should be structured, and the principles upon which it should rest. It calls upon us to reexamine the question of the relationship between our society as a whole and those living in poverty. Accordingly, the current focus on *how* the welfare system should be reformed only begs underlying questions—toward what end should welfare be reformed? What are the alternative means of addressing the problem of poverty? And more fundamentally, what are the causes of poverty? After all, the welfare system was never intended as an end in itself, but as a means of alleviating poverty.

The reforms that result from the current debate will inevitably be shaped by one or more visions of how society should respond to poverty. Not surprisingly, as it unfolds, the debate is replaying a number of themes that are familiar to all students of social welfare policy.<sup>6</sup> The tension between compassion and a desire to discipline the workforce can be traced back hundreds of years.<sup>7</sup> Similarly, the current focus on deterring “illegitimacy” reflects longstanding impulses for social control over the process of family formation, reproduction and the delineation of gender roles.<sup>8</sup>

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5. H.R. 4, 104th Cong., 1st Sess. (1995).

6. The observation that little is ever really new in social welfare policy is itself not new. See Joel Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. OF L. & SOCIAL CHANGE 457, 467 (1987-88) [hereinafter, Handler, *Transformation*]; Joel Handler, “Ending Welfare as We Know It”—*Wrong for Welfare, Wrong for Poverty*, 2 GEORGETOWN J. ON FIGHTING POVERTY 3, 42 (1994) [hereinafter, Handler *Ending Welfare*].

7. In describing the history of welfare, Joel Handler has written that “the most consistent, animating aspect of welfare policy—the desire to preserve the supply of labor at the bottom—is the basic principle of ‘less eligible’: the conditions of relief had to be made less desirable than the conditions of the lowest paid work.” Handler, *Transformation*, *supra* note 6. See FRANCES FOX PIVEN & RICHARD CLOWARD, *REGULATING THE POOR* 3-41 (2d ed. 1993).

8. See *New Jersey Welfare Rights Org. v. Cahill*, 411 U.S. 619 (1973); *King v. Smith*, 392 U.S. 309 (1968). See generally MIMI ABRAMOWITZ, *REGULATING THE LIVES OF POOR WOMEN* (1988); Linda Gordon, *What Does Welfare Regulate?*, 55 SOCIAL RESEARCH 608 (1988); MARTHA FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY* 106-118 (1994).

The current debate reflects a heavy emphasis on discipline and social control, with little attention to questions of deprivation and need. In part, this emphasis stems from the way in which the issue has been framed. Current debate centers on the problem of welfare dependency, not on the problem of poverty. Framing the question in this way can yield only one answer—the fastest way to end welfare dependency is to end welfare.

Thus, the current debate has focused on using the denial of benefits to influence the behavior of recipients.<sup>9</sup> It is not difficult to see the allure of such a strategy. While government's ability to foster job development and revitalization of inner cities is open to doubt, government does have control over the welfare system. Welfare presents a readily available lever which politicians and social scientists can harness to test out various social policies. In times of budgetary stress, withholding benefits can serve double duty: it enables the government to save the taxpayers money and at the same time is presentable as innovative social policy.

The use of welfare policy as a stand-in for anti-poverty policy is misguided for a number of reasons. The manipulation of welfare benefits and program requirements provides only a frail and inadequate lever on the problem of poverty. First, even apart from the moral and constitutional questions raised by the strategy of withholding benefits as a means of influencing behavior, the effort is likely to fail as a practical matter. Welfare benefits are simply too small to play a major role in shaping the kind of behavior that reformers seek to influence. In 1994, AFDC benefit levels for a family of three in the median state totalled only \$366 a month, or 38% of the federal poverty threshold.<sup>10</sup> This figure reflects a 47% decline in value since 1970.<sup>11</sup> Because current benefit levels are already insufficient to support families, many recipients survive by using benefits as part of a precarious package that includes support from relatives or friends and unreported work income.<sup>12</sup> Without minimizing the impact of benefit reductions, it is important to note that they can only affect the degree of inadequacy in the aid.

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9. See Malcolm Gladwell, *In States' Experiments, a Cutting Contest*, WASH. POST, Mar. 10, 1995, at A1; Lucy Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L. J. 710 (1992).

10. 1994 GREEN BOOK, *supra* note 1, at 367.

11. *Id.* at 377. When food stamps are taken into account, the decline in the benefit package is still 26%. SARA McLANAHAN & GARY SANDEFUR, *GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS* 139-40 (1994).

12. CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY* 205-18 (1992).

For example, family cap rules are intended to deny assistance to children as a means of deterring their mothers from giving birth. In New Jersey, the first state to implement such a program, mothers with two or more children ordinarily only receive \$64 a month with which to care for a new baby.<sup>13</sup> Thus, even before implementation of the policy, the rise in benefits did not meet the costs of feeding, clothing and sheltering a child. Withholding the \$64 may intensify the struggle to survive, but only by some marginal increment. Not surprisingly, preliminary studies show no significant effect on birth rates.<sup>14</sup> The principal effect of the policy is to further impoverish the children who are born despite the policy.<sup>15</sup>

Second, even assuming a beneficial impact, reforming the welfare system will not have any direct impact on the large numbers of poor families who do not receive welfare. The inadequacy of benefit levels and strict eligibility rules,<sup>16</sup> have already shrunk the pro-

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13. For a fuller discussion of New Jersey's family cap policy see James M. Sullivan, *The New Jersey Child Exclusion: Model or Mess?*, 2 GEO. J. ON FIGHTING POVERTY 127 (1994).

14. As time passes and data accumulates, the impact of the family cap appears more and more negligible. In March 1995 a preliminary study showed an 11% decline in the birth rate of AFDC mothers in New Jersey. Hilary Stout, *So Far, Efforts to Discourage Women on Welfare From Having More Children Yield Mixed Results*, WALL ST. J., Mar. 27, 1995, at A22. See Melinda Henneberger, *State Aid is Capped, but to What Effect?*, N.Y. TIMES, Apr. 11, 1995, at A1. By June 1995, even this decline could not be discerned, as birth rates for women subject to the family cap appeared to be the same as birth rates for women who had been placed in a control group. See Letter from Michael J. Camasso, Principal Investigator, State University of New Jersey, Rutgers, to Rudolph Myers, Assistant Director, Division of Family Development (June 14, 1995) (on file with author). More generally, many writers have pointed out the empirical weaknesses in the proposition that welfare benefits exert a strong influence on family structure or fertility. See MARY JO BANE & DAVID T. ELLWOOD, WELFARE REALITIES 109-112 (1994); DAVID T. ELLWOOD, POOR SUPPORT 57-62 (1988); IRWIN GARFINKEL & SARA S. McLANAHAN, SINGLE MOTHERS AND THEIR CHILDREN 55-63 (1986); THEODORE MARMOR ET AL., AMERICA'S MISUNDERSTOOD WELFARE STATE 110-112 (1990); MARK R. RANK, LIVING ON THE EDGE 71-86 (1994).

15. Christopher Jencks and Kathryn Edin have pointed out that even a state like Mississippi where AFDC benefits are only \$96 a month for a family of two still has a high rate of nonmarital births. Christopher Jencks & Kathryn Edin, *Do Poor Women Have a Right to Bear Children?*, AMERICAN PROSPECT 43, 46 (Winter 1995). The example of Mississippi illustrates two points. First, that even a truly spartan welfare program will not reverse the broader forces in our society that are increasing the incidence of nonmarital births. Second, a state like Mississippi has only a dim prospect for manipulating its welfare system to further social policies, because it provides so few benefits in the first place.

16. One example of such a rule is the cap on gross income in the AFDC program, 42 U.S.C. § 602(a)(18) (1988 & Supp. V 1993), which cuts off otherwise eligible fami-

portion of poor children who receive benefits to a point where almost 40% of children living in poverty do not reside in homes that receive welfare.<sup>17</sup> Absent a large expansion in eligibility, welfare reform will not reach the families in which these children live. For these families, all of the deterrents, incentives, and work programs that could be grafted onto the AFDC program have little meaning.

These two facts point out the irony that the more benefit levels are slashed and eligibility is tightened, the less welfare can be used as a tool to influence or control the conduct of poor people. This irony is most apparent in recent arguments by President Clinton that welfare benefits should be preserved so that recipients can be required to engage in work and training programs.<sup>18</sup>

In addition to these practical problems, the exclusive focus of the current debate on welfare receipt suffers from a more fundamental problem. It directs attention to only two variables: the individual and the welfare system. It leads inevitably to the conclusion that blame for poverty must be assigned to one or both parties. This focus on welfare receipt both leads to and stems from an assumption that the poverty is caused by choices made by poor individuals.

A shift in focus from the question of welfare to the question of poverty, however, changes the picture dramatically. It enables welfare to be seen in the broader context of the lives of poor families and individuals. When this context is considered, it becomes clear that policies that seek to reduce welfare receipt do not necessarily serve as solutions to poverty, and may have the effect of increasing poverty. Indeed, as the package of income supports available to poor families has eroded over the past twenty-five years and as eligibility rules have tightened, the rate of childhood poverty has climbed, not diminished.<sup>19</sup> As a result, the United States has the

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lies who have a gross income above a certain point, even if consideration of their net income would result in a finding of eligibility.

17. 1994 GREEN BOOK, *supra* note 1, at 399. In 1973 fully 80% of poor children received AFDC. *Id.*

18. See Robert Pear, *From Democrats, Another Welfare Plan*, N.Y. TIMES, June 9, 1995, at A21.

19. Sheldon H. Danziger & Daniel Weinberg, *The Historical Record: Trends in Family Income, Inequality, and Poverty*, in CONFRONTING POVERTY: PRESCRIPTIONS FOR CHANGE 18, 34-35 (Sheldon H. Danziger, et. al., eds. 1994) [hereinafter, CONFRONTING POVERTY].

One study has attributed almost two thirds of the increase in child poverty between 1979 and 1989 to changes in government policies. HOUSE COMM. ON WAYS AND MEANS, 1993 GREEN BOOK, OVERVIEW OF ENTITLEMENT PROGRAMS 1367-68, 1380,

dubious honor of being the leader among industrialized countries in child poverty rates.<sup>20</sup>

Moreover, looking at welfare as only part of the larger problem of poverty would bring the predicament of the non-welfare poor into the foreground. It would necessitate consideration of the fact that real hourly wages and weekly incomes have declined in the United States for twenty years.<sup>21</sup> By any measure, work at the bottom of the labor market no longer pays what it once did. As President Clinton has recently stressed, the real value of the minimum wage is about to reach a forty year low.<sup>22</sup> The percentage of full time workers who earn less than the poverty line for a family of four increased by 50% between 1978 and 1991.<sup>23</sup> This decline in wages has limited work opportunities for many Americans to jobs that leave them unable to provide for their children, without health coverage and without job security. It has had a particularly severe impact on employment in inner cities.<sup>24</sup> These economic realities are of central importance. They make clear that if welfare benefits are withdrawn, even those recipients who are absorbed into the workforce would remain trapped in poverty.<sup>25</sup> Jobs at Burger King are not the answer to poverty in America.<sup>26</sup>

Finally, a focus on poverty would require consideration of a host of other issues in addition to declining wage levels and job stability, such as the failure of our education and health care systems to serve poor communities, the unique problems that women face in work environments—which contribute to their failure to adapt to their dual roles as workers and as caretakers, the inadequacy of low

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1384 (Comm. Print 1993). Changes in welfare policy were the single biggest factor in causing this increase in child poverty. *Id.*

20. Gary Burtless, *Public Spending on the Poor: Historical Trends and Economic Limits*, in *CONFRONTING POVERTY*, *supra* note 19, at 82.

21. James Tobin, *Poverty in Relation to Macroeconomic Trends, Cycles and Policies*, in *CONFRONTING POVERTY*, *supra* note 19, at 147, 153-54.

22. President William J. Clinton, *State of the Union Address*, N.Y. TIMES, Jan. 25, 1995, at A18.

23. Handler, *Ending Welfare*, *supra* note 6, at 10.

24. WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED* 39-46 (1987).

25. See JENCKS, *supra* note 12, at 221-26. Studies of welfare-to-work programs have generally found that while such programs can aid recipients in getting jobs, the jobs do little to increase the income of program participants. See Judith Gueron, *Welfare and Poverty: The Elements of Reform*, 11 YALE L. POL'Y REV. 113 (1993).

26. Moreover, the availability of jobs at Burger King should not be taken for granted. A recent study found fourteen applicants for each position at fast food restaurants in Harlem. Katherine Newman & Cherney Lennon, *The Job Ghetto*, THE AMERICAN PROSPECT, at 66 (Summer 1995). A year later almost three-quarters of rejected applicants were still searching for jobs. *Id.*

income housing and continuing problems of race and sex discrimination.

In sum, our welfare system raises difficult questions concerning the structure, scope and purposes of the social safety net; however, the exclusive focus on welfare as the problem, rather than on the issue of poverty, is misdirected. Massive retrenchment of the current system would by definition reduce welfare dependency, but is also likely to exacerbate poverty. In describing a vociferous war against public aid to the poor that took place in the 1870s, historian Michael Katz has concluded that the withdrawal of aid showed that it is far "easier to eliminate or reduce relief than to remove the reasons that made the people ask for help."<sup>27</sup> He concludes that "by the early twentieth century most authorities reluctantly had admitted that outdoor relief played an indispensable role in the alleviation of human misery."<sup>28</sup>

It is a basic premise of the Stein Center that lawyers have an important role to play in helping to untangle knotty social issues. Issues of justice and responsibility are the bread and butter of a lawyer's trade. Lawyers have an important role in representing those most directly affected by the current debate over welfare: poor individuals and communities that have few means of participating in the public debate. Lawyers also have an important role to play in helping government agencies charged with implementing legislative policies, both through policy formation and by providing legal advice and representation. Of course, the means by which lawyers should fulfill their role in addressing the problems of welfare and poverty is subject to debate. Our second panel today will consider this question from a variety of viewpoints.

The students who organized this symposium—Betsy Bachman, Valerie White and Amy Loprest—have brought together an extraordinary collection of scholars and other experts to address these issues today, including present and former government officials, legal scholars, political scientists, and practitioners. In addi-

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27. MICHAEL KATZ, *IN THE SHADOW OF THE POORHOUSE* 37 (1986).

28. *Id.* A recent study of the consequences of Michigan's decision to end its General Assistance program in 1991 yielded similar conclusions in a contemporary context. Researchers concluded that "[m]any of our findings on work, health, public assistance, and coping after General Assistance (GA) indicate that self-sufficiency was elusive after benefits were lost." Sandra K. Danziger & Sherrie A. Kossoudi, *WHEN WELFARE ENDS: SUBSISTENCE STRATEGIES OF FORMER GA RECIPIENTS* 13 (1995). The study found that, apart from those who managed to replace GA income with disability benefits, two years after termination only a third of former GA recipients had incomes comparable to their monthly GA benefits of \$160. *Id.*

tion, I know that many in the audience are also experts on different aspects of the welfare system. We hope that the discussions at today's sessions—and in between sessions—as well as the volume of essays which will result, will provide a helpful contribution to the debate.