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CONTRACTUAL WELFARE: NON-ACCOUNTABILITY AND DIMINISHED DEMOCRACY IN LOCAL GOVERNMENT CONTRACTS FOR WELFARE-TO-WORK SERVICES

Barbara L. Bezdek*

INTRODUCTION

The Welfare State of the mid-twentieth century has been supplanted by the rise of the Contractual State, mirroring welfare reform in the United States in this worldwide reinvention of government. Moving people from welfare to work became a primary goal of federal welfare policy with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"),¹ and the Temporary Assistance for Needy Families ("TANF") program it created.² The Act restructured welfare administration by replacing the prior entitlement-based program with fixed block grants to the states, thereby devolving significant control over welfare policy from the federal to the state level. This new structure also expressly permits states to devolve welfare policy and operations further still, to the county and city levels, and even to private vendors.³

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1. Pub. L. No. 104-193, 110 Stat. 2105 (codified in scattered sections of 42 U.S.C.)

2. For a discussion of the Act, as well as the TANF program, see Mark Greenberg, *Welfare Restructuring and Working-Poor Family Policy: The New Context*, in *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* 30-44 (Joel F. Handler & Lucie White eds., 1999) [hereinafter *HARD LABOR*]. See also Vadim Mahmoudov, *Are Workfare Participants "Employees"?: Legal Issues Presented by a Two-Tiered Labor Force*, 1998 ANN. SURV. AM. L. 349, 351-52 (1998). Among other issues, Mahmoudov discusses the underlying theories behind workfare programs, including those found in New York City, concluding that the "primary goal is not to make welfare recipients employable and self-sufficient . . . [r]ather, the goal is simply to chase people off welfare." *Id.* at 353.

3. 42 U.S.C. § 604(a) (1999) ("[A] State to which a grant is made . . . may use the grant . . . in any manner that is reasonably calculated to accomplish the purpose of this [Act].").

As the “devolution revolution” manifests itself in the administration of welfare benefits, new issues of accountability—and indeed, democracy—arise. Accountability problems multiply because familiar rules of administrative law do not clearly constrain the new regime of the Contractual State. Moreover, devolution insulates agency decisions from public input and judicial review, masking whether welfare reform generally promotes permanent employment for recipients.

The erosion of administrative law structures diminishes democracy in three respects. First, the rules of the new contractual regime are not generated by processes that require or invite public participation, even those analogous to the imperfect models of administrative rulemaking. Second, the new contractual regime lacks the transparency we have come to expect of rule-bound welfare administration.⁴ The Contractual Welfare State’s core features—its actors, powers, points of influence and access, and opportunities for remedy—are downright opaque to the very citizens in whose name welfare purports to be reformed. Third, there is no effective method, and scant tools, by which citizens can obtain needed information to judge the efficacy of the new system. The opacity of the new regime compounds this information need because it disperses the sources and accountability for collecting and dispensing relevant information. For example, local governments need not produce information in a manner that institutionalizes or supports the public’s evaluation of the operations and outcomes of Contractual Welfare.⁵

Part I of this article probes the deficits of Contractual Welfare and canvasses potential solutions. Part II includes a case study of Baltimore’s own implementation—under a strong “work first” philosophy, and in substantial reliance upon public and private vendors for the delivery of work-related services—of the TANF

4. Alfred C. Aman, *The New Administrative Law, in THE PROVINCE OF ADMINISTRATIVE LAW* (Michael Taggart ed., 1997). Transparency refers to the openness commonly associated with democratic processes.

5. New strategies for strengthening the social and technological capacity of local communities to collect and use information effectively are in development. *E.g.*, TERRI J. BAILEY, URBAN INST., *BUILDING COMMUNITY CAPACITY TO USE INFORMATION* (1997) (arguing that the effective use of information enhances community-building activities), available at www.urban.org/nnip/pdf/bailey1.pdf. Bailey’s four steps to achieving this goal are: “(a) assessing community information capacity, (b) strengthening the social and technological communications networks available in the community, (c) building skills to use information for community change, and (d) providing technical assistance in support of community use of information.” *Id.* at 1.

program.⁶ Part III offers some direction as to where this process can and should go from here.⁷

The case study illustrates key features of the nation's massive shift from public to private provision of social services, long the province of government.⁸ This rapid and remarkable change has been accompanied by dramatic declines in welfare caseloads, a national average of forty-two percent between 1993 and 1998.⁹ These declines most likely reflect multiple factors such as the booming economy, increases in the minimum wage, and certain structural changes within the system.¹⁰ Presumably, decreased benefits and state work requirements have influenced this decline as well.¹¹ The government's ongoing use of private contracts in this rapid change, however, raises troubling issues of accountability and efficacy.

Whether welfare agencies and their contractors are in fact aiding TANF recipients to find employment, on penalty of sanctions and the deepening poverty of their children, is a question of great public concern. Only an accounting from public officials can reveal whether families who leave the welfare rolls are swimming along in the swirling new economy, or are sinking out of sight into unemployment and child-risking poverty. The new structure of welfare makes this accounting all the more elusive.

The Act of 1996 replaced the old AFDC program with TANF, abolishing entitlement to assistance by any individual or family under any state program so funded.¹² Under the Act, states must require all parents or caretakers receiving assistance to work,

6. *Infra* Part II.

7. *Infra* Part III.

8. *Infra* Part II.

9. N.Y. TIMES ON THE WEB, *Drop in the Rolls*, at <http://www.nytimes.com/library/politics/090198welfare-map.html> (providing an interactive web page that allows users to access welfare statistics from across the country). The national average obscures the lower reductions in the populous states of California (22%) and New York (26%), as well as the much higher reduction in Wisconsin (87%). *Id.* Maryland's rate according to this source is 48%. *Id.*

10. COUNCIL OF ECON. ADVISORS, *THE EFFECTS OF WELFARE POLICY AND THE ECONOMIC EXPANSION ON WELFARE CASELOADS: AN UPDATE* (1999) (describing its effort to build a model that would segregate and identify the effects of specific changes in welfare policy). The Council attributed 26-36% of the decline in the rolls to the strong labor market, 10% to the increase in federal and state minimum wages for the period 1993-96, and one-third of the decline to the shift from Aid to Families with Dependent Children ("AFDC") to TANF. For a collection of relevant data regarding the shift from AFDC to TANF, see U.S. DEP'T OF HEALTH AND HUMAN SERVICES, *INDICATORS OF WELFARE DEPENDENCE*, 2000, at app.A: *Program Data*, 2000, <http://www.aspe.hhs.gov/hsp/indicators00/apa.htm>.

11. Strict sanction policies were associated with declines in caseload. *Id.* at 18.

12. 42 U.S.C. § 601(b) (1999).

“once the State determines the parent or caretaker is ready to engage in work, or once the parent or caretaker has received assistance under the program for 24 months (whether or not consecutive), whichever is earlier.”¹³ Federal TANF monies may not be used to provide cash assistance to a family that “includes an adult who has received assistance . . . for 60 months,”¹⁴ and a state’s federal grant will be reduced if the state fails to meet the mandatory work “participation rates” set in the Act.¹⁵ The exceptions to the work requirements are few, albeit significant. For example, single parents with infants under the age of twelve months *may be* excused from mandatory work,¹⁶ as *may* single custodial parents caring for a child who is not yet six years of age, and who can demonstrate the inability to obtain needed child care.¹⁷ Countable work activities for the state include actual employment, of course, but also a variety of activities ostensibly related to work, but not necessarily leading to sustainable employment or clearly calculated to do so.¹⁸

The risk that agencies may direct TANF recipients into activities that satisfy the state’s federal obligations—but do not aid parents in finding permanent employment that supports their families—

13. *Id.* § 602(a)(1)(A)(ii). Parents not working must engage in approved community service after they have been on the assistance rolls for two months. *Id.* § 602(a)(1)(B)(iv). The number of persons who can be counted as “working” if they are attending school or vocational educational programs is stringently limited. *Id.* § 607(d)(8) (limiting vocational education to twelve months); *id.* at § 607(d)(10) (stating that education counts as work only until the recipient gains a high school diploma).

14. *Id.* § 608(a)(7)(A).

15. *Id.* § 607(a)(1) (setting “minimum participation rates” of 25% in 1997, rising to 50% by 2002, for single-parent families); *Id.* § 607(a)(2) (setting the minimum participation rate for two-parent families at 75% for 1997, and 90% by 2002).

16. *Id.* § 607(b)(5).

17. *Id.* § 607(e)(2).

18. The TANF affords states broad flexibility to select and structure work-related activities, subject to the participation rates and the twenty-four-month work requirement. The federal law also permits states to include as work activities the following: community service, adult basic education and English as a Second Language (“ESL”), education directly related to employment or post-secondary education not so related, job readiness activities, job search and skills training, on-the-job training, as well as subsidized employment in the public or private sectors. *Id.* § 607(d)(1)-(12). Each state then designates, under its own policy, which work activities satisfy the individual recipient’s obligation to participate in employment-related activities. A useful overview of the issues, and a fifty-state comparison of state provisions, is available from the STATE POLICY DOCUMENTATION PROJECT, TANF WORK ACTIVITIES AND REQUIREMENTS, 2001, <http://www.spdp.org/tanf/work.htm>. Many states prescribe an authorized list of work activities, then further devolve the policy decisions by authorizing their counties to tailor local programs as they see fit.

makes it imperative to examine the actual policies, practices, and objectives of the state as it spends not only the federal block grant, but also the recipients' lifetime welfare limit. This article analyzes two related problems posed by government's use of contracts for purchasing welfare-to-work services. The first is an accountability problem: the duty of public officials and managers to explain or justify their actions, and to provide a remedy to those members of the public who suffer loss or injustice. The second is a problem of administrative efficacy: the issue of maximizing performance through these new institutional arrangements.

Citizens and policymakers are in uncharted waters. The New Federalism devolves many changed and complex obligations to state and local governments, giving rise to a New Localism. Furthermore, today's New Economy has forced this nation to revamp its vision of human capital by raising the quality of American education and workforce development—all symbolized by a New Workforce-Investment enthusiasm at the federal level.¹⁹

The roles and responsibilities of the welfare bureaucracy have changed rapidly and dramatically. Local agencies, which for decades provided and withheld cash assistance, now are expected to move welfare recipients to work. Within this sea change at the agency level, caseworkers' roles and responsibilities have changed as well. Now it is up to the welfare intake worker to assess a TANF applicant's needs, skills, and interests, and to match each client to a range of services identified by agency administrators to move recipients off the welfare rolls and into the workforce.

Shaping the context of the caseworkers' shifting responsibilities is the juggernaut of privatization. To comply with TANF, many states are privatizing by contracting out services that have long been the province of government, or by purchasing a patchwork of services beyond their training and experience. The usual rationale for privatization is to bring to government the presumed efficiencies and innovations of the marketplace, including management by performance outcomes and profitability.²⁰

19. Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (codified as 29 U.S.C. § 2811 (1999)). For greater detail on the Workforce Investment Act, see *infra* note 129 and accompanying text.

20. Recent press accounts, however, show that the reality does not always live up to the rationale. In Florida, Lockheed Martin IMS and MAXIMUS, Inc. contracted with the state to enforce child support payments in conjunction with its welfare reforms. The two companies received \$4.5 million to collect \$162,000. *Deadbeat Parents Slip Away, State Pays \$4 Million, Collects Little*, ORLANDO SENTINEL, Dec. 30, 1998, at

It is not obvious which new mechanisms will permit citizens to hold state and local governments accountable in their performance of these new roles and responsibilities. Under the former AFDC system, welfare administrators could be held accountable for their policies, in part, through notice and comment rulemaking.²¹ Moreover, judicial review afforded a measure of substantive review of agency policies, reinforcing the principle of public participation inherent in notice and comment rulemaking.²²

Regulatory procedures under a due process model require first naming an action as harmful, blaming the responsible agent, and then claiming redress.²³ In the contractual system, however, agencies feel freer to make fewer rules that are subject to the devices of oversight. Without the specification of injury and designation of blame-bearers, individual hearings are less effective means for naming, blaming, or claiming for injuries resulting from, and embodied in, a web of poorly designed or implemented contracted services. Indeed, much of what the new model of welfare-to-work staff does is to assign welfare clients to job readiness or work-training vendors. The staff person either dispenses or withholds advice, encouragement, or understanding of clients' particular needs for childcare, transportation, or care for disabled family members at home. Furthermore, many actions taken by welfare workers are not treated as "determinations" subject to review, nor are unfair decisions captured as the denial of "benefits" that can be vindicated in the hearing process.

New forms of governmental accountability are required. These measures should include invigorated forms of public input and oversight—an upgraded toolkit of citizen action, if you will—in or-

D1. Astonishingly, both Lockheed and MAXIMUS say that despite that level of payment, they remain unable to turn a profit.

California dumped Lockheed when the cost of child support collection skyrocketed from \$99 million to \$277 million. *D.A. Needs Solutions Not Excuses*, L.A. TIMES, Nov. 19, 1998, at B8.

In 1999, Maryland also terminated its Lockheed contract for child support collection after performance fell far short of expectations. Greg Garland, *Corporation Set to Collect Child Support; Previous Contractor Replaced by State After Complaints, Shortfalls*, BALT. SUN, Oct. 31, 1999, at 1B.

21. Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1189 (2000). "The mechanisms of notice and comment rulemaking and judicial review provide that generally applicable rules are given a public airing and can be tested through judicial review for compliance with legal standards and rationality." *Id.*

22. *Id.*

23. William L.F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, 15 L. & SOC'Y REV. 631, 633-37 (1980-81).

der to hold government to higher levels of performance for its articulated policy objectives. Also ripe for review is the premise for double-devolution by states to local governments for welfare-to-work services under TANF. I argue for state limits on local control of welfare-to-work services comparable to those retained for workforce and economic development.

I. CONTRACTUAL WELFARE

A. Privatization's Premises

Decentralization and privatization are movements that encircle the globe. With particular force in Western democracies, national governments are trying to reduce their roles, lower public spending, trim the direct provision of services, and rely more on private markets. The anti-big government movement is a general retreat from collectivism and emphasizes private property and freedom of contract.²⁴ Although often cast in economic terms of costs, benefits, efficiency, and program management, this is really a watershed about governance, the uses of power in society, and the boundaries between public action and private concerns.²⁵

Despite recent legislation purporting to curb non-funded mandates, the federal government continues to require state programs, and the states themselves continue to require comparable county and local programs. Increasingly, public activities are carried out at the local level. The ideological underpinning for decentralization of government services in the United States is that bloated bureaucracies are inefficient and out of touch—that government could do more with less if it had fewer resources, was under the control of ordinary citizens at the local level, and followed the incentive systems of the private sector. Themes of freedom, efficiency, and accountability sound in the chorus for devolution.²⁶ In

24. JOEL F. HANDLER, *DOWN FROM BUREAUCRACY: THE AMBIGUITY OF PRIVATIZATION AND EMPOWERMENT* (1996) (discussing the decentralized nature of welfare administration in the U.S.); CASS SUNSTEIN, *AFTER THE RIGHTS REVOLUTION: RECONCEIVING THE REGULATORY STATE* (1990).

25. Some theorists on the Left also reject the modern liberal-capitalist welfare state and see opportunities for enhanced democratic politics in contemporary decentralization and privatization in the U.S. and in Europe. Various nominated "new social movements," e.g., SIDNEY TARROW, *STRUGGLE, POLITICS AND REFORM: COLLECTIVE ACTION, SOCIAL MOVEMENTS AND CYCLES OF PROTEST* (1989), "new populism," e.g., CARL BOGGS, *SOCIAL MOVEMENTS AND POLITICAL POWER: EMERGING FORMS OF RADICALISM IN THE WEST* (1986), or "postmodernism," e.g., HANDLER, *supra* note 24, these movements reject conventional politics for small-scale, decentralized, anti-hierarchical, and direct democracy.

26. E.g., HANDLER, *supra* note 24.

this anthem, both local control and the market are said to enhance the power of citizens, who can either reach the local administrators or can vote with their feet.

Privatization by contracting services to other providers is a familiar arrangement in the United States. Typically, the government entity retains responsibility for funding the public services, while delegating authority for some or many aspects of providing those services to the private sector. The most familiar example may be defense contracting. Estimates suggest that more than half of all government spending on goods and services is financed publicly, yet produced privately.²⁷

Contracting out is not entirely new in the delivery of public assistance either. Non-governmental entities have been partners in the delivery of government-funded human services since the New Deal inaugurated the expansion of the federal government's role in providing welfare, and social services continue to be delivered through a tapestry of public and private agencies across federal, state, and local levels.²⁸ The Act now authorizes states to employ private entities to conduct intake and make eligibility determinations²⁹—traditional gate-keeping functions of any benefits program—most often identified with the legal protections developed under AFDC.³⁰ Although nonprofits have been involved in service delivery for decades, the Act has brought for-profit enterprises into social services functions far beyond their prior limited roles as contractors for data systems.³¹

Unlike government agencies, contracted service providers have the added incentive of compensation, which may affect the providers' quality of service as well as accountability. This diminished or modified role of government, and the ensuing reliance upon non-

27. In the U.S., the social protection system often is assumed to be state-centric, but it is, in fact, a hybrid. The state provides income support, some health care, much housing, and many social or human services. But the private sector delivers other, important aspects of the social protection function: employment-based health care, pensions, and a vast array of services offered by private nonprofits. Families, or households, are likewise important players in providing care and socialization for children, as well as health care and general social support. *Id.* at 7.

28. LESTER M. SALAMON, PARTNERS IN PUBLIC SERVICE: GOVERNMENT-NON-PROFIT RELATIONS IN THE MODERN WELFARE STATE 15 (1995).

29. 42 U.S.C. § 604(a) (1999).

30. *E.g.*, *Goldberg v. Kelly*, 397 U.S. 254 (1970) (extending procedural safeguards to welfare recipients facing termination of benefits).

31. DEMETRA S. NIGHTINGALE & NANCY PINDUS, PRIVATIZATION OF PUBLIC SOCIAL SERVICES: A BACKGROUND PAPER 5 (1997) (concluding that although neither system may be superior, the key factor is whether there exists accountability for results), <http://www.urban.org/pubman/privitiz.html>.

governmental entities for the delivery of welfare benefits, underscores the importance of discerning whether welfare recipients have any enforceable rights against welfare providers.

Private sector roles in social service are evident in the early history of outdoor relief,³² the move to indoor relief early in the nineteenth century,³³ and the scientific charity³⁴ and settlement house movements.³⁵ In the face of industrialization, urbanization, immigration, and increased poverty, the government assumed greater responsibility for poverty relief in the twentieth century—evinced by mother's pension statutes and the Social Security Act.³⁶ But even as the Welfare State expanded, it did so in extended cooperation with private partners. The 1960s' War on Poverty greatly increased the roles of the private sector in delivering services such as job training, education, and placement, although these were funded by the government. The 1980s' "war on welfare" slashed benefits and programs, and increased exhortation to private volunteers to defeat what increasingly came to be seen as a "culture of dependency."³⁷ Under AFDC waivers and the Act, states experienced

32. Joel F. Handler, *American Regulatory Policy: Have We Found the "Third Way": The "Third Way" or the Old Way?*, 48 KAN. L. REV. 765, 778-80 (2000) (outlining the history of previous welfare reform attempts). Outdoor relief was the doling of public assistance to recipients without requiring them to work or live in poorhouses. *Id.* at 778-79. It was believed by many reformists of the nineteenth century that it was the "indiscriminate giving of aid which destroyed the desire to work." *Id.* at 778 (citing MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* 40 (1986)).

33. Indoor relief required recipients to live in poorhouses, where they could be observed and made to work. *Id.* at 779. Poorhouses often subjected the poor to deplorable conditions, and proved to be more costly than outdoor relief. *Id.* (citing KATZ, *supra* note 32, at 38).

34. Scientific charity was a method of assistance that endeavored to reinforce, or at the very least not weaken, the work ethic of the poor. Handler, *supra* note 32, at 779. Scientific charity relied on private charities to administer the relief for several reasons, including the fact that such relief would not be considered a public right, and that private charities would be more effective in exerting moral influence over the recipients. *Id.* (citing WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* 56 (3d ed. 1984)).

35. Perhaps the best known settlement house project was Jane Addams' Hull House in Chicago, Ill. These homes were typically run by women and provided a variety of charity services to the poor. *See generally* JANE ADDAMS, *TWENTY YEARS AT HULL HOUSE* (1910).

36. The AFDC was adopted in the Social Security Act to provide federal funding to state run "mother's pensions," which provided aid to families with needy dependent children. Diann Dawson, *The Evolution of a Federal Family Law Policy Under Title IV-A of the Social Security Act: The Aid to Families with Dependent Children Program*, 36 CATH. U. L. REV. 197 (1986).

37. CHARLES A. MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (1984); Brigid Kennedy-Pfister, *Continuity and Contradiction in the Theory and*

enhanced freedom and encouragement to cure their own deficiencies by increasingly paying private "partners" to deliver public help.

Although not entirely new, the now pervasive use of procurement in the welfare arena tends to impugn the idea that smaller units of government are necessarily more democratic—a central premise of political devotees of devolution.³⁸ Physical proximity to the people affected by state or local policies and practices does not alone prompt the state to create mechanisms of accountability. Indeed, some structural reasons indicate that the poor fare better when the decisions are made in larger rather than smaller polities. For example, well-off suburban voters dominate the politics of several states.³⁹ Students of locality politics have observed that, when policies are set at the local level, competition between jurisdictions decreases the generosity of programs that aid the poor.⁴⁰

B. Limitations of Administrative Law to Ensure Government Accountability in the Contractual Welfare State

For a long time, this country has lived with national ambivalence about the provision of welfare. David Ellwood has suggested that the history of welfare policy reveals a series of attempts to help people without infringing on their basic values of autonomy, work, family, and community.⁴¹ Even in the AFDC era, the underlying

Discourse of Dependence, 28 FORDHAM URB. L.J. 667 (2001) (dissecting the political meanings of the otherwise ambiguous terms "independent" and "dependent").

38. DANIEL J. ELAZAR, *AMERICAN FEDERALISM: A VIEW FROM THE STATES* 216 (1966) (extolling "maximization of local control over the political and administrative decision makers whose actions affect the lives of every citizen").

39. Sheryll D. Cashin, *Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities*, 99 COLUM. L. REV. 552, 577 (1999) (stating that politically weak minorities, such as welfare recipients, are often at the whim of political majorities in state and local governments).

40. *E.g.*, DAVID RUSK, *BALTIMORE UNBOUND: CREATING A GREATER BALTIMORE REGION FOR THE TWENTY-FIRST CENTURY: A STRATEGY REPORT* (1996); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1, 63 (1990); PAUL E. PETERSON, *CITY LIMITS* 41-65 (1981).

Joel Handler argues that this competition illustrates allocation "down" to smaller units of government as well as the jurisdictional authority over conflicting policy decisions. The most controversial issues are allocated to localities for discretion, while the contours of the policy—the myth—is articulated at the federal and state levels. This allocation minimizes their visibility, permits management by myth and ceremony, and permits little actual change as the welfare programs undergo repeated formal reforms—still governed by three major ideological fault lines of industrial discipline (the work ethic), race, and patriarchy. HANDLER, *supra* note 24, at ch. 3.

41. DAVID T. ELLWOOD, *POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY* 16 (1988) (listing his view of the Four Value Tenets of Americans).

philosophy of welfare policy in the United States was one of limited entitlement, through the protections offered by procedural due process. Repeated attempts by poor people's advocates to cloak public assistance with substantive constitutional values have been steadfastly resisted by courts.⁴² Now that the national commitment to an entitlement philosophy has been terminated expressly by the Act,⁴³ the deck is cleared for a new formula for public benefits, one based on reciprocal contract and the exchange of work for benefits.⁴⁴

Important staples of the due process model of welfare policy do not penetrate to local governments' contractual partners in the new regime of devolved responsibilities.⁴⁵ Moreover, if vendors design the services actually delivered to welfare recipients—absent meaningful prescription or oversight by the agencies that are in theory responsive through ordinary democratic channels—we suffer diminished democracy in policy design and implementation.

Administrative procedure acts⁴⁶ and public information laws⁴⁷ often do not apply to private contractors. The Supreme Court has

42. William H. Simon, *The Invention and Reinvention of Welfare Rights*, 44 MD. L. REV. 1 (1985); Rand E. Rosenblatt, *Legal Entitlement and Welfare Benefits*, in THE POLITICS OF LAW 262-64 (David Kairys ed., 1982).

43. At least for poor mothers turning to welfare. The end of welfare entitlement is not the end of the entitlement era. Two emblems of the New Deal—Social Security and Medicare—were the top priorities for protection by both major party candidates in the sharply divided election for President of the United States in 2000.

44. MICHAEL NOVAK, THE NEW CONSENSUS ON FAMILY AND WELFARE 93-95 (1987) (asserting that "government assistance alone is not enough").

45. Democratic constraints on agency discretion may be formal, such as those imposed by the legislature, through statutory controls, legislative history, oversight, appropriations, statutory review of agency rules, confirmation of key personnel; by the appointments and directives of the executive branch; and by judicial review of agency rules and "actions." Peter H. Schuck, *Delegation and Democracy: Comments on David Schoenbrod*, 20 CARDOZO L. REV. 775, 783-90 (1999). Informal agency norms also may promote the democratic regard inherent in due process—for example, when an organizational culture is committed to the rule of law. Diller, *supra* note 21, at 1126-27. Additional constraints are achieved sometimes through interest group monitors, participation in formal and informal agency decisionmaking, and mobilization of opposition to policies, although the success of these means are unpredictable and variable, and in important degree limited by the resources and organizational capacity of the affected interests. Media constitute an additional device for addressing agency action, by indirectly communicating to both the general public and specialized audiences.

46. *E.g.*, *Am. Hosp. Ass'n v. Bowen*, 834 F.2d 1037 (D.C. Cir. 1987) (exempting the U.S. Department of Health and Human Services from notice and comment in issuing peer review standards in the Medicare program). The court concluded that the standards contained in contracts with Peer Review Organizations, including performance objectives and criteria, were "rules" within the meaning of the federal Administrative Procedure Act ("APA"), 5 U.S.C. § 533 (1999). As such, they were exempt

held that receiving money under a grant does not turn the recipient into a government agent, nor create a joint venture between government and grantee.⁴⁸ Data generated by privately controlled organizations, whether or not received and used by the government agency, do not constitute "agency records."⁴⁹ Consultants employed to improve the quality of the agency's work are not "agency" actors, unless they have legal authority to make decisions as the agency's own.⁵⁰

Rules governing public procurement are implemented principally to protect the integrity of the competitive process. They are not intended or designed as means of soliciting public input into policy.⁵¹ The *ABA Model Procurement Code* ("Model Code") anticipates an administrative review process for contract awards, but only upon challenge by an "actual or prospective bidder, offeror or contractor who is aggrieved."⁵²

As a vehicle for public participation in the development of contract specifications, the selection of contractors, or the enforcement of contract terms, procurement procedures generally fail. Bidders and procurement officials alike tend to view bids, and all information about the evaluation of bids and bidders, as confidential, until the bidding period is closed and the award is made.⁵³ Private, par-

from notice and comment as either general statements of policy, or because they dealt with procedural matters. *Am. Hosp. Ass'n*, 834 F.2d at 1053. Judge Wald, however, did assert that agencies may not evade the APA by placing substantive rules in contracts. *Id.* at 1054.

47. E.g., Craig Feiser, *Privatization and the Freedom of Information Act: An Analysis of Public Access to Private Entities under Federal Law*, 52 FED. COMM. L.J. 21 (1999) (proposing that federal courts adopt broader definitions of "agency" and "agency record" to protect the public's right to information); Nicole B. Casarez, *Furthering the Accountability Principle in Privatized Federal Corrections: The Need for Access to Private Prison Records*, 28 U. MICH. J.L. REFORM 249 (1995) (reporting that the Freedom of Information Act, 5 U.S.C. § 552 (2000), fails to permit access to documents created and maintained by privatized prisons).

48. *Forsham v. Harris*, 445 U.S. 169 (1980) (upholding the government's "prevalent practice" of preserving the autonomy of federal grantees, both for data never received by the agency, and for documents created by the grantee to which the government has access and has used).

49. *Id.*

50. *Wash. Res. Project, Inc. v. Dep't of Health, Educ. & Welfare*, 504 F.2d 238, 246-48 (D.C. Cir. 1974).

51. AM. BAR. ASS'N, *MODEL PROCUREMENT CODE FOR STATE AND LOCAL GOVERNMENTS* (1979) (containing "statutory principals and policy guidance for managing and controlling the procurement of supplies, services, and construction for public purposes").

52. *Id.* § 9-101; see also *id.* § 9-501 (creating the Procurement Appeals Board).

53. NAT'L ASS'N OF STATE PURCHASING OFFICIALS ("NASPO"), *STATE AND LOCAL GOVERNMENT PURCHASING: PRINCIPLES AND PRACTICE* 55-56, 114 (5th ed. 1997)

ticularly for-profit, bidders may well desire the procedures to protect their proprietary information. Both MAXIMUS and Lockheed made such claims when they competed to win contracts to provide aspects of Chicago's welfare services in 1997.⁵⁴

Concerns about procurement processes have been raised in several jurisdictions, as those states and cities devise procedures that do not comply with the recommendations of the *Model Code* or of NASPO. In 1999, New York City awarded \$500 million in contracts to private entities to provide job training and placement to welfare recipients, using a process of "negotiated acquisition" instead of competitive bidding.⁵⁵ Although this could have offered a foothold for more public consultation, the contracts were let with virtually no opportunity for public input.⁵⁶ Critics fault the process for permitting increased cronyism.⁵⁷ Disputes persist in New York City about whether such contracts violated city procurement procedures following the city comptroller's complaints that contracts were not bid out, lacked specific information about the services to be provided, and provided compensation in excess of the amount requested by the company.⁵⁸

Similar concerns have been raised elsewhere, including Milwaukee, Wisconsin⁵⁹ and Washington, D.C.⁶⁰ In Washington, an audit identified \$50 million in welfare-to-work job training contracts that

(advising that public information requests can be "an impediment to public procurement unless the law of the jurisdiction recognizes and accommodates proprietary information").

54. Diller, *supra* note 21, at 1199 (citing Merrill Goozner, *Welfare's Gold Rush: Private Sector Mining Hard for Reform Effort's Contracts*, CHI. TRIB., June 29, 1997, at 1).

55. Edward Costikyan & Leslie U. Cornfeld, *NYC's New Procurement Structure: Birth of an Imperial Agency*, N.Y. L.J., Oct. 22, 1990, at 1 (referring to the procurement provisions, including negotiated acquisition, in the New York City Charter).

56. Diller, *supra* note 21, at 1199 (citing Kathleen McGowan, *Shh. . . We're Hunting Big Bucks*, CITY LIMITS, Dec. 6, 1999, at 1).

57. Robert Pollner, *Fast City Contracts, but at What Price?*, NEWSDAY, Mar. 27, 2000, at A8 (explaining how negotiated acquisition "allows city agencies to skirt competitive bidding").

58. Nina Bernstein, *Welfare Plan in City Suffers A Setback*, N.Y. TIMES, Feb. 3, 2000 at B1. MAXIMUS asked to be paid \$4175 per client, but the contracts provided \$5000. The asserted reason for the overage was to permit payment based on performance measures. *Id.*; see also Karen Matthews, *Hevesi Refuses to Register 17 Workfare Contracts*, ASSOCIATED PRESS, Mar. 13, 2000.

59. Steve Schultze, *State to Review Firm's Use of W-2 Funds*, MILWAUKEE J. SENTINEL, May 10, 2000, at B15 (reporting that Wisconsin hired an outside auditor to investigate whether MAXIMUS overbilled for its welfare reform project); Barrett, Kleczka Seek Congressional Inquiry of Welfare Services, MILWAUKEE J. SENTINEL, Oct. 3, 2000, at B35 (stating that U.S. Reps. Jerry Kleczka and Tom Barrett were seeking a congressional investigation of privatized welfare services).

were awarded illegally in 1999.⁶¹ Moreover, agency employees wrote vague requests for services, then failed to ensure that vendors had performed their tasks.⁶²

One potential avenue for holding government more accountable might be through taxpayer lawsuits. Standing to sue is premised on the theory that the contracts are paid for by tax dollars, and that illegal contracts squander those funds. Many jurisdictions permit such challenges to the award of public contracts; however, the customary requirement that a plaintiff post a bond for the costs of the litigation⁶³ renders taxpayer lawsuits as nonstarters for public policy review prior to the letting of contracts.

C. Context For Contractual-Welfare: Constraints of Women's Work Amid Concentrated Poverty

1. Concentrated Poverty

Many supporters of welfare-to-work programs proceed from the premise that recipients freely choose between deviant dependency and full participation in the workforce. There is a major defect in this reasoning, namely the growing concentration of poverty in many welfare-burdened cities. A wealth of social science data indicates that, in important respects, a significant portion of the welfare-reliant population may not be "able" to take the job to which they are directed by the local welfare office.⁶⁴ This inability stems not only from a lack of "skills," but also from deficiencies that the simple language of "work ethic" fails to capture—all as the New Economy beams far beyond the decaying relics of the nineteenth century.

The rhetorical and political focus of the Act is on the shortcomings of the welfare parent, understood as personal competencies to satisfy the economic and developmental needs of her children. Yet the parent also must face significant factors outside of her personal

60. Carol D. Leonnig, *District Audit Finds Illegal, Wasteful Contracting*, WASH. POST, July 29, 2000, at A1 (reporting that the District of Columbia illegally awarded \$50 million in welfare-to-work job training contracts in 1999).

61. *Id.*

62. *Id.*

63. Lewis Baker, *Procurement Disputes at the State and Local Level: A Hodgepodge of Remedies*, 25 PUB. CONT. L. J. 265, 291 (1996).

64. In addition to the material presented *infra* concerning what employers want of the low-wage workforce, note the burgeoning volume of reports posted to the Welfare Information Network, <http://www.welfarinfo.org>. Those reports address barriers such as: insufficient job skills, inferior healthcare systems for the poor, undiagnosed disabilities, and the consequences of domestic violence, criminal records, or substance abuse.

control. Insufficient analysis has been trained on these externalities. The employment infrastructure entails existing labor market opportunities, including job availability and potential wage rates, the availability of day care services, the availability of transit options between home/job/childcare, access to welfare benefits, and neighborhood resources. A second group of external factors encompasses her kinship network: the availability of husband or partner, of family or friends, who can potentially provide time and resources critical to simultaneous navigation of the employment infrastructure, and provision of family care.

a. Ethnographic Characteristics

New research approaches, combining economics, child development, and ethnographic perspectives, promise a more complex analysis of welfare reforms' contribution to the goal of family self-sufficiency. These results offer bases for translating the complexity of poor mothers' lived experience into program policy models,⁶⁵ including key factors for child outcomes such as time spent with the child and the quality of that interaction.⁶⁶ Obviously, parenting quality and time spent with the child are constrained by the parent's level of income, by characteristics of the parent, the availability of others to help care for the child (family, friends, the availability of childcare), as well as a mother's choices as to employment and welfare.⁶⁷

Much research about the effects of poverty on family life concludes that poverty impedes both cognitive and social develop-

65. For example, Johns Hopkins University researchers have begun a five-year, three city study that seeks to correct the narrow focus of economic studies on employment, welfare, and income, by also incorporating in-depth child development models and sociological ethnographic study of welfare recipients' social and kinship networks. PAMELA WINSTON, JOHNS HOPKINS UNIV., WELFARE, CHILDREN & FAMILIES: A THREE CITY STUDY, 1999, available at <http://www.jhu.edu/~welfare/-overviewand-design.pdf>. The Three Cities Study melds three time-tested models of qualitative study in the social sciences, drawing on economic studies, developmental psychology, and sociological ethnography. The study begins with the widely used "household production model," developed by economist Gary Becker in 1965, which conceives of the family as a unit that attempts to meet multiple goals with limited resources. *Id.* at 10. Those goals include material and other aspects of well-being, for both the adults and the children in the household. *Id.*

66. Additional key data are the amount of available resources spent on the child, and characteristics of the interactions between parent and child—for example, whether in infancy the child experiences her life in a secure and sociable world, or in a chaotic or unresponsive one. *Id.* at 12.

67. *Id.* at 12-13.

ment.⁶⁸ Thus, even with work requirements that move mothers off the welfare rolls, most of those jobs pay wages close to or below the poverty level. Child development models predict that children and youth in those homes still will be “disadvantaged” and remain susceptible to the same harmful processes of poverty that hamper healthy development.⁶⁹

Whether mothers facing the welfare work requirements can rely on social networks, of course, is relevant to the outcomes of welfare reform. The Act, as well as state and local implementation, frankly, seeks to require poor mothers to lean on these networks before turning to public assistance.⁷⁰ In the early 1970s, research suggested that most low-income African American families faced the hardships of poverty by relying on effective networks of relatives and friends who shared resources.⁷¹ More recent research shows that many low-income families, including many African Americans, do *not* have such strong supportive networks.⁷² One recent study found that although single mothers who resided with kin were more likely to find employment, they did not retain their jobs longer than mothers who did not live with kin.⁷³

b. Infrastructure Characteristics

Neighborhood characteristics and contexts are an important element among the environmental factors that facilitate or constrain

68. “Poverty places stresses on parents that may interfere with parenting. As a result, it can be more difficult for parents to be warm and engaging, consistent in discipline, and to provide the stimulation necessary for their children’s development.” *Id.* at 11 (summarizing research in related disciplines).

69. *Id.* (discussing developmental research on psychological processes that promote good development even in adversity).

70. The federal statute authorizes states to reduce or eliminate assistance for non-cooperation in establishing paternity or obtaining child support, 42 U.S.C. § 608(a)(2), and forbids assistance for families that fail to assign to the state any support rights of any member of the family, *id.* at § 608(a)(3). Maryland, for example, requires its FIP program assessment to include identification of the “personal and family resources available to facilitate independence.” MD. ANN. CODE 88A, § 49 (a)(1)(iii) (2000). Furthermore, the agreement between the agency and the recipient must “require[] the recipient to comply with the reasonable requests for cooperation by case management workers in seeking and using . . . *family resources* that may be available to recipient.” MD. ANN. CODE 88A, § 49 (a)(3)(ii) (emphasis added).

71. The classic work is CAROL STACK, *ALL OUR KIN: STRATEGIES FOR SURVIVAL IN A BLACK COMMUNITY* (1974).

72. Lingxin Hao & Mary C. Brinton, *Productive Activities and Support Systems of Single Mothers*, 102 AM. J. SOC. 1305-32 (1997); KATHRYN EDIN & LAURA LEIN, *MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK* 148-53 (1997).

73. *Id.*

welfare recipients' opportunities to obtain and keep jobs. Several researchers have studied the social isolation that follows the withdrawal from central cities of employers and the departure of the middle class.⁷⁴ Such neighborhoods are drained of institutional and social resources—plants in production, small shops, household-directed services, and bank branches—the community exemplars going through the daily ritual of getting to and from work. These neighborhoods fill with unemployed adults and young people and, completing the spiral, the lack of opportunity for gainful employment stymies the expectations of residents.

Neighborhood quality, including the physical condition of a neighborhood's schools, housing, and remnant commercial corridors, is important, too. Ethnography incorporates the premise that such environmental factors shape and constrain behavior, and the notion that these factors consist simultaneously of material conditions and the manner in which people interpret and understand the meanings of their society and their place in it.⁷⁵ Social scientists continue to debate whether acres of evident public abandonment, in neighborhoods with the highest concentrations of poverty and welfare dependence, breed the persistent vulnerability to death and mayhem experienced there, from guns, fires, addiction, and despair.⁷⁶

Welfare caseloads have become predominantly urban, while jobs and job growth have migrated to the suburbs. At the height of national welfare rolls in 1994, the one hundred largest U.S. cities held just under half of all welfare recipients.⁷⁷ In 1999, this number flipped, and nearly sixty percent of welfare families lived in these cities.⁷⁸ Even during this, the most sustained economic boom in U.S. history, four out of five American cities have not "staged a

74. *E.g.*, WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS: THE WORLD OF THE NEW URBAN POOR* 25-50 (1997) [hereinafter WILSON, *WHEN WORK DISAPPEARS*]; WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDER CLASS, AND PUBLIC POLICY* (1990).

75. WINSTON, *supra* note 65, at 12.

76. Jeanne Brooks-Gunn et al., *Do Neighborhoods Influence Child and Adolescent Development?*, 99 AM. J. SOC. 353, 385 (1993) (examining the impact of neighbors, both positive and negative, on the development of children).

77. KATHERINE ALLEN & MARIA KIRBY, BROOKINGS INST., *UNFINISHED BUSINESS: WHY CITIES MATTER TO WELFARE REFORM* 1 (2000), <http://www.brookings.edu/es/urban/welfarecaseloads/2000report.htm>.

78. Ten states now account for nearly 70% of the nation's welfare cases: California, Florida, Georgia, Illinois, Michigan, New York, Ohio, Pennsylvania, Texas, and Washington. *Id.* at 5-6. The same ten states accounted for just 53% of the national population in 1999. *Id.* at 6.

comeback" in job growth in comparison to their suburbs.⁷⁹ Half of America's largest central cities had positive employment growth rates, and still were outpaced by their suburbs.⁸⁰ In one quarter of the metropolitan areas examined, the central city's growth rate was almost stagnant and was far below that of its suburbs.⁸¹

Although poverty rates have declined in central cities, urban poverty rates remain twice those of suburbs.⁸² Urban neighborhoods in "concentrated poverty"—as defined by the U.S. Census Bureau, those where at least forty percent of residents are poor—more than doubled between 1970 and 1990.⁸³

While the economy's engines race toward more knowledge-intensive, white-collar, service-oriented jobs, many of the employment sectors traditionally rooted in cities are growing slowly, if at all, including manufacturing, banking, insurance, health care, and hospitals. Yet people left behind in the central cities' pockets of concentrated poverty often confront poor schooling and a growing digital divide, with little preparation to follow into the suburbs or the New Economy. While nearly two-thirds of suburban children achieve basic levels of achievement in reading, in high-poverty neighborhoods, less than one-quarter do. Only one-third of urban children achieve basic levels in math and science, compared to two-thirds of suburban school children.⁸⁴

Welfare reform compels poor mothers to enter the workforce. But as the work itself moves, how does one break through to employment? Does the vendored system of work services help or not? Labor markets do not begin and end at jurisdictional boundaries, and most of the growth in economic activity is regional, not

79. JOHN BRENNAN & EDWARD W. HILL, BROOKINGS INST., WHERE ARE THE JOBS? CITIES, SUBURBS AND THE COMPETITION FOR EMPLOYMENT 8 (1999), available at <http://www.brookings.edu/es/urban/hillfa.pdf>.

80. *Id.* at 2. The median growth rate was 6%, but some suburbs' rates grew over 30%. *Id.*

81. *Id.* Baltimore suffered a job loss of 3.6%, while its suburbs gained by 10%. Richmond's center lost jobs at a rate of 16.5%, while its suburbs exploded by 27.6%. *Id.* at 3, tbl.1. Nearly 20% of the largest central cities nonetheless had positive employment growth that surpassed their suburbs, and these included some surprises: Jersey City, New Jersey, Wilmington, Delaware, and even Newark, New Jersey, long synonymous with urban decline. *Id.* at 6.

82. Bruce Katz & Katherine Allen, *Help Wanted: Connecting Inner City Job Seekers with Suburban Jobs*, 17 BROOKINGS REV. 31, 34 (1999), available at <http://www.brook.edu/press/review/fall99/bkatz.pdf>. As of 1997, central cities experienced poverty at a rate of 18.8%, compared to 9% for suburbs. *Id.* at 32.

83. *Id.*

84. *Id.*

merely local.⁸⁵ Yet the structures adopted by states and counties to implement the Act *are* so bound. Public job training and workforce development programs are fragmented by jurisdiction, and mirror the geographically divided governance of federal and state programs of assistance such as public and subsidized housing, eligibility for Food Stamps, health care, and child care assistance. This territorial character shreds what otherwise might stitch together a patchwork of family-support services for poor women transitioning from welfare reliance to workplace reliance by imposing still more hurdles as a condition of reaching opportunities outside their neighborhoods.⁸⁶

2. *Welfare to Women's Work*

The shift to tighten work requirements in welfare policy, implemented aggressively by the states since the 1996 enactment of the Act, symbolizes a significant change in the nature of the relationship between government and its female welfare clients since the booming 1980s. The Act reaffirmed the exchange expectation that recipients would help themselves as a precondition of public assistance, but was enacted, however, at a time of deep national doubt about the obligations of the state to deliver on its side of the bargain.

The dramatic shift in welfare policy to require women on welfare to work in exchange for benefits got its preview in the Family Support Act of 1988.⁸⁷ When enacted, the Family Support Act was hailed as a new national consensus, as "the most sweeping overhaul

85. E.g., H.V. Savitch et al., *The Regional City and Public Partnerships*, in *IN THE NATIONAL INTEREST: THE 1990 URBAN SUMMIT* 69-70 (Ronald Berkham et al. eds., 1992); Brian Bosworth, *Regional Economic Analysis to Support Job Development Strategies*, in *JOBS & ECONOMIC DEVELOPMENT*, 85, 85-104 (Robert P. Giloth ed., 1998); Elizabeth J. Mueller & Alex Schwartz, *Why Local Economic Development and Employment Training Fails for Low-Income Communities*, in *JOBS & ECONOMIC DEVELOPMENT*, 42-60 (Robert P. Giloth ed., 1998); PEGGY CLARK & STEVEN L. DAWSON, ASPEN INSTITUTE, *JOBS AND THE URBAN POOR: PRIVATELY INITIATED SECTORAL STRATEGIES* 4 (1995); BETH SIEGEL & PETER KWASS, *JOBS AND THE URBAN POOR: PUBLICLY INITIATED SECTORAL STRATEGIES* 10 (1995).

86. Peter Salsich suggests that the self-sufficiency expected from compliance with welfare reforms is not feasible without affordable housing. Peter W. Salsich Jr., *Welfare Reform: Is Self Sufficiency Feasible without Affordable Housing?*, 2 MICH. L. & POL'Y REV. 43, 69 (1997). Critical housing needs impair the stability and economic well being of nearly fourteen million Americans, including three million moderate-income working families. It takes more than one working adult to keep families out of serious housing stress. *Housing America's Working Families*, 1 NEW CENTURY HOUSING 1, 1-2 (2000), available at <http://www.nhc.org/nhcimages/chprpt.pdf>.

87. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2342 (codified as 42 U.S.C. § 666 (1999)).

of the nation's welfare system in half a century,"⁸⁸ and as the re-definition of the social contract.⁸⁹ This profound shift prescribed reciprocity between government and recipient in the extension of benefits. In other words, the government would provide income support in exchange for the recipient's efforts toward self-sufficiency through the employment and training efforts mandated by the JOBS program created by the Act.⁹⁰

The Act's rhetoric links it to Americans' long association of poverty with personal weakness, laziness, or moral deficiency,⁹¹ and presumes that work promotes self esteem and a sense of responsibility that poor mothers otherwise lack.⁹² Little serious attention was paid to the kinds of work likely to be available for welfare mothers, nor the effect of that work on the physical and mental health of mother and their families. Politicians also failed to acknowledge significant differences by race in the lives of working women. These realities include the racial coding of the discourse that counterfactually presented welfare mothers as overwhelmingly black,⁹³ as well as the racial segregation of much of the work avail-

88. Irene Lurie & Mary Bryna Sanger, *The Family Support Act: Defining the Social Contract in New York*, 65 SOC. SERV. REV. 43, 44 (1991).

89. *Id.* (citing CONG. Q. WKLY REP., Oct. 8, 1988, at 2825); see also, Joel F. Handler, *The Transformation of Aid to Families with Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. L. & SOC. CHANGE 457 (1987-88) (discussing the implications of the reform effort for the future of welfare policy).

90. The Act required employable recipients to search for work, or to invest in their employment prospects through job training, education, or work experience. 42 U.S.C. § 602(a)(19)(A); *id.* § 682(a)(1)(A). The federal law required states to provide employment and training services to a minimum portion of employable recipients. *Id.* § 682(a)(1).

91. WILSON, WHEN WORK DISAPPEARS, *supra* note 74, at 155-60 (contrasting American views about poverty and welfare with European views). For a comprehensive critique of TANF's insufficient policy vision for working-poor families, see HARD LABOR, *supra* note 2.

92. Requiring work would stop "welfare mothers" from having more babies to enlarge their benefit check. MARTHA FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES 117 (1995) (citing U.S. Representative Marge Roukema, 113 Cong. Rec. H11515 (Dec. 16, 1987)).

93. Throughout the 1980s and 1990s, most women on welfare were white. WILSON, *supra* note 74, at 166-67. Yet the myth of the "welfare queen" was crystallized by Ronald Reagan in his 1980 presidential campaign. Reena Shah, *The Hidden Faces of the Hungry*, ST. PETERSBURG TIMES, Mar. 14, 1990, at 1A. The sticking power of this myth perhaps is explained by earlier images of poor black women-headed families as a component of urban pathology, rendered by the first "Moynihan Report," OFFICE OF PLANNING & RESEARCH, U.S. DEP'T OF LABOR, THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION (1967), and by the conflagration of race and class in the construction of black stereotypes, e.g., PATRICIA J. WILLIAMS, SEEING A COLOUR-BLIND FUTURE: THE PARADOX OF RACE 31-45 (1998) (arguing that "underclass" is a euphe-

able to poor mothers,⁹⁴ and the racial dimensions of concentrated poverty, in which people of color are far more likely to be concentrated in central cities that cannot provide economic sustenance and thus substantially limit the life opportunities of their residents.⁹⁵

Furthermore, the policy change to "put women to work" presumes the autonomy and independence of the women who seek public assistance, as measured by the norms of the market economy. Although this policy shift appeals to the traditional American notion that a person's value to society is determined by one's ability to perform paid work, the heightened requirement is implemented at a moment in economic history often called the New Economy. As workers, women still have not caught up with the old economy, for they continue to bear disproportionately the expectations of their families and their governments as presumptive caregivers, providers of socially essential services that are neither compensable nor reimbursable. Poor mothers must seek work despite their often-compromised availability for work because of the demands of caring for dependent children, grandchildren, aged parents, or disabled family members. For more than sixty years, AFDC was viewed as a program for the unemployable,⁹⁶ and efforts to revamp it to respond to the needs of a changing caseload

mism for blackness, whereas "middle-class" operates as a euphemism for whiteness. WILLIAMS, *supra*, at 34-35.

94. Sherrilyn A. Ifill, *Weaving a Safety Net: Women, Work, and Environmental Justice in the Chicken and Catfish Industries*, 1 MARGINS 23, 32-46 (2001); see also PUB. JUSTICE CTR., *THE DISPOSABLE WORKFORCE: A WORKER'S PERSPECTIVE* (1998) (discussing the poultry industry, which is ranked among the top five dangerous occupations, and how white employees have been replaced by African Americans and immigrant workers), <http://www.publicjustice.org/reports/-poultry.pdf>.

95. Scholarship detailing the structural links between segregation and poverty include WILSON, *supra* note 74; DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* (1993); DAVID RUSK, *CITIES WITHOUT SUBURBS* (1993); PAUL A. JARGOWSKI, *POVERTY AND PLACE: GHETTOS, BARRIOS, AND THE AMERICAN CITY* (1997).

96. The able-bodied employable poor were ineligible for assistance. See generally LESTER M. SALAMON, *WELFARE: THE ELUSIVE CONSENSUS* 71-73 (1978) (noting the transition during the Great Depression to supporting employable poor so that they would remain employable); KATZ, *supra* note 32; HANDLER, *supra* note 24. FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE*, 165-75 (2d ed. 1993) (stating that women with children were thought to be needed at home to accomplish childcare). Cf. *America's Working Women* 24-35 (Rosalyn Baxandall et al. eds., 1976) (examining how poor women have historically had to work outside the home); CARL DEGLER, *AT ODDS: WOMEN AND THE FAMILY IN AMERICA FROM THE REVOLUTION TO THE PRESENT* 362-94 (1980) (noting the growing participation of women in the economy).

and to shifting economic conditions and social expectations⁹⁷ have been awkward and incomplete.⁹⁸

Poor women today are caught in the crossfire between two shifts beyond the control of welfare policymakers. On one hand, poor mothers share in the legacy of the "women's movement," which fomented tremendous cultural change, for white women in particular, framed by the premise of women's full autonomy, one piece of which is workforce participation.⁹⁹ On the other hand, they remain relegated to the inadequate preparation and limited entrée to the workforce that was the status quo in the 1950s. Welfare policies profoundly affect the autonomy of women, and always have done so. The significant changes in the 1980s and 1990s reshaped welfare policies both substantively and ideologically, in ways that further mire many poor women. So, although policymakers embrace autonomy by requiring and directing the workforce participation of poor women, implementation of the new policies may limit rather than enhance the ability of welfare recipients to achieve, especially if careful effort is not taken to attend to the specific needs of women in the workforce. Otherwise, mandatory work requirements will tend to perpetuate the gender-based inequities that already exist in labor markets.¹⁰⁰

If local programs are to achieve the work objective of welfare reform, it is essential to maintain data on real job opportunities: on their availability, location, employer skill requirements, and patterns of hiring and wage discrimination. Principal findings of one recent survey of employers' hiring practices suggest a grim climate for less-educated workers, particularly minority members in central cities.¹⁰¹ The few vacant jobs in central cities, compared to suburbs, are mostly in white collar and service occupations, and almost all of them require daily reading, writing, arithmetic, computer use, and/or customer contact, as well as heightened credential re-

97. Myra Bryna Sanger, *Welfare Reform within a Changing Context: Redefining the Terms of the Debate*, 23 FORDHAM URB. L.J. 273, 275-77 (1996).

98. KATZ, *supra* note 32, at 283-87; cf. PIVEN & CLOWARD, *supra* note 96, at 123-45.

99. Ironically, welfare reform has forbidden poor women to be "stay-at-home moms" just at the historical moment when white middle-class working women have engaged in much-publicized angst over how to spend more time with their children. E.g., ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD: WHY THE MOST IMPORTANT JOB IN THE WORLD IS STILL THE LEAST VALUED* (2001); Theodore Gideonse, *Mommy Track At the Times*, NEWSWEEK, June 1, 1998, at 61.

100. Joanna K. Weinberg, *The Dilemma of Welfare Reform: "Workfare" Programs and Poor Women*, 26 NEW ENG. L. REV. 415, 418-21 (1991).

101. HARRY S. HOLZER, *WHAT EMPLOYERS WANT* 47-49 (1996).

quirements, such as job-specific experience, references, or previous vocational training.¹⁰² Hiring screens and task requirements are reportedly higher in central cities than in suburbs, even for non-college jobs.¹⁰³ Many jobs are filled through informal recruitment channels, especially by referral from current employees.¹⁰⁴ Wage discrimination continues to limit earnings for minorities, and particularly for women.¹⁰⁵ Such data from the demand side of the labor market necessarily ought to sharpen our government officials' analysis of welfare-to-work vendors' proffered services. In sum, if individuals are to escape poverty and the need for public support, real reform of welfare requires government to face those structures of the work world.

II. BALTIMORE'S LOCALISM: THE DEVIL'S IN THE DETAILS

Baltimore well illustrates the infrastructure imperative in planning an effective welfare-to-work policy. Jobs and economic opportunity have moved to the suburbs, while poverty worsens in the center city, which houses sixty percent of Maryland's poor.¹⁰⁶ The median family income for the city was \$28,217, compared with \$42,206 for the general metropolitan area.¹⁰⁷ The relevant economy driving the production and availability of jobs is happening outside the jurisdiction responsible for getting Baltimore's welfare recipients into the workforce. The growth economy is in the metropolitan region, which is better able to connect or compete with other spots around the globe. State and local governments tend to target their economic development and business recruitment ef-

102. *Id.*

103. *Id.* at 54-62.

104. *Id.* at 49-54; see also, Robert Suggs, *Economic Justice in America's Cities: Visions and Revisions of a Movement Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487 (1995) (evaluating the impact of public procurement programs on small businesses in deteriorated neighborhoods).

105. HOLZER, *supra* note 102, at 121. For a review of the empirical literature on declining earnings for less-educated workers, and on growing inequality in earnings including the gaps between whites and nonwhites and between men and women, see Frank Levy & Richard Murnane, *U.S. Earning Levels and Growing Inequality: A Review of Recent Trends and Proposed Explanations*, 30 J. ECON. LIT. 1333, 1333-81 (1992).

106. ALFRED J. KAHN & SHEILA B. KAMERMAN, *BIG CITIES IN THE WELFARE TRANSITION* 127 (1998).

107. *Id.* at 128. The poverty rate is comparatively high at 21.9%, includes a 34.3% rate for children ages five and younger, and 45.9% for single African American female heads of household with children. Indicators of child health and well being are troubling, and the infant mortality rate also remains exceptionally high, at 14.6% per 1000 live births. *Id.*

forts on high-tech, knowledge-intensive, and skilled-labor sectors. Center cities are home to disproportionate and growing shares of state welfare recipients, and to low-skilled workers, yet are increasingly removed from these new economic opportunities, spatially and by education and training. In Baltimore, for every entry-level, low-skill job opening, there are three people looking for that job.¹⁰⁸ Two of these three jobs are located outside of the city.¹⁰⁹ Yet Baltimore is home to seventy-five percent of TANF recipients in the metropolitan area who are required to work as a condition of eligibility.¹¹⁰ At the outset of welfare reform in Maryland, one research project estimated that of the 14,000 city residents who would need jobs by 1999 to comply with the twenty-four-month rule, fifty-two percent would have no high school diploma, twenty-six percent would have been long-term recipients of cash assistance, and sixteen percent would have substance abuse problems.¹¹¹

Whether the welfare agency and its contractors are in fact helping TANF recipients move to work, on penalty of sanctions and the deepening poverty of their children, are questions of great public concern. The risk that the public agency may direct TANF recipients into work activities that count for the state but do not help parents move to work, makes it imperative to document its policies and practices, and the results it seeks and obtains as it spends the state's welfare block grant.

These details of welfare policy delivery are necessary fuel for the deeply democratic practices of citizen critique, confrontation, negotiation, and change. Citizen scrutiny is appropriate at three key junctures that determine the efficacy of the local welfare-to-work services: (1) the scope and specificity of the city's requests for proposals by private vendors for job-related services; (2) contract rebid and renewal procedures for vendors; and (3) agency management of ongoing contracts. Each is a lens through which to view the central question of whether vendors are held to expectations and performance benchmarks appropriate to the policy of moving people from welfare into sustainable work. In addition, the accountability and democracy problems of contracted welfare ought to be addressed through enhanced state oversight for the localities'

108. JOB OPPORTUNITIES TASK FORCE, BALTIMORE AREA JOBS AND LOW-SKILL JOB SEEKERS: ASSESSING THE GAPS 5 (1999), http://www.abell.org/assessing_the_gap.html. This likely fails to account for all TANF recipients required to work or be engaged in a work activity. *Id.*

109. *Id.* at 4.

110. *Id.* at 5.

111. KAHN & KAMERMAN, *supra* note 106, at 140 n.5.

implementation of welfare reform. To exercise such oversight, the public requires new tools to aid in the naming and claiming of public rights as stakeholders in the use of those targeted funds.

Underscoring the urgency of such oversight is the fact that, to accomplish the employment objective requires two functions not within the experience of most welfare agencies: (1) a complex of services pertaining to work; and (2) planning in coordination with the needs of the local economy, particularly in declining center cities. How, if at all, has local welfare administration been revamped so that the caseworkers' ability to move people from welfare to work is *not* obstructed by the external structures of the local economy? Obvious elements of this agency function include planning in light of the local and regional unemployment rates, the location of job opportunities, and the skill levels required for such jobs relative to the skills and experiences of TANF recipients. One also must account for projected growth in occupations for which TANF recipients have or can gain suitable skills, and the wages and hours available in such occupations that can lead new workers into sufficient earned income to leave welfare behind.¹¹²

Addressing these barriers is essential to serving TANF recipients successfully. It is an enormous responsibility for a local welfare agency to assume, unaided by workforce development professionals, and more to the point, absent an intentional relation of welfare-to-work administration with the state's economic development policies. Baltimore, for example, does not appear to coordinate its TANF work services with the job development or economic development arms of the city or state. In the New Economy, this is a presumptively dangerous omission, and the perpetuation of yet another bleak economic ghetto, particularly for the residents of the state's largest city.

Two aspects of conceptualizing government accountability for TANF job placement services are readily obvious. First, we ought to expect government to implement its welfare-to-work policy through agencies and staff having the relevant competencies and capacity to deliver on the policy objectives. Second, we ought to be

112. Additional infrastructure issues that impose significant barriers to employment for the poor include the public transit system and the availability of childcare service providers. Barriers such as these are in no way personal to the TANF recipient transitioning to work. Even barriers that are personal to a worker in the sense that they occur in the private sphere of her life—issues such as domestic violence, mental illness, work-related disabilities, substance abuse, and the dearth of treatment and support services for workers struggling with these realities—plainly have structural dimensions which are central to policy planning and the effectiveness of the reforms.

able to get meaningful review of the performance of the new system. One logical source of benchmarks is to compare the local welfare agency's performance objectives, methods, and outcomes with the existing world of work placement and job training for low-income people outside of TANF.

A. TANF Accountability: Review of Vendor Contracts in Baltimore

The purpose of this article is to audit the local welfare agency's management of TANF recipients' time-limited opportunity to leave welfare for work. The first "track" of this study aims to assess the rapid contracting out of employment assistance by the Baltimore City Department of Social Services ("BCDSS") to implement the government "work activity" requirement.¹¹³ The investigation entails review of the contracts let in 1998, 1999, and 2000 by Baltimore City to an array of vendors, such as America Works, Goodwill Industries, and local for-profit and not-for-profit firms and sister agencies, for a set of employment-related services to TANF applicants and recipients.¹¹⁴

An important goal of this project is to hold the local welfare agency accountable for its management of TANF recipients' limited opportunity to leave welfare for the rewards of work. The first stage has consisted of reviewing the requests for proposals ("RFPs") issued by the BCDSS's Family Investment Bureau, beginning in 1997, for direct job placement as well as intensive job services. This stage also involved a comparison of the contracts' terms to the RFP provisions for performance assessment. The RFPs included the requirement of monthly and quarterly reports, which made the ground appear well-suited for citizen-monitoring of the manner in which the local welfare agency and its contractual agents would manage the public fiscal and community stake in moving Baltimoreans from TANF checks to pay checks.

113. A second track of the study examines "personal responsibility contracts," which Baltimore and other local governments in Maryland and throughout the nation require recipients to sign, indicating the steps that individuals and government agencies will take so that individuals will leave welfare for employment.

114. The first contracts were scheduled to be renewed (or not) during 1999. New requests for proposals were issued and a few vendors added and dismissed in the summer of 1999.

1. *A Citizen's Audit*

From the citizen-stakeholder's perspective, here is a short list of fundamental questions that deserve response from the government.

a. Goals of the Contracting Program

A threshold question, of course, is whether the strategy of contracting out serves appropriate goals. If so, to what extent are these articulated in the RFP, and specified in the contracts? The term "appropriate goals" requires development.¹¹⁵ These would obviously include those goals of the local government's program, as stated in the program of the agency charged with implementation of welfare-reform employment services. But they also should include goals of the program clients, and the larger community to be served, on the theory that these are essential stakeholders in this significant reformulation of the citizen-sovereign compact.

A related inquiry is whether the implementing agency considers "cross-program" goals, not specifically the subject of the services sought by this contract, but interactive policies of the same governmental unit, such as a specified percentage reduction in poverty in an area, community involvement, or of local capacity building. Minnesota, for example, designed its program expressly to increase employment *and* reduce poverty, and independent analysts confirm that state's significant success.¹¹⁶

b. Implementation of the TANF Work Requirements

Is the state doing its part by providing the necessary services to help clients leave welfare for work? Are TANF recipients receiv-

115. Analysts and advocates argue that the low-income communities most affected by the work activity requirement ought to have a consultative role at this stage. *E.g.*, THERESA J. FEELEY & SHERI A. BRADY, NAT'L ASS'N OF CHILD ADVOCATES, BEYOND DECLINING CASELOADS: ADVOCATES TOOLS FOR MONITORING WELFARE REFORM, 1999, <http://www.childadvocacy.org/publicat.html>. RFP writing is expressly exempted from federal and local administrative procedure acts. The familiar processes of notice and comment rulemaking, limited as they often are to ensure meaningful public participation, are absent here and require alternative vehicles for transmitting the perspectives of the demos.

116. VIRGINIA KNOX ET AL., MANPOWER DEMONSTRATION RESEARCH CORP., REFORMING WELFARE AND REWARDING WORK: A SUMMARY OF THE FINAL REPORT ON THE MINNESOTA FAMILY INVESTMENT PROGRAM 2-4 (2000), available at <http://www.mdrc.org/Reports2000/MFIP/MFIPSummary.htm>. Notably, Minnesota was found to have reduced poverty and increased employment for the group considered key by many policymakers: single-parent long term recipients, who comprise the majority of the welfare caseload and who are least likely to enter employment on their own. *Id.* at 2.

ing an assessment, adequate in law or fact, which provides the options and support they need to move successfully to work and to stay there, in light of the time limits? Are appropriate matches made to jobs or to employment-related services, and if the latter, are such services in place, and how well do they serve those seeking work and the employer base? Are local agencies able to align their expectations and the actual services for overcoming barriers to employment? Thus, one branch of the project is scrutiny of the local governments' use of "personal responsibility contracts."

c. Assessment of the Employment Secured

The employment offered by these services requires both quantitative and qualitative examination. Maryland adopted a "work first" policy, as have many states, in order to move rapidly into work the most job-ready welfare recipients. Its caseload has dropped precipitously, though not as much as those of some other states.¹¹⁷ Maryland officials are proud that at least fifty percent of the people who have left welfare can be identified as working in jobs at least one quarter later.¹¹⁸ They say little about the other fifty percent, except to suggest they left welfare voluntarily. Officials downplay the fact, but it is evident that a huge number have disappeared from the rolls without securing work.

d. Goal-Setting

One result of trying to contract for high numbers of job placements can be the pressure on vendors to focus on the easier-to-serve. If payment is made only as numbers are achieved, does this preclude smaller community-based organizations from successful competition because of their relative inability to muster the cash flow necessary to sustain a contract whose payout is tightly pegged to performance benchmarks? On the other hand, citizens should be able to learn whether established vendors are held to some measure of the promised outcomes.¹¹⁹

How well is BCDSS setting contract goals? Are they too high or too low? Do numerical goals undermine such softer goals as equity

117. MD. DEP'T OF HUMAN RESOURCES, STATUS OF CLOSED WELFARE CASES, 1997, <http://www.dhr.state.md.us/press/caseclos.htm>.

118. *Id.*

119. The evaluation criteria for the new Welfare-to-Work grants programs include: (1) entry into unsubsidized employment; (2) six-month retention in unsubsidized employment; (3) six months of earnings in unsubsidized employment; and (4) attainment of educational or occupational credential by participants who entered unsubsidized employment.

in the provision of services, of avoiding segregated employment patterns in placements, in the utility of the services to clients, or capacity building for local contractors? To the extent the contracts reflect "partnership" approaches, in which the state offers significant technical assistance and information during the term to facilitate success, as distinguished from old-fashioned compliance monitoring, is this model productive?

e. Contract Renewal and Rebid Decisions

When discussing renewal and rebid decisions, it is important to know who conducts the review of performance and evaluative data, by what standards, and how those reporting requirements are implemented. Some situations may, in fact, call for less stringent review. For example, when contracts are granted to pilot projects or to smaller, community-based organizations with one goal being capacity-building, ought more forgiving renewal terms apply than to larger contracts? What has been local experience with this approach?¹²⁰

In the era of contractualization, what role do agency staff retain for operating the new welfare agency within the framework created by the private vendor contracts? Furthermore, what training do they receive in the management of these contracts?

Qualitatively, the policy of the Act directs that jobs to which the new services lead should be assessed for their ability to promote self-sufficiency through work. Self-sufficiency is a concept amenable to serious debate, but in the workforce development field, it is common to find progress toward that goal measured in terms of access, retention, earnings, and benefits. In Maryland, as in much of the nation, of the welfare-leavers who are working, the newest data suggest that much of the work after welfare pays less than the poverty level, is highly contingent, and without benefits.¹²¹

120. A useful primer on the issue of performance evaluation is JESSICA YATES, *MANAGING THE CONTRACTING PROCESS FOR RESULTS IN WELFARE REFORM* (1998), at <http://www.welfareinfo.org/contractissue.htm>. Yates outlines the background concerns when deciding to renew or rebid contracts. She concludes by discussing how several states and municipalities have addressed the problem, including Pennsylvania; Broward County, Florida; Fairfax County, Virginia; Indiana; Delaware; and Wisconsin.

121. *E.g.*, UNIV. OF MD. SCH. OF SOC. WORK, *LIFE AFTER WELFARE: AN INTERIM REPORT* 26 (1997) (reporting that 58% of leavers earned wages reported in state administrative systems, and average earnings for 1996 were \$4,818; half earned less than \$3,041); UNIV. OF MD. SCH. OF SOC. WORK, *LIFE AFTER WELFARE: THIRD INTERIM REPORT* 41-45 (1999) (reporting the top twenty employment categories of Maryland's welfare leavers, and raising the question whether these jobs will pay enough for them

f. Evaluation of Contract Performance

Government review of service vendor performance also requires close scrutiny. How is the private contractor held accountable for compliance, performance, and outcomes? To what extent is the local agency serving the citizens by careful contracting, properly measuring vendors' performance, and making renewal and rebid decisions in line with suitable measures? The use of performance measures and incentives, including pay-for-performance, is one of the potentially important tools in the privatization kit.

2. Existing Models for Government Accountability in Local Government Contracts for Employment Services

One measure of local government's accountability is the availability of responsible benchmarks and contract management practices for the effectiveness of the job services required of TANF recipients. Congress relied upon performance-based management principles in aspects of the TANF statute, reinforcing the work participation requirements with a system to award bonuses to "high-performing States,"¹²² defined to mean states that are most successful in achieving the four purposes of the TANF program.¹²³ In addition, two major initiatives were launched—the Department of Labor's Welfare-to-Work¹²⁴ bonus program ("WtW") and the

to support their families and avoid a return to the welfare rolls); see also SHARON PARROTT, CTR. ON BUDGET AND POLICY PRIORITIES, WELFARE RECIPIENTS WHO FIND JOBS: WHAT DO WE KNOW ABOUT THEIR EMPLOYMENT AND EARNINGS? 9-12, 1998, available at <http://www.cbpp.org/11-16-98wel.pdf>. This study found that many former welfare recipients who have found employment earn salaries that place them well below the poverty line.

122. 42 U.S.C. § 603(a)(4) (1999). Bonus awards for TANF performance were based on four work measures: the job entry rate, the duration of job placements, earnings increase, and "such other factors as the Secretary of Labor deems appropriate" *Id.* § 603(a)(E)(iii).

123. Four principal goals shape the statute that emerged from deeply contentious, hard-fought, sharply partisan political effort. These are: (1) providing assistance to families so that children will be cared for in their family's home; (2) ending dependence on government assistance by promoting work, job preparation, and marriage; (3) preventing and reducing out-of-wedlock births; and (4) encouraging the formation and maintenance of two-parent families. § 601(a). For a balanced history of the contending policies ultimately melded into the Act, see TIMOTHY J. CONLAN, FROM NEW FEDERALISM TO DEVOLUTION, at ch.13 (1998).

124. The bonus program was authorized by the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251. For a discussion of these funds, which are targeted at creating opportunities for those TANF recipients who are hardest to employ, see Kathryn R. Lang, *Fair Work, Not Workfare: Examining the Role of Subsidized Jobs in Fulfilling States' Work Requirements Under the Personal Responsibility and Work Reconciliation Act of 1996*, 25 FORDHAM URB. L.J. 959, 982-83 (1998).

Workforce Investment Act of 1998 ("WIA")¹²⁵—each designed to include meaningful benchmarks and outcome evaluation, thereby suggesting a serious concern for their effectiveness as workforce development programs.

The Department of Labor's WtW was first authorized in 1997 to award \$3 billion in grants to states and local communities, on a competitive basis, to promote job opportunities and employment preparation for the hardest-to-employ recipients of cash assistance and for non-custodial parents of children on TANF.¹²⁶ Evaluation criteria include: (1) entry into unsubsidized employment; (2) six-month retention in unsubsidized employment; (3) six months of earnings in unsubsidized employment; and (4) attainment of educational or occupational credentials by participants who entered unsubsidized employment.¹²⁷ Independent evaluation, conducted by Mathematica Policy Research, Inc. and its subcontractors, the Urban Institute and Support Services International, Inc., is intended to answer specified questions, including: What are the net impacts of the WtW approaches on employment, and on families' well-being? What challenges do the grantees face as they implement and operate WtW? How well do the Private Industry Councils and other non-TANF organizations (the primary vehicles for funding and operating WtW programs) meet the challenge of serving the hardest-to-employ?¹²⁸

An additional benchmark of government accountability for the TANF job placement services could be a comparison of the world of work placement and job training for poor/low income people outside of TANF. The WIA prescribed a major national upgrade of the field of public workforce development, representing a new national policy consensus that human resources are our most pre-

125. 29 U.S.C. § 2801 (2000); *infra* note 129 and accompanying text.

126. *Welfare Reform: States' Implementation and Effects on the Workforce Development System: Testimony Before the House Subcomm. on Postsecondary Educ. Training, and Life-Long Learning, Comm. on Educ. and the Workforce*, 106th Cong. 3-4 (1999) (statement of Cynthia M. Fagnoni, Director, Education Workforce and Income Security Issues, Health, Education, and Human Services Division). Grants are awarded by the Dep't of Labor to local communities with innovative welfare-to-work approaches on a competitive basis, and through states on a formula basis to the Private Industry Councils or equivalent bodies in the service delivery areas of the Job Training Partnership Act, Pub. L. No. 97-300, 96 Stat. 1332 (1982), now subsumed by the Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (1998).

127. The U.S. Department of Health and Human Services is evaluating the effectiveness of welfare-to-work initiatives, in conjunction with the Departments of Labor and Housing and Urban Development.

128. A wealth of information about the grants program, and WtW in general, is posted by the Employment and Training Administration at <http://wtw.doleta.gov>.

cious national assets.¹²⁹ Its Evaluation Task Force recommended twenty-four performance measures.¹³⁰

Furthermore, although the Act does not require states to develop or use client-based outcome measures, many states have contracted for an array of studies and other services, which may help them understand the outcomes of their programs. Maryland's Administration for Children and Families ("ACF") retains oversight responsibilities, and is obligated to provide an annual report to Congress on TANF. Thus in 1997, ACF issued regulations to address the data collection and reporting provisions, measures of state performance under the work participation requirement, and the assessment of penalties for performance failures under TANF.¹³¹ The agency funded evaluations in several states to assess reforms begun under waivers. The Assistant Secretary for Planning and Evaluation ("ASPE") also has sought to evaluate the impact of welfare reform on child well-being, by requiring annual reports of state child poverty rates in relation to the TANF program,¹³² and to fund studies of outcomes for families diverted from or leaving TANF.

Most states are planning or have begun to conduct evaluations examining the outcomes of their state TANF programs for families

129. The WIA is the most significant reform of the national job training system in fifteen years. Its statutory purpose is to improve the quality of the workforce and reduce welfare dependency by supporting and directing the investment of statewide and local workforce systems intended to increase the employment, job retention, earnings, and occupational skill of participants. 29 U.S.C. § 2811 (1999). The WIA establishes a system of "one-stop delivery" sites for access to employment-related and training services, *id.* § 2864(c), and requires the participation of more than twenty "partner" programs authorized under this and prior federal statutes pertaining to work. *Id.* § 2841(b). WtW programs are required to participate; TANF may be linked, but this is not required. The state must establish a State Workforce Investment Board, *Id.* § 2821(a), which develops the state plan, and submits a five-year strategic plan to the Department of Labor. State plans must specify how the state will implement key requirements of the WIA, and how special populations, *including welfare recipients*, veterans and persons with multiple barriers to employment, will be served. *Id.* § 2822(b).

Local planning and state oversight are required for "workforce development," unlike TANF welfare-work programs. Planning and oversight of local implementation is by a Local Workforce Investment Board, appointed by local elected officials; local plans are then subject to approval by the governor. *Id.* § 2832(a)-(b).

Like the Act, the WIA makes funding available to states contingent upon satisfactory levels of performance, according to specified indicators.

130. WORKFORCE DEVELOPMENT PERFORMANCE MEASURES: MENU AT A GLANCE, at <http://www.wdsc.org/transition/measure/append-d.htm> (Mar. 1999).

131. Temporary Assistance for Needy Families, 64 Fed. Reg. 17,720, 17,722 (Apr. 12, 1999) (to be codified at 5 C.F.R. pts. 260-265).

132. Notice of Proposed Rulemaking, 63 Fed. Reg. 50,837 (Sept. 23, 1998).

and children.¹³³ The central utility of such evaluations surely is to inform citizens and policymakers about the effects of the policy judgments implemented in one's jurisdiction. Three years into welfare reform, few states' evaluations had produced even an interim report.¹³⁴

Neither the prevalence of performance-based evaluation of programs tailored to the employment-related needs and services for welfare recipients, nor the policy commitments to alleviate poverty through public expenditures for work activity required under the Act, need penetrate to the streets where welfare mothers live, work, and raise their children. These federal efforts all stand in remarkable contrast to the city-run and state-approved system for moving people from welfare to work, and sanctioning them for non-work, in the City of Baltimore.

B. Baltimore's Vendor Contracts for TANF Job Services

Following passage of TANF and of Maryland's implementing legislation in 1996, Baltimore had more than two years to plan its program of welfare-to-work services before its resident recipients would meet the twenty-four-month limit, which required participation in an approved work activity on January 1, 1999. The City promulgated its Family Investment Program ("FIP")¹³⁵ in 1996 and requests for proposals for employment-related services in 1997, 1998, and 1999. Twenty-nine contracts have been let to twenty vendors, committing the City to pay some \$64 million for the vendors' services. What scope of services, quality of service, and program outcomes, have the contracts secured?

1. The Local Plan: Baltimore City's FIP

Since its inception in 1996, the primary objective of Baltimore City's FIP "is to assist the customer to become self-sufficient,"

133. State evaluations vary greatly in scope and in methodological rigor. They range from simple one-time surveys of a single policy to longitudinal studies that track multiple cohorts of clients on a variety of outcomes. Only twelve states are using an experimental design using control groups, which can establish causal relationships between program features and client outcomes. OFFICE OF INSPECTOR GEN., U.S. DEP'T OF HEALTH & HUMAN SERVS., *EARLY EFFORTS BY STATES TO MONITOR OUTCOMES OF WELFARE REFORM*, Pub. No. 0E1-03-98-00130 (1999) available at <http://searchpdf.adobe.com/proxies/1/71/32/28.html>.

134. *Id.*

135. FAMILY INVESTMENT PLAN FOR BALTIMORE 5.1 (1996) [hereinafter FIP]. To achieve the goal of helping families become more independent, the Maryland Department of Human Resources ("DHR") transferred "greater flexibility, authority, and accountability to the Local Departments of Social Services." *Id.* at 1.1.

through placement in various work-related activities that lead to permanent employment.¹³⁶ In April 1997, proposals were sought for Direct Job Placement Program Services. Two years into Maryland's implementation of TANF, Baltimore's revised Plan explained that it "triaged" its TANF customers into three work categories—"Job Ready," "Hard-to-Place," and "Severely Challenged."¹³⁷ Job Ready customers are those deemed "able to achieve full-time employment with current job programs."¹³⁸ Individuals who have not secured jobs by those means are classified as Hard-to-Place. The variety of personal and family challenges faced by these customers presumably led to the issuance of the RFP for Coordinated/Supportive Work Preparation and Placement Services in 1999, intended to move persons with these needs "into full-time unsubsidized employment."¹³⁹ The Severely Challenged customers are so categorized based on multiple problems prohibiting them from fulfilling basic functions of daily living, including chronic substance abuse, domestic violence, histories of child abuse or neglect, and physical and/or mental health problems severe enough to pose a major barrier to employment, although not so severe as to constitute a disability.¹⁴⁰ The City also solicited proposals and let contracts for Intensive Family Support Services, to provide comprehensive family interventions for these severely challenged applicants. Vendors were to be contractually obligated to provide services from initial contact until the adult family member is employed for six months, and job retention support services for six months beyond that.¹⁴¹

136. *Id.* at 5.1.

137. BALT. CITY DEP'T OF SOC. SERVS., FAMILY INVESTMENT PROGRAM IN ACTION 6 (1999) [hereinafter BCDSS, FIPA]. Two years later, the City modulated this objective somewhat, stating that one of three primary goals is "to move families toward economic self-sufficiency through adult household members obtaining and retaining employment, or some other source of income." *Id.* at 2.

138. Available programs include job resource labs, job readiness programs, and support services such as transportation, childcare, medical assistance, and emergency services. These are accessible through the Employment Opportunity Resource Labs in each Family Investment Center. *Id.* at 6.

139. *Id.* at 6-7. The City Plan claims that vendors contracted to provide coordinated/supportive services must provide outreach, case management, job retention, and post-employment services. *Id.* at 7-8. The RFP for Direct Job Placement similarly states that the purpose is to place customers into full-time unsubsidized employment. Balt. City Dep't of Soc. Servs., Request for Proposal(s) for Direct Job Placement Program Services, BCDSS/IMA-97/015-S, at ¶ 1.1 (1997).

140. BCDSS, FIPA, *supra* note 137, at 6-7. A person identified as disabled is entitled to exemption from the TANF work activity requirements.

141. BCDSS, FIPA, *supra* note 137, at 7.

a. Characteristics of Baltimore's TANF Program

State law requires that each applicant for cash assistance and other Family Investment benefits be assessed to determine what she needs to achieve independence.¹⁴² A work assessment is required for each Temporary Cash Assistance ("TCA") recipient adult or minor parent. This is the task of the case manager, and state regulations provide limited guidance for the assessment.¹⁴³ Eligibility is conditioned upon compliance with employment requirements, unless an individual is exempt by reason of severe disability, youth, care for a young child, or working at least thirty hours a week at minimum wage or higher.¹⁴⁴ Maryland law commands participation, but the local departments approve particular work activities.¹⁴⁵ Recipients found to face "no barriers" to participation in work activities are referred to a vendor under contract with the local department.¹⁴⁶ If the adult does not comply with the

142. MD. ANN. CODE 88A, § 49(a)(1) (2000). An assessment shall consider the applicant or recipient's reasons for reliance on public assistance, personal and family resources available to the individual, and her "educational level, job skills and readiness, and interest to evaluate appropriate work activities." *Id.*

143. TCA is a component of the FIP that provides cash assistance to needy families with dependent children. FAMILY INV. ADMIN, MD. DEPT OF HUMAN RES., PUBLIC ASSISTANCE: TEMPORARY CASH ASSISTANCE, http://www.dhr.state.md.us/fia/-p_assist.htm. The assessment consists of review of the customer's education level, work history, skills, interests and the number of months that s/he has received cash assistance. The case manager also explores whether there are "any barriers" to employment. The information so assembled is to be used to write an Independence Plan of action to move the recipient from welfare to work. SOP 99-12 (Aug. 1, 1999). Because the Plan must specify the work activities required of the recipient, and the specific supportive services that the local department will provide to meet the recipient's obligations, MD. ANN. CODE 88A, § 49(a)(3) (2000), the assessment must precede the formulation of the Plan. However, in 1998, TANF recipients in Baltimore were required to sign Plans in blank. Even after advocates discovered the practice, it remains the case the customers are required to sign the Independence plan before the assessment has been completed. FAMILY INV. PROGRAM LEGAL CLINIC, TIME OUT! A STATUS REPORT ON WELFARE REFORM IN BALTIMORE CITY AT THE THREE YEAR MARK, AS EXPERIENCED BY THOSE IT WAS INTENDED TO HELP AND THEIR LEGAL ADVOCATES 10 (1999) [hereinafter TIMEOUT!], <http://www.law.umaryland.edu/faculty/czapanskiy.asp>. One problem with this timetable is that Independence Plans are executed before the recipient and case manager have discussed the availability and suitability of the work-services vendors. *Id.*

144. MD. REGS. CODE, tit. 7, § 07.03.03.07(I)(2) (2000).

145. MD. REGS. CODE, tit. 7, § 07.03.03.07(J)(1)(a) (2000).

146. SOP 99-12 (Aug. 1, 1999).

work requirements,¹⁴⁷ without good cause,¹⁴⁸ the entire family is sanctioned and ineligible for cash assistance.¹⁴⁹

b. Scant Planning for Outcomes.

The original statement of program objectives was modest and stated with little specificity. BCDSS hoped to achieve 4000 job placements.¹⁵⁰ The agency reported that approximately half of FIP customers had a high school diploma or GED. No baseline was presented concerning the length of time of cash assistance, or numbers facing other barriers to sustained employment. Even two years into the new employment focus, when the local FIP plan was revised in 1999, the agency still offered no data or estimate of the target numbers of customers in each triage cohort to be served.¹⁵¹ Indeed, although information about an individual's literacy level is essential to assessment and suitable placement with a vendor, BCDSS waited two years before it included any assessment of literacy level or needs in its assessment.¹⁵²

The revised Plan appeared to make provision for 5000 recipients.¹⁵³ The agency estimated that 1500 Job Ready customers

147. Noncompliance is not defined in the provision for sanction for noncompliance, MD. REGS. CODE, tit. 7, § 07.03.03.15C (2000).

148. Good cause for refusing or failing to cooperate with work requirements includes properly documented illness or incapacity, court-required appearance or incarceration, family crisis including domestic violence, a breakdown in transportation arrangements, a breakdown in child care arrangements or lack of child care resources, lack of supportive services defined in the initial assessment and independence plan, or an assignment to a work activity that would require a parent or child caretaker providing care for a child younger than one year, to work more than thirty hours per week. MD. REGS. CODE, tit. 7, § 07.03.03.07(I)(6) (2000).

149. A recipient who disagrees with the local department's decision to refer to a work program, with the disposition in a conciliation process, or with a decision to sanction the recipient, may request a fair hearing before an administrative law judge. MD. REGS. CODE, tit. 7, § 07.01.04.03(B) (2000). Although formally available, administrative appeals often are impeded by City practices. *TIMEOUT!*, *supra* note 143, at 31-33. Agency staff routinely refuse to accept requests for appeals, refuse to provide appeals forms, and push customers into settlement conferences with supervisors. *TIMEOUT!*, *supra* note 143, at 32. Administrative law judges practice a "Catch-22"; they merely remand a contested matter to the agency for unspecified "corrective action," leaving the agency free to take the same action again. The judge's response—file another appeal. *TIMEOUT!*, *supra* note 143, at 33.

150. FIP, *supra* note 135, at 5.1.

151. Nor was any mention made of the proportions of its caseload that might be exempt from the work requirements, or in need of particularized services, due to disability, caring for a young child, or the recipient's youth.

152. *TIMEOUT!*, *supra* note 143, at 11-12.

153. The first families hit twenty-four months on January 1, 1999, and then required assessment and referral to a work activity. BCDSS projected that 10,040 families

would use existing support services to seek employment. Twenty percent were expected to succeed in finding full-time unsubsidized employment.¹⁵⁴ No further outcomes were stated for this group's job retention, duration, wages or benefits.

Some 3000 Hard-to-Place recipients were to be served by a new RFP for Coordinated/Supportive Work Preparation and Placement Services, issued in 1999. Outcomes projected that ninety percent, or 2700, would be placed in a job during the contract term, and that at least fifty percent would achieve full-time unsubsidized employment for six months.¹⁵⁵

The FY 2000 Plan included a heightened obligation for vendors to provide more extensive outreach services, to improve the enrollment rates for customers who otherwise fail to attend initial appointments,¹⁵⁶ and to integrate job retention strategies with job placement services.¹⁵⁷ To that end, all of the welfare-to-work contracts with new vendors were to include "goals and/or pay incentives" for the vendor to assist the customer to stay employed.

Further policy developments, not explicitly linked to the outcomes expected under the vendor contracts, were announced to address the barriers of illiteracy, transportation, and childcare in 1999. Asserting that the single most significant predictor of a child's educational success is the educational level of the child's mother, the City targeted "the intergenerational cycle of educational failure" as closely associated with the cycle of welfare dependency.¹⁵⁸ Recognizing the cost of transit as a hindrance to job retention, the City announced plans for a pilot program allowing any transitional recipient who finds a job outside the City to qualify

would reach the twenty-four-month mark in FY 2000. It estimated a 30% reduction by the end of FY 2000. BCDSS, FIPA, *supra* note 137 at 22.

154. *Id.* at 7.

155. The City also anticipated that at least 500 families would require intensive services in order to prepare for placement or referral to a work activity. Thus a separate RFP was issued for these services. The Plan projected that 90% of the adult family members would be "ready to be referred or placed in work activity" within time frames specified in each individual's case plan. *Id.*

156. *Id.* The FY 2000 Plan announced additional innovations in the works: it was developing programs to engage non-custodial parents in work activities and family life; pre-service and in-service training for relative caretakers; and family literacy programs.

157. Two new programs facilitated the combination of job retention and placement services. The Post Employment Partners Program ("PEPP") provides supportive retention services to employees, and the Baltimore Employment Exchange ("BEE") affords job retention services to potential employers, thereby creating incentive to hire customers receiving temporary cash assistance. *Id.*

158. *Id.* at 13.

for the maximum childcare subsidy, regardless of income, for the first six months of employment.¹⁵⁹ The BCDSS, in response to welfare-to-work vendors' reports that a lack of evening, sick-child, and overnight childcare impeded employment, committed to study the need for such care and to create a flexible fund to address that need.

c. Adding Up the Numbers.

Baltimore's revised FIP Plan is one source of data with which to evaluate the efficacy of the City's vendor system for work services, specifically for those contracts let in the first three years of TANF.¹⁶⁰ The City projected that, of the more than 10,000 families that would hit the twenty-four-month limit requiring their work participation, only 2700 would be "placed in jobs," and of these, only 1350 would retain employment for as long as six months.¹⁶¹ An additional 300 individuals were expected to find work because they were directed to look for it.¹⁶² All told, then, Baltimore expects fewer than 1700 individual recipients actually will leave welfare for work.

2. The Welfare-to-Work Services Contracted For by Baltimore City: Not "Leading to Sustained Employment"

a. Requests for Proposals

At first blush, Baltimore's welfare-to-work RFPs appear to provide important accountability tools, in that they require monthly and quarterly reports to maintain relevant benchmarks. Direct Job Placement vendors were notified of monthly deliverables—to include the hourly wage for placements, the number of jobs secured with and without benefits, and the number of persons placed in full-time unsubsidized employment or enrolled in other work activities (by type).¹⁶³ As is customarily provided, failure to deliver could result in possible termination of the multi-year contract.

159. Thereafter, the recipient is expected to apply for the Earned Income Tax Credit, to defray some of the expenses of retaining a job with a city-county commute. *Id.*

160. This is certainly the case in the absence of other professional evaluation studies.

161. *Id.* at 7, 22.

162. *Id.*

163. Balt. City Dep't Soc. Servs., Request for Proposals for Direct Job Placement Program Services, BCDSS/IMA-97/015-S, at ¶ 3.7 (1997) [hereinafter Request for Proposals].

In other important respects, however, the RFPs provided little guidance to offerors about the City's needs or requirements. The furious embrace of performance-based contracting for social services at the federal level, and in many other states, appears not to have penetrated to this local government, where the five-year clock is ticking for local residents.

RFPs are perhaps the most common method for governments to purchase professional services. A comprehensive specification of services is a regular feature of the RFP method, although not universal, since prospective contractors often are encouraged to develop their own approaches.¹⁶⁴ The quality of the service specification is recognized as a critical ingredient of effective contracting. Local government can set guidelines for vendors by specifying: (1) resources needed for the task—for example, the number and qualifications of personnel needed for the job and the number of clients to be assisted; (2) descriptions of the processes and tasks; and (3) performance that is considered satisfactory.¹⁶⁵

Baltimore's RFP for direct job placement specified some processes and outcomes. Those processes included placing applicants into full-time unsubsidized employment, providing job readiness and job search training, developing job and career training specifically for welfare recipients, and providing six months of post-placement follow-up for those applicants placed in full-time unsubsidized employment.¹⁶⁶ Prescribed outcomes suggested a higher level of expectation than that signaled in the City's FIP: at least 75% of all referred recipients would find full-time employment; 90% of those placed will remain employed for at least thirteen weeks, and 85% for twenty-six weeks following placement.¹⁶⁷ Payment was to turn on the four pay-out points indicated by the outcome measures: 20% upon referral to the vendor; an additional 30% upon placement into unsubsidized employment; 20% more for each individual who retains employment for at least thirteen weeks, earning at the higher of the TANF eligibility amount or the minimum wage; and the remaining 30% for each individual employed at least twenty-six weeks.¹⁶⁸

164. KEVIN LAVERY, SMART CONTRACTING FOR LOCAL GOVERNMENT SERVICES 63 (1999).

165. *Id.* at 66.

166. Request for Proposals, *supra* note 163, at ¶ 3.3.

167. *Id.*

168. *Id.* at ¶ 2.15.

Aside from the incentives inherent in the pay-out points, the details await vendors' design. The balance of the specification section lists the dozen aspects of implementation that each vendor is to describe in its proposal.¹⁶⁹ Those features include the employment services to be provided and the data the vendor will collect, including its intended means of tracking attendance and maintaining records of participants' employment.¹⁷⁰ The RFP makes a faint effort at requiring offerors to consider the labor market in which their employment services would be provided. Specifically, the City asked vendors to identify the occupations that TANF recipients are "most likely" to obtain after the vendor's program, as well as some evidence that the labor market in the Baltimore metropolitan area will support the potential services the vendor proposes.¹⁷¹

One effect of this form of RFP is that the City waited to learn from the offerors such key parameters as: the number of individuals to be served; the number who would be aided by job placements or some intermediate spot on the continuum from welfare to paycheck; and what the vendor-dependent program would in fact cost the taxpayers. The RFP asked offerors to estimate the total number of persons they expected to serve in the twenty-five-month contract period, and to submit a budget, projecting monthly enrollments, job placements, other work-related activities, or work experience placements.¹⁷²

The Baltimore RFPs delegated significant aspects of program design to the vendors. One result is that vendors' programs vary enormously. A further result is that, absent either effective program prescription or contract management, the local government is not in the driver's seat for its policy or service delivery. Rather, local government is acting in derogation of the responsibilities devolved to it by the state.

3. *The Contracts*

The contracts provide a discouraging portrait of the City's commitments to its neediest citizens' employment needs, and raise large questions about the value added by the vendor contracts. The contracts propose service for too few, aim for quite limited employment outcomes, and for those few contracts expressly connected to real job openings, engage in creaming. The bulk of ven-

169. *Id.* at ¶¶ 3.1-3.11

170. *Id.* at ¶ 3.4.

171. *Id.* at ¶ 3.4(8).

172. *Id.* at ¶ 3.4(10).

dors paid under the “direct job placement” RFP, in fact, promise less than job placement for most welfare recipients. Thus, most of Baltimore’s expenditure for welfare-to-work services is made without the apparent expectation that referral to vendors will lead most welfare recipients to employment success and independence from welfare.

As of January 1999, some 9700 people in Baltimore hit the twenty-four-month mark and nearly all needed to be in work activities.¹⁷³ The number of jobs created and placements planned under Baltimore’s strategy of contractualization could provide employment for only one-quarter of that number.

The vacuity of expected outcomes is evident from the vendors’ program proposals. Ten vendor programs variously aim for customers to “become employed,” “move to work experience,” or “to be employed.”¹⁷⁴ Six vendors got contracts for programs the atten-

173. JOB OPPORTUNITIES TASK FORCE, BALTIMORE AREA JOBS AND LOW-SKILL JOB SEEKERS: ASSESSING THE GAPS 31-33 (1999) [hereinafter *ASSESSING THE GAPS*]. An overview of employment projections in Baltimore City and the greater metropolitan area paints a changing picture of the job market. For example, the region’s employment growth over the next decade will be centered on the wholesale trade, retail trade, finance-insurance-real estate, and service sectors; however, Baltimore City is predicted to experience declines in each of these sectors. *Id.*

Examination of the jobs themselves further explains Baltimore City’s plight. According to the Job Opportunities Task Force, sixty-two percent of employment in the Baltimore metropolitan region was in positions defined as low-skill. *Id.* Unfortunately for urban residents, two out of three of those jobs were located outside of Baltimore City. *Id.*

Finally, comparing the number of unemployed individuals to the number of jobs completes this dreary picture. On an average day in 1999, there were 76,700 individuals seeking 26,500 full-time, low-skill jobs in the Baltimore metropolitan region—approximately a 3-to-1 ratio. *Id.* at 32. In Baltimore City, however, there were 27,500 individuals seeking 8950 full-time, low-skilled jobs—also a 3-to-1 ratio. *Id.*

The near future does not appear any brighter for the region. According to the Greater Baltimore State of the Region report, issued by the Greater Baltimore Committee and the Greater Baltimore Alliance in 1998, “Baltimore ranked last out of twenty comparable regions in terms of job growth between 1992 and 1996.” *Id.* at 33. In short, Baltimore’s rate of job growth fails to create sufficient employment for its residents. *Id.*

174. *E.g.*, GRANT AGREEMENT BETWEEN BALTIMORE CITY DEP’T OF SOC. SERVS. & BALTIMORE GOODWILL INDUS., FOR HOSPITALITY TRAINING AND PLACEMENT SERVS. app.A (1997) (“After the two week job readiness training an individual can either become employed immediately or receive on the job training.”) [hereinafter *BGI AGREEMENT*]; INTERAGENCY AGREEMENT BETWEEN BALTIMORE CITY DEP’T OF SOC. SERVS. & BALTIMORE CITY HEAD START, FOR JOB SEARCH/WORK EXPERIENCE PROGRAM SERVS. app.A (1996) [hereinafter *HEAD START AGREEMENT*] (“If a customer has not secured a job by the end of the 8 weeks [of training] he/she will have the opportunity to move to work experience.”); GRANT AGREEMENT BETWEEN BALTIMORE CITY DEP’T OF SOC. SERVS. & THE CHIMES, FOR JOB TRAINING AND PLACEMENT SERVS. app.A (1997) [hereinafter *CHIMES AGREEMENT*] (“The total of their

uated relation to employment of which included the number to “be enrolled,” to “complete a career plan,” or to “be served.” The absence of definitions, and of government-selected performance benchmarks, renders the count nearly meaningless. For example, one vendor projected 600 individuals to “receive employment,” then cautions that 450 of these will “retain employment for at least 7 days.”¹⁷⁵

The prototypes of a value-adding vendor are: (1) contracted training with an employer who will hire successful completers, and (2) training that leads to a credential in an occupation likely to have recurring vacancies. Several vendors were funded to provide job training for specific occupational destinations in the service sector, widely thought to offer the most employment opportunity for low-skilled, less educated women. Vendors made no promises that successful trainees would receive job offers, however. For example, Baltimore Goodwill Industries was contracted to train seventy people for positions as “house person, room attendant, utility steward, [or] salad pantry.”¹⁷⁶ It opined, without committing, that it expected the Omni Hotel, site of its training program, to “hire our customers if a position is available during the initial pilot phase of this project.”¹⁷⁷

Three vendors claimed that they would train recipients sufficiently to permit them to gain a credential.¹⁷⁸ A local community college said that it would offer a selection of training programs—which ones were not determined at the time the contract was let—but might include positions of Emergency Medical Technician and Geriatric Nursing Assistant.¹⁷⁹ Each of these is certificated upon passing a state-administered test. The vendor explained that its selection of training programs “will depend on the actual employment demands in the Baltimore area,”¹⁸⁰ but did not explain how,

[the individuals’] experiences in the workplace and classroom will provide the trainee with a comprehensive training program which should lead to employment.”).

175. BCDSS, FIPA, *supra* note 137, at 42 (summarizing Welfare to Work Academy of Morgan State University).

176. BGI AGREEMENT, *supra* note 174 app.A, at 4, 8.

177. *Id.* at 2. If none were hired, then the vendor planned to “ask Omni to help us locate a similar position” elsewhere downtown. *Id.*

178. *E.g.*, INTERAGENCY AGREEMENT BETWEEN BALTIMORE CITY DEP’T OF SOC. SERVS. & BALTIMORE CITY COMMUNITY COLLEGE, FOR EMPLOYMENT TRAINING AND PLACEMENT SERVS. PROGRAM app.A. (1998) (stating that “this training program is designed to support participants in achieving specific work skills which they will use to acquire employment leading to careers”).

179. *Id.*

180. *Id.*

when, or on what information it would make that decision. Similarly, Catholic Charities pledged to help recipients conduct “meaningful career planning and job search,” including certification opportunities “in a field that could provide employment.”¹⁸¹ Each of these vague assertions was apparently accepted by the City as compliance with the RFP requirement for demonstration that the labor market in the Baltimore metropolitan area will support the potential services the vendor proposes. The Chimes submitted the most completely articulated training program, leading to a credential as a Developmental Disability Assistant.¹⁸² It promised job placement (much through its own hiring) of seventy percent of graduates of the 124-hour training.¹⁸³

The Chimes program illustrates a strength and a weakness of the City’s reliance on vendors to design its employment readiness program. The weakness is “creaming”—the vendor selecting the trainees most likely to complete training. For the valuable credential and job prospect it offered, the Chimes specified an extensive list of prerequisites to enrollment, including academic, health, social, and, arguably, economic requirements.¹⁸⁴ Chimes trainees were to start with their high school diploma or GED in hand, and in addition, a minimum of eighth grade proficiency in writing and math.¹⁸⁵ They must be in good health, pass a physical, and be able to lift fifty pounds.¹⁸⁶ Trainees must pass both a drug screening test and a criminal background check.¹⁸⁷ Furthermore, trainees were to have a driver’s license, and preferably be willing and able to accept full-time employment in the field upon completion.¹⁸⁸

Other vendors’ creaming was less comprehensive, but still significant for Baltimore’s citizens and taxpayers. Baltimore Goodwill’s hotel services program included drug and criminal background screening, “to assure that we do not train a customer who could not

181. HEAD START AGREEMENT, *supra* note 174, at app.A. At the time of the contract’s signing, Catholic Charities operated three Head Start Centers in Baltimore City, serving 600 children and their families. *Id.* The vendor suggested a ninety hour certification in Early Childhood, and a Health Care certificate. *Id.*

182. CHIMES, *supra* note 174, at app.A. “The Chimes is a multi-services organization assisting over 1600 children, adults, and senior systems.” *Id.* Historically, the Chimes aided individuals with mental retardation or other related handicapping conditions, but has now “expanded its mission to serve people with financial barriers to independence as well.” *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.*

188. *Id.*

be hired" by the partner hotels.¹⁸⁹ Some vendors specified literacy prerequisites, while others' training includes assistance to secure one's GED; America Works of Maryland required referrals to be able to fill out its application form.¹⁹⁰ Exclusion of "current substance abusers" was almost universal, and of persons with a "substance abuse history," common.¹⁹¹

4. *The Tally: Selling the People Short*

Thus the sad tally. For \$60 million, Baltimore got 2000 jobs for more than 10,000 TANF families.¹⁹² Of the contracts let by BCDSS covering 1998-99, seventeen contracts were let to thirteen vendors: one private for-profit corporation,¹⁹³ five non-profits,¹⁹⁴ three public colleges,¹⁹⁵ and four City agencies.¹⁹⁶ The largest contract went to the Office of Economic Development ("OED"), and is producing twice as many work experience slots than job placements for Baltimore's TANF citizens. The seventeen contracts promised a total of 2058 jobs for TANF recipients who completed the vendors' programs. More than twice as many people—4855—were to receive services counting as "work experience" instead. An additional 1267 persons would receive services "related" to employment, such as job search, job readiness, literacy instruction, or community service. Altogether, this accounted for 8210 TANF recipients—about 1500 fewer than the number of individuals estimated to reach the twenty-four-month mark of receipt under TANF, and thus required to comply with the work requirements.

189. BGI AGREEMENT, *supra* note 174, at app.A, at 2.

190. AGREEMENT BETWEEN BALTIMORE CITY DEP'T OF SOC. SERVS. & AMERICA WORKS OF MARYLAND, FOR JOB TRAINING AND PLACEMENT SERVS., app. A. (1998).

191. *E.g.*, BGI AGREEMENT, *supra* note 174, at app.A, at 2 (requiring background checks and drug testing); CHIMES, *supra* note 174, at app.A (requiring physical examination including drug test).

192. BCDSS, FIPA, *supra* note 137, at 22 (stating that in FY 2000, more than 10,040 families will have received twenty-four-months in cash assistance); *see also* ASSESSING THE GAPS, *supra* note 173, at 27. Although the number of individuals on TANF has decreased by 41% in Baltimore City since 1994, this rate lags behind the state's 55% reduction. *Id.*

193. America Works of Maryland.

194. Baltimore Urban League, Goodwill of Baltimore, Maryland New Directions, the Chimes, and Park Heights Community Center.

195. Morgan State University, Sojourner-Douglass College, Baltimore City Community College.

196. Mayor's Office of Children and Youth; Head Start; Baltimore Department of Housing and Community Development; and the Office of Employment Development.

5. Contract Management

Despite the modest promise of the RFPs, the contracts themselves reveal no meaningful benchmarks, outcomes, or control mechanisms in the contracts subsequently let. There were no control provisions whatsoever in any of the contracts. Only two vendors proposed that outcomes serve as a measure of performance.¹⁹⁷ Only one vendor's proposal contemplated payment only for performance.¹⁹⁸ The Agency has so far declined to provide any evidence or assurance that any performance review is made.

Although Baltimore's revised plan acknowledged the need to boost its evaluative capacity,¹⁹⁹ it is not apparent that it has in fact evaluated the vendor services for which it spends public funds and recipients' time-limited welfare support. As of this writing, an outside evaluation promised in the FY 2000 report has not materialized, nor does the program of vendor-contracted work services reflect such evaluation.²⁰⁰

At least one recent study found that, in this respect, Baltimore is not at all unusual. Formal contract management is largely absent in local government procurement, and few people responsible are procurement professionals or have any formal training in contract management.²⁰¹ This may make some sense for contracts that

197. These were American Works of Maryland and Maryland New Directions.

198. America Works of Maryland proposed to be paid \$5,490 per person still employed six months after placement, in full-time jobs with benefits; \$4,320 per person working at six months, without benefits.

199. BCDSS said it would contract with publicly funded colleges and universities to provide "a myriad of services." Its illustrative list included: to provide research of current needs, to identify the best practices from around the country, to bring together unnamed stakeholders, and to formulate short and long range strategies—to what ends, were not stated. BCDSS, FIPA, *supra* note 137, at 12-13.

200. In the FY 2000 Plan, the City stated that it would contract with the University of Baltimore (although no department, institute, or principal investigator was named) specifically to evaluate the effectiveness of current vendor services, and to recommend a continuum of services to meet the needs of the City. *Id.* at 13. Despite the author's repeated requests to City officials, no such contract or report has been provided; nor is one referred to in Department SOPs, or on the websites of the relevant local or state departments. The Plan makes further boilerplate assurances of accountability, by asserting in comparably elusive fashion, the intention to fund demonstration projects for the most cost effective service delivery models; to use "full competitive procurement RFP processes" to replicate the most successful programs in future years; and to establish "strategic planning committees including representatives of all major stakeholders" that will "support, direct and evaluate the use of program resources to serve each major target population." *Id.* "Coordination and collaboration with all stakeholders will be a priority" to assure maximum leverage of all available resources and minimize administrative costs. *Id.*

201. KEVIN LAVERY, SMART CONTRACTING FOR LOCAL GOVERNMENT SERVICES: PROCESSES AND EXPERIENCE 71 (1999).

specify inputs rather than outcomes. But given the RFPs' formal requirement for vendors' monthly reports of employment secured, it is not apparent whether the absence of actual government monitoring and oversight implies the assumption that vendors would perform smoothly,²⁰² or the assumption that they would fail.

III. LESSONS LEARNED ABOUT LOCALIZED-PRIVATIZED SERVICE DELIVERY OF PUBLIC OBJECTIVES

In the welfare arena, the passing of the old AFDC program to the new Act marked a significant change in the character and methods of the federal government's responsibilities for the substance and effectiveness of public welfare for needy families. Its alteration of the framework for welfare implementation, and its embrace of contractual welfare, also alters the analysis that usefully can gird the welfare policy debate.

A. What Does Local Government Want?

Government needs to know what it wants from the contracts let at public expense. And citizens need to know what the government is buying, in their names, with the public's money.

The privatization of government service delivery presents a paradox: it is said repeatedly that citizens believe government should contract out for services because government is not competent to deliver the services, and yet, government must be very competent to design, let, and monitor effective service contracts.²⁰³ Four phases for effective contract management are useful to identify—services planning, contract negotiation and writing, contract award, and contract monitoring and evaluation.²⁰⁴ To plan intelligently for

202. *Id.* at 72. Lavery's study includes Baltimore's contract with a private vendor, EAI, to run certain public schools, as an example of light monitoring. While one office scrutinized bills and payments, no official was responsible for assessing the quality of the contractor's performance, and no reports on the quality and nature of the performance were in fact required of EAI. Only general performance data for all of the City's public schools were available, which could not be correlated to specific schools or actions of the contractor. *Id.*

203. JOHN A. O'LOONEY, *OUTSOURCING STATE AND LOCAL GOVERNMENT SERVICES: DECISION-MAKING STRATEGIES AND MANAGEMENT METHODS* 31 (1998). O'Looney's book is a highly useful analysis of the ethical, political, budgetary, and legal issues to be addressed when assessing whether outsourcing is likely to provide results in the public interest.

204. *Id.* at 61 (citing Peter M. Kettner & Lawrence L. Martin, *Purchase of Service at 20, Are We Using it Well?*, 52 PUB. WELFARE 14-20 (1994) (in a survey of state-level human service agency executives, formal objective assessments of need for the services are made infrequently)).

services to be contracted out requires a statement of the needs that the contract will address, in terms of social indicators or performance data.²⁰⁵

Monitoring and performance measurement are the key elements of contract administration because of their significant contribution to the success of contracting out.²⁰⁶ Methods of monitoring commonly include the review of contractor reports and inspections or observations, but also may include citizen surveys or reliance on citizen complaints.²⁰⁷ Legally, of course, all that can be demanded is adherence to the contract. Thus the outcomes expected must be stated as performance standards in order to demand actual contractor performance.²⁰⁸

Outsourcing in human services is viewed widely as the most complex context for the practice, precisely because it can be so difficult to state specific outcome goals or measures, yet human-services providers have participated in the larger movement to evaluate programs based more on results than on attempts.²⁰⁹

It is fair to inquire whether all fault for an ill-formed strategy lies with the agency. As noted in Part II *supra*, local welfare agencies have been asked to do a very big job, for which few were prepared at the creation of TANF. Baltimore may exemplify many other local governments that demanded no more of themselves prior to the new regime of Contractual Welfare. The City might assert that, when welfare reform began, the state of knowledge was such that effective performance standards could not be set. This argument falls away on a quick perusal of research available at that time.²¹⁰ A major failure of JOBS was that the U.S. Department of Health and Human Services only held state programs accountable for par-

205. *Id.* at 65.

206. *E.g.*, JOHN A. REHFUSS, *CONTRACTING OUT IN GOVERNMENT* 84 (1989).

207. *Id.* at 87.

208. *Id.*

209. *Id.* at 219-20. Some examples include Annie Casey Foundation's Children's Initiative. Although performance measures and work specifications must vary according to the particular services (child welfare, school readiness, job placement), certain necessary elements are common. O'Looney recommends: a list of all the types of care and services that will be provided by the vendor; a complete operations manual concerning administration, including forms and data elements in the information system; staffing requirements, including charts, minimum qualifications, training expectations, and requirements for staff and facility certifications to be kept current; and requirements for evaluation. *Id.* at 224-25.

210. *See generally* BROOKINGS INST., *LOOKING BEFORE WE LEAP: SOCIAL SCIENCE AND WELFARE REFORM* (R. Kent Weaver & William Dickens eds., 1995).

ticipation, not employment.²¹¹ In the New Economy, the issue is the availability of jobs, their accessibility, and support sufficiency—not their number.

This is not a job for local government alone.

Private actors are even further removed from direct accountability than are the local agencies, which must submit to legislative, executive, and judicial oversight. Administrative law scholars have worried that private vendors may lack the norms of public service and of professionalism, which characterize many public bureaucracies. Accordingly, some have prescribed greater constraints on private power in devolution and contracting out. Many have called for recommitment to the notion that certain key functions of government must remain the exclusive responsibility of the state. Another approach is to extend procedural controls to private actors.²¹² Some commentators suggest imposition through the common law of norms of due process,²¹³ good faith, and nonarbitrariness.²¹⁴

211. WELFARE TO WORK: MEASURING OUTCOMES FOR JOBS PARTICIPANTS, GAO/HEHS-95-86, at 2 (1995) (concluding that, after spending about \$8 billion between 1989 and 1994, HHS “does not know whether JOBS is reducing welfare dependency because it does not gather enough information on critical program outcomes”). In the absence of a federal approach to such data, several state programs used more informative data statistics, including: participant entered employment (49 states), hourly wages at hire (42 states), job retention rate (26 states), achievement of education/training credential (24 states). *Id.* at 9. In 1994, HHS promised Congress to do better. The GAO observed that “HHS and performance monitoring system experts agree that the first critical step in developing outcome indicators and performance goals is to reach agreement among stakeholders, such as the Congress, researchers, and federal, state and local officials, regarding the objectives of the program.” *Id.* at 17. The disagreement was this: 80% of state program directors responding in the survey viewed the “overriding objective” was to prepare and place participants in employment that allows them “to move off and stay off” welfare. The other 20% viewed their objective as getting participants employed “in any job, part- or full-time,” even if the job might not allow them to leave welfare behind. *Id.* at 17-18.

The Job Training Partnership Act (“JTPA”), 29 U.S.C. §§ 1501-1792 (2000), in contrast, did establish outcome measures as standards for states’ performance. JTPA collected data on hard to serve participants (recipients of welfare or food stamps, those deficient in basic skills, persons with disabilities, or school dropouts). GAO, JOBS AND JTPA, TRACKING SPENDING, OUTCOMES AND PROGRAM PERFORMANCE, GAO/HEHS-94-177, at 13 (July 15, 1994). JTPA’s minimum standards included employment rates and wages at thirteen weeks after program termination, and since 1992, unsubsidized employment for not less than six months. *Id.* at 14 (stating separate standards for all adults including welfare recipients, and for adult welfare recipients alone).

212. Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. L. REV. 543, 572 (2000) (stating that “every aspect of policymaking, implementation, and enforcement depends on the combined efforts of public and private actors”).

213. *Id.* at 589; see also F. Eric Fryar, Note, *Common-Law Due Process in the Law of Contracts*, 66 TEX. L. REV. 1021 (1988).

214. Michael Asimow, *The Private Due Process Train is Leaving the Station*, 23 ADMIN. REG. L. NEWS 8 (1998).

The fulcrum of this analysis, however, is BCDSS, a unit of government, not a private actor. Its failures to direct and manage contracts to serve the citizenry well illustrate the need for resolution of the democracy and accountability issues at the larger level of political organization.

B. What Do Citizens Need? State Limits on Local Policy Implementation

Proponents of double-devolution to local governments for welfare policy and implementation draw on a bottom-up tradition that celebrates interlocal variation and emphasizes local decision-making autonomy, local responsibility for services delivered locally, and local political accountability to the electorate. In theory, this model of localism responds to the preferences of the people of different localities.²¹⁵

But this is only half the reality. Local governments are also creatures of the state, established as political subdivisions of the state and granted their legal authority, including their regulatory and public service powers and responsibilities, from the state's constitution, statutes, and state-granted charters. The state's decisions are fundamental to the very existence, and certainly the scope, of local powers and responsibilities.

Thus it is conceptual error to read out the state-level government, which government has a duty to assure fair treatment to all the people within its borders. This obligation must affect the state's delegation of powers to local governments. The state encompasses all the local political units, and is politically accountable to all the people in the state. This is surely the case when local governments, adjacent to each other, discharge effects on their neighboring jurisdictions. Only the state can police such externalities of local action sufficiently to hold local governments accountable for the responsibilities delegated down. Thus the state ought to ensure that local governments are locally accountable and autonomous in local matters, but the state also ought to ensure the state's oversight of local performance, and monitor the ability of local governments to perform effectively the functions entrusted to them.

215. E.g., Charles Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956); Richard Briffault, *Our Localism: Part I—The Structure of Local Government Law*, 90 COLUM. L. REV. 1 (1990).

C. What Can Citizens Do? Upgrading the Toolkit of Citizen Action

The familiar tools of political accountability are of diminished and uncertain utility, but are not gone from the arena. Nonetheless, to aid citizens now in insisting upon local government's accountability under the new regime of contractual welfare, they will require significant upgrades.

It has been much too hard to collect the information relevant to this citizen's audit of Baltimore's vendor system. The documents that frame the City's expenditure in service of its "work not welfare" mantra ought to be publicly available. At the minimum, the state and City Family Investment Plans, the RFPs, the contracts with successful vendors, and independent evaluations of the program ought to be readily accessible in a public reading room maintained by the Agency and accessible by Internet. During the course of this project, Baltimore's Web access began as abysmal, and has become no more informative. Low-tech options for getting information, such as requests by phone and letter, suffer seriously from limited staffing. But it also is fair to infer that local government is not anxious to publicize its premises or performance. The independent evaluation of the local vendor program has produced no interim report, nor is the identity of the evaluator publicly available. No useful documents have been available on Baltimore's web page for the Department of Social Services generally, or the Family Investment Program specifically. The state's page is only slightly more informative.²¹⁶

As citizens and government, we must search for ways to "incentivize" local governments and their contractual partners, to provide the information that citizens need and to which we are entitled. This information is not private in the way that some details of sealed bids are deemed proprietary under procurement rules. One important route is to redistribute access to the fora for policy formation. New tools to enhance the democratic accountability of local government might include new reporting requirements on local governments, and the creation of an ombudsman with powers of inquiry and public hearing. These tools should function at the stage of policy formulation, as well as at program performance evaluation.

216. The Maryland State Department of Human Resources Web page includes the revised State Plan, at <http://www.dhr.state.md.us>.

The complex interactions between welfare policy and the swirling changes in wage work argue also to expand the stakeholder table to include the citizens experienced with TANF and its work-related programs—those citizens most affected and least consulted about decisions otherwise made by elected officials, bureaucrats, and entrepreneurs. One vehicle to accomplish this could be a Community Congress, to be held quarterly, to elicit the input of TANF customers and affected communities, including locally operating employers, as a source of guidance for the services offered by vendors.

New mechanisms to enhance democracy also should incorporate more clear-eyed attention to the substance that makes for more accountability in the design and conduct of government policy. Whatever revamped entity is forming policy, it should employ some means to learn the state of the relevant research. Over-localizing an inherently regional problem such as building employment capacity for welfare-users badly serves the purported political theory of devolution to enhance democracy. It is essential that we eschew provincialism, and seek to avoid the pitfalls of reliance only on local and state resident institutions, to solve problems larger than the locality. To do so will require state and local government first to expand the pool of relevant types of expertise. The usual cast of procurement and other officials cannot do it alone. Consultative partnerships with affected communities, with the state workforce development communities, coupled with serious study of the wealth of best practices and program studies generated by independent research entities, would better prepare states and their local units for shared problem-solving.

Another model would be the development of an intermediary organization, to serve as a resource both to citizens and to government entities. Such an organization should be designed to tap the growing resources of experience and expertise engaged in the important task of maximizing the independence of our neediest citizens. A real-life version of the www.welfareinfo.org site could facilitate exchange across state and local welfare programs, employers, advocates, non-profits, academics, and affected clients and communities.

Specific functions might well include providing professional, non-parochial evaluation of contemplated requests for proposals; the creation of standards for performance; and performance monitoring, as well as promoting the capacity of affected community residents to participate actively in these processes. When it is sen-

sible to contract for specific services, government actors need to know what is needed, so that they can prepare bid documents and contracts reflecting the planned scope of services, prescribe benchmarks, and enforce standards.

What should local government want? The confluence of an active Community Congress and a wider-than-local lens on what is possible would allow state and local governments to see more than merely cutting the welfare rolls. Our government should seek to increase employment and decrease poverty, while it seeks to reduce dependence on welfare. To that end, its contracts with work-services vendors must be designed to secure employment in a value-added sense—thus leading to jobs, sustained at length, at wages above poverty-level.

As a new beginning in this effort, Maryland should return at least the first three years of the five-year lifetime limit to the thousands of welfare parents who complied with work activities under Baltimore's paltry "Family Investment" Program, while the welfare agency failed to adequately conceptualize or implement its side of the independence bargain.