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WELFARE REFORM AT THE LIMIT: THE FUTILITY OF "ENDING WELFARE AS WE KNOW IT"

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*By defining what is deviant, we are enabled to know what is not,
and hence to live by shared standards.¹*

Introduction

Once again, the people of the United States of America have been treated to a performance of the passion play that has become a staple of our national civic theater—the reform of that perennial “bad girl”² of federal “welfare” law, Aid to Families with Dependent Children (AFDC).³ With grand ceremonial splendor, President Clinton, in a speech delivered in Kansas City, Missouri on June 14, 1994, announced his intention to deliver to Congress a “plan to change the welfare system.”⁴ The President assured his audience that this plan would “end welfare as we know it . . . to change it from a system based on dependence to a system that works toward independence . . . to change it so that the focus is clearly on work.”⁵ The President’s proposal was introduced on June 21, 1994, as the Work and Responsibility Act of 1994 (WARA).⁶

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¹ Daniel P. Moynihan, *Defining Deviancy Down*, 62 AM. SCHOLAR 17 (1993).

² On the traditional construction and use of images of “bad girls” and “good girls” in feminist thought, see ROSEMARIE TONG, *WOMEN, SEX, AND THE LAW* (1984). Much like prostitution, welfare is reviled, thought necessary, and necessarily reviled. “According to the common mythology, there are two sorts of women—bad girls and good girls. The bad girls meet men’s need for sexual objects; the good girls meet men’s need for nurturers. It is significant that bad girls are no less indispensable than good girls.” *Id.* at 38.

³ Social Security Act, ch. 531, §§ 401–406, 49 Stat. 620, 627–29 (1935) (codified as amended at 42 U.S.C. §§ 601–662 (1988)) [hereinafter SSA]. AFDC is meant to provide cash assistance primarily to single-parent households. It is the program most closely associated with our cultural notions of “welfare.”

⁴ William Clinton, Remarks by the President to Officials of Missouri and Participants of the Future Now Program (June 14, 1994), available in Westlaw, 1994 WL 258369, at 3.

⁵ *Id.* at 3.

⁶ H.R. 4605, 103d Cong., 2d Sess. (1994), [hereinafter WARA]. A substantially identical bill was introduced in the Senate on the same day. S. 2224, 103d Cong., 2d Sess. (1994). See 140 CONG. REC. S7264 (daily ed. June 21, 1994) (statement of Sen. Moynihan). On the politics of the development and announcement of WARA, see David Whitman

The President was not the only politician pushing welfare reform in 1994. On the eve of the announcement of WARA, members of Congress had already introduced about fifteen other welfare reform bills.⁷ Once WARA was introduced, however, Congress neglected welfare reform. Prior to the November 1994 mid-term congressional elections, the prediction was for "little prospect of legislative action this year [1994], because the relevant congressional committees are grappling with . . . healthcare reform. But given the consensus of the need for change in poor relief, reforms loosely based on Mr. Clinton's ideas probably will be enacted in 1995."⁸

The Work and Responsibility Act and its competitors were overshadowed by the outcome of the November 1994 elections, which resulted in the seating of conservative Republican majorities in both houses of Congress for the first time since 1948. Many of the members of this new Republican majority subscribed to a "Contract With America" during their campaigns.⁹ Among its many provisions was a promise to bring a welfare reform proposal to a vote on the House floor within 100 days of the start of the 104th Congress.¹⁰ This promise was kept—the House of Representatives passed the Republican blueprint for welfare reform, entitled the

& Matthew Cooper, *The End of Welfare—Sort of*, U.S. NEWS AND WORLD REP., June 20, 1994, at 28. Three significant figures in the development of WARA—Donna Shalala, Secretary of Health and Human Services (HHS) under President Clinton, Mary Jo Bane, HHS Assistant Secretary for Children and Families, and David Ellwood, HHS Assistant Secretary for Planning and Evaluation—were involved in a study of the New York State welfare system for then-Governor Mario Cuomo. See TASK FORCE ON POVERTY AND WELFARE, STATE OF NEW YORK EXECUTIVE CHAMBER, A NEW SOCIAL CONTRACT: RETHINKING THE NATURE AND PURPOSE OF PUBLIC ASSISTANCE (1986) [hereinafter TASK FORCE ON POVERTY AND WELFARE]. Both Secretary Shalala and Assistant Secretary Bane were associated with opposition to the Family Support Act of 1988. See Whitman & Cooper, *supra*, at 30. At about the time WARA was being cobbled together, David Ellwood and Mary Jo Bane were finishing a book on welfare and its reform (that is, the means for ending "dependency"): MARY JO BANE & DAVID T. ELLWOOD, WELFARE REALITIES: FROM RHETORIC TO REFORM (1994).

⁷ See Jean Hopfensperger, *Who Pays for Welfare Reform?; One Bill Would Cut AFDC to Some Unwed Mothers*, STAR TRIB., June 12, 1994, at 31A.

⁸ *Reforming US Welfare*, FIN. TIMES, June 16, 1994, at 21.

⁹ The "Contract With America" consisted of an outline of "eight specific reforms that the Minority Party pledges to put into place on the first day of the 104th Congress, when it becomes the Majority, and 10 bills that will be brought to the House Floor for consideration within the first 100 days of the 104th Congress." Bill Goodling, *Contract With America*, Sept. 27, 1994, available in LEXIS, News Library, Wire File. The Republican National Committee published the "Contract" along with explanatory comments. Republican members of Congress and Republican Party candidates for office unveiled the plan at a public signing at the Capitol. REPUBLICAN NATIONAL COMMITTEE, CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY, AND THE HOUSE REPUBLICANS TO CHANGE THE NATION (Ed Gillespie & Bob Schellhas eds., 1994) [hereinafter CONTRACT WITH AMERICA].

¹⁰ The *Contract With America* described its welfare reform plan as a measure to "discourage illegitimacy and teen pregnancy by prohibiting welfare to minor mothers and denying increased AFDC for additional children while on welfare, cut spending for welfare:

Personal Responsibility Act of 1995 (PRA), on March 22, 1995.¹¹ Like WARA, this proposal is meant to transform institutional poor relief in the United States.¹² President Clinton continues to advocate WARA as the better alternative.¹³

The purpose of this Article is to demonstrate that these proposals essentially change nothing.¹⁴ Significant alteration of Western poor relief methodology is taboo, *except at the margin* (i.e., taking poor single mothers off welfare rolls). Our political leaders could not craft a politically and socially acceptable substitute for WARA or PRA that would involve substantive changes in our welfare system. Indeed, this Article pushes the point further—for all practical purposes our society *does not want* to alter the basic structure of our approach to succoring the poor. These taboos arise out of the bundle of basic assumptions and parameters that form and limit poor relief methodology—the “static paradigm.”¹⁵

This static paradigm functions as the accepted substructure on which all conceptualizations of poor relief rest. Fundamental to our cultural order is the notion that there are no socioeconomic systemic flaws that produce poverty; rather, individual flaws merely produce the appearance of system failure. The current welfare system and these proposed reforms, whether liberal or conservative, must affirm majoritarian core values—tra-

programs, and enact a tough two-years-and-out provision with work requirements to promote individual responsibility.” CONTRACT WITH AMERICA, *supra* note 9.

¹¹ H.R. 4, 104th Cong., 1st Sess. (1995) [hereinafter PRA]. The Personal Responsibility Act of 1995 was introduced on January 4, 1995. A companion bill, the Family Reinforcement Act, H.R. 11, 104th Cong., 1st Sess. (1995), includes important provisions relating to child support enforcement.

¹² “Our contract will achieve what some thirty years of massive welfare spending has not been able to accomplish: reduce illegitimacy, require work, and save taxpayers money.” CONTRACT WITH AMERICA, *supra* note 9, at 65.

¹³ “Last year, I introduced the most sweeping welfare reform plan ever presented by an administration . . . So let this be the year we end welfare as we know it. But also let this be the year that we are all able to stop using the issue to divide America.” William Clinton, State of the Union, Address Before the 104th Congress (Jan. 24, 1995), *available in* LEXIS, News Library, CURNWS File.

¹⁴ I will concentrate on an analysis of WARA and PRA because they represent the most likely consensus positions of the people we have chosen to represent us at the federal government level. However, the conclusions I draw from the analysis of WARA and PRA apply equally to the other proposals as well, whether “liberal” or “conservative.”

¹⁵ For an extended development of these themes in the context of a general theory of poor relief, see Larry Catá Backer, *Medieval Poor Law in Twentieth Century America: Towards a General Theory of Modern American Poor Relief*, 44 CASE W. RES. L. REV. (forthcoming) (manuscript on file with author). Consider Joel Handler’s constant principles of welfare: (1) “social welfare programs reflect fundamental attitudes towards the category of the poor to be served;” (2) “the core issue is whether the applicable category is morally excused from work;” (3) “all social welfare programs are both inclusive and exclusive;” and (4) “the current welfare reform reflects the deeply held, historical attitude that female-headed households in poverty are a deviant category of the poor.” 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, 459–60 (1987–88).

ditional family structure, work, individual productivity, and the deleterious effects of income redistribution. That is as it must be. We reinvent only the *details* of poor relief implementation. We do not alter the fundamentals of poor relief, for that would threaten core social and cultural mores.

As such, the radicalism of proposals such as WARA and PRA is apparent only when examined within the conceptual framework of the static paradigm. Only within the paradigmatic limitations of stasis can one conceive of WARA and PRA as programs which take modification of "welfare" to its limit. These proposals represent a modest radicalism, one which does not threaten the social, cultural, or economic substructure of our society. Dominant American social and cultural norms will prevent the use of poor relief for social or economic transformation. Yet even a little dose of radicalism can be potent—if only because it highlights the dissatisfaction with current welfare policy. And so, whichever bill gains full support in this session of Congress is not particularly relevant in the larger sense—the *proposals* contained in these two bills *will* reemerge, to be fought about, over and over again.¹⁶ And for that reason, if for no other, WARA and PRA are worth serious study.

The current crop of proposals also merits serious study for their inventive use of language as cloak, sword, and shield. The imagery of moral worthiness and sin occupies a large part of American poor relief and the legislative reforms of federal institutional aid. It would be difficult to convey the full implications of this imagery without resorting to the traditional language of sin and degradation that for so long formed a living part of the vocabulary of poor relief.¹⁷ Thus, the language of this Article is peppered with traditional and, for many, pejorative terms—"bastard," "illegitimate," "pauper," "breeder," and others. These terms are meant to breathe life and context into the Article. They are meant to bring the reader closer to the underlying meanings and judgments that are

¹⁶ Consider that in November 1993—a month before President Clinton unveiled the Administration's plan—both the Republican members of Congress and a group of Democrats introduced their version of welfare reform. All three of the plans would require AFDC recipients to take jobs within a limited period of time and would slash benefits to those who did not look for work or enter job training programs. See Statement of Correspondent Kwame Holman, *McNeil/Lehrer NewsHour: Welfare—System Overhaul* (PBS television broadcast, June 14, 1994), transcript available in LEXIS, News Library, CURNWS File; Keith White, *Congress All Over the Lot on Welfare Reform*, Gannett News Service, June 16, 1994, available in LEXIS, News Library, CURNWS File (describing a number of similar bills introduced by various members of Congress).

¹⁷ Both liberals and conservatives speak in moral terms about the "crisis" of welfare. President Clinton, for example, speaks about "the fact that we have a big welfare problem because the rate of children born out of wedlock, where there was no marriage, is going up dramatically." Clinton, *supra* note 4, at 4. The underlying theme of the PRA is the same. See CONTRACT WITH AMERICA, *supra* note 9, at 65 (stating that current welfare programs have "bred illegitimacy, crime, illiteracy, and more poverty").

masked by the more common use of disinfected terms. To the extent that these terms generate strong reaction, positive or negative, so much the better. Consider the many layered meanings and judgments embedded within the terms, the ways in which cultural norms find reinforcement in their use, and especially the irony of their use as you read through the Article. Some may be troubled by the use of personal pronouns like "us," "our," and "we," when placed in front of phrases like "poor relief" and words which describe the sources of poor relief conceptualization. However, there is intention and irony in the use of this device as well. There is no running away from American poor relief—no shirking of responsibility for its contours. There is no blaming of the system's faults on "Republicans," or "liberals," or someone else's "culture," or people who are not "us." In this case, physical presence cannot be combined with metaphysical isolation. Each of us has been touched by the assumptions of the static paradigm, willingly or not, irrespective of our ideologies of separation.

Part I of this Article describes the context in which these proposals were spawned—the static paradigm and its rules limiting the range of conceivable models for reforming institutional poor relief.¹⁸ Parts II through VII closely examine WARA and PRA in light of the foundationalist assumptions of the static paradigm. The focus is on the purpose of the legislation, funding and efficiency issues, eligibility, work imperatives, behavior modification, and the systemic blindness of poor relief to issues of race, gender, and ethnicity. Each part focuses on the "why" and "how" of these reforms, and draws some lessons from the examination of the current crop of welfare proposals.

All American poor relief proposals orbit around certain paradigmatic assumptions from whose gravitational force they cannot break free. And, like a strong gravitational field, these assumptions—inherent in our conceptions of poverty and the poor—invisibly limit the meaning and possibility of transformation. Poor relief reform remains confined within the boundaries of the world created out of the static paradigm. Unless society

¹⁸ One of the "lessons" I try to draw is that our cultural substructure assumes away questions about the systemic/larger causes of poverty and income inequality. These questions will have to be seriously explored if the goal is truly radical and transformative welfare reform. While some policy makers and scholars have begun work in this direction, their voices remain strong only within academia. A discussion of the systemic causes/obstacles to the amelioration of poverty is beyond the scope of this Article. Instead, the focus is on the effect of the dominant paradigm on political discussions of welfare reform. That paradigm has found facts, much like a legislature "finds" them, and having found them, may not necessarily permit any other reality to interfere with its application of these facts to the problem of the poor. A corollary to this focus is the somewhat disheartening idea that this society may not be able to move beyond its paradigmatic thinking. For a discussion of alternative visions, see Larry Catá Backer, *Of Handouts and Worthless Promises: Understanding the Conceptual Limitations of American Systems of Poor Relief*, 34 B.C. L. REV. 997, 1050-54 (1993).

chooses to question the very core assumptions underlying our social ordering, we can expect nothing more radical of our government than the kinds of reforms of which these two proposals are fairly typical examples.

I. Constraints on Reform

*As we reform welfare to focus on work, responsibility, and reducing dependency, we must not forget that these programs provide a lifeline when a parent has lost a job, a mother cares for a severely disabled child, an abused partner finally takes her child and breaks away, an elderly person can't make it on meager pension benefits, or a working family needs a small supplement. As a nation, we have accepted responsibility for ensuring that our neediest families have some help in meeting their basic needs.*¹⁹

The critical assumptions and parameters of the static paradigm have provided the conceptual building blocks for the creation of systems of poor relief in Western Europe and the United States since the destruction of the Western Roman Empire.²⁰ These assumptions provide the lens through which data are evaluated; they also determine which data are even deemed worthy of analysis.²¹ They serve to "provide coherent explanations for the central phenomena with which a . . . field concerns itself."²² They also create fairly broad but inflexible rules for the changing of "malfunctioning" poor relief systems.²³

¹⁹ *Personal Responsibility Act: Hearings on H.R. 4 Before the Committee on Ways and Means, 104th Cong., 1st Sess. (1995)*, available in LEXIS, News Library, CNGTST File (prepared testimony of Mary Jo Bane, Assistant Secretary for Children and Families, U.S. Dep't of Health & Hum. Services) [hereinafter *Bane Statement*].

²⁰ For a more detailed description of poor law systems in Europe prior to the Protestant Reformation, see Stefan A. Riesenfeld, *The Formative Era of American Public Assistance Law*, 43 CAL. L. REV. 175 (1955). On Elizabethan poor law, see, for example, E.M. LEONARD, *THE EARLY HISTORY OF ENGLISH POOR RELIEF* (1900); Jacobus tenBroek, *California's Dual System of Family Law: Its Origin, Development, and Present Status (Part I)*, 16 STAN. L. REV. 257 (1964). On the conformance of these systems to the fundamental conceptual framework of the static paradigm, see Backer, *supra* note 15, at pt. IV.

²¹ Thus, for instance, the rates of teenage pregnancy are characterized as important data impelling "reform" of poor relief systems because the static paradigm puts a premium on work, and because teenage pregnancy is deemed to limit the ability of such mothers to work at a level that would free the state from its obligation to support both the mothers and the "products" of their "licentiousness." See, e.g., Robert Rector, *Welfare Reform, Dependency Reduction, and Labor Market Entry*, 14 J. LAB. RES. 283 (1993); *Poor Mother, Poor Child*, N.Y. TIMES, June 17, 1994, at A30 (editorial noting that "eighty percent of those babies [born to girls with no high school diplomas] will know poverty and, more likely than not, be cruelly affected by its pathologies. Many of them will replicate their mothers' lives—and become single parents themselves.").

²² JOHN D. STEINBRUNER, *THE CYBERNETIC THEORY OF DECISION: NEW DIMENSIONS OF POLITICAL ANALYSIS* 10 (1974).

²³ See *infra* part IB.

A. *The Critical Assumptions and Principles of the Static Paradigm*²⁴

*A mother and father who bring home paychecks and teach their children the value of work and learning are our greatest assets in creating and sustaining the culture of education that we need for our children.*²⁵

The critical assumptions of the static paradigm fall into seven broad categories. Together, they set the boundaries within which poverty is constructed and the mechanism of its amelioration is crafted.

First, the social and economic order is taken as a given. At its core, our social ordering is grounded on three fundamental notions. First, all people are responsible for their own maintenance.²⁶ Welfare reform debate revolves endlessly around the debate over who is to work and when. Currently, the focus is on women with small children.²⁷ Second, all people have free will.²⁸ Third, there have been and always will be sufficient jobs to employ all able-bodied people willing to work.²⁹ Consequently, poor

²⁴ For an extended treatment of the themes suggested in this section, see Backer, *supra* note 18; Backer, *supra* note 15, at pt. V.

²⁵ Richard W. Riley, Secretary of the U.S. Department of Education, *Fulfilling the Promise of Brown*, Address at Georgetown University Law Center (May 17, 1994), in 1 GEO. J. ON FIGHTING POVERTY 480, 485 (1994).

²⁶ This requirement applies to everybody, whether or not able-bodied. If she has her own resources, even the totally disabled person is expected to meet her own needs. The values of work, productivity, and self-sufficiency lie at the very core of Western European society, culture, and religion. Consider this foundation of Judeo-Christian belief: "Cursed is the ground for thy sake; in toil shall thou eat of it all the days of thy life . . . In the sweat of thy face shalt thou eat bread, till thou return unto the ground . . ." *Genesis* 3:17, 19. Anglo-American institutional programs of poor relief have been coupled with work requirements at least since the Statute of Labourers in the 14th century (a provision commanding the idle to work). Since the enactment of the Elizabethan Poor Laws, workfare or other work requirements have continued to form an essential part of institutional poor relief efforts. On the development of the Elizabethan Poor Law, see LEONARD, *supra* note 20, at 134, 140-42.

²⁷ Anglo-American society long ago settled the question of whether to impose work requirements on able-bodied males. For a discussion about another category of persons destined for closer scrutiny regarding work requirements, see James R. Sheldon, Jr., *PASS: SSI's Plan For Achieving Self-Support*, 25 CLEARINGHOUSE REV. 962 (1991), which describes the push to get the traditionally disabled into productive jobs and off the "dole."

²⁸ See, e.g., MICHAEL KATZ, *IN THE SHADOW OF THE POORHOUSE* 211-12 (1986). The belief in free will as a matter of public policy has been the theme of traditionalist writers since the 1970s—a theme that has (expectedly) struck a chord with every presidential administration since that of Ronald Reagan. See, e.g., LAWRENCE M. MEAD, *THE NEW POLITICS OF POVERTY: THE NONWORKING POOR IN AMERICA* 157-58 (1992); CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (1984). The idea of individual free will has influenced non-traditionalists as well—certainly those who believe in the existence of an "underclass." See, e.g., CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS* 204-05, 225 (1992).

²⁹ Indeed, this notion underlies the imposition of the work requirement for AFDC recipients under the Work Incentive Program (WIN), 42 U.S.C. § 602(a)(19) (1982 & Supp. IV 1986). See Sylvia Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1262-63 n.48 (1983). This notion also underlies the work

law programs do not challenge the socioeconomic status quo. Proposals which defy the status quo are taboo.³⁰

Second, acceptance of the basic social and economic order requires acceptance of the existence, value, and immutability of income inequality. Income inequality implies certain derivative notions, foremost of which is the notion that a person has the right to the substantially undisturbed enjoyment of the fruits of his or her labor. These notions are tied to underlying Christian (and in the United States, particularly Protestant) notions of a divinely prescribed work obligation. Thus, for American Puritans, "[p]overty, like wealth, demonstrated God's hand, and while riches were proof of goodness and selection, insufficiency was proof of evil and rejection."³¹ Throughout the nineteenth century, the characterization of poverty as an indication of the worthlessness of the poor individual (or at least as a sign of his or her laziness and unfitness for civil society) was articulated with scientific terminology—first with the theories of Malthus and then with Social Darwinist theories of the late Victorian period.³² A consequence of the connection between poverty, idleness, and sin was the conclusion that a person had no entitlement to wealth that was generated by someone else. The colonial Massachusetts divine Cotton Mather maintained that "for those who Indulge themselves in Idleness, the Express command of God unto us, is, That we should let them Starve."³³ We now

of a number of traditionalist commentators. See, e.g., MEAD, *supra* note 28, at 85–109 (1992). But see DAVID R. RIEMER, *THE PRISONERS OF WELFARE: LIBERATING AMERICA'S POOR FROM UNEMPLOYMENT AND LOW WAGES* 43–56 (1988) (suggesting that the number of current job seekers always exceeds the number of available jobs and that the wage market makes low-end jobs economically unappealing); Jane Bayes, *Labor Markets and the Feminization of Poverty*, in *BEYOND WELFARE: NEW APPROACHES TO THE PROBLEM OF POVERTY IN AMERICA* 90–92 (Harrell R. Rogers, Jr. ed., 1988).

³⁰ Thomas Sugrue has correctly observed:

Too much scholarship in the mainstream of poverty research focuses on the attitudes and behaviors of individuals and families, giving but cursory attention to the larger and rapidly changing context of urban poverty . . . [Far too many social scientists] rely on theories about motivation rather than empirical observation to explain the causes of joblessness.

Thomas J. Sugrue, *The Impoverished Politics of Poverty*, 6 *YALE J. L. & HUMAN.* 163, 176–77 (1994) (reviewing MEAD, *supra* note 28, and JENCKS, *supra* note 28).

³¹ SAMUEL MENCHER, *POOR LAW TO POVERTY PROGRAM: ECONOMIC SECURITY POLICY IN BRITAIN AND THE UNITED STATES* 43 (1967). One can (and many do) argue about the inevitability of this gloss of Divine commands in light of the existence of other commands—"love thy neighbor as thyself" or "do unto others as you would have them do unto you."

³² For a discussion of the development of these notions in the 19th century, see GERTRUDE HIMMELFARB, *THE IDEA OF POVERTY: ENGLAND IN THE EARLY INDUSTRIAL AGE* 100–44 (1984). For a discussion of the blending of early Protestant theology and the poor law of the American colonial period, see Julius Goebel, Jr., *King's Law and Local Custom in Seventeenth Century New England*, 31 *COLUM. L. REV.* 416, 427 n.19 (1931); Riesenfeld, *supra* note 20, at 201–14 (1955).

³³ Cotton Mather, *quoted in* MENCHER, *supra* note 31, at 44. For a discussion of the

substitute the religiously neutral concept of "self-sufficiency" for Cotton Mather's condemnation of "Idleness."³⁴

Third, since income inequality is a function of productivity, it justifies discrimination against the unproductive. Income inequality is meant to serve as a sorting device—a socially positive form of discrimination. This sorting device is meant to work most powerfully at its limit. Since even a minimum of productive conduct is assumed to be sufficient to provide an adequate amount of wealth or income to meet one's needs, society is free to brand those who cannot or do not accumulate wealth in a quantity sufficient to meet their needs as life's losers, social and economic deviants who will not conform their behavior to the societal norm.

Poverty is thus primarily within the control of the poor themselves³⁵ and is a function of their refusal or inability to work.³⁶ The poor are lazy,³⁷ or too choosy,³⁸ or have not learned standard English,³⁹ or prefer to breed "too many" children at "too early" an age.⁴⁰ Their poverty is the mark of Cain. A poor person is identified by such terms as "beggar, pauper, [a member of] the *dangerous class*, *rabble*, *vagabond* and *vagrant*, [terms] which the United States borrowed from Europe. America also invented its own terms, including . . . *shiftless*, *tramp*, and *feeble-minded* . . . [I]n the late twentieth century, terms like *hard core*, *drifter*, *culturally deprived*, and most recently, *underclass*" have entered

theories of charity in the colonies, see Robert H. Bremner, *Private Philanthropy and Public Needs: Historical Perspective*, 1 RES. PAPERS (HISTORY, TRENDS AND CURRENT MAGNITUDES) 89, 89–94 (sponsored by the Commission on Private Philanthropy and Public Needs, U.S. Treasury Dep't, 1977).

³⁴ See, e.g., TASK FORCE ON POVERTY AND WELFARE, *supra* note 6; LAWRENCE M. MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* 3–4 (1986).

³⁵ Consider Lawrence Mead, who argues in his latest book that the problem with modern social policy is sociologism, a view of the poor as social victims. MEAD, *supra* note 28, at 128. Mead argues that the crux of the problem of poverty is the "passivity of the seriously poor in seizing the opportunities that apparently exist for them." *Id.* at 12. This argument has been in existence since the American colonial period. See, e.g., JOHN POUND, *POVERTY AND VAGRANCY IN TUDOR ENGLAND* (1971).

³⁶ This has been most forcefully stated by "traditionalist" theorists. See, e.g., MEAD, *supra* note 28, at 157; MURRAY, *supra* note 28. But it is not merely traditionalists who have espoused this view. See, e.g., JENCKS, *supra* note 28; WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987).

³⁷ MEAD, *supra* note 28, at 151.

³⁸ GEORGE GILDER, *MEN AND MARRIAGE* 81–82 (1992).

³⁹ See, e.g., Vera P. John & Vivian M. Horner, *Bilingualism and the Spanish Speaking Child*, in LANGUAGE AND POVERTY: PERSPECTIVES ON A THEME 140–52 (Frederick Williams ed., 1970); cf. Donnie Broxson, *The Rising Challenges of Immigrant Education*, 1 GEO. J. ON FIGHTING POVERTY 449 (1994) (noting that most non-English-speaking immigrant children in Washington, D.C. appear to come from the poorer regions of their native countries and wind up dropping out of school).

⁴⁰ See generally JENCKS, *supra* note 28, at 135 (describing a decline in family values, leading to a rise in the single-parent families that are a cause of poverty); MURRAY, *supra* note 28, at 127–29; DANIEL PATRICK MOYNIHAN, OFFICE OF POLICY PLANNING, U.S. DEP'T OF LAB., *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965).

our vocabulary.⁴¹ A majority of our society has freely ascribed these negative traits to the cultural norms of the nonwhite populations of the United States.⁴² In particular, since Daniel Patrick Moynihan's now (in)famous study of the African American family,⁴³ African American "cultural norms" have received special attention in this regard.⁴⁴

⁴¹ Herbert J. Gans, *Positive Functions of the Undeserving Poor: Uses of the Underclass in America*, 22 POL. & SOC. 269, 270 (1994) (emphasis in original). In the parlance of the 19th and 20th centuries, we referred to the impoverished as the "lower classes," the "underclass," the "dangerous [classes], discontented and potentially revolutionary." Himmelfarb, *supra* note 32, at 371-400. On the rhetoric by which the poor are isolated as a pariah (under)class, see Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499 (1991).

⁴² The culture of poverty in its modern form may well have originated with the well-intentioned liberal anthropologist, Oscar Lewis. See, e.g., OSCAR LEWIS, *LA VIDA: A PUERTO RICAN FAMILY IN THE CULTURE OF POVERTY—SAN JUAN AND NEW YORK* (1966). Though intended to help the poor escape from their poverty, such themes were quickly appropriated by those seeking an explanation of the unworthiness of the poor—especially the poor of color. *Id.* at xiii; see also EDWARD C. BANFIELD, *THE UNHEAVENLY CITY REVISITED* (1974); GEORGE GILDER, *WEALTH AND POVERTY* (1981). Since the 1970s, the popular press has chronicled "a war that is going on in the ghetto between black business people and superflies (pimp types who don't work, won't work, and yet make it) for the minds and talents of black youth, especially black males." Joe L. Mattox, *Hurting Too Much to Help the Cities*, BUS. WK., May 8, 1978, at 25. In a very real sense, the ascribing of such cultural imperfections to nonwhite peoples provides a positive value to the status of being white. Cultural poverty, then, inures to the benefit of those not tainted by this culture—nonwhite equals poor or poor and shiftless, while white equals productive and rewarded. See DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (1992); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993). We take it for granted that when we talk about welfare and its problems, we are really talking about the problems of African American females and their offspring. It is worth noting that empiricists think nothing of substituting race for status when investigating the empirical characteristics of poverty. See, e.g., MURRAY, *supra* note 28, at 53-55 ("But social and economic phenomena that we have too readily considered to be 'black' in recent history are often phenomena that have been occurring predominantly among poor and disadvantaged people, black and white alike . . .").

⁴³ MOYNIHAN, *supra* note 40, at 5-12. Herbert Gans correctly notes that Moynihan's Report did not ripen into concern about breeding (African American) children on the dole until the children of wealthier (white) parents began seriously breeding themselves almost a decade later, by which point the rate of adolescent pregnancy among the poor had begun to decline. Gans, *supra* note 41, at 269, 272.

⁴⁴ Lawrence Mead observes that African Americans are the source of their own economic misery because the norms of their "culture" resemble more those exhibited in *SUPERFLY* (Universal 1972) than those exhibited in episodes of the television show, *The Cosby Show* (Viacom, distributed through NBC):

[African Americans refuse] to work hard in jobs that do not immediately convey much income or prestige . . . [Prior to the 1960s], working hard and going to church were much of what black culture meant. Today, tragically, it is more likely to mean rock music or the rapping of drug dealers on ghetto street corners. That change, rather than any change in the surrounding society, seems to lie at the origin of the underclass.

MEAD, *supra* note 28, at 151. The "Superfly" culture is blamed for crime and serves as evidence of the gulf between African American and Anglo-European culture. See Nathan

Poverty is seen not as a symptom of a malfunctioning society or economic system, but as a pathological condition affecting the individual pauper.⁴⁵ Poverty, like a disease for which there is no vaccine, is presumed to be ineradicable on a macro level.⁴⁶ As long as we believe in free will, as long as an individual pauper is free to reject work (for whatever reason), the poor will make up an inevitable element of our stable social and economic order.⁴⁷ The only cure for poverty at the individual level is work.⁴⁸ Thus, economist John Kenneth Galbraith quotes the Calvinist

McCall, *Makes Me Wanna Holler*, NEWSWEEK, Feb. 7, 1994, at 46. This notion of the old-time, communal ghetto is also explored in WILSON, *supra* note 36, at 52-62 (discussion of the contract between the old-time communal ghetto and the modern, atomized hyperghetto). For a very different view of the "golden age" of the African American ghetto, see CHERYL GREENBERG, "OR DOES IT EXPLODE?": BLACK HARLEM IN THE GREAT DEPRESSION (1991); cf. ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL 36 (1992) (discussing the frustrated attempts at integrating urban environments due to racism); DOUGLAS A. MASSEY & NANCY DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 17-59 (1993) (characterizing the segregation of the ghetto's residential structure as having been maintained by white Americans from the mid-18th to mid-19th centuries).

⁴⁵ Consider the arguments of Daniel P. Moynihan, who has spent a lifetime criticizing the tendency of "society" to accept poverty-related deviance as normal. Moynihan, *supra* note 1, at 17-26. Before the November 1994 elections changed the composition of Congress, Moynihan was described as the current "de facto chief of social policy in the United States." Whitman & Cooper, *supra* note 6, at 28, 30 (quoting David Gergen, President Clinton's former White House Counselor).

⁴⁶ As long as people can choose not to work, as long as cultural norms provide incentives to idleness, poverty will exist—even in a world where some sort of job is available to everyone. See, e.g., MEAD, *supra* note 28, at 133-58 (on human nature). For a critical review of the pathology of single mothers and the presumption that single mothers breed poverty, see Martha Fineman, *Images of Mothers in Poverty Discourses*, 1991 DUKE L.J. 274, 285-89 (1991).

⁴⁷ This view is reflected in the writings of contemporary press commentators. A good example is the recent comment of William Raspberry, whose writings are well within the mainstream of contemporary popular thought: "The worrisome problem, no nearer solution now than before Clinton's bold promise to reform the welfare system, is what to do about those whose crying need is not a job training program but personal (one is tempted to say) spiritual transformation." William Raspberry, *Welfare's Unreachables*, TULSA WORLD, May 31, 1994, at News 9. Others have argued that the inevitability of poverty arises from our economic system's need for excess workers. FRANCES F. PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1971). The poor are at once available during periods of high economic activity and serve as a living example of the dire consequences of the failure of individual productivity. Still others have argued that American society has harbored several potentially irreconcilable purposes of poor relief, the result of which is that the elimination of poverty cannot sincerely be said to be the purpose of income transfer programs. See, e.g., THEODORE MARMOR ET AL., *AMERICA'S MISUNDERSTOOD WELFARE STATE: PERSISTENT MYTHS, ENDURING REALITIES* 22-31 (1990) (arguing that comprehensive reform is usually not on the political agenda while the rhetoric of transformation usually is).

⁴⁸ However, the union of charity and work, and indeed the heavy reliance on work as the cure for poverty, is not universally viewed as either "right" or "proper." For instance, Julie A. Nice has recently argued that conditioning welfare benefits on work requirements may constitute an unconstitutional involuntary servitude. Julie A. Nice, *Welfare Servitude*, 1 GEO. J. ON FIGHTING POVERTY 340, 340 n.7 (1994).

precept: "The only sound way to solve the problem of poverty is to help people help themselves."⁴⁹

Fourth, poor relief, therefore, is fundamentally contrary to the ordering of the social and economic system. By taking the fruits of productivity away from the productive, poor relief is inimical to the natural social and economic ordering. Poverty signifies individual failure within the social and economic fabric of life. Its amelioration requires actions at once necessary and complementary to that fabric. Thus, society will tend to ameliorate the negative income distributive qualities of poor relief by extracting a price from the recipients of aid which is equal to or greater than the cost to society of the transfer. As Herbert Gans has argued, if the poor cannot be productive in a microeconomic (individual) sense, then society can make them productive (useful) in a macroeconomic (group) sense. The existence of a class of shiftless poor, therefore, gives value to the rest of society.⁵⁰ "The competition for money and jobs generated by the very existence of poor and homeless people began to dictate social policy."⁵¹

And so, our society indulges in a love-hate relationship with poor relief and its recipients. We provide relief for the poor and also despise them for actually taking it. We fear relief as a concept alien to basic conduct parameters of our society. President Bush warned that the "welfare disease" could be "passed on from generation to generation like a legacy."⁵² Consider the cultural subtext of the commonly accepted images of poor relief: "Every time I see a bag lady on the street, I wonder, 'Was that an A.F.D.C. mother who hit the menopause wall—who can no longer reproduce and get money to support herself?'"⁵³

Fifth, society will permit the transfer of resources from the productive to the nonproductive only if the consequences of nontransfer are deemed worse than those of transfer. This serves as a first-level wealth shifting formula. Only two situations qualify without controversy: (1) death and

⁴⁹ JOHN K. GALBRAITH, *THE AFFLUENT SOCIETY* 251 (3d ed. 1976).

⁵⁰ Professor Gans has identified 13 positive functions of poverty. Risk reduction, scapegoating, and displacement serve microsocial functions, permitting the productive to feel better about themselves (thus adding to the value of productivity) by creating a pariah class out of the unproductive. See Gans, *supra* note 41, at 271-79.

⁵¹ THERESA FUNICIELLO, *TYRANNY OF KINDNESS: DISMANTLING THE WELFARE SYSTEM TO END POVERTY IN AMERICA* 213 (1993).

⁵² This theme, first sounded in a wholly different context by President Franklin Delano Roosevelt, was picked up about 50 years later by President George Bush in his 1992 State of the Union message, advancing the notion that the poor ought to find work, get trained, hold their families together, and get their lives in order. George H. Bush, State of the Union: Address before a Joint Session of Congress (Jan. 29, 1992), in *N.Y. TIMES*, Jan. 29, 1992, at A17.

⁵³ Jason de Parle, *Counter to Trend, A Welfare Program in California Has One Idea: Get a Job*, *N.Y. TIMES*, May 16, 1993, at A14 (quoting Lawrence Townsend, welfare director of Riverside County, California).

(2) an absolute inability to be productive.⁵⁴ All other situations become problematic, principally because the object of aid is physically capable of fending for himself or herself (and recall that society postulates that there is a job for every willing worker, as long as the worker is not too choosy). Income transfers to paupers are inherently subversive because they have the potential to destabilize the existing social order; significant control over the lives of the beneficiaries is therefore required to preserve the social and economic order.⁵⁵ Thus, beyond this first level of permissible wealth shifting, all wealth transfers must be blessed by that font of right conduct—work.⁵⁶

Sixth, society will tend, therefore, to spend a great deal of time and effort worrying about the taxonomy of poverty based on notions of productivity. This taxonomy employs two sorting devices—eligibility discrimination and hierarchies of need.⁵⁷ These components are subsumed under the concept of queuing. Eligibility discrimination is another way of referring to the prioritization of need (i.e., who is eligible for aid in the first place). It serves a gatekeeper function—determining who may line up for aid. Need determines the *quantity* of aid made available to the individual pauper and, to some extent, the *order* in which such quantities are distributed, based on the immediacy of the need of the individual

⁵⁴ One can argue that a third situation also merits relief—the plight of the worker temporarily between jobs and suffering from “hard times.” But such workers are usually covered by entitlement programs other than welfare, primarily unemployment insurance. For a discussion of unemployment insurance, see, for example, SAR LEVITAN, *PROGRAMS IN AID OF THE POOR FOR THE 1980s* 43–46 (4th ed. 1980). Failure to return to work after the period permitted for the collection of unemployment benefits might well convert the favored unemployed laborer into the disfavored able-bodied unemployed eligible for the dole. Interestingly, in times of economic trouble, both Congress and the public would rather extend the period for which unemployment benefits are available to laid-off workers than force such workers onto federal and state welfare programs for which they might otherwise be eligible. On the effects of cutbacks to the extension of unemployment compensation benefits for women, see MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* 373–76 (1988). Like the AFDC program, unemployment insurance was implemented in a way that marginalized women (especially women of color) and women’s work until late in the 20th century. See *id.* at 273–304.

⁵⁵ See ABRAMOVITZ, *supra* note 54, at 313–42. “Although AFDC’s harsh regulations intervene in the daily life of poor women on behalf of the *status quo*, the program also paradoxically contains the potential to counter social conditions on which capitalism and patriarchy depend. Herein lies its threat to the haves and its possibilities for the have-nots.” *Id.* at 314.

⁵⁶ There is a plethora of writing on the necessity of work as a solution to the “problem” of welfare. These writings cut across the political spectrum. See, e.g., *id.* at 362; MARMÖR, *supra* note 47, at 83; Rector, *supra* note 21, at 293. On the political “consensus of the late 1980’s in favor of work requirements to end ‘dependency,’” see Lloyd Bentsen, *Reforming the Welfare System: The Family Support Act of 1988*, 16 J. LEGIS. 133, 134 (1990); Handler, *supra* note 15, at 462–88. For a criticism of this consensus, see RIEMER, *supra* note 29, at 59–73.

⁵⁷ On eligibility discrimination and need hierarchies, see Backer, *supra* note 18, at 1017–20.

pauper. Welfare reform devotes substantial energy to the *construction of elaborate and shifting hierarchies of worthiness* and to the justification for such construction. Need, its characterization and its definition, has formed a multilayered criterion for distinguishing between the poor.⁵⁸ The empiricism of poverty is meant to serve a moral cataloging function in the construction of these hierarchies. We catalog and we judge. We call this social science and analysis. But neutral cataloging is a fiction.

Seventh, because poverty is the fault of the poor themselves, all poor relief systems must devote a substantial amount of resources to detecting cheating. The pathologically poor, it is assumed, would rather exaggerate the level of their economic distress than actually find and retain a job. The emphasis of welfare administration is on minimizing the extent of error of overpayment and payment to ineligible. Society does not devote much time or effort to outreach; it concentrates on weeding out welfare "cheats," even if the direct and indirect effects of the methods of "fraud control" are to hinder the ability of the eligible poor to qualify for assistance.⁵⁹ We worry more about the tendency to cheat than about the cost of failing to provide for the eligible.⁶⁰

⁵⁸ Need determines entitlement to aid as well as levels of aid. Cf. William H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431, 1459 (1986). But need has also "developed its own bureaucratic self-understanding . . . [and, as a result,] welfare recipients are often unable to articulate their sense of need in ways that are recognizable to those in charge of the welfare system." Austin Sarat, "The Law is All Over": Power, Resistance and the Legal Consciousness of the Welfare Poor, 2 YALE J. L. & HUMAN. 343, 371 n.69 (1990).

⁵⁹ Thus, the Reagan Administration's concentration on eliminating welfare cheats (in contrast to the earlier policy of concentrating on both under and overpayments to recipients) may have created significant barriers to participation. In recent studies of nonparticipation in the Food Stamp Program, one-half of the eligible nonparticipants did not think they were eligible. About two-thirds of those who knew they were eligible and failed to participate did so because they had been convinced they did not need food stamps or because they feared "administrative hassles," which included "certification workers withholding advice and assistance, delaying benefits for reasons of procedure rather than need, and terminating participation because of unverified allegations by third parties." George E. Matt & Thomas D. Cook, *The War on Fraud and Error in the Food Stamp Program: An Evaluation of Its Effects in the Carter and Reagan Administrations*, 17 EVAL. REV. 4, 23 (1993); see also Sarat, *supra* note 58, at 343-79; William H. Simon, *Legality, Bureaucracy, and Class in the Welfare System*, 92 YALE L.J. 1198, 1206-13 (1983) (describing the effects of the concentration on error detection on the nature of the job of welfare workers).

⁶⁰ "The Carter and Reagan Administrations seem to have operated from quite different assumptions about (1) human nature and the willingness to cheat . . . ; (2) the need to reduce social welfare costs . . . ; and (3) the willingness to see possibly eligible participants remain unserved." Matt & Cook, *supra* note 59, at 22. Of course, the fear of Food Stamp cheats did not begin with the Reagan Administration. See *id.* at 5. The Carter Administration initiated a "national conference on fraud, abuse and error" in 1979 to discuss solutions to the perennial problem of, among other things, welfare fraud. See U.S. DEP'T OF HEALTH, EDUC. AND WELFARE, THE SECRETARY'S NATIONAL CONFERENCE ON FRAUD, ABUSE AND ERROR: PROTECTING THE TAXPAYER'S DOLLAR (U.S. Gov't Printing Off. 1979) [hereinafter CONFERENCE ON FRAUD].

B. The Fundamental Rules of Welfare Reform

One antidote to the hyperinflation of reform rhetoric is to recognize that fundamental change is virtually never on the political agenda—much less likely to be accomplished.⁶¹

The critical assumptions of the static paradigm constitute the filter through which we analyze poor relief in the United States. They provide the measure by which we evaluate the effectiveness of poor relief systems and the potential utility of system reforms. They define the severe constraints on American social, economic, and political thought, deviation from which would constitute a breach of core cultural taboos, and would be rejected out of hand on that basis.

The static paradigm does offer a certain amount of flexibility, as long as three simple ground rules are obeyed. First, the reform proposal must not question the socioeconomic order. Second, welfare reform must focus on the behavior of the poor. Third, welfare reform must be cost-saving. All three of these rules have been scrupulously observed in WARA and PRA.

Maintenance of the Status Quo. Programs which disrupt the social or economic system in any fundamental way are characterized as outlandish, that is, outside the realm of the possible.⁶² Both WARA and PRA affirm and support the assumptions of responsibility, free will, and ready employment. As a result, differences between these and other proposals amount to nothing more than arguments over the size of benefits, the definition of aid-worthiness, and the means used to inculcate proper behavior. These differences can be significant; they have been in the past.⁶³ Welfare reform consists of arguments about eligibility discrimination and need hierarchies, not about the ability of the socioeconomic system to achieve a substantive result, such as the eradication of poverty.

⁶¹ MARMOR, *supra* note 47, at 229.

⁶² See *supra* part I.A.

⁶³ People tend to forget that poor relief existed in a variant form before its partial federalization in the 1930s. The earlier system was harsher: benefits were less generous, conditions of receipt stricter, and the definition of the eligible population smaller than the current system. The welfare reforms of the Roosevelt Administration and of the Johnson Administration's Great Society consisted of no more than a manipulation of eligibility discrimination and need hierarchies, resulting in greater numbers of recipients and greater benefit levels. Yet, all of the programs have been based on an unquestioning acceptance of the assumptions of responsibility, free will, and ready employment. For a description of the cyclical movement of poor relief, see NORMAN FURNESS & TIMOTHY TILTON, *THE CASE FOR THE WELFARE STATE: FROM SOCIAL SECURITY TO SOCIAL EQUALITY* (1977); KATZ, *supra* note 28; MENCHER, *supra* note 31; GILBERT STEINER, *SOCIAL INSECURITY: THE POLITICS OF WELFARE* 140 (1966); WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* (3d ed. 1984).

As a corollary, society rewards policymakers and scholars whose works internalize the norms that the majority is thought to endorse. That reward consists largely of serious consideration of their ideas.⁶⁴ All other opinions are either ignored or marginalized—they cannot be taken seriously.⁶⁵ Indeed, “mainstream liberals” acknowledge the marginalizing power of our social, economic, and political taboos.⁶⁶ The shared notion of the unassailability of our social and economic system accounts for the dearth of poor relief proposals that seriously question that system’s legitimacy. For example, since a job is supposedly available for all who seek one, there is no reason to integrate preexisting poor relief policies aimed at achieving maximum employment among the able-bodied poor with labor policies that aggressively focus on the systemic reasons for unemployment.⁶⁷

Behavior Modification. One of the main purposes of welfare is to eliminate the personal weaknesses that prevent the able bodied from

⁶⁴ Thus, those who internalize the underlying cultural norms and concern themselves with implementation issues are taken quite seriously. See, e.g., BANE & ELLWOOD, *supra* note 6; JENCKS, *supra* note 28. The work imperative and cultural norm-reinforcing dialogue of so-called conservative commentators also earn them serious consideration. See, e.g., MEAD, *supra* note 34.

⁶⁵ This is an equal opportunity oblivion. It affects those who might popularly be characterized as conservative, as well as those characterized as liberals. Consider the fate of the negative income tax—a proposal consigned to economists and dreamers. See, e.g., MILTON FRIEDMAN, CAPITALISM AND FREEDOM (1962); James Tobin et al., *Is a Negative Income Tax Practical?*, 77 YALE L.J. 1 (1967); cf. David A. Larson, *Long Overdue: The Single Guaranteed Minimum Income Program*, 69 U. DET. MERCY L. REV. 353 (1992) (noting past attempts to enact guaranteed minimum income programs). Even in its much watered down (and some would say almost unrecognizable) version as proposed during the Nixon Administration, the concept of a negative income tax did not survive Congressional scrutiny. See DANIEL PATRICK MOYNIHAN, THE POLITICS OF GUARANTEED INCOME: THE NIXON ADMINISTRATION AND THE FAMILY ASSISTANCE PLAN (1973). But see MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY (1983); NATIONAL CONFERENCE OF CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY (1986). “Rogue” scholarship can also be used to frighten society into conformity—as exemplified by the effective use to which traditionalists and others put Charles Murray’s proposals for the dismantling of welfare programs. MURRAY, *supra* note 28. Murray pressed all of the right cultural and economic buttons for a “radical” purpose. Thus, the fear that some significant movement might be made in the direction of his proposals sparked welfare reform.

⁶⁶ For an insightful analysis of this consciousness and the resulting reticence in advancing proposals that might significantly question notions about income redistribution or the social structure of our society, see Lynn A. Baker, *The Myth of the American Welfare State*, 9 YALE L. & POL’Y REV. 110, 123–26 (1991) (reviewing the recent defense of the modern liberal welfare state by MARMOR, *supra* note 47).

⁶⁷ That, certainly, is the position of Charles Murray in proposing the elimination of welfare. Since he believes benefit payments exceed what the recipients could receive in real wages in the labor market, the only way to induce the able bodied to work, and control their tendency to breed, is to eliminate most benefits. The alternative to work would then be starvation. See MURRAY, *supra* note 28, at 196; see also NATHAN GLAZER, THE LIMITS OF SOCIAL POLICY 128–39 (1988) (advocating primary reliance on nongovernmental aid to reduce dependency on institutional handouts).

fending for themselves.⁶⁸ Programs that reduce the ability of society to reward the productive by permitting them to accumulate substantial wealth (such as programs advocating increased taxation for the benefit of the nonworking, able-bodied citizenry) are viewed not merely as wrong, but as the harbingers of the collapse of society by facilitating, and even celebrating, personal weaknesses.⁶⁹ On that basis, such programs do not merit consideration.⁷⁰ Radical programs are massaged, neutered, and then criticized as ineffective.⁷¹

Welfare reforms, therefore, focus poor relief on the poor themselves. Since the able bodied have made deliberately vicious (though somewhat tepidly described by some as self-serving, or at least unenlightened) lifestyle choices the cure for poverty lies not with the system but with the recipient.⁷² Poor relief reforms are "people-oriented" in the sense that

⁶⁸ Impediments can be psychological, cultural, or environmental. A psychological impediment to self-sufficiency, for example, is the inability of young women to avoid impregnation by males who lack either the means or the intention to support the women they impregnate and the products of their coupling. A cultural impediment is exemplified by people who have not yet found sufficient reason to learn English. Environmental impediments might include the failure of education to provide proper training for work. Cf. LINDA CHAVEZ, *OUT OF THE BARRIO: TOWARDS A NEW POLITICS OF HISPANIC ASSIMILATION* (1991) (arguing against affirmative action because such programs treat Hispanics as victims who cannot succeed on their own merits); Nicholas Lemann, *The Other Underclass: Puerto Ricans in the U.S.*, ATLANTIC, Dec. 1991, at 96 (examining why Puerto Ricans are failing to move into the economic mainstream and arguing for Hispanics to adopt a new politics of assimilation).

⁶⁹ See, e.g., MURRAY, *supra* note 28, at 234.

⁷⁰ But see Richard Delgado, *Rodrigo's Second Chronicle: The Economics and Politics of Race*, 91 MICH. L. REV. 1183, 1199-1201 (1993) (reviewing RICHARD EPSTEIN, *FORBIDDEN GROUNDS: THE CASE AGAINST EMPLOYMENT DISCRIMINATION LAWS* (1992)).

They conclude that, because the world is fair yet we are poor and despised, there must be something wrong with us individually, or with our culture or family—we are not among the Elect. We, by contrast, having the same belief in a fair world but knowing that we are normal—like everyone else—interpret differences in the distribution of social goods like jobs, longevity, wealth, and happiness as evidence of malevolence or neglect on the part of those in power, or else as basic defects in the social system.

Id. at 1200.

⁷¹ Consider the rejection of President Nixon's attempt to legislate a welfare system based on a "negative income tax." See MOYNIHAN, *supra* note 65.

⁷² See Edward Weisband, *Introduction*, in *POVERTY AMIDST PLENTY: WORLD POLITICAL ECONOMY AND DISTRIBUTIVE JUSTICE* 7, 8-9 (Edward Weisband ed., 1989). Thus, the poor are incapable of bettering themselves because they are unable to speak standard English. See Frederick Williams, *Some Preliminaries and Prospects*, in *LANGUAGE AND POVERTY: PERSPECTIVES ON A THEME* 1, 8-9 (Frederick Williams ed., 1970). The poor remain on welfare because they refuse to take available jobs. See GILDER, *supra* note 42, at 188; MEAD, *supra* note 34, at 76-82. The poor do not accept or model their behavior in accordance with the norms of the middle classes in American society. See KEN AULETTA, *THE UNDERCLASS* 210-19 (1982) (stating that the poor suffer from an inability to obtain or retain employment); GILDER, *supra* note 38, at 79-98; Paul Taylor, *Carrots and Sticks of Welfare Reform: Author of Landmark Federal Bill Hears Why States Are*

incentive, punishment, and compulsion are directed to altering unacceptable behavior. This orientation remains constant, whatever the political allegiance of the reform, and whether or not, as is currently customary, the reform is couched in the therapeutic language of self-sufficiency, mutual responsibility, or the eradication of poverty.

Static programs will be modified to compel desired behavior and to substitute employment—any employment—for institutional maintenance. Compulsion typically means adjustment of available benefit levels and required attendance at programs thought to enhance job prospects.⁷³ This compulsion is substantially punitive, as evidenced by the use of benefit level adjustments as a method for compelling behavior. This punishment also takes more direct forms. Static reform efforts tend to permit criminal proscription of disapproved conduct, such as sleeping in the streets, urinating or washing in public, public intoxication,⁷⁴ prostitution, and, in some jurisdictions, fornication, adultery, and other forms of “deviant” conduct.⁷⁵

Going Their Own Way, WASH. POST, Feb. 4, 1992, at A13 (reporting that the purpose of welfare should be to teach middle-class values, according to New Jersey Assemblyman Wayne R. Bryant).

⁷³ For a review of a number of such programs geared for vocational training and placement which have been implemented in a number of states and cities across the United States, see JUDITH M. GUERON & EDWARD PAULY, *FROM WELFARE TO WORK* (1991). Adjustment of benefit levels can take a variety of forms. One of the more popular proposals entails limiting AFDC payments to new residents of the state to an amount no greater than that available in the state of last prior residence. See, e.g., WIS. STAT. ANN. § 49.19 (11m)(a) (West Supp. 1992); Proposed Law: The Government Accountability and Taxpayer Protection Act of 1992, California state initiative measure submitted for voter approval in accordance with CAL. CONST. art. II, § 8 on Nov. 3, 1992 as Proposition 165, § 7, discussed in Backer, *supra* note 18, at 1070–82.

⁷⁴ See, e.g., Harry Simon, *Towns Without Pity: A Constitutional and Historical Analysis of Official Efforts to Drive Homeless Persons From American Cities*, 66 TUL. L. REV. 631–33, 645–47 (1992); Donald E. Baker, Comment, “Anti-Homeless” Legislation: *Unconstitutional Efforts to Punish the Homeless*, 45 U. MIAMI L. REV. 417, 417–25, 429–31, 456 (1990–1991); cf. Margaret K. Rosenheim, *Vagrancy Concepts in Welfare Law*, 54 CAL. L. REV. 511, 523–35 (1966) (noting that conceptions of vagrancy and unemployment as “socially reprehensible” limit the provision of aid to the able bodied).

⁷⁵ In 1992, Mississippi considered a proposal to require welfare mothers with more than four children to submit to mandatory birth control. See *Mississippi Proposes Changes in Welfare* (National Public Radio broadcast, Apr. 2, 1992), available in LEXIS, News Library, NPR File. There is an uneasy sense that the tearing down of traditional gender roles and sexual conduct proscriptions, especially where such behavior results in fornication and illegitimate births, is one of the reasons there exists so much poverty; a man without a wife and child to support has little reason to get and keep a job. These unease is most pronounced among traditionalists. See GILDER, *supra* note 38. For an example of descriptions of traditional sexual conduct regulation, see Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy—Balancing the Individual and Social Interests*, 81 MICH. L. REV. 463 (1983); Kenneth L. Karst, *The Freedom of Intimate Association*, 89 YALE L.J. 624 (1980); Marvin M. Moore, *The Diverse Definitions of Criminal Adultery*, 30 U. KAN. CITY L. REV. 219 (1962); Martin J. Siegel, *For Better or Worse: Adultery, Crime & the Constitution*, 30 J. FAM. L. 45 (1991–92).

Cost-Saving Measures. Because our paradigmatic assumptions will permit the construction of only essentially minimalist systems, the reforms tend to revolve around the need to save money. The more money is spent, the more taxes must be raised, and the larger the redistributive effect of the program. Consequently, reforms will tend to focus on cost-saving features. These include: (1) narrowing the definition of the eligible population,⁷⁶ (2) modifying or eliminating minimum maintenance levels for the poor,⁷⁷ and (3) imposing work or conduct requirements as a prerequisite for aid.⁷⁸ Cost-saving rationalizes various approaches to the implementation of a less generous approach to administering even current systems of poor relief.⁷⁹ The most common include eliminating cost of living increases,⁸⁰ tying benefits to the number of children in the household, or

⁷⁶ PIVEN & CLOWARD, *supra* note 47, at 161 ("[K]eeping people off the welfare rolls is the main method by which relief administrations keep costs down and ward off public attack."). The easiest way to shrink the eligible population is to eliminate the right of the able bodied to receive general assistance at all. A number of states currently provide assistance on this basis. As a result, the able bodied must look to private charitable organizations for assistance. This is certainly in keeping with the minimalist or residual character of static poor relief, reserving for itself as few of the needy as possible. Another, and perhaps equally popular, method of controlling the size of the eligible population is to require recipients to have an address. This requirement, however, has been successfully challenged in California. See *Nelson v. Board of Supervisors*, 235 Cal. Rptr. 305 (Cal. App. 1987) (invalidating San Diego County's general assistance regulation, which mandated termination of assistance payments to persons unable to obtain a valid address within 60 days after their initial application). Yet another method of reducing the size of the eligible population is to impose a regime of income deeming—considering the income of relatives to be available to the recipient for purposes of determining assistance eligibility. This method also has been successfully challenged. See, e.g., *Bernhardt v. Board of Supervisors*, 130 Cal. Rptr. 189 (Cal. App. 1976) (striking down Alameda County regulation based on presumption that people under 20 years of age should be supported by their parents absent exceptional circumstances).

⁷⁷ This is precisely the PRA's intent when it proposes elimination of the entitlement status of AFDC benefits. See *infra* part III.B. The popular press has long understood this. See, e.g., Retha Hill, Md. Legislators Question Welfare Overhaul Plan; Committees Raise Doubts About Whether Goal is Changing Behavior or Saving Money, WASH. POST, Jan. 26, 1992, at B8 (describing the Maryland proposal to limit benefits based on the conduct of the recipients as one driven primarily by cost savings concerns).

⁷⁸ See, e.g., MEAD, *supra* note 34, at 144-47; Elizabeth Neuffer, *Cash-Hungry States Revamp Welfare*, BOSTON GLOBE, July 22, 1992, at A1 (describing the efforts of several states to link receipt of assistance to behavior and work habit modification programs).

⁷⁹ The principle of cost reduction could also be used to justify increasing the size of the eligible population or the amount of benefits given to that population. Indeed, one of the important arguments in favor of the Great Society programs was that increasing the size of the eligible population and the amount of their benefits (by provision of more cash and greater in-kind services) would save a significant amount of money in the long run by ultimately decreasing the size of the permanently dependent population. For arguments in favor of a similar approach, see ROBERT HAVEMAN, STARTING EVEN: AN EQUAL OPPORTUNITY PROGRAM TO COMBAT THE NATION'S NEW POVERTY 149-87 (1988).

⁸⁰ Reductions of cost of living increases can take at least two forms. In one, the state will pay newly arrived residents no more than the benefits to which they were entitled in the state of prior residence. See, e.g., WIS. STAT. ANN. § 49.19 (11m)(a) (West Supp. 1992). In the other, the state directly reduces or eliminates automatic adjustments in benefit

capping the number of months a person may be eligible to receive aid.⁸¹ Reductions can also be effected by vesting local officials with greater discretion to determine eligibility and to set benefit levels.⁸² This local discretion can be exercised by linking the right to receive benefits not to eligibility (no matter how narrowly drawn) but to the availability of funds⁸³ and by linking the availability of state benefits to eligibility for federal programs. More of the financial burden would then be shifted to the federal government.⁸⁴ The Personal Responsibility Act goes even one step further: if eligibility is tied to children, and if the parents of eligible children are too expensive to "fix," then children ought to be taken away from their parents and raised properly in a less expensive environment.⁸⁵

Institutional providers of relief are always seeking reform that shifts the costs and burdens of relief to others—principally private charities and the families of the indigent. The Republican administrations of Presidents Reagan and Bush sought to accomplish this by increasing the participation of private charitable groups. These types of reforms were made the central tenet of President Bush's program for the revitalization of the federal

levels based on cost of living indicators. Wisconsin's enactments in this regard have been deliberately aimed not at rehabilitation, but at cost reduction. Thus, a Wisconsin statute provides for the evaluation of some of its programs to determine whether they deter "persons from moving to this state . . ." WIS. STAT. ANN. § 49.19 (am)2(e) (West Supp. 1992). Proposals like these also serve as means of compelling the poor to adjust their behavior; in "poverty speak," they encourage self-sufficiency by creating incentives to get a job.

⁸¹ For instance, the Oklahoma Commission for Human Services has proposed that aid levels be reduced for all recipients but that larger reductions and a two-year limit on benefits be permitted for able-bodied recipients. Wayne Greene, *Board Kicks Off New Philosophy of Welfare*, TULSA WORLD, Sept. 1, 1992, at A1. New Jersey enacted such benefit limitations as part of its public assistance programs. See N.J. STAT. ANN. § 44:10-19 (West 1992).

⁸² Courts have moved to curb this trend. See generally Kerry Bensinger, *From Public Charity to Social Justice: The Role of the Court in California's General Relief Program*, 21 LOY. L.A. L. REV. 497 (1988). Ironically, the effort might have sparked the (unsuccessful) efforts to undo the court reforms, including California Proposition 165 (discussed in Backer, *supra* note 18, at 1070-82).

⁸³ That is precisely what Governor Wilson of California attempted to accomplish in 1992 with California's general relief laws. See Backer, *supra* note 18, at 1076-82. This is also what the PRA seeks to do with federal programs. See CONTRACT WITH AMERICA, *supra* note 9, at 72-73.

⁸⁴ Thus, states should tend to limit the availability of assistance to those categories for which it can receive cash or other subsidies from the federal government. As a result, state general assistance programs tend to mimic federal categorical programs.

⁸⁵ Under PRA, the federal government would provide block grants to states for the purpose of creating services to help mothers of illegitimate children. These services include the promotion of adoption and the establishment of orphanages and residential group homes for unwed mothers. PRA § 108(a) (amending SSA § 441(a)). Even under WARA, the government retains the right to place children in foster homes, or other places, including orphanages, when their parents refuse to work or get training and are no longer eligible for benefits. See *Shalala Admits Clinton's Plan Could Put Some in Orphanages*, CAP. TIMES, Jan. 11, 1995, at 1C.

welfare programs—the so-called “Thousand Points of Light” campaign.⁸⁶ Reliance on private charity to “fill the void” makes it easier to reform by a process of selective elimination. “The role of government cannot be one of guaranteeing the financial well-being of every able-bodied citizen The middle class’s reform plan can best be described . . . as a ‘tough love’ approach where recipients become more responsible for their own actions.”⁸⁷ The Work and Responsibility Act and PRA follow this approach by relying on a reconstituted “family,” consisting of the parents of underage female breeders and “runaway” fathers, to bear the financial burden (at least theoretically) of the care of indigent mothers.⁸⁸

Costs can also be shifted by manipulating eligibility rules to make it impossible for whole categories of people to qualify for aid. Recall that neither childless, single, able-bodied men or women can qualify for AFDC. Institutional reform can manipulate eligibility for selected categories of people, to reduce benefit levels below current minimum requirements, or to reject calls for increasing benefits up to the poverty line. Static systems will also tend toward reforms that make more efficient the manner in which private charitable contributions are actually received by the poor. This course of reform has been prominent in the agenda of static reformers since the Tudor period in England.⁸⁹ In our own time, the problems of fraudulent solicitation, to take one example, generate much legislative concern.⁹⁰ Irrespective of the details, the horizon of conceivable reform is limited to minimal refinements on the basic model of relief—the provision of physical maintenance for the unemployable poor. What passes for radical reform will tend to resemble that attempted by WARA, PRA, or even the enlargement of AFDC during the Great Society period of the 1960s. An orientation, such as the static paradigm, that seeks so little cannot be expected to measure its reforms or changes by a larger scale.

⁸⁶ George H. Bush, Address at the Republican Party Convention accepting the Republican Party Nomination for President of the United States (Aug. 19, 1988), in *FACTS ON FILE WORLD NEWS DIGEST*, Aug. 19, 1988, at 605; see also Christopher Edley, Jr., *Season's Seethings: I Am Not a Point of Light*, *LEGAL TIMES*, Dec. 18/Dec. 25, 1989, at 26. On the perverse effects of charity, see FUNICIELLO, *supra* note 51, at 212–55.

⁸⁷ *Personal Responsibility Act: Hearings on H.R. 4 Before the Committee on Ways and Means*, 104th Cong., 1st Sess. (1995) (Prepared Statement of Paul Beckner, Citizens for a Sound Economy Foundation, Jan. 11, 1995), available in LEXIS, News Library, Transcripts File [hereinafter *Beckner Statement*].

⁸⁸ See Lisa Kelly, *If Anybody Asks You Who I Am: An Outsider's Story of the Duty to Establish Paternity*, 6 *YALE J. L. & FEMINISM* 297, 297 n.14–15 (1994).

⁸⁹ See, e.g., GLAZER, *supra* note 67, at 1–17, 133–39, 168–92; LEONARD, *supra* note 20, at 77–78, 206–20; Bremner, *supra* note 33, at 89–114; tenBroek, *supra* note 20, at 265–70.

⁹⁰ See, e.g., Richard Steinberg, *Economic Perspectives on Regulation of Charitable Solicitation*, 39 *CASE W. RES. L. REV.* 775 (1988–1989).

II. The Purpose of the Legislative Reforms

*This is the beginning of what's going to be a very long process in which everyone will roll out their think tanks and advocacy groups and try to make their predictions.*⁹¹

The Work and Responsibility Act and PRA both celebrate the core values of the dominant American culture. Each seeks to extract the traditional *quid pro quo* for institutional assistance—compliance with conduct norms. Each also represents a reevaluation of the relative worthiness of certain categories of needy paupers, particularly young, single mothers and children born outside of legally recognized marriage relationships. The differences between these plans lie in the intensity with which these judgments are enforced. However, the basic messages of the two plans are similar. Each bill observes the strong taboo against income redistribution. Each stays true to the principle of hierarchy, segregating not only the poor, but poor law policy itself.

As an exercise of redistributive power antithetical to core social taboos, the primary motivation of WARA and PRA is cost containment. Cost containment has been an explicit policy underlying poor relief construction since the reign of Elizabeth I of England.⁹² Static system builders presume that limited resources justify eligibility discrimination and need hierarchies. Congress uses the limitation on resources to justify the creation of programs that it later fails to fund, the latest and perhaps most notorious of which has been the Family Support Act.⁹³ Understand, of course, that the lack of resources, though quite real, is more the function of the political limitations society has placed on the allocation of revenue than on the actual inability of any government to raise taxes sufficiently to provide the services. The static paradigm helps us understand that these "political" limitations are part of our cultural substructure. To spin reform on the loom of greater income redistribution (taxation) is to weave a cloth from strands of wishful thinking.

⁹¹ Stephen Hess, Senior Fellow, Brookings Institute, quoted in Indira A.R. Lakshmanan, *GOP Aims Attacked in Group's Report: "Contract" Called Costly to Children*, BOSTON GLOBE, Jan. 22, 1995, at 21.

⁹² tenBroek, *supra* note 20. The paramount role of cost containment in the creation of WARA is summarized in Whitman & Cooper, *supra* note 6, at 28. "Under the recent 'pay as you go' budget law, any increase in entitlement spending had to be paid for with an entitlement cut or tax increase. That meant the administration would have to fund its welfare policy largely by slashing other programs for low income Americans . . ." *Id.* at 31.

⁹³ See THE WHITE HOUSE, WORK AND RESPONSIBILITY ACT OF 1994: DETAILED SUMMARY 1 (1994) (unpublished manuscript, on file with the author) [hereinafter WARA DETAILED SUMMARY]. "Fiscal constraints have proven particularly troublesome in effecting welfare system changes." *Id.* at 16.

Cost containment is not the sole driving force of poor relief. The social and economic order produce a hierarchy based on wealth, productivity, and social position. This hierarchy is reproduced even within the recipient population.⁹⁴ For the administration of poor relief, our society produces a reverse hierarchy based on productivity. Near the top rung are those who are incapable of satisfying their needs through their own labor, such as certain groups of physically challenged persons. At the bottom rung are the able-bodied poor who should be working but are not.⁹⁵

The welfare reform embodied in WARA and PRA is in significant disagreement with current definitions of disability. Neither bill evidences any discomfort over the need for or utility of a pauper hierarchy. The current dispute centers on the status of women. The Work and Responsibility Act and PRA transform poor relief by reclassifying women with small children. No longer considered "disabled" because of a need to raise their children, they are now to be treated more like childless, able-bodied men. This is a significant change, but one that is well within the normative framework of American poor relief. This reclassification is, however, supported by a major attitudinal shift: poor women now are deemed to make better workers than mothers. The Work and Responsibility Act makes this reclassification most explicit—mandatory child care is offered as an alternative to full-time maternal care.⁹⁶ The Personal Responsibility Act, on the other hand, expects poor female workers to make whatever arrangements they can for their children. The implication is that even

⁹⁴ Consider Austin Sarat's observations in this regard, based on conversations with Spencer, a 35-year-old man on public assistance:

Spencer insisted that many welfare recipients have lives not unlike my own only without the material comfort which a regular job would provide, that many have stable ties to their community and its major institutions They invest heavily in the effort to attain symbols of respectability Others lack such stable social ties and aspirations. They are cut off from their families or do not know the identities of parents and relatives; some are involved in serious drug use and have criminal records. Spencer helped me see that there are, if you will, at least two ways of life concealed by the singular label—the welfare poor—and that serious antagonisms sometimes occur between people whose lives on welfare are very different. One group defines itself, in part, by differentiating itself from what Spencer referred to as the "welfare crowd." In contrast, as I later came to appreciate, many members of that so-called "crowd" take pleasure in mocking efforts by people like Spencer to maintain "respectability" in the midst of misery.

Sarat, *supra* note 58, at 348.

⁹⁵ "The poverty of the working poor, for instance, is quite different from the poverty of teen-age mothers. The poverty of those idled by plant closings or similar economic events is different from the poverty of those who lack marketable skills and different yet from the poverty of those who can't hold a job, or who don't want one." Raspberry, *supra* note 47, at News 9.

⁹⁶ See, e.g., WARA § 301(a) (amending SSA § 402(g)(1)(A)); WARA § 201(A) (adding SSA § 495(b)(3)).

substandard child care will better educate the children of female paupers in the requisites of social and cultural norms than the mothers whose behavior led them to poverty in the first place.⁹⁷

Hierarchy is the embodiment of judgments and requires that blame be placed. Both WARA and PRA are suffused with the traditional notion that the problems of the poor are either a result of unfortunate circumstances that render a person unable to support him/herself, or the consequence of intentional lifestyle choices. In either case, the welfare recipient is a victim who needs guidance. The state's welfare programs are, therefore, limited to the shortcomings of the poor themselves.⁹⁸ Thus, the problem of alleviating the condition of the poor is treated as quite distinct from monetary, labor, or discrimination policies, military procurement, or any other problem or policy area.

The Personal Responsibility Act affects this policy isolation directly by characterizing poverty as a consequence of the actions of the poor and the disincentives for work created by institutional relief measures. With the removal of the disincentives to work, poverty of the type requiring chronic assistance will dwindle.

In the mid-1960s President Lyndon Johnson launched a war on poverty The federal government was mobilized to fight poverty by creating a slew of new federal programs and expanding existing ones, such as AFDC. More than twenty-five years later, Johnson's War on Poverty has been an unqualified failure. Despite spending trillions of dollars, it has the unintended con-

⁹⁷ This, of course, is inherent in the nature of the notion of the underclass and intergenerational poverty. After all, it is clear under the static paradigm that the mothers of the next generation of paupers provide the kind of socialization necessary to accept a life of paupery. Again, poor women lose. Labelled as bad mothers, they must also be prodded to work. In this manner, the state may assert a control over the children of the poor far beyond that which would be tolerable in the rest of the population.

⁹⁸ See, e.g., FURNISS & TILTON, *supra* note 63, at 164-66 (noting that while the notion of full employment has been embraced as an ideal, the government has taken a minimalist attitude to its achievement, relying on the private sector to achieve that goal). Even the New York Task Force on Poverty and Welfare, in recommending a more interventionist approach to labor policy, remained fairly conservative in its suggestions, concentrating on a call for more responsive fiscal and monetary policy and making America more competitive in foreign trade. See TASK FORCE ON POVERTY AND WELFARE, *supra* note 6, at 43. Again, both the separateness of these areas and the correctness of keeping approaches to policy in these areas separate have come under increasing criticism. See, e.g., BARRY BLUESTONE & BENNETT HARRISON, *THE GREAT AMERICAN JOB MACHINE: THE PROLIFERATION OF LOW WAGE EMPLOYMENT IN THE U.S. ECONOMY* (1986) (a study prepared for the Joint Economic Committee of the U.S. Congress, on file with author); FOLKE DOVRING, *INEQUALITY: THE POLITICAL ECONOMY OF INCOME DISTRIBUTION* 146-48 (1991) (arguing that the United States should take a more active role in achieving full employment); RIEMER, *supra* note 29; Theda Skocpol, *Targeting Within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in *THE URBAN UNDERCLASS* 411 (Christopher Jencks & Paul E. Peterson eds., 1991); Larson, *supra* note 65.

sequence of making welfare more attractive than work to many families, and once welfare recipients become dependent on public assistance, they are caught in the now-familiar welfare trap.⁹⁹

The Personal Responsibility Act posits that the welfare crisis has been caused by the unintended consequences of generous benefits—illegitimacy and unemployment. Its solution lies not with labor, trade, or health care policy, but with the behavior of the poor. “[M]ost adult welfare recipients can find employment within 2 years.”¹⁰⁰ The Personal Responsibility Act eliminates any past poor relief provisions that it deems will provide a more satisfactory alternative to low-wage work.

While WARA envelopes itself in the rhetoric of academic universalists and integrationists,¹⁰¹ its provisions also affirm the isolation of poor relief from other significant policy areas. Consider that health care and tax reform are consciously treated as useful to, but necessarily separable from, welfare reform. Thus, WARA suggests that the “combination of work opportunities, the Earned Income Tax Credit, health care reform, child care, and improved child support will make the lives of millions of women and children demonstrably better.”¹⁰² Yet, in the same breath, WARA characterizes the Earned Income Tax Credit and health care reform as “not part of welfare reform legislation.”¹⁰³

Neither WARA nor PRA make much effort to relieve the isolation they create, even while describing their poverty curatives in the most positive language they can muster. Worse, perhaps, these reforms hide their isolative effect within a maze of alphabet soup programs that offer the appearance of integration. Indeed, proliferation of and greater funding for a large variety of programs seem to be the order of the day under WARA.¹⁰⁴ Although PRA appears to reduce programs, it merely transfers

⁹⁹ CONTRACT WITH AMERICA, *supra* note 9, at 67. These ideas find expression in PRA. See PRA § 100(4) (“[I]n light of this demonstration of the crisis in our Nation, the reduction of out-of-wedlock births is an important government interest and the policy contained in the provisions of this title address the crisis.”).

¹⁰⁰ PRA § 201(a)(4).

¹⁰¹ Consider rhetoric regarding the need to integrate welfare reform and health care reform as part of a single package: “Universal [health care] coverage is critical to making work pay and helping families become and stay self-sufficient.” 140 CONG. REC. S7265 (daily ed. June 21, 1994) (statement of Sen. Mitchell). On integrationist approaches to poor relief, see Skocpol, *supra* note 98.

¹⁰² WARA DETAILED SUMMARY, *supra* note 93, at 1.

¹⁰³ *Id.* at 24.

¹⁰⁴ For instance, WARA proposes a 22% increase in funding the Child Care and Development Block Grant (CCDBG). WARA DETAILED SUMMARY, *supra* note 93, at 26–27. The Work and Responsibility Act also proposes creation and funding of a number of programs: paternity and parenting demonstration projects WARA, § 404(g); “access and visitation” grants to states, WARA § 691 (adding SSA § 469A); and child support enforcement and assurance demonstration projects, WARA § 681.

responsibility for program multiplicity to the states.¹⁰⁵ For example, it consolidates ten large nutrition programs into nutrition block grants for the states.¹⁰⁶ Status isolation confirms hierarchy and its rewards. Programs create employment for those who wish to be productive by servicing the "helpless" poor. These reforms perpetuate programs designed ultimately to separate paupers receiving institutional aid from the rest of us, and to reward us for being different.

III. Funding and Efficiency Issues

*We are now confronting the consequences of this policy of moral "neutrality." Having made the most valiant attempt to "objectify" the problems of poverty, criminality, illiteracy, illegitimacy and the like, we are discovering that the economic and social aspects of these problems are inseparable from the moral and psychological ones. And having made the most determined effort to devise remedies that are "value-free" we find that these policies imperil the material, as well as the moral, well being of their intended beneficiaries—and not only of individuals but of society as a whole.*¹⁰⁷

A. Funding Issues

Funding issues drive welfare reform on a practical level. Static poor relief systems tend to separate the determination of minimal needs from any actual funding decision. The focus is on the ability or willingness of the state to tax, rather than on the obligation to meet even perceived needs of the eligible.¹⁰⁸ Funding issues are also linked to the latest transformation of modern American welfare—the metamorphosis of poor women with young children from the worthy poor to the shiftless, able-bodied, undeserving poor.¹⁰⁹

¹⁰⁵ For instance, along with consolidated food program block grants come spending requirements for the maintenance of a variety of specific classes of programs. PRA § 501(C). Moreover, PRA encourages states to create additional programs to reduce illegitimacy among poor women. See PRA § 441(a)(1), (5).

¹⁰⁶ PRA § 501.

¹⁰⁷ Gertrude Himmelfarb, *A De-Moralized Society*, FORBES, Sept. 14, 1992, at 120 (footnote omitted).

¹⁰⁸ See *King v. Smith*, 392 U.S. 309, 334 (1968) (on state authority to set standards of need and level of benefits).

¹⁰⁹ And what of the children—well, that is what grandmothers or neighborhood ladies are for. See MEAD, *supra* note 28, at 119–24.

1. *Disjunction Between Funding and Needs*

For all their claims of radical change, WARA and PRA leave untouched the heart of the current system of AFDC—the method for determining benefit levels. AFDC remains a two-standard system. Each state remains free to select, within federal guidelines, a “need standard” (what we ought to give qualifying paupers) and an AFDC “payment standard” (what we are willing to give them). The need standard is an assessment of the income the state decides is the amount essential for basic consumption of items.¹¹⁰ The AFDC payment standard may be no more than the need standard but can be less.¹¹¹ In fact, in almost all states, the payment standard has been traditionally less than (and at times much less than) the need standard.¹¹²

This disparity between need and payment is inherent in the funding methodology of WARA. The Work and Responsibility Act attempts no more than increased federal funding of the program; the federal cap will be increased \$1.9 billion for fiscal year 2005, while federal matching rates will increase over four years to seventy-five percent in the year 1998.¹¹³ The working assumption is that this increase will be sufficient to “enable States to undertake the necessary expansion of the JOBS program.”¹¹⁴ However, most of the money to fund these programs will come from other social programs, and it is likely that the largest expenditures will be incurred in the second five years of the program when more recipients become eligible for the JOBS¹¹⁵ and the WORK Programs.¹¹⁶ Funding

¹¹⁰ See, e.g., 45 C.F.R. §§ 233.20, 239.01 (1993).

¹¹¹ *Id.*

¹¹² See Daan Braveman, *Children, Poverty and State Constitutions*, 38 EMORY L.J. 577, 582–84, 593–614 (1989) (highlighting the differences between the poverty line and maximum state welfare grants in 1987 and arguing for the amendment of state constitutions to tackle the problem of child poverty). The history of the funding of AFDC in the territories and the Commonwealth of Puerto Rico starkly illustrates the way in which the disjunction between need and benefit works in “real life.” Federal AFDC benefits are capped in the territories and, thus, territories must fund all payments above the cap. Between 1979 and 1994, the cap was increased once, and even then by only 13%. “The number of public assistance programs funded under the current caps . . . has seriously limited the territories’ abilities to provide, let alone increase, benefits.” WARA DETAILED SUMMARY, *supra* note 93, at 45. The Work and Responsibility Act’s solution to this disjunction is to raise the amount of the cap a little bit!

¹¹³ WARA § 202(a) (amending SSA § 403(k)); WARA § 611(a) (amending SSA § 455(a)(2)).

¹¹⁴ WARA DETAILED SUMMARY, *supra* note 93, at 16.

¹¹⁵ Jason de Parle, *Tinkering, or Real Reform of Welfare?*, INT’L HERALD TRIB., June 16, 1994, available in LEXIS, News Library, CURNWS File.

¹¹⁶ The Work and Responsibility Act provides that federal funds will be capped and divided based on the number of persons required to participate in the JOBS and WORK programs. The federal match will be the same as that for the JOBS component of WARA. WARA § 202(c) (amending SSA § 403(l)). States will also be reimbursed for wages paid to WORK program participants, including wage subsidies to private employers, at the “enhanced” matching rate. SSA § 403(l)(1)(A).

constraints affect the child care provisions of WARA as well.¹¹⁷ The Work and Responsibility Act does little to redress the imbalance between needs and benefit levels, other than to seek the funding of limited demonstration projects for states with extremely low benefit levels.¹¹⁸ The Work and Responsibility Act, like the Family Support Act before it and like the AFDC program in general, is long on rhetoric and quite short on funding.

The Personal Responsibility Act does WARA one better. Its most significant innovation is that "[t]he entitlement status of [AFDC] is ended."¹¹⁹ Spending for a number of programs, including AFDC, SSI, the JOBS programs, and several housing programs, is capped.¹²⁰ The cap is equal to the amount spent the preceding year, adjusted for inflation and the growth of the poverty population.¹²¹ Work program reimbursement is also capped.¹²² Availability of funds is now an additional condition for benefits; mere qualification for benefits will not guarantee their receipt.¹²³ This reflects core paradigmatic dislike of income redistribution and the corresponding obsession with "cost" containment. The observations of Robert Rector, who had a significant influence during the drafting of the PRA, exemplify the ideology behind the proposal:¹²⁴

The long history of bogus welfare reforms, all of which were promised to save money but did not, leads one to one obvious conclusion. The only way to limit the growth of welfare spending is to do just that: limit the growth of welfare spending. The welfare system must be put on a diet.¹²⁵

¹¹⁷ The Work and Responsibility Act proposes to fund more generously a current child care subsidy program—the At-Risk Child Care Program. WARA § 302(b) (amending SSA § 402(i)). The funding will come in the form of cap modifications and matching formulas to induce states to expand participation in the program. Part of the additional money generated will be allocated to quality control concerns—resource and referral services, advice and loans to meet local licensing standards, and efforts to expand the availability of infant and toddler care facilities in low-income areas. WARA § 306 (amending SSA § 403(n)).

¹¹⁸ See WARA § 681(i)(2) (permitting the HHS Secretary to increase the federal match to 90% in states in which benefit levels under SSA Title IV-A are below the national median).

¹¹⁹ CONTRACT WITH AMERICA, *supra* note 9, at 72.

¹²⁰ PRA § 301(B).

¹²¹ PRA § 301(a).

¹²² See PRA § 202(b) (adding SSA § 403(o)).

¹²³ See PRA § 302 (terminating the entitlement of individuals to benefits established under SSA, Part A, Title IV, and Supplemental Security Income programs under SSA, Title XVI). Savings from the capping of entitlement programs is to be used to reduce the federal deficit. PRA § 303.

¹²⁴ See Hilary Stout, *Behind the Scenes*, WALL ST. J., Jan. 23, 1995, at A1.

¹²⁵ *Personal Responsibility Act: Hearings on H.R.4 Before the House Committee on Economic and Educational Opportunities*, 104th Cong., 1st Sess. (1995), available in LEXIS, News Library (prepared testimony of Robert Rector, the Heritage Foundation, Jan. 18, 1995) [hereinafter *Rector Statement*].

Another significant innovation of PRA fueled by funding concerns is the bill's heavy reliance on block grants. Ten nutrition programs, including Food Stamps and the School Lunch Program, are consolidated into a single discretionary block grant to the states.¹²⁶ States are also permitted to move unexpended funds between programs.¹²⁷ In addition, PRA also gives states the option of receiving the federal portion of AFDC payments to which they are entitled in a single block grant, giving them the flexibility to opt out of AFDC entirely and construct a different system of eligibility.¹²⁸ States are required to use the money to administer programs that provide cash benefits to needy families with children and to submit annual reports that account for all expenditures to the Secretary of HHS.¹²⁹ The Secretary may enforce compliance by withholding up to twenty percent of amounts otherwise payable.¹³⁰

The block grant approach is advanced as a means of reducing the cost of poor relief, ostensibly by making its provision more economical.¹³¹ However, this approach has been criticized as a means of avoiding responsibility for the care of the destitute.¹³² The Personal Responsibility Act, in particular, has been criticized by the Clinton Administration for failing to recognize the ramifications of abdicating to states the task of designing such programs.¹³³ The primary purpose of block grants is not financial fairness, but to provide a (negative) financial incentive aimed at reducing the cost of institutional relief.

¹²⁶ See PRA § 501. The grants would contain a number of provisions limiting the power of the state to use the grants. See, e.g., PRA § 501(C) (allocation of funds to school food programs, economically disadvantaged families, etc.). The federal government would continue to be able to sell surplus food to the states. See PRA § 503.

¹²⁷ See, e.g., PRA § 203(b) (amending SSA § 482(e)(1)) (authorizing states to apply unused Food Stamp Program funds to provide subsidized jobs for work program participants).

¹²⁸ See PRA § 601 (adding SSA § 403(c)).

¹²⁹ See PRA § 601(a) (adding SSA § 403(c)(3), (4)).

¹³⁰ See PRA § 601(a) (adding SSA § 403(c)(5)).

¹³¹ See CONTRACT WITH AMERICA, *supra* note 9, at 72-73. It is also promoted on efficiency grounds. See *infra* part III.B.

¹³² "Since these block grants will be vulnerable to the congressional chopping block, pressure to cut them will be strongest in years of recession, a time when most Americans are in need of assistance." *Personal Responsibility Act: Hearings on H.R.4 Before the Committee on Ways and Means*, 104th Cong., 1st Sess. (1995), available in LEXIS, News Library (prepared statement of Rep. Lynn Woolsey, Jan. 10, 1995) [hereinafter *Woolsey Statement*].

¹³³ Mary Jo Bane, an author of WARA, cautioned Congress to "carefully consider this fundamental change in the nature of this nation's welfare and nutrition programs, [because] it is important to carefully consider the effect such proposals could potentially have on states over time and under changing economic conditions." *Bane Statement*, *supra* note 19.

2. Implementation Delay as a Form of Cost Minimization

Poor relief reform is rich on rhetoric but lacks substance. This gap between rhetoric and substance is hidden in the logistics of implementation. For all the lofty changes heralded by WARA and PRA, their phase-in provisions make substantial implementation unlikely. The Work and Responsibility Act applies only to recipients born after December 31, 1971, barring some exceptions.¹³⁴ Even if it had passed in 1994 and had been implemented in the 1994-95 budget, "[a]ccording to HHS estimates, the plan [would have had] little impact on the welfare rolls. In the year 2000, roughly 390,000 heads of AFDC families [would have been] working out of a population of 5.7 million."¹³⁵ Only after ten years will the WARA reforms have substantial effect.¹³⁶

[T]he plan is expected to cost more than twice as much in the second five years [than the \$9.3 billion expense anticipated during the first five years]. An impatient public, recognizing little change, might balk at the bill before the program ever hits its stride. If the government does not have the money to create the subsidized jobs, it could not enforce the two-year limit.¹³⁷

The Personal Responsibility Act, while perhaps more brutal, is no more honest. Minimum participation in work programs will increase from a mere 2% in 1996 to 50% in 2003.¹³⁸ Likewise, work program participation rates are increased for unemployed parents.¹³⁹ The Personal Responsibility Act's work inducement provisions may have perverse effects on long-term implementation. The federal government is given power to reduce a state's AFDC payment whenever its work program participation rate falls below the minimum.¹⁴⁰ But the total funds available for AFDC will be capped so that a state wishing to hold on to its share of a limited federal AFDC pool will have to pick up a larger share of the costs of the

¹³⁴ See WARA § 101(a) (adding SSA § 402(a)(19)(B)(i) (eligibility), (D) (deferrals)).

¹³⁵ Whitman & Cooper, *supra* note 6, at 28. The Work and Responsibility Act proposes spending "\$9.3 billion over five years on training, child care, and job subsidies, and even that sum buys a phase-in so gradual that by 1999, only about eight percent of the nation's welfare recipients will be working for their benefits." Jason de Parle, *An End to Welfare?*, N.Y. TIMES, June 14, 1994, at B7.

¹³⁶ This assumes that WARA is maintained without modification, a fantastic assumption. At that point, WARA will apply to an estimated two-thirds of the anticipated caseload. See WARA DETAILED SUMMARY, *supra* note 93, at 7-9.

¹³⁷ de Parle, *supra* note 135, at B7. See ABRAMOVITZ, *supra* note 54, at 365 ("The nation does not seem willing to absorb an up front increase in welfare expenditures on behalf of lower costs in the future.").

¹³⁸ See PRA § 202(b) (adding SSA § 403(p)(3)).

¹³⁹ See PRA § 202(c) (amending SSA § 403(l)(4)).

¹⁴⁰ See PRA § 202(b) (adding SSA § 403(p)(1)).

program. Either the back-end participation rates will have to be modified downward to avoid creating "unfunded mandates"¹⁴¹ or the cap on individual AFDC payments will have to be increased, substantially gutting the core of PRA.

Both programs have little to show for the expense actually incurred.¹⁴² Both sabotage themselves, as well as other social welfare programs, in the search for funding.¹⁴³ Both enable elected officials to maintain the proper political stance—support for humane, norm-affirming programs (despite the unlikely prospect of implementation).

B. Efficiency: Cost Shifting and Quality Control

*Let's see. His reform plan costs taxpayers billions of dollars, actually weakens current work requirements and doesn't curb illegitimate births—maybe he meant to say he'd "defend" welfare as we know it.*¹⁴⁴

Cost shifting and quality control reduce expenses and lend the appearance of successful poor relief programs. The Personal Responsibility Act emphasizes cost shifting whereas WARA relies on quality control. Since income redistribution (especially for social programs) is a suspicious activity, institutional assistance programs that rely on taxation for their funding must attempt to shift costs to other sources. In practical terms, this results in substantial state reliance on private charity and on the federal government.¹⁴⁵ All American systems of poor relief create

¹⁴¹ See Robert Pear, *Welfare Overhaul Chorus Begins on a Cautious Note*, N.Y. TIMES, Jan. 14, 1995, at A10 (reporting the resistance of governors to the imposition of new federal requirements for welfare programs). "Unfunded mandates" refer to the imposition of obligations by the federal government on the states to be funded in whole or in part by the states. The Senate version of a bill that curtails the power of the federal government to impose such obligations became law on March 22, 1995. See Unfunded Mandates Reform Act of 1995, Pub. L. No. 104-4, 109 Stat. 48 (1995).

¹⁴² For a conservative critique of WARA, see Craig Hines, *GOP Blasts Welfare Plan; Out-of-Wedlock Birthrate Focus of Criticism*, Hous. CHRON., June 15, 1994, at A11 ("The plain effect of the president's proposal is to leave most welfare programs untouched while spending more on some and trusting bureaucrats to invent a handful of new welfare programs to take up the slack." (quoting Sen. Phil Gramm)).

¹⁴³ For a liberal critique of WARA, see Paul Magnusson & Howard Gleckman, *Reforming Welfare*, BUS. WK., June 13, 1994, at 58, "It's not as large a step as was promised, or as the public anticipates. But greater change would require spending a lot more money." de Parle, *supra* note 115 (quoting Judith Gueron, president of the Manpower Demonstration Research Corp. in New York, a firm that evaluates welfare programs).

¹⁴⁴ Rep. Dick Armey, commenting on President Clinton's proposed Work and Responsibility Act of 1994, *quoted in* Thomas Brazaitis, *Both Sides Assault Clinton's Welfare Plan*, PLAIN DEALER, June 15, 1994, at 14A.

¹⁴⁵ This has long been a sore point with state officials. Consider the reaction of the National Conference of State Legislatures' Welfare Reform Task Force to WARA: "We're all hearing from our local communities, 'Don't give us any more unfunded mandates,' said

significant incentives to rely on voluntary charitable programs conducted by private institutions or on other alternative sources of private aid.¹⁴⁶ States can be tempted to provide inadequate funding for education of the poor with the expectation that private groups will make up the difference.¹⁴⁷

The impetus to shift poor relief costs to private charity is based on the notion that public charity demeans in ways that private charity cannot, because the latter builds community and confirms poor people's place within that community.¹⁴⁸ For example, consider former President Bush's "Thousand Points of Light" campaign¹⁴⁹ and similar proposals to eliminate or reduce institutional charity in favor of private charitable efforts.¹⁵⁰ The idea of substituting private for public sources of poor relief was articulated recently by a member of Congress: "It has always been my opinion that the real safety net that should be under our society should be supplied by the Church, by God's people Government [has] stepped in to take the role God gave the Church."¹⁵¹

The Personal Responsibility Act's elimination of the right to benefits and the shrinking of aggregate funding create incentives for states to

Ohio State Senator Grace Drake, . . . co-chairwoman of the task force." Katina Johnson, *State Legislators Wary of Clinton Welfare Plan*, PLAIN DEALER, June 17, 1994, at 1B.

¹⁴⁶ Thus, traditionally, the poor have had to rely on local networks and institutions for providing whatever opportunities might exist for them. See Robert Putnam, *The Prosperous Community: Social Capital and Public Life*, 13 AM. PROSPECT 35-42 (1993). Modern commentators have even proposed deliberate emphasis on private networks by state poor relief systems. See GLAZER, *supra* note 67, at 128-39. George Bush emphasizes the importance of these institutions for "eliminating dependence," in his thousand points of light. See Bush, *supra* note 86, at 605.

¹⁴⁷ See Broxson, *supra* note 39, at 450 (describing the D.C. Schools Project, a volunteer organization pairing over 200 volunteers per semester with immigrant students); Eileen Flood, *From the Ground Up*, 1 GEO. J. ON FIGHTING POVERTY 451 (1994) (describing a group that attempts to make produce more accessible and affordable to inner city poor people).

¹⁴⁸ Note, however, that there exists a strong undercurrent of thought that views private charity as fundamentally undemocratic and a vehicle for empowering donors, not recipients. See, e.g., HERBERT GANS, *PEOPLE, PLANS, AND POLICIES: ESSAYS ON POVERTY, RACISM, AND OTHER NATIONAL URBAN PROBLEMS* 264-68 (1991). The positive value of private charity can be traced back to the Canon Law concepts of the distribution of "surplus." Under Canon Law, all people had an obligation, enforceable in ecclesiastical courts, to distribute their "superfluities," or surplus, to the poor, either directly or through the parish priest. See THOMAS AQUINAS, *THE SUMMA THEOLOGICA OF SAINT THOMAS AQUINAS* II 544 (Fathers of the English Dominican Province trans. 1941, Daniel J. Sullivan rev. 1951).

¹⁴⁹ See Bush, *supra* note 86, at 605. This represents the rhetorical culmination of the Reagan Administration's drive to popularize charity as a legitimate alternative to state aid. See LOW INCOME OPPORTUNITY WORKING GROUP, DOMESTIC POLICY COUNCIL, *UP FROM DEPENDENCY: A NEW NATIONAL PUBLIC ASSISTANCE STRATEGY* 43-47 (1986).

¹⁵⁰ See GLAZER, *supra* note 67, at 128-39.

¹⁵¹ Jim Myers, *Let Churches Help the Poor, Largent Says: The Freshman Lawmaker Says Government Isn't Up to the Job*, TULSA WORLD, Feb. 12, 1995, at News 23 (quoting Rep. Steve Largent).

reduce average benefits and place people in any job that minimizes the payment burden of the state.¹⁵² Although these reductions will be characterized as costsaving, the saved costs to the government will merely be hidden in the increased burden on nongovernmental, institutional providers of aid.¹⁵³

Cost shifting is intertwined with quality assurance issues—the determination that significant effort should be expended to ensure that funds for amelioration of poverty are well spent. Although we have always worried about welfare cheats and corruption, we worry about them more now.¹⁵⁴ For nearly a generation, AFDC has focused on fraud prevention as a means of containing costs.¹⁵⁵ Our worry about welfare cheaters is born of limited resources. Since there is not enough aid money to go around (because we will not tax ourselves at a rate sufficient to do so), every penny must “count.” The effect of the resulting concern with quality assurance is perverse, inducing state administrators to “err” on the side of underinclusion of potentially eligible recipients.

Under WARA’s management of the AFDC program, there is a strong tendency toward underinclusion because the bill stipulates that the amount of federal funding will be reduced (with greater state revenues required to meet the shortfall) if the HHS Secretary’s office determines that an “excessive” amount of erroneous payments were made by a state.¹⁵⁶ The Work and Responsibility Act’s cost reduction efforts are directed primarily at battling recipient fraud and ensuring state compliance with the bill’s mandates. The Work and Responsibility Act approaches quality control through the enactment of complex monitoring provisions aimed at the containment of overpayments.¹⁵⁷

¹⁵² The hope is that PRA will reduce poor relief expenses by about \$41 billion. See CONTRACT WITH AMERICA, *supra* note 9, at 74. All poor relief programs that mandate work for benefits or in which government subsidizes some but not all of the wage expense can be characterized as cost shifting. But for government intervention, there would be no work, and but for work, the government would have to pick up the entire expense of poor relief. Of course, wage or benefit subsidies to private employers also benefit employers, whose costs of operation decrease without any loss of efficiency.

¹⁵³ “The Republican proposals, on the other hand, get families off welfare by gutting the system, leaving millions of children without support and on the street.” *Woolsey Statement*, *supra* note 132. For a discussion of the distorting effects of quality control on the delivery of social services in AFDC programs, see Simon, *supra* note 59, at 1206–13.

¹⁵⁴ The popular press is full of stories of welfare fraud. See, e.g., Jonathan Eig, *Welfare Fraud Toll Unknown: Cases Overwhelm State Investigators*, DALLAS MORNING NEWS, Jan. 22, 1995, at 1A. Academics have also studied the problem. See, e.g., BANE & ELLWOOD, *supra* note 6, at 17–19; Simon, *supra* note 59, at 1206–13. For a description of the central role of cost cutting and economy in the Elizabethan and colonial welfare systems, see tenBroek, *supra* note 20, at 265–70.

¹⁵⁵ See, e.g., CONFERENCE ON FRAUD, *supra* note 60.

¹⁵⁶ WARA § 402 (amending SSA § 408) (“and determine the amount (if any) of the disallowance required to be repaid to the Secretary because of erroneous payments of aid made by the State, or its failure to meet such participation or performance standards”).

¹⁵⁷ States will be given more flexibility to implement the information verification rules,

The Personal Responsibility Act merely continues the Great Society methodology of empowering the federal government to reduce the size of federal assistance to states that fail to comply with federal mandates.¹⁵⁸

IV. Eligibility, Need, and Lifetime Caps on Benefits

*The Clinton plan is a take-it-or-leave-it ultimatum that "punishes poor children and families and satisfies the hate that some in our society have for the poor."*¹⁵⁹

*The Personal Responsibility Act cuts off welfare benefits for millions of poor children who, through no fault of their own, are born to young unmarried mothers.*¹⁶⁰

*The current welfare system is at odds with the core values Americans share: work, family, opportunity, responsibility.*¹⁶¹

Poor relief is confined by the manipulation of eligibility and need.¹⁶² Adjusting the definition of eligibility and the quantum of need can also

see WARA § 713 (adding SSA § 1137(d)(6)), and the power to implement federal income tax intercept programs to collect AFDC overpayments, see WARA § 712 (adding SSA § 418). The Work and Responsibility Act also limits the restoration of underpayments for a period not to exceed 12 months. See WARA § 711 (amending SSA § 402(a)(22)). Underpayment restoration also would not exceed the amount necessary to correct for the underpayment of aid during the 12-month period immediately preceding the month in which the state first learned of the underpayment. See *id.*

In order to minimize fraud and overpayments, a new National Clearinghouse will be created. See WARA § 625 (adding SSA § 453A). States will be expected to set up a variety of information systems designed to track recipients in order to prevent fraud. See, e.g., WARA § 403 (adding SSA § 411) (establishing a National Welfare Receipt Registry). WARA § 403(b) and (d) set forth some of the state requirements in this regard. Lastly, WARA proposes the development of an outcome-based performance measure. Among the elements to be measured will be the cap in deferrals, the monthly JOBS participation rates, the cap on JOBS extensions, state accuracy in moving recipients off relief after two years, and the WORK participation rate. See WARA § 401 (amending SSA § 487) (performance standards); WARA § 402 (amending SSA § 408(a), (h), (b)(5)). The focus of the programs, then, will be to maximize income (minimize transfer payments) by rewarding underinclusion and diligent recordkeeping. See, e.g., WARA § 403 (adding SSA § 411) (National Welfare Receipt Registry and state information systems); WARA § 621 (adding SSA § 454A(e)) (locating and tracking information for paternity and child support).

¹⁵⁸ See, e.g., PRA § 108 (adding SSA § 441(C)) (failure to properly use grants for assistance to children born out-of-wedlock).

¹⁵⁹ Brazaitis, *supra* note 144, (quoting in part Kevin M. Aslanian, facilitator of the California-based National Welfare Rights and Reform Union).

¹⁶⁰ Woolsey Statement, *supra* note 132.

¹⁶¹ WARA DETAILED SUMMARY, *supra* note 93, at 1.

¹⁶² For a broader discussion of the nature of eligibility discrimination and need hierarchies, see Backer, *supra* note 18, at 1017-24; see also BANE & ELLWOOD, *supra* note 6, at 1-27.

effectively "punish" deviance from accepted cultural mores and reinforce the established social order. Both are malleable concepts; they have no magical qualities. These concepts are not burdened with notions of absolute rights.¹⁶³ Both eligibility discrimination principles and need hierarchies are, in this sense, political concepts,¹⁶⁴ each infinitely manipulable to suit the interests of the providers and recipients.¹⁶⁵ Manipulation of these concepts ultimately must serve core social values: fostering work, punishing deviance, and reducing costs. That is precisely what WARA and PRA do.

The eligibility rules of WARA are complex. The Work and Responsibility Act modifies eligibility provisions in small ways which permit the AFDC-eligible population to keep modest amounts of wealth. However, such changes are not meant to increase the aggregate size of the current pool of potential beneficiaries of poor relief.¹⁶⁶ While states have the

¹⁶³ The only qualification, of course, is that those in imminent danger of physical harm (starvation) will always be eligible for whatever assistance is available and will find their way to the top of the need hierarchy.

¹⁶⁴ Cf. MENCHER, *supra* note 31, at 364-71. The simplest way to make distribution determinations is by creating a hierarchy of the needy. To some greater or lesser extent, this hierarchy is the product of political choices. While these determinations may be based on basic moral, religious, or other assumptions about the ordering of society, or the relative utility of its members or their conduct, they remain, at base, political choices. Eligibility discrimination is based on a comparison of the relative worthiness of potential recipients. Notions of worthiness are rife with political implications, which are influenced by the underlying ordering of society. In this country, worthiness with regard to welfare is based on the inability to work.

¹⁶⁵ See, e.g., PIVEN & CLOWARD, *supra* note 47, at 177 (arguing that the "standard of American public welfare system meshes with and enforces the work system, not the least by excluding potential workers from aid"); STEINER, *supra* note 63, at 148 (noting that each of the groups with a stake in the welfare system—administrators, politicians, program advisors and recipients—"has been less of an instrument of change than one of retaining the particulars of a program with which they all acknowledge dissatisfaction").

¹⁶⁶ See WARA § 705(b) (amending SSA § 402(a)(8)(a)(ii)). For example, while WARA requires states to disregard at least \$120.00 per month when calculating the AFDC benefit level, the underlying belief is that the higher the disregard the greater the incentive to seek subsidized work. In addition, states will be required to offer supplemental payments or to provide alternative means for child care cost payments to ensure that the increase in the disregard does not result in an increase in the number of households eligible for AFDC. See WARA § 307 (amending SSA § 402(g)(1)). The problem is that "[s]imply raising the dollar amount of the disregard inadvertently makes a number of new families eligible for AFDC. At the same time, eliminating the disregard will make families ineligible." WARA DETAILED SUMMARY, *supra* note 93, at 27. States will also be permitted to increase the amount of child support payable by a noncustodial parent and passed through to the custodial parent (without reimbursement of state child care expenditures) from \$50 per month to "... such greater amount as the state may choose ...". See WARA § 705(e) (amending SSA § 402(a)(8)(A)(vi)). This disregard would also be indexed to inflation. See *id.* On the support and pass through obligation, see *Wilcox v. Ives*, 864 F.2d 915, 916-17 (1st Cir. 1988) (striking down an HHS regulation that prohibited pass through payments).

option to liberalize their eligibility rules,¹⁶⁷ in general, WARA's provisions reduce the size of the eligible population.¹⁶⁸

On the other hand, WARA concentrates on increasing the size of the population eligible for work, at least in theory. In WARA, every individual is potentially work-eligible under the JOBS Program; each must enter into a written agreement setting forth the mutual obligations of the recipient and the welfare agency to obtain a job for the recipient as a condition for the receipt of benefits.¹⁶⁹ Exemptions from the work requirements have been narrowed significantly.¹⁷⁰ The reality, however, is that JOBS Program eligibility rules will not have a substantial impact until the next decade.¹⁷¹ In the meantime, WARA delivers only a work *sentiment*. The Work and Responsibility Act provides that only JOBS-mandatory participants who have reached the lifetime assistance cap must enroll in the WORK Program.¹⁷² While this creates a huge pool of eligible WORK Program participants, the full potential of this provision (like that of the JOBS Program) will also not be achieved for a decade. Moreover, even if the broad eligibility rules applied to a greater number of AFDC recipients, WARA concedes that lack of funding may require a diminution of the eligible pool. Any analysis of the WARA participation rate formulas must take into account these limitations.¹⁷³

¹⁶⁷ States will be permitted (but not required) to disregard the "100" hour rule and other rules which make it harder for two-parent families to qualify for AFDC. AFDC eligibility for two-parent families is limited to cases where the principal wage earner is unemployed and has worked for six of the last 13 quarters. For purposes of eligibility, unemployed means employment of less than 100 hours per month. Additionally, states will be allowed to raise the AFDC asset limit to conform to those of the Food Stamp Program, create Individual Development Accounts (IDA) for limited purposes (education or home purchases), increase the AFDC resource limit, and increase the allowances for automobiles. See, e.g., WARA § 707 (amending SSA § 402(a)(7)(B)) (resource limit); WARA Pt. C §§ 731-734 (Individual Development Account Demonstration Act of 1994); WARA § 708(e) (amending SSA § 402 (a)(7)(B)) (\$10,000 limit for an IDA).

¹⁶⁸ WARA seeks to limit the ability of AFDC recipients to obtain benefits for people "deemed essential" to the recipient. See WARA § 703 (adding SSA § 402(d)). There are two exceptions, one for people who provide child care services for the recipient and the other for those who provide services for incapacitated AFDC recipients.

¹⁶⁹ See WARA § 102(b) (adding SSA § 482(a)(1)) (individuals can resort to review and arbitration or mediation procedures in the event of a disagreement).

¹⁷⁰ Exemptions are generally limited to people with a disability or those who are caring for a disabled child, mothers with infants under one year of age (three months for the second child), and people living in remote areas. See WARA § 101(a) (adding SSA § 402(a)(19)(D)). In addition, states will be allowed to defer a capped number of people for other good-cause reasons. See *id.* at § 402(a)(19)(D)(vii).

¹⁷¹ Initially, the JOBS Program portion of WARA will be limited to recipients born after December 31, 1971. See WARA § 101(a) (amending SSA § 402(a)(19)(B)(i)). Older recipients will continue to receive benefits under the old Family Support Act JOBS Program. See *id.*

¹⁷² See WARA § 201(a) (adding SSA § 493(a)).

¹⁷³ WARA sets participation rates by formula. The participation rate of a state must be the lower of (1) the number of WORK assignments the state is required to create (based on funding allocation) that are actually filled by WORK Program eligible participants or

The eligibility rules under PRA are simpler than those of WARA. The Personal Responsibility Act seeks to minimize the size of the pool of potential beneficiaries of poor relief. The limitation with the greatest effect on eligibility involves services to undocumented residents. The Personal Responsibility Act makes benefits under fifty-two listed federal programs—including AFDC, Food Stamps, SSI, housing, and other programs—available only to U.S. citizens, refugees over seventy-five years of age, persons lawfully admitted to the United States, and those who have resided in the United States for at least five years.¹⁷⁴ States are also given greater power to exclude men from receiving benefits. All states will have the option to limit the AFDC-UP Program, which permits states, in some highly restricted cases, to open eligibility for assistance to two-parent families with an unemployed adult.¹⁷⁵ States will also have the option of applying the AFDC rules of the state of prior residence to recipients who have lived in the state less than twelve months.¹⁷⁶ However, PRA does provide states with the discretionary power to liberalize the disregard rules and potentially increase the size of the eligible population.¹⁷⁷

Like WARA, PRA seeks to increase the size of the welfare-eligible population required to participate in work programs. The participation rules of the JOBS Program under PRA are broadened to include more of the recipient population (at least in theory), and to make it harder for a recipient to refuse a job.¹⁷⁸ The Personal Responsibility Act, like WARA, compels work as a legislative rhetorical device.

The legislative rhetoric of WARA and PRA applies the ethos of aid formerly reserved for able-bodied males to the most significant group of

(2) no less than 80% of those who reach the assistance cap. See WARA § 202(d) (adding SSA § 403(l)). A failure to enroll over 45% of JOBS eligible recipients can result in a reduction of the federal matching rate by 25% on a monthly basis. See WARA § 202(b) (amending SSA § 403(k)(6)). In the event that insufficient funds exist to create the necessary WORK positions, the WORK Program provides allocation rules. See WARA § 201(a) (adding SSA § 495(a)).

¹⁷⁴ See PRA § 401. The programs are listed in PRA § 401(d). Emergency medical assistance will still be made available to people otherwise ineligible for benefits. See PRA § 401(c). In addition, state AFDC agencies will have to provide the Immigration and Naturalization Service with information on any individual unlawfully in the United States. See PRA § 402. The Work and Responsibility Act makes no attempt to exclude any class of participant, continuing the Great Society approach to eligibility.

¹⁷⁵ See PRA § 202(c) (amending SSA § 407(b)(2)(B)). In contrast, the drafters of WARA sought to make AFDC-UP permanent as a means of fostering marriage within the eligible population.

¹⁷⁶ See PRA § 602 (adding SSA § 402(a)(50)).

¹⁷⁷ Disregard rules are family assets, such as the family home and burial plot, that are not considered for purposes of determining eligibility for public assistance. See 42 U.S.C. 602(a)(7)(B) (1988). See PRA § 605 (option to disregard income and resources designated for education, training, and employability, or related to self-employment). These include Qualified Asset Accounts. See PRA § 605(b) (adding SSA § 402(a)(8)(A)(ix)).

¹⁷⁸ PRA § 202(d).

once-favored paupers, AFDC recipients. Since the able-bodied poor are able to fend for themselves, overaiding them would increase the costs of poor relief efforts—magnifying undesirable, income redistributive effects.¹⁷⁹ Aid to able-bodied males and other unworthy poor tends, therefore, to be restricted to those whose need places them near the top of the need hierarchy (in terms of immediacy of need) and limited to the type of aid that will effectively move the recipient well back down the need hierarchy.¹⁸⁰ Such assistance is usually provided in the form of food or vouchers for private charitable relief or limited to small amounts of cash¹⁸¹ in a quantity sufficient to induce the recipient to get a job, and no more. Assistance tends to be limited to those whose need is immediate; it is not meant to be permanent, and in this way is different from the continuous aid we make available to the permanently disabled.¹⁸²

In an effort to convert AFDC into a program for the able bodied, both WARA and PRA characterize (at least theoretically) aid, even to worthy recipients, as a purely temporary device. A crown jewel of WARA's effort to promote work (self-sufficiency and independence) is its proposal to place a lifetime cap on AFDC assistance payments to all recipients,¹⁸³ followed by a work requirement. Those recipients who are still unemployed after receiving benefits for twenty-four months will be required to participate in the newly enacted WORK Program.¹⁸⁴ Recipients who exhaust the twenty-four month assistance cap, but who leave the AFDC

¹⁷⁹ "Republicans believe time limits on welfare benefits must be real limits, not replacing one type of welfare check with another. Government help should be tied to personal responsibility and should not be unending." *CONTRACT WITH AMERICA*, *supra* note 9, at 75.

¹⁸⁰ See, e.g., ILL. COMP. STAT. ANN. ch. 305, § 5/6-10 (Smith-Hurd 1993) (This statute is designed "to alleviate life-threatening circumstances or to assist the individual in attaining self-sufficiency Emergency assistance shall not be granted under this Section more than once to any applicant during any 12 consecutive month period.").

¹⁸¹ Alaska, for instance, limits all assistance of this type to \$120 per month, excluding transportation and medical care costs. ALASKA STAT. § 47.25.250 (1990).

¹⁸² See, e.g., MD. SOC. SERV. CODE ANN. § 88A-65(a) (1992) ("The Social Services Administration shall establish, implement and modify as necessary a program of State funded assistance payments to residents of the State of Maryland who are temporarily in need but are not eligible for any other State or federal category of assistance.").

¹⁸³ WARA § 104 (adding SSA § 417(a)). "Placing a time limit on cash assistance is part of the overall effort to shift the focus of the welfare system from providing cash assistance to promoting work and self-sufficiency. The time limit will give both recipients and JOBS staff a structure that requires continuous movement toward fulfilling the objectives of employability—planning for and, ultimately, finding a job." WARA DETAILED SUMMARY, *supra* note 93, at 18.

¹⁸⁴ WARA § 201 (adding SSA §§ 491-496, especially § 491(a)). WARA § 102(b) (adding SSA § 482(b)(1)) requires the state to meet with a recipient no later than 90 days before she becomes ineligible for assistance in order to prepare for registration for the WORK Program. In addition, no later than 45 days before reaching the cap (the state can opt to set this mandatory date earlier to 90 days before reaching the cap), recipients must engage in a supervised job search for those final days before being required to participate in WORK. WARA § 102(b) (adding SSA § 482(b)(2)).

Program for an extended period of time, will be eligible for assistance for no more than six months.¹⁸⁵ The lifetime cap, however, is subject to a number of exceptions and qualifications.¹⁸⁶ These tend to reduce the effect of lifetime caps to mere sentiment.

The Personal Responsibility Act's lifetime cap rules are simultaneously more generous and harsher than WARA's, and its version of lifetime caps is more broadly applicable. States may not provide subsidized, non-work activities to any recipient for more than twenty-four months (whether or not consecutive).¹⁸⁷ States have the option of terminating AFDC benefits to any recipient who received such benefits for two years if during one of those years the recipient participated in a work program.¹⁸⁸ States must terminate the AFDC benefits of recipients after they receive a total of five years of AFDC benefits.¹⁸⁹ After the five-year limit is reached, these recipients must either work or find another source of charity. The Personal Responsibility Act, in the end, *will* treat women with children like unemployed, able-bodied men.

The inflexibility of these proposals has been praised and criticized.¹⁹⁰ In the end, lifetime caps on benefits will result in a reduction of state

¹⁸⁵ WARA § 104 (adding SSA § 417(a)(2)(A)); WARA § 201(a) (adding SSA § 493(a)).

¹⁸⁶ See WARA § 201(a) (adding SSA § 493(a)). Since the JOBS participation rates have been so low, the effect of this provision is to limit the application of the cap to recipients born after December 31, 1971. See also WARA § 104 (adding SSA § 417(a)(2)(B)(vi)). A number of exceptions are included. See WARA § 417(a)(2)(B). A state is not permitted to extend the lifetime cap on more than 10% of its JOBS mandatory recipients at any one time. WARA § 104 (adding SSA § 417(e)). In addition, a state is permitted to grant a limited number of extensions of time from the lifetime cap rules. There are two major categories of exceptions: (1) educational exceptions and (2) "structural" barriers to work exceptions. See WARA § 104 (adding SSA § 417(c)(2)(B)). Educational exceptions can include a school-to-work program or a post-secondary education program. These extensions of the lifetime cap are conditioned on the satisfactory completion of the program and are limited to an additional 24 months (with exceptions to be made on an individual basis in cases in which recipients have "significant learning disabilities or other substantial barriers to employment"). See WARA § 104 (adding SSA § 417(c)(2)); WARA § 417(c)(2)(B)(iii).

¹⁸⁷ PRA § 202(a) (adding SSA § 402(a)(29)(D)).

¹⁸⁸ PRA § 202(a) (adding SSA § 402(a)(29)(E)).

¹⁸⁹ PRA § 202(a) (adding SSA § 402(a)(29)(F)). But termination of AFDC will not result in cessation of Medicaid benefits. See PRA § 202(a) (adding SSA § 402(a)(29)(G)).

¹⁹⁰ For praise, see *Beckner Statement*, *supra* note 87 (stating that middle-class voters want such a system as a means of reducing dependency). In contrast, Rep. Lynn Woolsey has observed that:

the Act's inflexible time limits will cast people off the welfare rolls permanently, regardless of whether there are jobs available. In my case, despite my job skills, education and good health, it took me three years to get off welfare. And you know I wasn't lazy. Strict time limits, particularly on individuals that do not have the advantages I had, will only result in increased poverty, hunger, and homelessness.

support obligations—whether or not recipients will have found suitable employment. However, lifetime caps do not guarantee either state or employment-generated sustenance and will thus undermine the proposals' ostensible goal—the reduction of poverty.

V. Work Provisions

*The intent of Congress is to provide States with the resources and authority necessary to help, cajole, lure, or force adults off welfare and into paid employment as quickly as possible, and to require adult welfare recipients, when necessary, to accept jobs that will help end welfare dependency . . .*¹⁹¹

Since work is "good" and idleness is "bad," static systems tend to implement programs that will make work, any kind of work, a better alternative than poor relief.¹⁹² The very basis of the proposals of commentators like Charles Murray is that if you make able-bodied poor persons uncomfortable enough, they will be induced to work for their keep. Aid is always "too generous"; it contributes to the breakdown of the work ethic and traditional values or leads to the decay of large cities. And it is not merely the more extreme "traditionalist" commentators¹⁹³ who seek to make the poor work (and thereby get off the dole). Liberal universalists¹⁹⁴ and traditional liberal commentators alike view the possibility of work as the reasonable goal of social welfare programs.¹⁹⁵ Some have advocated an enforceable "right to be productive."¹⁹⁶ The core normative significance

¹⁹¹ PRA § 201(b).

¹⁹² For a short discussion of the rhetoric of federal work requirements and the political nature of such rhetoric, see MEAD, *supra* note 34, at 219–33. These euphemisms can easily be used by those who wish to impose work tests as a condition for the receipt of benefits as well as by those who wish to provide the poor with guaranteed incomes. Compare MICKEY KAUS, *THE END OF EQUALITY* 121–48 (1992) (asserting that an end to poverty and the stigma of relief can only be brought about by forcing the poor to work for their keep) and MURRAY, *supra* note 28, at 227–35 (arguing that the only way to help the disadvantaged is to eliminate the entire system of federally subsidized welfare) with ROBERT J. LAMPMAN, *ENDS AND MEANS OF REDUCING INCOME POVERTY* 135–68 (1971) (arguing that reducing income poverty through governmental transfers is a worthy goal) and Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 678–95 (1987–1988) (asserting that the poor must be entrusted with the responsibility for their own transformation and the eradication of their poverty through strategies of empowerment in which the poverty has a clearly defined but subordinate place).

¹⁹³ See, e.g., GILDER, *supra* note 42; MEAD, *supra* note 34.

¹⁹⁴ See WILSON, *supra* note 36; Skocpol, *supra* note 98.

¹⁹⁵ See, e.g., HAVEMAN, *supra* note 79; MARMOR, *supra* note 47; RIEMER, *supra* note 29. Note that even traditional liberal commentators now distinguish themselves as social liberals and social conservatives. Thus, Christopher Jencks is a liberal but in welfare matters is a self-described social conservative. See JENCKS, *supra* note 28.

¹⁹⁶ See Edgar S. Cahn, *Beyond the New Property: The Right to Become and Remain Productive*, 1 D.C. L. REV. 25 (1992).

of work for all members of this society finds expression even in the rhetoric of President Clinton:

Just stop for a moment sometime today and think about how much of your life is organized around work—how much of your family life, how much of your social life, not to mention your work life. Think about the extent to which you are defined by the friends you have at work, by the sense that you do a good job, by the regularity of the paycheck.¹⁹⁷

In WARA, work assumes rhetorical center stage. The Work and Responsibility Act requires that all job-ready recipients born after December 31, 1971 engage in a job search as soon as their applications are approved.¹⁹⁸ All adult applicants for relief will be required to enter into written personal responsibility agreements in which they will acknowledge their obligations and the obligation of the government to prepare them for employment.¹⁹⁹ "The underlying philosophy is one of mutual responsibility. The welfare agency will help recipients achieve self-sufficiency and will provide transitional cash assistance; in return, recipients will take responsibility for their lives and the economic well-being of their children."²⁰⁰ This is meant to provide an "incentive" to participants to "maximize" their opportunities.²⁰¹

The primary work components of WARA are an enhanced JOBS Program and the WORK Program. Under the JOBS Program, states are required to provide basic education (high school equivalency, basic liter-

¹⁹⁷ Clinton, *supra* note 4, at 5.

¹⁹⁸ WARA § 103(g)(2) (amending SSA § 482(g)(2)). Custodial parents under twenty years of age will be required to finish high school and participate in the JOBS Program. WARA § 101(a) (amending SSA § 402(a)(19)(F)). This reflects an expansion of a similar provision in the current JOBS Program, which also requires custodial parents under twenty years of age to participate in educational activities. However, participation is contingent on the existence of a suitable program in the welfare subdivision and the sufficiency of state resources to meet the expense of the program. See 42 U.S.C. § 602(a)(19)(E) (Supp. 1989).

¹⁹⁹ WARA § 102(b) (adding SSA § 482(a)(1)(A)). The Work and Responsibility Act did not invent this idea of establishing a "contractual" relation between recipient and the state. It has been tried in several demonstration projects, the most notable of which was the much ballyhooed GAIN Program in California. GAIN (Greater Avenues for Independence) is codified at CAL. WELF. & INST. CODE § 11320 (1985). The GAIN legislation, in turn, is based on the Community Work Experience Program (CWEP) in San Diego. The utility of such an approach is disputed; it is considered to be a way to focus recipients and caseworkers on the purpose of relief, or a means of monitoring the performance of the welfare agency, or something approaching a farce—another means for the state to manipulate recipients in the quest for behavior modification. See David Nelkin, *The Use of "Contracts" as a Social Work Technique*, 40 CURRENT LEGAL PROBS. 207 (1987). For a discussion of these contracts in the context of the GAIN Program, see Handler, *supra* note 15, at 494-95.

²⁰⁰ WARA DETAILED SUMMARY, *supra* note 93, at 13.

²⁰¹ *Id.* In effect, benefits must be put to socially productive use.

acy, or English proficiency programs), job skills training, job readiness activities, and job development and placement services.²⁰² Building on the work-relief provisions of the Family Support Act, the WORK Program is designed both as a repository for those who reach the lifetime cap on benefits and as a means of finding permanent unsubsidized jobs for participating AFDC recipients.²⁰³ The Work and Responsibility Act relies on strong private sector support to differentiate the WORK Program from run-of-the-mill workfare.²⁰⁴ But even the WORK Program is meant to be temporary. No individual WORK assignment may last longer than twelve months. At the end of the second twelve-month placement period, the WORK participant will be required to perform a job search, prior to or in conjunction with reassignment.²⁰⁵

²⁰² 42 U.S.C. § 682(d)(1)(A)(i) (1988). In addition, states are required to provide any two of the following programs: group and individual job searches, on-the-job training, work supplementation, and community work experience. *Id.* at § 682(d)(1)(A)(ii). Under the Family Support Act, work-relief was permitted as part of the job search, training, and education programs, but was limited. Work-relief assignments had to be limited to public service (day care, social service, and the like) and, to the extent possible, the assignments had to be related to the abilities and training of the person assigned the work. *See id.* at § 682(f)(1)(A).

²⁰³ Participants must be paid the minimum wage, except that WORK participants must be paid the same as "regular" workers performing the same tasks. WARA § 103(j) (adding SSA § 484(e)(5)). They will also be required to experience the same work conditions as comparable employees of the same employer. WARA § 103(j) (amending SSA § 484(e)(1)). States will be required to supplement WORK Program wages under certain circumstances. WARA § 201(a) (adding SSA § 493(e)); WARA § 103(j) (adding SSA § 484(e)(2)). States will have the right to require persons waiting for WORK assignments to participate in ancillary WORK Program activities created by the state. WARA § 201(a) (adding SSA § 495(b)(1)).

²⁰⁴ Consider the arguments of the Clinton Administration on this score:

This is work—not workfare. Persons will be paid for performance—not paid a welfare check and sent out to a work site. This work-for-wages plan provides far greater dignity and responsibility than workfare. Moreover, the purpose of the WORK program is to help persons move into, rather than serve as a substitute for, unsubsidized employment.

WARA DETAILED SUMMARY, *supra* note 93, at 20. WORK advisory panels will operate in each locality to provide oversight to the program. These panels will include representatives of labor unions, private and not-for-profit enterprises, and the public sector. WARA § 201(a) (adding SSA § 492(d)(3)). In addition, states will be required to maintain a substantial amount of information about program and participant performance. In particular, states will be required to maintain records of the performance on the employers in retaining WORK participants after subsidies end. WARA § 201(a) (adding SSA § 494(e)).

²⁰⁵ WARA § 201(a) (adding SSA § 493(d)(2)) (time limitation); WARA § 201(a) (adding SSA § 495(b)(1)(C)). The state welfare office will be required to conduct a comprehensive assessment of any person who has completed two WORK assignments or has been enrolled in the WORK Program for two years. WARA § 201(a) (adding SSA § 495(c)). At the conclusion of this reassessment, the state retains the option of assigning the participant to another WORK position, placing the individual in a deferred status, or

The Personal Responsibility Act focuses as heavily on work as WARA, but with fewer exceptions and carve-outs. Under PRA, states may design their own work programs and determine who will participate in these work programs.²⁰⁶ The Personal Responsibility Act only sets forth certain outer parameters: states may not provide work programs for more than two years to any recipient of benefits.²⁰⁷ In addition, states may terminate the benefits of AFDC recipients who have received benefits for twenty-four months if such recipients have participated in work programs for at least twelve months and if work placement was offered at the end of the twelve-month period.²⁰⁸ The Personal Responsibility Act embraces a traditional approach of state general assistance provisions that require the able bodied to work for their benefits, even those receiving food stamps.²⁰⁹ Though WARA continues to embrace job training, PRA rejects it as ineffective because the poor are incapable of taking advantage of it.²¹⁰ The

referring the individual back to the JOBS Program. WARA § 201(a) (adding SSA § 495(c)(1), (2)). Conservatives criticize this provision as being too flexible to be effective. Liberals are wary that this provision is potentially draconian, especially if there are no jobs for the poor who are taken off of welfare. See Statement of Eleanor Holmes Norton (Democratic delegate from the District of Columbia), *McNeil/Lehrer Newshour* (PBS television broadcast transcript #4949, June 14, 1994) available in LEXIS, Nexis Library, CURNWS file. Because of they believe that, realistically, there are no jobs available to them that would pay a wage sufficient to support a family, welfare recipients are particularly leery of a plan forcing people to get jobs. See, e.g., Roger Signor & Cynthia Todd, *Clinton's Plan has Several Pitfalls, Welfare Recipients Say*, ST. LOUIS POST-DISPATCH, June 15, 1994, at 13A.

²⁰⁶ Work programs may include work supplementation programs under 42 U.S.C. § 682(e) (1988), a community work experience program under 42 U.S.C. § 682(f) (1988), or any other work program established by the state. PRA § 202(a) (adding SSA § 202(a)(29)(a)(ii)). For work program participation rules, see PRA § 201(b)(4) (adding SSA § 402(a)(29)(A)(i)). The Personal Responsibility Act does include a "sense of Congress" statement encouraging states to require families with older preschool or school-age children to participate in the proposed SSA § 402(a)(29) work program. PRA § 202(e).

²⁰⁷ PRA § 202(a) (adding SSA § 402(a)(29)(D)).

²⁰⁸ PRA § 202(a) (adding SSA § 402(a)(29)(E)). In addition, work programs will require participants who have received 24 months of benefits to work 35 hours per week or work 30 hours per week and engage in five hours of job search. PRA § 202(a) (adding SSA § 402(a)(29)(B)(i)). One parent in a two-parent family must work 32 hours per week plus engage in eight hours of job search. PRA § 202(a) (adding SSA § 402(a)(29)(B)(ii)).

²⁰⁹ All recipients of food stamps who are not parents (usually men) will be required to work about eight hours per week for food stamp benefits. PRA § 204 (adding SSA § 402(a)(29)(A)(i)). The individual must perform at least 32 hours of work on behalf of the state or its political subdivisions. Proponents of this requirement cite the results of studies of the San Diego Food Stamp workfare program in which "modest work requirements on males in the Food Stamp program have been shown to significantly reduce welfare rolls, cutting welfare costs by nearly a third, and immediately saving several dollars in welfare expenditures for every dollar spent operating the work program." *Rector Statement*, *supra* note 125. Rector cites data contained in FOOD AND NUTRITION SERVICE, OFFICE OF ANALYSIS AND EVALUATION, U.S. DEPT. OF AGRIC., WORK REGISTRATION AND JOB SEARCH DEMONSTRATION: FINAL RQM 169, 251 (Contract No. 53-3198-0-85) (July 1986).

²¹⁰ "The complete lack of effectiveness of government training programs is especially

Personal Responsibility Act makes an exception for young unwed mothers and the children of certain AFDC recipients.²¹¹

Work serves many functions. It reinforces the central cultural norm of Anglo-American society—that individuals must assume responsibility for their own maintenance. It reduces the expense of maintenance to the state and thereby reduces the income redistributive potential of poor relief. It produces larger sources of potential income for the state to use on other (worthier) projects such as road building and defense. It inculcates social and economic stability. It is no accident that substantial social, cultural, and economic pressure exists to force *everyone* to conform to the work obligation. The pressure is so strong that it outweighs even the social and cultural imperatives of patriarchy, which prefer women to be child rearers rather than workers.²¹² It should come as no surprise that WARA and PRA focus so heavily on work. In a very large sense, the real thrust of these proposals is to force a category of human beings, formerly permitted a reprieve from the general culturally imposed work requirements, to conform to these requirements. This shift represents a refinement, not a rejection, of traditional poor relief structuring. Neither WARA nor PRA evidences substantial change in the trend of poor relief systems increasingly to impose work requirements for the receipt of federal categorical relief.²¹³

Since work is central to American notions of individual obligation and must serve as a singular indicator of eligibility (worthiness) for aid, able-bodied paupers who refuse to work will be punished.²¹⁴ Punishment is consistent with the notion that individual deficiencies create the need for poor relief. Punishment serves as a direct incentive for behavior modification.²¹⁵ It also serves as an effective form of cost containment. The pun-

salient given the very low cognitive ability levels of many mothers on AFDC Rather than reforms aimed at enabling single mothers to 'go it alone,' what is needed are more fundamental changes aimed at reducing illegitimacy and restoring marriage." *Rector Statement*, *supra* note 125.

²¹¹ See, e.g., PRA § 603 (adding SSA § 402(a)(52)) (establishing incentives for recipients to finish high school and for children of recipients to attend school).

²¹² It is not that society values work more than child rearing for its females. Rather, it is that society favors the child rearing role for females within the context of a patriarchal family structure. Where females fail to conform their breeding activities to this norm, then work obligations will trump the primary rearing role otherwise assigned to them. The reforms necessarily advocate the balancing of work and family work provisions, numerous demonstration projects, and hortatory provisions for the reconstruction of traditional patriarchal family structures.

²¹³ For a review of the work requirements of federal categorical relief programs, see MEAD, *supra* note 34, at 130-32. For a discussion of the increasing federal emphasis on work prior to the introduction of these reforms, see generally Handler, *supra* note 15.

²¹⁴ Work and punishment for unemployment have been features of English labor and poor law since the 14th century. Statute of Labourers, 25 Edw. 3, st. II (1350-51) (commanding all the able-bodied to work and criminalizing begging).

²¹⁵ For instance, American popular culture has gotten quite good at imagining the poor indulging in an oversexed life of leisure. See GILDER, *supra* note 38, at 80-82.

ishment of recipients perversely rewards states by freeing funds otherwise payable to those recipients. For those who believe in the normative value of work but find punishment counterproductive, this course may not be a positive development. These policies represent "a step back from the more generous provision of financial incentives to earlier practices of simple coercion and exclusion."²¹⁶ However, differences of opinion about the value of punishment do not affect the status of work as the ultimate goal of relief.

The Work and Responsibility Act strengthens the punitive provisions of poor relief and the targeting of these sanctions at nonconforming individual paupers. The Work and Responsibility Act proposes that sanctions for failure to participate in the JOBS Program remain the same as under current law.²¹⁷ However, it imposes sanctions upon nonexempt participants who refuse to accept job offers without good cause.²¹⁸ The Work and Responsibility Act permits the reduction or elimination of benefits in a variety of circumstances.²¹⁹ For example, states are permitted to limit benefit increases when additional children are conceived by parents already on AFDC, a provision that has drawn the most vocal and sustained

One reason that welfare recipients are a ready target for punitive legislation is that politicians, and most likely some of their constituents, imagine them to be enjoying leisure and an active sex life at public expense. Whether or not very many poor people actually behave in the ways that are judged undeserving is irrelevant if they can be imagined doing so.

Gans, *supra* note 41, at 275.

²¹⁶ ABRAMOVITZ, *supra* note 54, at 362. "Our goal should not be to punish [the poor] because they happen to be poor." Clinton, *supra* note 13.

²¹⁷ Currently 42 U.S.C. § 602(a)(19)(F) (1988) provides for the assessment of monetary sanctions against nonexempt participants who fail to participate in the program without "good cause," as defined by the state.

²¹⁸ In the event of a violation, the family's entire AFDC benefits may be terminated for up to six months or, if earlier, until the sanctioned adult accepts a job offer. WARA § 101(c) (adding SSA § 402(a)(19)(G)(i)).

²¹⁹ Failure to sign an agreed-upon employability plan will result in the denial of aid to the individual. WARA § 102(b) (adding SSA § 482(a)(2)(C)). Individuals may resort to review and arbitration or mediation procedures in the event of a disagreement. WARA § 102(b) (adding SSA § 482(a)(2)(B)). Both JOBS and WORK participants will be required to accept a bona fide offer of an unsubsidized job unless they qualify for certain "good cause" exceptions. WARA § 201(a) (adding SSA § 496(a)(1)). An individual who refuses an offer which meets the requirements for acceptance will not be eligible for a WORK position, and the entire family will be ineligible for AFDC benefits for a six-month period. WARA § 201(a) (adding SSA § 496(f)(1)); WARA § 201(a) (adding SSA § 495(c)). Similar sanctions apply to refusals to accept bona fide job offers while enrolled in the JOBS Program. WARA § 101(c) (amending SSA § 402(a)(19)(G)). Other punishments, less severe, apply for termination from an unsubsidized job for misconduct, voluntarily leaving a position, or refusal to participate in the program. WARA § 201(a) (adding SSA § 496(f)(2)). Thus, WORK Program participants who quit any unsubsidized job without good cause will lose eligibility for the WORK Program for up to three months. Additionally, the state retains the right, at its option, to exclude individuals from WORK should a recipient leave an unsubsidized job without good cause. WARA § 201(a) (adding SSA § 496(g)).

criticism from liberals.²²⁰ But WARA also provides some rewards, principally child care.²²¹ Among the other salutary benefits of child care is its employment potential. Recipients of subsidized work can be employed to provide the child care that permits other recipients to work; ideally, this would reduce the direct cost of maintaining working paupers.²²²

The Personal Responsibility Act provides significantly more punishment and fewer rewards. Work is its own reward. For instance, states are permitted to reduce benefits by seventy-five dollars per month to parents under twenty-one years of age who have not graduated from high school or earned a high school equivalency degree.²²³ For the most part, however, under PRA, states are permitted a great degree of latitude in designing sanctions to enforce the work requirements.²²⁴ The Personal Responsibility Act does make clear that states have the option of terminating the benefits of recipients who have been sanctioned three or more times.²²⁵

²²⁰ WARA § 502 (amending SSA § 402(a)). For some critical observations on this provision, see Statement of Theresa Funciello, *McNeil/Lehrer NewsHour: Welfare—System Overhaul* (PBS television broadcast, June 14, 1994), transcript available in LEXIS, News Library, CURNWS File [hereinafter *Funciello Statement*]; see also Statement by Planned Parenthood Federation of America, *Planned Parenthood Action Fund, on the Clinton Welfare Reform Proposal*, U.S. NEWSWIRE, June 15, 1994, available in LEXIS, News Library, CURNWS File. Traditionalists are unmoved, perhaps because it is inconceivable in our society to tie labor market wages to family size.

²²¹ Currently, the federal government provides a large number of independent programs to subsidize child care costs for low-income families. See, e.g., 42 U.S.C. § 602(b), (g)(1) (1988) (AFDC/JOBS Child Care and Transitional Child Care, an open entitlement program); 42 U.S.C. § 602(i) (1988) (At-Risk Child Care, a capped entitlement program); 42 U.S.C. § 9858 (1994) (Child Care and Development Block Act of 1990, a discretionary program). In addition, AFDC recipients are entitled to a small child care disregard (up to \$200 per month for infants; \$175 a month for all other children). 42 U.S.C. § 602(a)(8)(A)(iii) (1988). Under WARA, recipients will continue to be entitled to child care while working or attending education programs, including participation in the WORK Program. WARA § 301 (amending SSA § 402(g)(1)). Recipients who accept unsubsidized jobs will be entitled to up to one year of child care under the Transitional Child Care Program. WARA § 301(b) (amending SSA § 402(g)(1)(A)).

²²² See WARA § 201(a) (adding SSA § 492(b)(6)). The proponents of the more traditional PRA have criticized these provisions as "reverse" cost shifting. See Debra Saunders, *Sham Reform*, TIMES-PICAYUNE, June 17, 1994, at B7 ("Don't bother leaving the kids with a relative, you are entitled to free child care for at least one year." (quoting Robert Rector of the Heritage Foundation)).

²²³ PRA § 603 (adding SSA § 402(a)(52)). Payments may also be reduced if dependent children of recipients fail to meet minimum school attendance rules. *Id.*

²²⁴ PRA § 202 (adding SSA § 402(a)(C)(i)(I)). Under certain circumstances, the state is required to reduce the benefits payable to recipients who fail to comply with the work requirements. PRA § 202 (adding SSA § 402(a)(C)(i)(II), (III)).

²²⁵ PRA § 202 (adding SSA § 402(a)(C)(ii)).

VI. Behavior Modification and Social Control Provisions

*And I find the whole debate here to be extraordinary in the level of misogyny that's involved, the idea that somehow teenage girls are going to destroy civilization as we know it . . .*²²⁶

For many, the heart of poor relief is the affirmative obligation to reinforce conformance with traditional social norms. The sense of "wrongness" or of the "failure" of the system grows when poor relief methods do not reinforce core social and cultural values.²²⁷

Not only has the cost of welfare become exorbitant, but many also believe that the present system has greatly contributed, over the last twenty-five years, to the rise of a new set of "behavioral poverty" problems including eroded work ethic and dependency, lack of educational aspiration and achievement, increased single parenthood and illegitimacy, criminal activity, and drug and alcohol abuse.²²⁸

The Work and Responsibility Act and PRA devote a substantial amount of their efforts to behavior modification and the correction of cultural deviance. I have already examined the centrality of work to poor relief "reform"; I examine here the focus of poor relief on matters of family and crime.

A. Supporting the Traditional Family

There exists a strong tendency to find in the two-parent family the source of our culture and social order. Two-parent families are seen as the means of preserving social stability.²²⁹ Traditional family structure has been tied to optimum economic efficiency²³⁰ and to core social values.

²²⁶ *Funiciello Statement*, *supra* note 220.

²²⁷ *CONTRACT WITH AMERICA*, *supra* note 9, at 65-66.

²²⁸ Rector, *supra* note 21; *see also* KATZ, *supra* note 28, at 16-23 (noting that both liberals and conservatives contributed to the development of the concept of the culture of poverty).

²²⁹ This is the subject of much commentary in the popular press. *See* Magnusson & Gleckman, *supra* note 143, at 58 ("A shocking number of today's inner-city population is growing up without fathers, without their incomes, and without the stability of a two-parent family . . . The result is a downward economic spiral."). *But see, e.g.*, Ellen Goodman, *Right Tune but Lyrics Need Work*, *BERGEN RECORD*, Sept. 27, 1994 ("The truth is that prosecuting deadbeat dads makes good politics and policy, talking about reconnecting fathers and children makes good sense, but it doesn't get to the heart of the matter: relationships between men and women.")

²³⁰ *See, e.g.*, GARY S. BECKER, *A TREATISE ON THE FAMILY* (enlarged ed. 1991) (discussing the economics of marriage and the family). For others, the relationship of

Quite simply, there are three rules for escaping from poverty in America: 1) finish high school; 2) get an "out," any job, and stick with it; 3) do not have children outside of marriage. Those who abide by these rules of middle class existence will not be chronically poor in the U.S. Those who violate these rules are very likely to be trapped at the margins of our society.²³¹

Daniel Patrick Moynihan, a great proponent of this focus of poor relief, has argued that the disintegration of African American families will lead to economic disintegration as well.²³² Conservatives see a direct connection between traditional family structure and economic independence.²³³ Those who find traditional family structures problematic reject this connection. The components of traditional family structure—father, mother, children—are deeply ingrained in dominant culture. Not surprisingly, commentators have little effect on the political discourse of poor relief when they argue that the tenacious dominance of the concept of the nuclear family has substantially restricted legal reform and stymied substantial change in the manner in which poor relief is conceived.²³⁴

Both WARA and PRA see a direct and significant connection between social conformity and poverty.²³⁵ They seek to impose social conformity

traditional family structure and "success" may be a question of the proverbial "chicken and the egg."

Because the legally constructed image of the family expresses what is appropriately considered family, it also constitutes the normal and defines the deviant. Hence, we witness the same categorization and status denying mechanisms at work in labelling the family as we had seen in defining the poor and non-poor, deviant and normal, the worthy and unworthy. Under this rhetoric, children's problems are created, to a large extent, by the fact that they are trapped in a deviant family situation.

Roger J.R. Levesque, *Targeting "Deadbeat" Dads: The Problem With the Direction of Welfare Reform*, 15 *HAMLINE J. PUB. L. & POL'Y* 1, 27 (1994). See Lucy A. Williams, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 *YALE L.J.* 719, 721-25 (1992); see also Fineman, *supra* note 46, at 274 (describing how society has responded to perceived changes in the manifestation of motherhood in an effort to preserve traditional patriarchal values).

²³¹ Rector Statement, *supra* note 125.

²³² MOYNIHAN, *supra* note 40. On the impact of this report in the academic and political communities, see KATZ, *supra* note 28, at 23-29.

²³³ MURRAY, *supra* note 28; Rector Statement, *supra* note 1.

²³⁴ See Margaret L. Anderson, *Feminism and the American Family Ideal*, 22 *J. COMP. FAM. STUD.* 235 (1991); Martha L. Fineman, Symposium, *Gender and the Law Essay and Article: The Neutered Mother*, 46 *U. MIAMI L. REV.* 653, 662-64 (1992); Law, *supra* note 29.

²³⁵ For example, the nature of the problem of poverty, and of its cure as well, was framed by the Clinton Administration as substantially related to teen pregnancy:

Poverty, especially long-term poverty, and welfare dependency are often associated with growing up in a one-parent family. Although many single parents do a

in family matters as a means of reducing the size of the welfare eligible population and maintaining social peace and stability. The Work and Responsibility Act approaches social conformity through positive incentives and exhortation; PRA provides some positive incentives but relies more heavily on compulsion.

The Work and Responsibility Act seeks to put poor relief on solid traditional footing by using public morals as a tool of public policy. In introducing WARA, President Clinton reminded his audience:

We must keep people from the need to go on welfare in the first place by emphasizing a national campaign against teen pregnancy, to send a powerful message that it is wrong to continue this trend, that children should not be born until parents are married and fully capable of taking care of them.²³⁶

After all, if public morals are used to determine policy for one set of society's sexual deviants, homosexual men,²³⁷ then it ought to be as useful for dealing with another set of sexual deviants—teenage and out-of-wedlock mothers.

The Work and Responsibility Act focuses its behavior modification provisions on teenage, out-of-wedlock pregnancies and nontraditional families that seek aid. Its most significant concrete proposal is to make the AFDC-UP Program mandatory.²³⁸ The Work and Responsibility Act takes a tentative approach to compelling appropriate behavior: states are given the option of limiting benefit increases when additional children are conceived by parents receiving AFDC.²³⁹ The Work and Responsibility Act appears most comfortable with hortatory and educational programs to deal with the problem of teenage and out-of-wedlock pregnancies.²⁴⁰ However,

heroic job of raising their children, the fact remains that welfare dependency could be significantly reduced if more young people delayed childbearing until both parents were ready to assume the responsibility of raising children.

WARA DETAILED SUMMARY, *supra* note 93, at 30; *see also* CONTRACT WITH AMERICA, *supra* note 9, at 65.

²³⁶ Clinton, *supra* note 4, at 4–5. On the feminization of poverty, see Mary Jo Bane, *Politics and Policies of the Feminization of Poverty*, in *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES* 381 (Margaret Weir et al. eds., 1988). In a sense, poverty has been “feminized” because, except for other worthy categories, (unproductive) females with young dependents are substantially the only group that continues to receive benefits of any appreciable kind. Able-bodied men without dependents have been consigned to the institutional oblivion of state general assistance. *See* Backer, *supra* note 15.

²³⁷ *See* Bowers v. Hardwick, 478 U.S. 186 (1986).

²³⁸ WARA § 701(a) (repealing SSA § 401(h)). Additionally, WARA makes AFDC-UP a permanent program. For an encouragement of intact, two-parent families, *see* WARA DETAILED SUMMARY, *supra* note 93, at 43.

²³⁹ WARA § 502 (amending SSA § 402(a)).

²⁴⁰ The Clinton Administration signalled its intention to lead a national campaign

sanctions, responsibility training, and coercive behavior modification also make up an important part of WARA's efforts to promote conformity.²⁴¹

The Personal Responsibility Act relies far less on the hortatory and far more on the compulsory as a means for modifying *bad* behavior. Most of PRA's provisions are aimed at unmarried mothers under twenty years of age.²⁴² Interestingly, PRA makes AFDC-UP substantially optional; unlike WARA, PRA does not view that program as a great inducement to marriage.²⁴³ The Personal Responsibility Act makes compulsory WARA's tentative move to punish illegitimacy. Additional AFDC benefits will not be payable if a child is born to a recipient of AFDC or to a female who received AFDC any time during the ten months prior to the birth of the child.²⁴⁴ As an inducement to marriage, states are given the option of providing transitional benefits to females who marry.²⁴⁵ The Personal Responsibility Act, like WARA, does not ignore the power of hortatory and educational programs; the only significant difference between PRA and WARA is that the former would fund such programs out of savings from the reduction of benefits to nonconforming poor women.²⁴⁶

against teen pregnancy. "The goals will focus on measurable aspects of the broader opportunity and responsibility message for teen pregnancy prevention, such as graduating from high school; deferring childbearing until one is economically and emotionally prepared to support a child; and accepting responsibility for the support of one's children." WARA DETAILED SUMMARY, *supra* note 93, at 33. In addition, a National Clearinghouse on Adolescent Pregnancy Prevention would serve as a national information center. WARA § 505(a) (adding 42 U.S.C. § 2008(n)).

²⁴¹ First, minors with children of their own will be required to live with their parents or other "responsible adults." WARA § 501(a), (c) (amending SSA § 402(a)(43)(B)). The state agency would be required to provide case managers for recipients under age 20 to monitor their progress. WARA § 503 (amending SSA § 482(b)). States are also given authority to provide additional incentives to encourage minor recipients to finish school and participate in parenting activities. WARA § 504(b) (adding SSA § 402(k)). They will also be required to comply with JOBS participation requirements. WARA § 101(a) (amending SSA § 402(a)(19)(C)).

²⁴² Under PRA, females under 18 years of age will be denied AFDC payments for a child born out of wedlock unless they marry the biological father of their child or a man who adopts their child. PRA § 105(a) (adding SSA § 402(a)(47)). States are also given the option of prohibiting AFDC payments and housing benefits for mothers between the ages of 18 and 20. However, payments cannot be withheld if the mother is the legal or biological parent of another child not born out of wedlock. SSA § 402(a)(49)(B)(ii). Optional housing prohibition provisions are set forth in PRA § 107(b). Female recipients who are minors will be required to live with their parents. PRA § 102 (amending SSA § 473(a)(43)).

²⁴³ PRA § 202(c) (amending SSA § 407(b)(2)(B)).

²⁴⁴ PRA § 106(a) (adding SSA § 402(a)(48)). Medicaid benefits will not be reduced. PRA § 106(a) (adding SSA § 402(a)(48)(B)).

²⁴⁵ PRA § 604 (adding SSA § 402(a)(53)). States will also have the option of making benefit payments contingent on the recipients' attendance at money management and parenting classes. PRA § 606(a) (adding SSA § 402(a)(54)).

²⁴⁶ The "savings" from the limitations on benefit payments to young mothers will be returned to the states in the form of block grants, which states may use to provide services (but not cash) to young mothers with illegitimate children. PRA § 108 (adding SSA, Pt. C, § 440). The grant amount is calculated in accordance with formulas set forth in new

The generosity of the Great Society approach to poor relief is potentially destabilizing for society, not merely because of its income redistribution effect, but also because it creates negative incentives to traditional family structures. As Mimi Abramovitz has observed:

As an economic cushion, AFDC does offer poor women some choice which, however limited, increases their bargaining power at home and on the job. In general, even so small a social wage may enable workers to take the economic risks involved in resisting pressure to take any job at any pay or to engage in activities, such as strikes, that might improve wages and working conditions. It may also suggest the leverage that a larger social wage could provide. For women in particular, the social wage offers additional protection against entering into or remaining in marriages regardless of their safety or security.²⁴⁷

But it is precisely those very low wage jobs that WARA and PRA reformers wish paupers to assume, and it is precisely those bad marriages that the reformers wish paupers to maintain. Minimum wage and part-time jobs are what the American economy has been most efficient in producing.²⁴⁸ And we want our women to "stick with their men," especially if they *must* breed. We worry, then, over what Robert Rector identifies as the "dissuasion" and "exit promotion" functions of institutional welfare programs.²⁴⁹

Indeed, dissuasion and exit promotion must be at the heart of all static systems of poor relief, and poor relief systems use their power over the children of the poor to encourage both. The great radicalism of PRA and WARA lies in their infusion of economic consequences into the concept of illegitimacy—consequences that dissuade illegitimacy and idleness with the threat of forcible exit from the welfare program. Reducing benefits to children based on the marital status of the mother adds substance to the notion of illegitimacy. This targeted notion of illegitimacy is

SSA § 442 and based on the amount of AFDC payments that a state need not make to minors with illegitimate children. States are rewarded for aggressively limiting benefits to unwed minors with children by increasing the size of their grants under this program. These include programs to reduce out-of-wedlock pregnancies, to promote adoption, and to establish orphanages and operate closely supervised residential group homes for unwed mothers. PRA § 108 (adding SSA, Pt. C, § 441(a)).

²⁴⁷ ABRAMOVITZ, *supra* note 54, at 314. Of course, Professor Abramovitz views this as a positive residuum of the AFDC program. Many others take a different view, using this insight as the basis for arguing for benefit reduction or even the elimination of AFDC in its entirety. Consider the moral power of Charles Murray's apocryphal story of Harold and Phyllis. See MURRAY, *supra* note 28, at 156–62.

²⁴⁸ See BLUESTONE & HARRISON, *supra* note 98, at 6–7.

²⁴⁹ Rector, *supra* note 21, at 284.

class-based: the illegitimate children of the rich suffer no such disability. This discriminating pattern has been in effect since the time of the Elizabethan Poor Laws.²⁵⁰ The Personal Responsibility Act combines the reinvigoration of illegitimacy as a tool of public policy with the judgment that poor women make bad mothers. Unsited to making responsible choices regarding child bearing or child rearing, it is better to put such women to work.²⁵¹ The Personal Responsibility Act focuses on inducing poor young females to give their children up for adoption,²⁵² without giving them the option of an abortion or motherhood.²⁵³ Increasing the psychic costs of indiscriminate procreative sex outside of marriage may serve to reduce the state's burden to care for the children produced from such behavior. If all else fails, forced assimilation to cultural norms can be accomplished by threatening to take children away from nonconforming pauper women.

B. Paternity and Enforcement of Child Support

A society based on the family unit implies mutual support obligations among family members. Poor relief mimics these mutual support obligations by imposing fiscal responsibility for adult paupers on a large range of private individuals—primarily relatives.²⁵⁴ This seems as natural to us as the linkage between marriage and its social and economic implications.²⁵⁵ Family support obligations may serve other redistributive ends as

²⁵⁰For a discussion of the traditional dual system of family and poor law, see tenBroek, *supra* note 20.

²⁵¹The notion seems to be that young, unmarried mothers who have run out of benefits should place their children up for adoption or be placed in closely supervised homes with "no walking around money." See *Hearing Focuses on Teen Pregnancy*, UPI, Jan. 18, 1995 (B.C. Cycle), available in LEXIS, News Library, UPI File (quoting Robert Rector's testimony before the House Committee on Economic and Educational Opportunities).

²⁵²"Active, creative, and diligent efforts are needed to recruit parents, from every race and culture, for children needing foster care or adoptive parents." PRA § 109(a)(5). Adoption agencies may not discriminate on the basis of race, color, or national origin when placing a child and are encouraged to reduce the amount of time a child must wait before being adopted. PRA § 109(c)(1)(A). Apparently, these agencies can continue to discriminate on the basis of religion. Individuals are given a right of private action to enforce this provision. PRA at § 109(c)(3).

²⁵³Taxpayer funds for block grants for services to young mothers cannot be used for abortion services or abortion counseling. PRA § 108 (adding SSA, Pt. C, § 441(a)(B)(2)).

²⁵⁴For a discussion of the tendency of Anglo-American poor relief systems to shift the costs of pauper maintenance to family members see tenBroek, *supra* note 20.

²⁵⁵Why relatives? Because they are the individuals on whom it is easiest to impose the obligation; there is a long tradition in Western religion and culture of imposing mutual obligations for support on the family unit headed by the father. On the origins of Western family structure, see SUZANNE DIXON, *THE ROMAN FAMILY* (1992); see also FRANCES GIES & JOSEPH GIES, *MARRIAGE AND THE FAMILY IN THE MIDDLE AGES* (1987); cf. JAMES A. BRUNDAGE, *LAW, SEX, AND CHRISTIAN SOCIETY IN MEDIEVAL EUROPE* (1987). For an economic analysis of the family, see BECKER, *supra* note 230.

well.²⁵⁶ Maintenance of and cost shifting to family units through implementation regimes that transfer funds to the productive class by withholding aid to the poor are not unconscious acts by government.²⁵⁷ Indeed, as commentators have recently reminded us, amendments to welfare laws (primarily AFDC) since the adoption of the Family Support Act have imposed more extensive familial financial obligations on recipients of poor relief than are usually imposed under traditional family law statutes. These familial obligations are extended to stepparents, siblings, and grandparents of indigent children.²⁵⁸

Legislatures have not refrained from imposing "family" obligations on nontraditional members of pauper households,²⁵⁹ even as they decry the social and moral chaos resulting from the disintegration of traditional family structures. Family obligation requirements have been used to limit eligibility and to deny relief even when the income "deemed" available is in actuality not available.²⁶⁰ Like all traditional static poor relief systems,

²⁵⁶ Harry Krause has suggested that the methods used to enforce child support payments from poor fathers transfer more wealth to lawyers and bureaucrats than to the children for whom the benefits are intended. See Harry D. Krause, *Child Support Reassessed: Limits of Private Responsibility and the Public Interest*, 24 FAM. L.Q. 1, 13-14 (1990); Harry D. Krause, *Reflections on Child Support*, 1983 U. ILL. L. REV. 99, 106-11 (1983).

²⁵⁷ Courts, for instance, consider the wealth of family members in determining welfare eligibility. See, e.g., *Pyke v. Department of Social Servs.*, 453 N.W.2d 274 (Mich. Ct. App. 1990); cf. *Dempsey v. Commonwealth*, 404 A.2d 1373 (Pa. Commw. Ct. 1979). This obligation is in addition to the general family law obligation requiring a parent to support his or her minor children. See, e.g., FLA. STAT. ANN. § 856.04 (West 1941 & Supp. 1992); N.J. STAT. ANN. § 2C:24-5 (West 1937 & Supp. 1992); OKLA. STAT. tit. 10, § 4 (1991). Some jurisdictions also require some form of parental support of adult children. See, e.g., OKLA. STAT. tit. 10, § 12 (1991). For a discussion of the general obligation to support minors, see Martha Minow, "Forming Underneath Everything that Grows": *Toward a History of Family Law*, 1985 WIS. L. REV. 819, 827-34 (1985). On the implicit notions of patriarchy that underlie much family law and welfare discourse, see Fineman, *supra* note 46, at 277-89; Lucie E. White, *No Exit: Rethinking "Welfare Dependency" From a Different Ground*, 81 GEO. L.J. 1961, 1986-90, 1997-2000 (1993).

²⁵⁸ See Amy E. Hirsch, *Income Deeming in the AFDC Program: Using Dual Track Family Law to Make Poor Women Poorer*, 16 N.Y.U. REV. L. & SOC. CHANGE 713 (1987-1988). On the obligations of stepparents, see Mary A. Goldsmith, *AFDC Eligibility and the Federal Stepparent Regulation*, 57 TEX. L. REV. 79, 93-95 (1978).

²⁵⁹ Consider the grant group composition rules set forth in 42 U.S.C. § 602(a)(31), (38), (39) (1988), which treat the income of nonfamily members who are part of the household as recipient. See *Bowen v. Gilliard*, 483 U.S. 587, 599-600 (1987) (parent must include income of an independently supported child in calculating the welfare grant). As Lisa Kelly reminds us, "[t]he vituperative zeal directed against the 'female-headed household' often overlooks the strength and resilience of the extended African American family in all its many forms." Kelly, *supra* note 88, at 307 n.3. For "liberal" static system builders, the recognition of African American extended families could have cost-shifting potential by imposing mandatory support obligations on all of the members. Child support limited to the fathers of illegitimate children is an invention of a mobile European productive class; it need not limit the state in its effort to shift costs and teach responsibility to family units under either a "liberal" or "conservative" view of poor relief.

²⁶⁰ See *Williams v. Raiford*, 976 F.2d 942 (5th Cir. 1992) (denying welfare benefits

WARA and PRA have shifted responsibility for the cost of maintaining the poor to others (primarily those defined as family members) and have sought reimbursement for the cost of relief. Both WARA and PRA tie reimbursement principles to incentives for traditional family arrangements and, as a cost-saving default, even reach to nontraditional familial sources of economic support.

The current focus of lawmaking bodies has been on the obligations of noncustodial parents.²⁶¹ The Work and Responsibility Act concentrates on the establishment of paternity and on the institution and enforcement of child support orders. Mothers who apply for AFDC must agree to cooperate to help establish paternity as a prerequisite to the receipt of benefits.²⁶² The Work and Responsibility Act institutes "outreach" and public education programs to convince potential fathers of the nature of their responsibility; paternity and parenting demonstration projects and "access and visitation" grants to states are also authorized.²⁶³ The burden of matching fathers with children on relief is shifted to the states. States that fail to establish paternity within a year of the receipt of information by cooperating recipients will lose a portion of their federal match for benefits.²⁶⁴

The Work and Responsibility Act's means of improving the collection of child support payments consist primarily of information gathering, compulsion, and reward. The Work and Responsibility Act requires states to centralize the manner in which support payments are collected and distributed.²⁶⁵ The federal government is to establish a National Clearing-

for family denied because income of one child, placed in trust by a representative payee, was deemed available to entire family for purposes of calculating eligibility); *see also* *Orris v. Sullivan*, 974 F.2d 109 (9th Cir. 1992) (denying AFDC on assumption that father's income was available to entire family even though there was no legal obligation for support of mother and two other children). State pilot projects have moved in this direction in recent years. *See* Levesque, *supra* note 230, at 14-16 (describing New York's Child Assistance Program, Wisconsin's Child Support Assurance System, and the proposed Federal Child Support Assurance Act).

²⁶¹ *See, e.g.*, COLO. REV. STAT. § 26-2-402 (1993) (permitting deduction from income of noncustodial parents). These statutes are in part a reflection of the incentives provided by the Family Support Act for the collection of child support payments. For a discussion of these provisions, *see* Handler, *supra* note 15, at 509-12.

²⁶² WARA § 601(a) (adding SSA § 454(4)(A)(25)); WARA § 601(b) (amending SSA § 402(a)(26)).

²⁶³ *See* WARA § 641(a) (amending SSA § 454(23)) (public education programs); WARA § 404(g) (parenting and paternity demonstration projects); WARA § 691 (adding SSA § 469A) (access and visitation grant programs). The access programs are meant to promote closer relations between the noncustodial parent and the child.

²⁶⁴ WARA § 642 (amending SSA § 403). Of course, a state that is routinely unsuccessful in establishing paternity may create a downward pressure on benefit levels. To facilitate the states' task, in-hospital paternity establishment procedures are simplified. WARA § 636(a) (amending SSA § 466(a)(2)); WARA § 640(a)(4) (amending SSA § 466(a)(5)(C)) (modifying the procedures already established under the Omnibus Budget Reconciliation Act of 1993).

²⁶⁵ WARA § 622 (adding SSA § 454A(28), 454B). The bill envisions a central state registry that would "maintain current records of all support orders and work in conjunction

house consisting of a Federal Parent Locator Service, the National Child Support Registry, and the National Directory of New Hires.²⁶⁶ States are given the power to impose wage withholding requirements and to employ other means of reaching the assets of fathers of dependent children.²⁶⁷ States are also permitted to revoke professional, occupational, and driving licenses of parents failing to meet their support obligations.²⁶⁸ The Work and Responsibility Act rewards conforming parents in a number of ways.²⁶⁹ But even the proposal to provide child care for certain qualified recipients has static implications.²⁷⁰ Promoting child care for dysfunctional parents allows the state to intervene directly in the raising of children and thus to have a greater hand in inculcating proper social attitudes.²⁷¹

Similarly, PRA concentrates on compulsion and the imposition of the burden of identification on the states. Unlike WARA and current law, which merely require cooperation in identification of fathers, PRA makes AFDC benefits contingent on the establishment of paternity, except in cases of rape or incest or where identification will result in physical

with a centralized payment center for the collection and distribution of child support payments"; the prime purpose of this registry is to take advantage of economies of scale. WARA DETAILED SUMMARY, *supra* note 93, at 38; WARA § 621 (adding SSA § 454A(e)-(f)).

²⁶⁶ WARA § 625 (adding SSA § 453A). The Work and Responsibility Act also seeks to establish a National Commission on Child Support Guidelines to study the feasibility of federalizing state rules respecting child support payments. The Commission is to present its report within three years of its formation. WARA § 651. States now receiving AFDC funds must establish uniform guidelines for determining child support awards. 42 U.S.C. § 667(a) (1993).

²⁶⁷ WARA § 623 (amending SSA § 466(a)). Other methods might include charging interest and late payment penalties, WARA § 670 (amending SSA § 466(a)(17)), modifying laws relating to fraudulent transfers, WARA § 666 (amending SSA § 466(a)(15)), bankruptcy, WARA § 672 (amending various provisions of the Bankruptcy Code, 11 U.S.C.), and wage garnishment, WARA § 664 (amending SSA § 459). In addition, states might be permitted to use credit reporting of support delinquencies as an incentive for prompt payment. WARA § 668 (amending SSA § 466(a)(7)).

²⁶⁸ WARA § 667.

²⁶⁹ Parents who conform to the traditional family model and marry or remarry will have child support arrearage forgiven to some extent. WARA § 603(e) (amending SSA § 457(e)). WARA also gives the states the option of developing JOBS and WORK Programs for noncustodial parents. WARA § 206 (adding SSA § 482(j)). Section 206 applies to parents with children receiving AFDC and to parents with child support arrearage. WARA § 206 (adding SSA § 482(j)(3)). WARA also provides for the funding of child support enforcement demonstration projects. WARA § 681.

²⁷⁰ States will be required to guarantee the provision of child care for any person in a WORK assignment, as well as other work-related supportive services as may be needed in accordance with the state WORK plan. *See, e.g.*, WARA § 301(a) (amending SSA § 402(g)(1)(A)(i)) (child care); WARA § 201(a) (adding SSA § 495(b)(3)). The Work and Responsibility Act suggests that a primary source of WORK projects is staffing the day-care facilities that may be needed to provide services to recipients accepting nonsubsidized jobs. In this sense there would be no net negative—recipients would still be receiving a standard amount of alms in return for which they would be expected to care for dependent children.

²⁷¹ On the involvement of the government in the raising of the children of AFDC recipients, see ABRAMOVITZ, *supra* note 54, at 338.

danger to the mother.²⁷² The Personal Responsibility Act also shifts this burden to the states, requiring them to establish paternity in ninety percent of their cases.²⁷³

The focus of WARA and PRA on the financial responsibility of fathers has long and unsuccessful roots, with its Anglo-American precursors going back at least as far as the Elizabethan period in Tudor England.²⁷⁴ The rationale has not altered since 1575. We impose this obligation in an attempt to teach responsibility by providing financial disincentives to wholesale breeding among our paupers.²⁷⁵ The Work and Responsibility Act concentrates on the need to force fathers to support their children to a greater extent than PRA only because, for WARA drafters, that obligation represents a substantial source of cash.²⁷⁶ To further the collection of this mother lode of funds, WARA even establishes procedures for automatically reviewing and updating child support awards.²⁷⁷ The problem is that these men often do not have sufficient resources to support their children.²⁷⁸ As such, these programs will likely succeed more as hortatory exercises than as a real means of reducing the drain on public resources or providing for the financial needs of illegitimate children.

²⁷² PRA § 101(a) (amending SSA § 402(a)(44), (45) and adding SSA § 402(a)(46)). In cases involving females whose sexual activity makes it difficult to determine the paternity of the child, the mother may allege that any one of a maximum of three named people may be the father. If she provides the address of each, and if the state has not disproved the allegation, then AFDC benefits may not be denied. However, the mother will not be entitled to any *additional* benefits for such child. PRA § 101(a) (adding SSA § 402(a)(46)(B)).

²⁷³ PRA § 104 (amending SSA § 452(g)(1)). States are also encouraged to develop procedures in public hospitals and clinics to determine paternity. PRA § 103(c). The Personal Responsibility Act also imposes an obligation on state officers to inform unwed pregnant females of their ineligibility for AFDC unless they cooperate in the establishment of paternity. PRA § 103(a) (adding SSA 466(a)(5)(C)(i)).

²⁷⁴ tenBroek, *supra* note 20, at 284-85 (discussing Eliz. 1, c.3, § I (1575-76)).

²⁷⁵ See, e.g., 18 Eliz. 1, c.3, § I (1575-76), quoted in tenBroek, *supra* note 20, at 284 (condemning the behavior of and outlining sanctions for parents of bastard children).

²⁷⁶ The drafters of WARA believe that such support would relieve the state of at least \$34 billion worth of the current institutional welfare obligations. WARA DETAILED SUMMARY, *supra* note 93, at 30. Several commentators have described as speculative fantasy the notion that substantial amounts of income are available from the fathers of poor, illegitimate children. See, e.g., JOEL F. HANDLER & YEHESKEL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA 223 (1991) (reviewing the literature on poverty).

²⁷⁷ WARA § 652 (amending SSA § 466(a)(10)) (automatic updating of child support awards). The Work and Responsibility Act provides payments to families to encourage the establishment of paternity. WARA § 643 (amending SSA § 455).

²⁷⁸ Levesque, *supra* note 230, at 32-33. Indeed, even the programs imposing uniform support guidelines can have limited success. "Guidelines, then, seemingly end up increasing only poor fathers' obligations; they fail to address poor fathers' lack of resources and their inability to lift children out of poverty." *Id.* at 34; see also Kelly, *supra* note 88, at 310 n.15.

C. Antisocial Behavior

The Work and Responsibility Act and PRA build on the "generally accepted" view that idleness leads to antisocial behavior. Stasis foundationalism sees a direct correlation between single-parent families, poverty, and crime.²⁷⁹ Our cultural substructure lends substantial plausibility to the belief that "[c]hildren born out of wedlock, when compared to those in intact families, are almost twice as likely to exhibit antisocial behavior."²⁸⁰ The popular press continually celebrates the link between poverty, crime, youth gangs, and drug trafficking.²⁸¹ Both liberals and conservatives focus particularly on the link between African American criminality and poverty.²⁸²

The Personal Responsibility Act assumes a connection between poverty and criminality. It states that "the likelihood that a young black man will engage in criminal activities doubles if he is raised without a father and triples if he lives in a neighborhood with a high concentration of single-parent families."²⁸³ The best antidote to criminality is therefore conformance to social norms, especially dominant family and work ethic norms. The drafters of PRA assert that "the greater the incidence of single parent families in a neighborhood, the higher the incidence of violent crime and burglary."²⁸⁴ PRA addresses this by directly regulating certain antisocial behavior.²⁸⁵

²⁷⁹ Societal consciousness of this linkage is not new. Even for the policymakers of Tudor England, the idleness associated with poverty is the "mother & rote of all vices, wherby hathe insured & spronge . . . contynual thefts murders & other haynous offences & great enormytes." 22 Hen. 8, c.12 (1530) (Eng.).

²⁸⁰ Rector Statement, *supra* note 126. "As for juvenile crime, . . . '[n]eighborhoods with larger percentages of youth (those aged 12 to 20) and areas with higher percentages of single-parent households also have higher rates of violent crime.'" Moynihan, *supra* note 1, at 24 (quoting a study conducted by Douglas Smith and G. Roger Jarjoura). Thus, poverty does not cause crime; according to this analysis, deviation from traditional family norms leads to both poverty and crime. Poverty reduction, like crime reduction, requires reimposition of the traditional family norm. And institutional poor relief is not the method for achieving this goal.

²⁸¹ Testimonials of reformed drug addicts and criminals are especially appreciated. See Nathan McCall, *Makes Me Wanna Holler*, NEWSWEEK, Feb. 7, 1994, at 46. On the lure of the "Superfly" culture, see Jerrold K. Footlick, *White Fear, Black Crime*, NEWSWEEK, Oct. 23, 1978, at 134. Ken Auletta and George Gilder have also stressed that the provision of jobs alone will not be enough to return children and their mothers to a lifetime of productivity unless the cultural and economic norms of poverty, which views crime as a more attractive source of income, are overcome. See AULETTA, *supra* note 72, at 275; Gilder, *supra* note 38, at 80-82. Liberal commentators, while perhaps more sympathetic, still see a strong connection between poverty and crime. Though their analysis is less culturally oriented, they still place heavy emphasis on education and job training. See TASK FORCE ON POVERTY, *supra* note 6.

²⁸² See Delgado, *supra* note 236, at 509 (commenting on the social construction of the "problem" of African American criminality).

²⁸³ PRA § 100(3)(o).

²⁸⁴ PRA § 100(3)(p).

²⁸⁵ For example, it provides that states must identify recipients addicted to drugs or

VII. The Trivialization of Race, Gender, and Ethnicity

The assumptions of the static paradigm that guide welfare reform are meant to define a complete universe of ideas.²⁸⁶ Like all paradigmatic thinking, however, this universe is inherently limited and rigid.²⁸⁷ Once the paradigm accepts as "true" a generalized conception of societal ground rules for system building, certain ideas become out-of-bounds or outside the consciousness of the builders.²⁸⁸ For example, one paradigmatic assumption is that unemployment is a volitional act on the part of unemployed paupers; if the unemployed would seek a job, they would find one. The internalization of this assumption makes it difficult to accept any argument that impediments to employment may exist other than individual lack of will. Actual unemployment is characterized as a temporary condition.²⁸⁹ Solutions to joblessness, therefore, would lie with the provision of incentives to seek work. Proposed solutions that imply that unemployment might be caused by a lack of jobs or by refusals of employers to hire applicants because of race, ethnicity, or gender are not seriously considered.

As such, our foundationalist thinking functions like tinted blinders, cutting our vision of other phenomena and rendering us unable to "see" facts that cannot be reconciled with the core assumptions of the paradigm. The results can be tragic. Let us look more closely at two aspects of this tragedy—the blindness of poor relief to issues of race, gender, and ethnicity and the effect of "neutral" principles of poor relief on women.

A. Indifference to Race, Gender, and Ethnicity

Among the most important "facts" ignored by the static paradigm are that questions regarding the effect of race, gender, and ethnicity on productivity are ultimately trivialized. These concerns are painted over with words and phrases—"welfare values," "single-mother families," "illegitimacy," or "dependence." Productivity, not productivity maximization, is

alcohol. These recipients, as a condition to the receipt of benefits, must enroll in addiction treatment programs and consent to random drug testing. PRA § 701(a) (amending SSA § 402(a)(35)). Failure to participate in these programs will terminate AFDC benefits but will not preclude eligibility for Medicaid. *Id.*

²⁸⁶ See discussion *infra* part I.

²⁸⁷ See, e.g., Stanley Fish, *Consequences*, 11 CRIT. INQUIRY 433, 437 (1984-1985) (arguing that theory, defined as a procedure whose steps, if they are faithfully and strictly followed, will always yield correct results, is an "impossible project" because "the primary data and formal laws necessary to its success will always be spied or picked out from within the contextual circumstances of which they are supposedly independent.")

²⁸⁸ See STEINBRUNER, *supra* note 22, at 25-27 (1974) (discussing the normative and positive value of paradigmatic thinking as well as the "blinders" that such thinking creates).

²⁸⁹ See Clinton, *supra* note 13. "We have to make welfare what it was meant to be—a second chance, not a way of life." *Id.*

the key. Classism, racism, sexism, ethnocentrism, and heterosexism are merely impediments to full productivity; they do not affect a person's ability to be at least minimally productive. Such questions do not register at all; they have "nothing to do" with welfare.²⁹⁰ Stasis sees at best a secondary connection between these impediments and the plight of the poor. Thus, for example, the fact that lending institutions discriminate against racial and ethnic minorities, who therefore find it harder to start or maintain businesses and communities,²⁹¹ is no excuse for any lack of productivity. If the lending system poses a problem for the poor of color, they are expected to find some means of resolving it themselves.²⁹² And if they cannot, then they need not be entrepreneurs—they can be dishwashers and maids instead. Economic discrimination of this kind is a matter of indifference. The assumptions of the static paradigm presuppose racial, gender, and ethnic neutrality, but not because such neutrality exists. Rather, the paradigm does not even register the *possibility* of the absence of neutrality in the socioeconomic ordering and its subsequent effect on the burden of governmental relief.

The ostensible neutrality of the paradigm perversely provides a justification for segregation on the basis of status—race, gender, and ethnicity. For example, both liberals and traditionalists substitute race, gender, and ethnicity for poverty. When we debate issues of poverty, we debate issues of race, gender, and ethnicity.²⁹³ "In toto, more whites and Hispanics than blacks are on AFDC, but most voters associate welfare with the broken families and crime of the black inner-city poor. It is this image [that]

²⁹⁰ Thus, Lawrence Mead can insist that African American methods of protesting racism such as the expression of "hostility by devious refusals to cooperate, a passivity that infuriates whites—as it is intended to—without challenging them directly" make them far more "vulnerable to poverty." MEAD, *supra* note 28, at 157, 148. This, in turn, amounts to a deliberate secession from the culture and social life of the nation as a whole, which "is no less threatening to the country than the more formal rupture in 1861." *Id.* at 246; see also MURRAY, *supra* note 28, at 156–64 (discussing hypothetical couple, Harold and Phyllis).

²⁹¹ See Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights, and Substantive Racial Justice*, 107 HARV. L. REV. 1463 (1994) (arguing that internalization of economic foundationalism in the form of "neoclassical economic ideology" must inevitably lead to economic disempowerment of poor communities); Brian Porter Zidek, Note, *Discrimination in Lending: Community Adaptations and Government Responses*, 1 GEO. J. ON FIGHTING POVERTY 460 (1994).

²⁹² Thus, poor communities have begun to rely on credit unions and community development banks to meet their need for capital. See Zidek, *supra* note 284, at 466–69. But to the extent that such self-help relies on concepts such as affirmative action in investment or antidiscrimination policies (treating all borrowers equally), disempowered communities will remain economically marginalized. "To the extent that it accepts as given the institutional structures of American life (but for racial disparity), affirmative action reinforces the legitimacy of the very institutions that effectively disempower African-American and other non-elite communities." Taibi, *supra* note 284, at 1468.

²⁹³ Compare MASSEY & DENTON, *supra* note 44 and HACKER, *supra* note 44, at 61 with KAUS, *supra* note 192, at 105–09 and MURRAY, *supra* note 28, at 53–55.

drives the politics of welfare."²⁹⁴ On the one hand, with the interchangeability of race, gender, or ethnic traits for poverty, we recognize a certain level of deliberate artifice in the way in which we construct our common conceptualizations of the poor.²⁹⁵ On the other hand, we cannot help ourselves. Interchangeability is a *conclusion* as well as a *process* by which we can find affirmation for our characterization of the "average" person of color as culturally incapable of the productivity which is the hallmark of Anglo-European, Judeo-Christian culture.²⁹⁶

The acceptance of the substitutability of race or gender or ethnicity for poverty provides the lens through which we can construct theories about the permanence of poverty—the apocryphal "cycle of poverty."²⁹⁷ These theories posit that, for some poor families, receipt of welfare is not a temporary state but a chronic condition. Consider the following passage in the light of its characterization of poverty as a trait inherent to groups of poor persons:

A second key problem in welfare policy is long-term dependence: 65 percent of the 4.3 million families currently on AFDC will stay on for over 8 years; 82 percent will be on for over five years. Only 7 percent will receive welfare for less than two years This pattern of dependence is passed from one generation to another. With all other socioeconomic variables held constant, being raised in a single-parent AFDC family doubles the probability that a woman will give birth to a child out of wedlock and triples the number of years that a woman would receive AFDC as an adult.²⁹⁸

The Personal Responsibility Act and WARA evidence the necessity of trivialization of race, gender, and ethnicity. Trivialization here implies

²⁹⁴ Whitman & Cooper, *supra* note 6, at 28, 29 (quoting sociologist Nathan Glazer).

²⁹⁵ On the social construction of poverty and its political, economic, and social usefulness for the goals of conventionally productive elements of society, see Gans, *supra* note 41. For an angry discussion of the real effects of this construction, see generally HACKER, *supra* note 44.

²⁹⁶ See, e.g., DAVID T. ELLWOOD, POOR SUPPORT: POVERTY IN THE AMERICAN FAMILY (1988); JENCKS, *supra* note 28 (liberal view of social conservative); MEAD, *supra* note 28 (traditionalist view). But this view is not universally held. Consider the study of welfare reform in New York State undertaken with the direction of Mary Jo Bane and Donna Shafala, two of the principal authors of the Clinton Plan (along with David Ellwood) TASK FORCE ON POVERTY AND WELFARE, *supra* note 6.

²⁹⁷ Note, however, the lack of universal agreement on the implications of empirical studies of poverty. See, e.g., HAVEMAN, *supra* note 79; MARMOR, *supra* note 47. Even liberal commentators internalize notions of the "cycle of poverty." See, e.g., JENCKS, *supra* note 28.

²⁹⁸ Rector, *supra* note 21, at 283–84 (citing, in part, HOUSE COMM. ON WAYS AND MEANS, OVERVIEW OF ENTITLEMENT PROGRAMS: 1992 GREEN BOOK 685 (1992)).

dominance and social stability. Race, gender, and ethnicity are thus trivialized to the extent that the basis of poor relief theory negatively impacts members of nondominant groups. Race, gender, and ethnicity are not trivialized, however, to the extent that these characteristics can be linked to personal or group failings causing poverty. Poverty, education, work, and adherence to the social and cultural norms of dominant society are all closely linked and are all additionally linked to race, gender, and ethnic difference. This linkage compels a conformity which may be tinged with unpleasant class, racial, and ethnic overtones.²⁹⁹ Conformance to dominant economic mores is deemed to be a valuable positive good from the perspective of dominant society. For those who face greater obstacles to productivity, however, the cost may seem greater than the gain.

B. Women and the Burden of Poor Relief

The blindness of poor relief to issues of race, gender, and ethnicity, and its perverse use of such categories to *judge* and to *segregate*, create burdens which fall heavily on women. Conformity, traditional morality, and isolation have combined to force a reevaluation of the status of poor women who procreate without the benefit of marriage. Women are supposed to breed and raise their children while their ever-present husbands maintain them. Any deviation from this formula implies sin, or, in the more psychological terms of our own century, a social or pathological deviance that is detrimental to the woman (who becomes a thief—a “welfare queen”), her children (who become criminals), and society in

²⁹⁹CHARLES MURRAY & RICHARD HERRENSTEIN, *THE BELL CURVE* (1994). The authors argue that the underclass consists of people who are not part of the cognitive elite and are passing their genetic disadvantages to their children. George Gilder describes the welfare culture:

Like other fatherless youths, black boys are less responsible, less able to defer gratifications, less interested in achievement, more prone to crime, and, even, as other studies have shown, lower in I.Q. than boys from intact families of either race.

GILDER, *supra* note 38, at 80–81. This objectification of welfare or ghetto culture has a long tradition in the social sciences. Oscar Lewis describes the traits commonly thought to be shared by the poor that may be responsible for their own inability to overcome their miserable economic conditions:

Other traits include high incidence of maternal deprivation, of orality, and of weak ego structure; confusion of sexual identification; lack of impulse control; strong present time orientation, with relatively little ability to defer gratification and to plan for the future; sense of resignation and fatalism; widespread belief in male superiority; and high tolerance for psychological pathology of all sorts.

Oscar Lewis, *The Culture of Poverty*, in *ON UNDERSTANDING POVERTY* 187, 192 (Daniel P. Moynihan ed., 1969).

general (which is destabilized).³⁰⁰ The suggestion that the means to success and upward mobility are denied to poor mothers on the basis of racism, sexism, and/or ethnocentrism is rejected as the system single-mindedly focuses on these women's ability or willingness to work—on the conduct that makes single, poor mothers "bad girls."³⁰¹

The Work and Responsibility Act disguises the imperative of assimilation for poor women with positive incentives rather than with naked compulsion.³⁰² The difference between WARA's methods and those of PRA is merely the difference of a velvet glove on a metal fist. The Personal Responsibility Act uses the same methods of compulsion as WARA, only with far less self-consciousness. The Personal Responsibility Act's provisions for single poor mothers are based on the tenet that "marriage is the foundation of a successful society"³⁰³ and is essential to the promotion of "the interests of children and society at large."³⁰⁴ The proof on which PRA relied is that "the 1-parent family is 6 times more likely to be poor than the 2-parent family"³⁰⁵ and that the children of those single-parent families will be socially and economically defective.³⁰⁶ The solution to single mothers' poverty is not the freedom to raise children, but the medicine of work. "[A]dults who leave AFDC for paid employ-

The battle over the nature of poor relief programs is at once a struggle to assimilate culturally and socially marginalized groups and a reflection of the general struggle for power in America as between a white, European Protestant majority and a host of other groups, each increasingly conscious of its identity and anxious to translate this self-awareness into tangible power over social wealth and the conditions of its distribution. This conformity implies value judgments based on class, race, gender, and ethnicity. PRA reflects this power struggle through a program of negative incentives to behavioral conformity. While WARA is cloaked in a liberal rhetoric that rejects the dominance of any one group, its programs ultimately depend for their success on the very conformity to core cultural norms that its rhetoric rejects. But, for those receiving poor relief, the price of nonconformity may be abandonment. In this sense, the lifetime benefit caps of WARA and PRA may serve as the most damaging form of race, gender, and ethnic trivialization.

³⁰⁰ Cf. KAUS, *supra* note 192, at 103–09. The obstacles and contradictions are no less noxious for people of color.

³⁰¹ On the interplay of images of motherhood and poor relief policy, see Fineman, *supra* note 46.

³⁰² WARA focuses on demonstration projects teaching conformity to the rules of traditional family organization. See *supra* part VIA. For an interesting analysis of the marriage of liberals and conservatives in the last decade, see Lawrence E. Lynn, Jr., *Ending Welfare Reform as We Know It*, 15 AM. PROSPECT, 83, 89–91 (1993). Critical race theorists have best explained the discomfort of liberals with their own agenda as the consciousness of the disjunction between what they say and what they do. "Long ago, empowered actors and speakers enshrined their meanings, preferences, and views of the world into the common culture and language. Now, deliberation within that language, purporting always to be neutral and fair, inexorably produces results that reflect their interests." Richard Delgado & Jean Stefancic, *Hateful Speech, Loving Communities: Why Our Notion of "A Just Balance" Changes So Slowly*, 82 CAL. L. REV. 851, 861 (1994) (discussing hate speech rules).

³⁰³ PRA § 100(1).

³⁰⁴ PRA § 100(2).

³⁰⁵ PRA § 100(E).

³⁰⁶ PRA § 100(F)–(L).

ment are on the ladder that can lead to greater future income, and their children have a role model for the societal value of self-sufficiency."³⁰⁷ Welfare reform according to WARA and PRA exemplifies the self-confidence of a dominant culture that is satisfied with the righteousness of its foundations and impatient with differences in behavior or outlook which it might *tolerate*, but which it will not *support*.³⁰⁸

The force of conformity, the centrality of traditional morality, and the segregation of a subset of paupers deemed different from the rest of the population has transformed the status of poor women who have illegitimate children. American welfare programs have begun to distinguish more clearly between worthy and unworthy women with young children. President Clinton provides a good example of the ideal AFDC recipient: a woman who has left AFDC to work.³⁰⁹ The authors of PRA share that view.³¹⁰

Society will continue to reward the worthy (ultimately with work) and is free, therefore, to coerce "bad" AFDC recipients through public (and private) opprobrium and institutional sanctions. The difference between "liberal" and "conservative" plans is the length to which each is prepared to go to achieve this result. The Personal Responsibility Act is more ready to compel. The Work and Responsibility Act reflects a preference for cajolery.³¹¹ As President Clinton has said, "I have no problem with punishing bad behavior, or the refusal to be a worker or a student or a responsible parent."³¹² It is not an accident that the poor on relief feel embarrassed and alone or that their children perceive a stigma associated with welfare receipt. That isolation, we hope, provides a powerful inducement to work. In other words, we encourage in workers a feeling of pride that we deny in welfare recipients—the pride associated with self-sufficiency. As President Clinton retells a story: "And then a Governor said, 'Well, can you tell us what the best thing about being in a full-time job is?' She said, 'Yes, sir; when my boy goes to school, and

³⁰⁷ PRA § 201(a)(3).

³⁰⁸ This result should not strike us as either "wrong" or strange. The alternative to the current paradigm is not the absence of paradigm, but its replacement by another, the substructure of which will be as problematic for those who do not "fit in" as the current one.

³⁰⁹ See Clinton, *supra* note 4. This theme was revisited by President Clinton in his 1995 State of the Union speech in which he identified the model welfare mother: "Lynn Woolsey, who worked her way off welfare to become a Congresswoman from the State of California." Clinton, *supra* note 13.

³¹⁰ "[W]e require that welfare beneficiaries work so that they can develop the pride and self-sufficiency that comes from holding a productive job." CONTRACT WITH AMERICA, *supra* note 9, at 65.

³¹¹ "And I know all the arguments pro and con, and I have read and thought about this for a long time. I still don't think we can in good conscience punish poor children for the mistakes of their parents." Clinton, *supra* note 13.

³¹² *Id.*

they ask him, what does your mama do for a living, he can give an answer."³¹³

For the moment, *dominant culture is inextricably intertwined with the static paradigm*. Its assumptions provide the base from which moral judgments are made, political and economic stability is measured, and conformity is sought. Both liberals and conservatives are grounded in this substructure and offer only two alternatives for the poor—either conform or be abandoned. Conservatives believe institutional relief contributes to the poor's resistance to assimilation.³¹⁴ Although liberals have more faith in institutional relief, they insist on conformity as well. Consider the statement of Senator Moynihan, quoting, in part, President Clinton:

"No nation," said the President, "has ever found a substitute for the family." For a young woman who is thinking of having a baby and going on welfare, the new plan contains a simple message: you will have to live at home and stay at school, and after you graduate, you will have to go to work.³¹⁵

We have constructed our poor relief systems from our basic notions of how people ought to conduct themselves. We called it righteousness in the past,³¹⁶ we call it middle-class values today,³¹⁷ and we sanction those who violate its taboos. "The government can fix poverty that stems from

³¹³ Clinton, *supra* note 4, at 8.

³¹⁴ The authors of the *Contract With America* perhaps explain it best:

Currently, the federal government provides young girls with the following deal: Have an illegitimate baby and taxpayers will guarantee you cash, food stamps, and medical care, plus a host of other benefits. As long as you stay single and don't work, we'll continue to give you benefits worth a minimum of \$12,000 per year (\$3,000 more than a full-time job paying a minimum wage).

CONTRACT WITH AMERICA, *supra* note 9, at 75.

³¹⁵ 140 CONG. REC. S7264 (daily ed. June 21, 1994) (statement of Sen. Moynihan).

³¹⁶ People who did not work for their "bread" sinned against the laws of God. *Genesis* 3:17-19. The cornerstone of the poor relief provisions of early Protestant leaders in both Europe and the American colonies equated idleness with sin and crafted their poor relief systems to provide as little as necessary for these unworthy poor. See, e.g., Martin Luther, *Ordinance for a Common Chest*, in *SOME EARLY TRACTS ON POOR RELIEF* 84, 92-93 (F.R. Salter ed., 1926) (first published 1523); Riesenfeld, *supra* note 20; Ulrich Zwingli, *Ordinance and Articles Touching Almsgiving*, in *SOME EARLY TRACTS ON POOR RELIEF*, *supra*, at 99-101 (first published 1525).

³¹⁷

There are people whose poverty is due to external circumstances but who, even so, retain what are essentially middle class values. For this group, social and economic programs may be all that is needed. But there is another group of 'the poor' whose poverty is caused—or at least exacerbated and entrenched—by their own self-destructive attitudes and behavior. For them, social programs, day care and job training will make very little difference.

a lack of opportunity, but not that which stems from a lack of values."³¹⁸ Poor relief serves as the legislative expression of our basic assumptions about the way in which our society and economy best operate and of the most efficient relationship between society and its population. It reflects our judgment that there is no cause for poverty severe enough to require governmental relief—be it racism, sexism, or ethnocentrism—other than the behavior of the poor themselves.

VIII. Conclusion

*Are you a good witch or a bad witch?*³¹⁹

I have tried to show how our paradigmatically limited approaches to poor relief constitute a self-enclosed set of cultural imperatives: the able bodied must work, children are to be conceived of as adult luxury goods to be acquired only by those who can afford them (they ought not to be bought on credit supplied by others), the able bodied can find work if they seek it, sustained unemployment is an individual failing, and, finally, sustained unemployment is a dangerous form of social and economic deviance that poses a threat to social stability. The so-called radical modifications of WARA or PRA are meant to affirm these basic assumptions:

[Welfare] started for the right common purpose of helping people who fall by the wayside. And believe it or not, it still works that way for some—people who just hit a rough spot in their lives and have to go on public assistance for awhile, and then they get themselves off and they do just fine.³²⁰

We do not propose by any of these welfare programs to overturn our sociocultural substructure.

Change at the margin, then, is all that is left us. Differences between poor relief proposals are based on the amount of wealth to be transferred and social norms to be imposed. We give some people more or less poor relief in the hope that they will adopt certain basic social and economic norms, and we fight about the manner and extent to which we can compel the adoption of these norms or show disapproval for failure to adopt them. In a larger sense, then, WARA and PRA are iterations of a force the

Robert L. Woodson, the head of the National Center for Neighborhood Enterprise, *quoted in* Raspberry, *supra* note 47, at News 9; *cf.* Ross, *supra* note 41.

³¹⁸ Woodson, *quoted in* Raspberry, *supra* note 47, at News 9.

³¹⁹ THE WIZARD OF OZ (Metro-Goldwyn-Mayer 1939) (as delivered in the movie by Glinda the Good Witch of the South).

³²⁰ Clinton, *supra* note 4, at 2.

dynamic of which was set long ago, and the expression of which continues to haunt modern attempts to reform poor relief at the federal level. Will any of these proposals significantly modify American poor relief? Probably, although their most significant modification will be to treat both able-bodied men and women as unworthy poor—unworthy, that is, of generous amounts of aid.³²¹ Will either proposal “end welfare as we know it?” Absolutely not; both of these proposals serve to confirm millennia-old notions of the “natural” and proper purpose of poor relief. Both proposals signal a return to the good old days of the Elizabethan Poor Laws and, through these, to the reaffirmation of the core concepts of ecclesiastical institutional charity.³²²

The Work and Responsibility Act and PRA can best be understood as renewed attempts to fine-tune society's sanctions for violation of conduct taboos; nothing affecting fundamental cultural norms will be changed by reform. Indeed, both the President³²³ and the leaders of the opposition political party³²⁴ have told us as much. At the same time, the proposals confirm and solidify the change in attitude that has occurred over the past thirty years respecting cultural expectations of poor women. We have concluded that poor women make awful stay-at-home mothers. The proof of this conclusion is our rhetoric about the culture of poverty and inter-generational poverty.³²⁵ The state is deemed better able to teach the “products” of the poor's indiscriminate breeding habits the cardinal virtues of dominant culture: (1) men work, women marry (and may also work); (2) material success is a product of the efforts of the individual; and (3) there is work for everyone who seeks it.³²⁶ Poor women are told to

³²¹ I do not propose to engage in a detailed analysis of the implementation potential of WARA or PRA. For this purpose, see, for example, BANE & ELLWOOD, *supra* note 6, at 143–62 (on WARA). I suspect, however, that each of these programs will be successful in changing the bundle of benefits available to recipients, altering the characteristics of the eligible pool, extracting more work out of some of that pool, and shifting the responsibility for the maintenance of those who fail to abide by the program's requirements onto other (nongovernmental) providers of aid to the poor.

³²² I have previously argued that there is a direct connection between the Elizabethan Poor Laws, the mythical source of traditional American poor relief, and the institutional poor relief systems developed by the Roman Catholic Church prior to the Protestant Reformation. The Elizabethan Poor Laws, adopted by the English colonies in America, essentially comprise a secularized version of the religion-based institutional system with an increased focus on punitive and work incentive provisions. See Backer, *supra* note 15.

³²³ Recall that the purpose of the Reform is to align AFDC with “core values of American society: work, family, opportunity, responsibility.” WARA DETAILED SUMMARY, *supra* note 93, at 1.

³²⁴ CONTRACT WITH AMERICA, *supra* note 9, at 67–69.

³²⁵ 140 CONG. REC. S7264 (daily ed. June 21, 1994) (statement of Sen. Mitchell) (“Welfare receipt ought to be temporary, . . . not a way of life as it has become for too many families.”).

³²⁶ States remain free to devise the contents of day-care programs but may tie such programs into federal programs such as Head Start. See WARA DETAILED SUMMARY, *supra* note 93, at 27. One of the reasons why many welfare “advocates” oppose mandatory

identify their breeding partners—so that the state will exact a “toll” (child support) on them for impregnating the state’s “charges.” Poor women are also told to go to work. The transformation of poor relief is radical only so far as that an entire group of the poor—mothers raising young children without a husband—has been relegated from the exalted category of “worthy poor” to that of “undeserving.”

The sociocultural imperatives that drive us to our particular approach to poor relief is neither inherently “good” nor “evil.” Yet “good” and “evil” are implicit in the discussion; they color the way in which we interpret the inescapability of paradigmatic thinking for the construction of systems of poor relief. For those who view traditional cultural taboos as evil and who desire to impose a different set of cultural norms on society, this Article may well provide an indictment on the feebleness of legislative reform and the hypocrisy of the rhetoric of reform. On the other hand, for those who share the traditional values represented by the assumptions of the static paradigm, this Article may provide evidence of the necessity of harshness in the treatment of nonconformists and herald a way of maximizing the effectiveness of poor relief. Either way, poor relief remains a significant tool of cultural conformity and social control.

The rhetoric is the difference, and the problem. In the fifth century, we donated some coins and cursed the beggar for his or her sin; in the twentieth century, we are not doing anything more substantial to eliminate poverty than to *insist* that we are doing something different. We hide from our own fundamental notions of poverty and its relief. We disguise these notions when we impose them on the poor who behave differently from members of the dominant culture. Poor relief is not snake oil—our poor relief policy (however effectuated) cannot eliminate poverty. Yet we continue to indulge in our taste for snake oil. That is the greatest problem of welfare and its reform in the United States today.

work rules may be “on the grounds that they violate basic ideas of choice and self-determination.” ABRAMOVITZ, *supra* note 54, at 366.

