

NOTE

“ONCE MORE UNTO THE BREACH, DEAR FRIENDS”^a: RECURRING THEMES IN WELFARE REFORM IN THE UNITED STATES AND GREAT BRITAIN AND WHAT THE PRINCIPLE OF SUBSIDIARITY CAN DO TO BREAK THE PATTERN

Joseph P. Rompala^{a1}

I. INTRODUCTION

In 1996, President Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act¹ (“PRWORA”) into law and fulfilled the promise to “end welfare as we know it.”² In many ways PRWORA did alter the way in which the American welfare system distributed benefits. In place of an assistance check provided by Aid to Families with Dependent Children (“AFDC”), PRWORA instituted a new system of conditional benefits provided through the Temporary Aid to Needy Families (“TANF”) program.³ Under TANF, states were encouraged to develop programs that reduced the number of individuals on welfare, in part, by moving welfare recipients off direct public assistance and into the work force.⁴ In addition, welfare recipients were limited to receiving funds for only five years during their lifetime.⁵

a. WILLIAM SHAKESPEARE, KING HENRY THE FIFTH act 3, sc. 2. King Henry’s speech before the city of Harfluer, from which this quote is taken, is meant to encourage his army to attempt another frontal assault against the defenses of that city. The purpose of this Note is to suggest that rather than engaging in the same struggle in reforming welfare in the United States again and again, a new approach might save us from, proverbially, “clos[ing] the wall up with our English dead.” *Id.*

a1. J.D. candidate, University of Notre Dame Law School, 2004; B.A., Cornell College, 2001. I would like to thank Professor Vincent Rougeau for providing the inspiration for this Note and for his insightful assistance and commentary. I would also like to thank my friends, especially Kim, Mark Juba, and Julie, for their encouragement during the creation of this work and for their support in my life. Finally, I would like to thank my family for the years of teasing, joking, mocking, and debating, as well for their unconditional love and support, without which I would not be who, or where, I am today.

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

2. Statement By President William J. Clinton Upon Signing H.R. 3734, 32 Wkly Comp. Of Pres. Docs. 1487, (Aug. 26, 1996), *reprinted in* 5 U.S.C.A.N. at 2891-93 (1996).

3. PRWORA §§ 101-116 (codified as amended at 42 U.S.C. §§ 601-617, 619 (2000)).

4. 42 U.S.C. §603(a)(4), (5)(E) (2000).

5. 42 U.S.C. §608(a)(7).

In spite of these radical changes to the mechanics of the American welfare system, some scholars argued that the changes did not represent a radical shift in American welfare policy.⁶ Several legal scholars argued that the provisions of PRWORA, in fact, closely resembled the Elizabethan Poor Laws, which developed in England during the 1500s, as a system of public assistance.⁷

What scholarly works in this area more generally suggested was that the provisions of PRWORA contained neither radically new mechanisms of welfare distribution nor a radically new conception of the poor.⁸ Instead, by implementing PRWORA, America appeared to be reaffirming a historical commitment to a conception of the poor and the acceptable uses of public assistance. In particular, PRWORA reflected a vision that conceived of the poor as being defective, and attempted to use the welfare system to correct those defects by bringing the behavior of the poor in line with that of mainstream society.⁹

During the summer of 2002 the 107th Congress again took up the welfare reform debate. During the course of that debate, two bills—one from the House and one from the Senate—eventually came to embody the focal points of the welfare reform debate as envisioned by both Republicans and Democrats.¹⁰ These two bills, the House's Personal Responsibility,

6. See generally, Larry Cata Backer, *By Hook or By Crook: Conformity, Assimilation and Liberal and Conservative Poor Relief Theory*, 7 HASTINGS WOMEN'S L.J. 391 (1996); Kathleen A. Kost & Frank W. Munger, *Fooling All of the People Some of the Time: 1990's Welfare Reform and the Exploitation of American Values*, 4 VA. J. SOC. POL'Y & L. 3 (1996). But see WILLIAM M. EPSTEIN, *WELFARE IN AMERICA: HOW SOCIAL SCIENCE FAILS THE POOR* 223 (Univ. Wisconsin Press 1997) (arguing that "[w]elfare policy in the United States is curiously undisciplined by any universal assumptions about the causes of poverty," and is therefore the result of political compromise and prevailing political attitudes).

7. See, e.g., Larry Cata Backer, *Medieval Poor Law in Twentieth Century America: Looking Back Towards a General Theory of Modern American Poor Relief*, 44 CASE W. RES. L. REV. 871, 885 (1995); William P. Quigley, Symposium, *Five Hundred Years of English Poor Laws, 1349-1834: Regulating the Working and Nonworking Poor*, 30 AKRON L. REV. 73, 125-28 (1996); William P. Quigley, *Backwards Into The Future: How Welfare Changes in the Millennium Resemble English Poor Laws of the Middle Ages*, 9 STAN. L. & POL'Y REV. 101, 101 (1998). Cf., Larry Cata Backer, Comment, *Los Fingidos y Vagabundos: On the Origins of Personal Responsibility and the Welfare State in Early Modern Spain and its Implications for the Welfare Reform in the United States*, 3 LOY. POVERTY L.J. 1, 1 (1997) (arguing that the American welfare system has roots that extend beyond the Elizabethan period into early Spanish poor relief systems. Professor Backer nevertheless acknowledges that American welfare ideology was filtered through and shaped by the Elizabethan Poor Laws; his larger goal within this work is to extend the historical roots of that ideology to an earlier period.).

8. See *supra* note 7, citing authorities.

9. See, e.g., Mark Neal Aaronson, *Scapegoating the Poor: Welfare Reform all Over Again and the Undermining of Democratic Citizenship*, 7 HASTINGS WOMEN'S L.J. 213, 230-34 (1996); Larry Cata Backer, *Of Handouts and Worthless Promises: Understanding the Conceptual Limitations of American Systems of Poor Relief*, 34 B.C. L. REV. 997, 1055-56 (1993); Larry Cata Backer, *Poor Relief, Welfare Paralysis, and Assimilation*, 1996 UTAH L. REV. 1, 39 (1996). See also Nicole Huberfeld, *Three Generations of Welfare Mothers are Enough: A Disturbing Return to Eugenics in Recent "Workfare" Law*, 9 UCLA WOMEN'S L.J. 97 (1998) (arguing that changes to the welfare system mimic eugenic theory by mandating adherence to particular mainstream values).

10. VEE BURKE, CONGRESSIONAL RESEARCH SERVICE, *WELFARE REFORM: AN ISSUE OVERVIEW*, CRS

Work and Family Promotion Act of 2002¹¹ ("PRWFPA") and the Senate Committee on Finance proposed substitute, the Work, Opportunity, and Responsibility for Kids Act of 2002¹² ("WORK"), tried separately to respond to the successes and failures of PRWORA. Despite many facial differences, the two bills build upon conceptions of the poor that are similar both to those embodied in PRWORA and those contained in the opposing legislation.

As the 108th Congress prepares to revisit the welfare reform debate in the United States¹³, Great Britain continues to reflect on its own experiences in reforming its social welfare system. Facing many of the same concerns over rising costs and growing public dependence on the system that spurred American reform in 1996, Britain sought to balance a commitment to universal social protection with the practical and political realities of the modern world.¹⁴ Using reforms implemented in the United States as models, Britain attempted to strike that balance through the creation of reform programs containing work requirements and time limits. More importantly, in bringing about those reforms, Great Britain, led by the Labour Party, revealed an intellectual willingness to envision the poor as defective, and to use the welfare system to correct those defects.¹⁵

The welfare reforms in both the United States and Great Britain, then, reflect similar modern political commitments to older philosophical understandings of poverty. Those philosophical understandings can be traced back over five hundred years to the Elizabethan Poor Laws. In particular, the centrality to the modern welfare debate of work requirements, and the commitment to self-sufficiency, reflect relatively fixed conceptions of the poor and the function of poor relief.

REP. NO. IB93034, available at http://www.policyalmanac.org/social/welfare/archive/crs_welfare.shtml, (updated Oct. 8, 2002), at 1.

11. Personal Responsibility, Work and Family Promotion Act of 2002, H.R. 4737 [hereinafter PRWFA], 107th Cong. (2002).

12. Work, Opportunity, and Responsibility for Kids Act of 2002 [hereinafter WORK], H.R. 4737, 107th Cong. (2002) (reported, as amended, in the Senate on July 25, 2002) 148 Cong. Rec. S. 7371 (daily ed. July 25, 2002).

13. The 108th Congress has already begun the process of restarting the welfare reform debate with the introduction, in the House, of the Personal Responsibility, Work, and Family Promotion Act of 2003, H.R. 4, 108th Cong. (2003).

14. MINISTER FOR WELFARE REFORM & SEC. OF STATE FOR SOCIAL SECURITY, NEW AMBITIONS FOR OUR COUNTRY: A NEW CONTRACT FOR WELFARE, GREEN PAPER Cm 3805, (hereinafter Green Paper) at 9-16 (1998).

15. For an examination of the relationship between British and American welfare reform and the intellectual basis of the British reforms, see generally, Alan Deacon, *The Green Paper on Welfare Reform: A Case for Enlightened Self-Interest?* 69 POL. Q. 306 (July-Sept., 1998); Alan Deacon, *Learning from the US? The Influence of American Ideas upon 'New Labour' Thinking on Welfare Reform*, 28 POL'Y & POL. 5 (Jan., 2000); Mark Hyde et al., "Work for Those That Can, Security for Those That Cannot": *The United Kingdom's New Social Security Reform Agenda*, 52 INT'L SOC. SECURITY R. 69 (Issue 4, 1999); Simon Prideaux, *New Labour, Old Functionalism: The Underlying Contradictions of Welfare Reform in the US and the UK*, 35 SOC. POL'Y & ADMIN. 85 (March, 2001).

The similar historical foundations of welfare reform in both the United States and Britain, as well as the similarities in the present day methods of reform, are useful to consider as the United States reopens the welfare reform debate. Examination of the British system will assist in illuminating two points. First, that the particular methods of reform currently under consideration in the United States have, in similar contexts, been tried and found not entirely successful. Second, because the acceptance of those principles affects the choice of mechanisms used to realize those principles, and because those mechanisms appear to consistently fail, a deeper philosophical flaw may exist within the American treatment of welfare. Specifically, the emphasis on work requirements and absolute self-sufficiency within American welfare policy ultimately produces only variations on the theme without adequately addressing the underlying problems facing the poor.

In order to illuminate these points Part II of this Note will begin by examining the key provisions of both PRWFPA and WORK, and more generally the welfare reform measures implemented in Great Britain, in order to establish the basis for a later examination of policy goals underlying American welfare legislation.

Part III of this Note will briefly describe the arguments that link the modern American conceptions of welfare systems to historical antecedents. Specifically, this Note will examine those arguments that expose the philosophical connections between American welfare reform and the Elizabethan Poor Laws. Part III will then attempt to place PRWFPA, WORK and the British reforms within the larger framework of that historical analysis in order to show that all three share common conceptions of poverty, the poor, and the role of work requirements in poor relief systems.

Part IV of this Note will compare the proposed American legislation with existing reform measures—specifically PRWORA and the changes in the British system—in order to suggest that both PRWFPA and WORK are traveling down legislative pathways which have not only been tried, but have not been entirely successful in achieving their purposes.

Part V of this Note will examine the principle of subsidiarity, both as a principle in the social teachings of the Roman Catholic Church and as embodied in the European Union, as a possible framework for evaluating American welfare. This Note will then briefly examine the American welfare proposals, and in particular their work requirements, within that framework.

Part VI of this Note will, in the form of a conclusion, briefly sketch the contours of what an American welfare system that conforms to the principle of subsidiarity might look like. Part VI will then argue for a fundamental shift in American thinking on the acceptable uses of welfare away

from stigmatizing the poor towards respecting the freedom and dignity of individuals.

II. THE REFORM MEASURES

A. Personal Responsibility, Work and Family Promotion Act of 2002

After a short period for consideration, the House passed PRWFPA on May 16, 2002.¹⁶ The vote in favor of the bill was 229-197¹⁷ along party lines in what was described as a “polarized House.”¹⁸ In a move that caused much controversy and political rancor, the Republican leadership refused to allow the Democrats, or members of their own party, to offer floor amendments to the bill.¹⁹ On the same day, House Republicans defeated a substitute bill proposed by Representative Benjamin Cardin (D-MD) that included provisions that increased childcare spending and contained a more flexible definition of “work.”²⁰

The provisions of PRWFPA effectively increase the pressure on states and individuals to accelerate participation in the welfare to work reforms begun under PRWORA. At its core, PRWFPA requires that a forty-hour work week become the standard for most welfare recipients.²¹ These forty-hours may be split so that individuals need to spend only twenty-four hours per week in required “direct work activit[ies]” in order to receive benefits.²² One of six specified activities can constitute “direct work activity.”²³

In the alternative, PRWFPA allows states to consider a welfare recipient to meet the twenty-four hour per week work requirement if that individual is engaged in one of five qualifying non-work activities.²⁴ These activities, however, will only meet the work requirement for a period of three months within any twenty-four month period in which the individual is re-

16. 148 CONG. REC. H. 2594 (daily ed. May. 16, 2002)

17. 148 CONG. REC. H. 2594 (Roll No. 170) (daily ed. May 16, 2002); Karen Masterson, *Welfare Bill Wins in U.S. House; Work Focus Not as Popular in Senate*, HOUSTON CHRON., May 17, 2002, at 1.

18. Amy Goldstein and Juliet Eilperin, *House Clears GOP-Backed Welfare Bill; Senate Proposals Presage a Clash*, WASH. POST, May 17, 2002 at A01.

19. *Id.*

20. Masterson, *supra* note 17.

21. PRWFPA §110.

22. *Id.* at §110(d).

23. *Id.* PRWFPA provides that the six allowable activities are: unsubsidized employment, subsidized private sector employment, subsidized public sector employment, on-the-job training, supervised work experience and supervised community experience. *Id.*

24. PRWFPA §110(d). The first four of these qualifying activities—substance abuse treatment, rehabilitation, work related education, and job searches—either relate directly to finding work, or preparing an individual to enter work. *Id.* A recipient may also meet the requirement with “any activity that addresses a purpose specified in section 401(a) [of PRWORA].” *Id.*

ceiving TANF funds.²⁵

In addition to the stricter requirements on individual eligibility imposed by PRWFPA, the bill includes a provision that requires states, in order to continue to receive federal funding for welfare programs, to increase the percentage of welfare recipients who are working from fifty-percent in 2003 to seventy-percent in 2007.²⁶

Finally, PRWFPA promotes programs designed to assist in “encouraging and supporting healthy marriages and married fatherhood through such activities as premarital education . . . marital therapy, couples counseling, divorce education, . . . divorce mediation.”²⁷ In addition, the bill calls for the development of programs designed to reduce the risks of child and domestic violence.²⁸

B. The Work, Opportunity, and Responsibility for Kids Act of 2002

After passage through the House, PRWFPA was received in the Senate on May 16th, 2002 and then referred to the Committee on Finance.²⁹ Shortly before PRWFPA was referred to the Committee on Finance, a Senate bill, the Work and Family Act of 2002³⁰ (“WFA”), was also referred to that committee.³¹ WFA mirrored many of the provisions of PRWFPA such as the inclusion of a forty-hour work week.³² At the same time, however, WFA also included increased funding for the support programs³³ and educational opportunities³⁴ above those provided in PRWFPA.

Although WFA received initial support from some predominate Senate Democrats,³⁵ support for the bill languished under bipartisan pressure,³⁶ and intense outside lobbying.³⁷ In place of WFA, the Committee on Finance chose to amend the House’s version of PRWFPA and eventually reported

25. PRWFPA §110(d).

26. *Id.* at §110(a). To achieve the seventy percent level of participation PRWFPA would raise the participation requirement rate by five percent per year over the four years.

27. PRWFPA §119(b).

28. *Id.*

29. 148 CONG. REC. S. 4490 (daily ed. May 16, 2002).

30. Work and Family Act of 2002 [hereinafter WFA], S. 2524, 107th Cong. (2002).

31. 148 CONG. REC. S. 4387 (daily ed. May 15, 2002).

32. WFA §107.

33. *See, e.g.*, WFA §108 (mandating increases in funding for child care).

34. WFA §§110, 111.

35. WFA. Among those who sponsored the bill were Evan Bayh, Thomas Carper, Bob Graham, Joseph Lieberman, and Hillary Clinton.

36. S. REP. NO. 107-221, at 2-7 (2002).

37. For instance, Sen. Hillary Clinton, who originally supported WFA, had her New York home bombarded with waffles by protesters who insisted that she was “waffling” on campaign promises to support welfare recipients. Press Release, National Campaign for Jobs and Income Support, NYC Welfare Recipients Toss Waffles on Hillary Clinton’s Lawn: Activists Demand that Senator Stop “Waffling on Welfare” (May, 21, 2002), available at <http://www.nationalcampaign.org/tanf/preleases/pr15.htm>.

WORK to the Senate as a substitute bill.³⁸

The major facial difference between WORK and PRWFPA is that WORK maintains the thirty-hour work week established by PRWORA.³⁹ WORK does, however, raise the number of hours that an individual must participate in priority work activities from twenty per week to twenty-four per week.⁴⁰

In addition to maintaining the thirty-hour work week, WORK incorporates the nine priority work activities that could be counted toward fulfilling the work requirements under PRWORA.⁴¹ WORK further expands the definition of work participation above that contained in PRWFPA by increasing the length of time that vocational training and job searches can constitute work.⁴² Like PRWFPA, WORK allows participation in certain “rehabilitative services” to constitute some of the hours necessary to meet the minimum per-week work participation requirement.⁴³ In addition, WORK provides that individuals, under certain circumstances and with some restrictions, may be considered to meet the work requirement if they are engaged in a two or four year degree program.⁴⁴

The Senate bill also attempts to reduce the pressure on states to move individuals from welfare to work by reducing the actual number of individuals the state must move off of public assistance in order to qualify for federal funding. Although WORK, like PRWFPA, requires that states achieve a seventy-percent work participation rate over five years,⁴⁵ WORK is structured in such a way that states may claim families that fulfill part of, but not all, the work requirement as constituting a “percent of a family” for the calculation of the participation rate.⁴⁶ This has the general effect of making it easier for states to meet the increasing participation rates without forcing individual welfare recipients who are only partially employed—but still engaged in other “self-help” programs—off of public assistance.

38. S. REP. NO. 107-221, at 1.

39. WORK §202(d).

40. *Id.*

41. WORK §202(e). Those activities include: unsubsidized work, subsidized private employment, subsidized public employment, work experience, on-the-job training, job searches, community service, vocational training, and providing care for child or community service participant.

42. WORK §202(g).

43. WORK §202(e). These services can include programs “such as adult basic education, participation in a program designed to increase proficiency in the English language, or [in some cases] substance abuse programs.”

44. WORK §202(g). An individual can be counted as engaged in work only if the state chooses to establish a post-secondary education program as provided for in §105(e) the bill. Under the provisions of §105(e), a state may use funds to provide assistance and benefits for eligible welfare recipients engaged in post-secondary education programs. States, however, may only consider persons in such programs as engaged in work up to a limit of ten percent of recipient families. WORK §202(g).

45. WORK §202(a).

46. WORK §202(d).

Finally, the Senate bill contains provisions funding support services and strengthening families. WORK increases the available funds for child-care by five and one-half billion dollars over a period of five years.⁴⁷ Similar to PRWFPA, WORK incorporates provisions that fund programs promoting healthy marriages and the development of relationship skills.⁴⁸ Unlike the House version, however, WORK makes participation in such programs largely voluntary.⁴⁹

C. Welfare Reform in Great Britain

The current round of welfare reform in Great Britain began in the mid-1990's with the ascendancy of the Labour Party to power within parliament. Facing the same problems that confronted many welfare systems such as prohibitive costs, growing public dependence on the system, and systemic abuse and fraud, but still concerned over the problem of increasing social inequality,⁵⁰ the Labour Party felt that it was confronted with a momentous choice over the future course of welfare in Britain.⁵¹ Unwilling to turn the system into a "residual safety net for the poorest and most marginalized,"⁵² but equally unwilling to continue in the same direction without change, the Labour Party instead proposed a "third way."⁵³ This third way would ultimately create a welfare system that was consistent with the earlier vision of the Beveridge system's goal of providing comprehensive, guaranteed support, but would also reshape the modern system in order to promote "empowerment, not dependency."⁵⁴

At the heart of the third way was the belief that both the government and the people possessed both social rights and social responsibilities.⁵⁵ In that context, welfare reform became a process of redefining the social contract between the government and the people.⁵⁶ The social contract ultimately settled on by the Labour Party acknowledged the government's responsibility to "support those unable to work so that they can lead a life of dignity and security" but demanded that the people accept the duty to "take

47. WORK §103(a). See also BURKE, *supra* note 10, at 5 (noting that increase represents a much larger increase than contained in PRWFPA or the President's proposal).

48. WORK §301.

49. WORK §301. WORK actually uses the term "voluntary" in describing the programs, whereas PRWFPA does not. PRWFPA §103. This choice of wording suggests that the programs funded under PRWFPA could be compulsory in nature.

50. Green Paper, *supra* note 14, at 9-12.

51. *Id.* at 1-2.

52. *Id.* at 2.

53. *Id.* at 19-20.

54. *Id.* at 18-19.

55. Deacon, *Learning from the US?*, *supra* note 15, at 11-12.

56. Green Paper, *supra* note 14, at 80.

up the opportunity to be independent if able to do so.”⁵⁷ In light of this redefinition of the contractual relationship between the state and the citizen, and because of a vision of the contract’s goal as promoting individual fulfillment,⁵⁸ the Labour Party sought to rebuild the welfare system around work.⁵⁹

In order to facilitate the mutual compliance of both the government and the citizens to the terms of the contract, the Labour Party introduced a series of reforms to the welfare system. The most significant of these reforms, for the purposes of this Note, were the “New Deal” programs and the Welfare Reform and Pensions Act of 1999.⁶⁰ Both of these programs sought to redefine the obligations of the government and the citizen by conditioning the receipt of certain forms of benefits on compliance with work requirements, while at the same time providing numerous support services designed to enhance the ability of individuals to achieve self-fulfillment.

In particular, the New Deal built upon the State of Wisconsin’s welfare-to-work program⁶¹ to produce a benefits system through which individuals could be transitioned from unemployment benefits into the labor force.⁶² The original series of New Deal programs contained a program targeted at reducing the number of those who were unemployed and receiving welfare benefits between the ages of sixteen and twenty-four.⁶³ Successive New Deal programs targeted single parents, the disabled, the chronically unemployed and the partners of the unemployed.⁶⁴ Although each program differs somewhat in the precise mechanism of operation, each is consistent with the general goal of assisting people to find meaningful employment.⁶⁵

The New Deal for Young Unemployed People most closely resembles American attempts at welfare reform. The program requires that individuals receive Jobseeker’s Allowance⁶⁶ benefits—payments to unemployed individuals—for a period of more than six months to participate in the pro-

57. *Id.*

58. *Id.*

59. *Id.* at 3. Interestingly, much like “compassionate conservatives” in the United States, the Labour Party also contends that paid work is an important element of welfare reform because work “gives people independence and status in the community.” *Id.* Such a position lends support to the conclusion that Labour has come to view welfare recipients as, in some way, defective members of society. See, e.g., Deacon, *Learning from the US?*, *supra* note 15, at 15.

60. Welfare Reform and Pensions Act 1999, c. 30, §§57-60 (Eng.) [hereinafter WRPA].

61. Therese Raphael, *Taming Britain’s Welfare Beast*, WALL ST. J. Jan. 30, 1998 at A14.

62. *Id.*

63. Green Paper, *supra* note 14, at 24-25.

64. *Id.* at 24. See also New Deal Homepage, available at <http://www.newdeal.gov.uk> (Extensive information concerning the operational details of the New Deals programs designed for these groups can be found here).

65. Green Paper, *supra* note 14, at 24-27.

66. Jobseeker’s Allowances and the regulations that structure their distribution were established by the Jobseekers Act 1995, c.18 (Eng.).

gram.⁶⁷ Upon entering the program, the individual has four months in which to join one of four work or study programs.⁶⁸ Unlike several of the other New Deal programs, in which compliance with the program is voluntary after entrance into the program, the New Deal for Young Unemployed People imposes sanctions on individuals who fail to participate.⁶⁹ Specifically, failure to enter one of the four programs results in the loss of Jobseeker's Allowance benefits.⁷⁰ Compliance with the program, however, provides the individual with certain tax credits/exemptions, access to training programs, assistance in locating work, some continuation of benefits, and a range of other support services.⁷¹

Like the New Deal programs, the Welfare Reform and Pensions Act of 1999 provided guarantees of government support contingent upon compliance with "self-help" requirements. In addition to establishing new rules regarding pension benefits, WRPA required that individuals seeking certain forms of benefits take part in a "work-focused interview."⁷² The purpose of the interview is to "assess the individual pathway to work" and "determine the barriers blocking a return to employment."⁷³

Unlike the New Deal for Young Unemployed People, WRPA does not require that the individual actively seek employment in order to continue to receive benefits. Rather, in most circumstances, only the failure to participate in a work-focused interview exposes the individual to the possible reduction of benefits.⁷⁴ Continued voluntary participation in the program is encouraged by providing the individual with access to a range of support services similar to those offered to participants in the New Deal programs.⁷⁵

III. THE HISTORIC UNDERPINNINGS

A. Building the Framework

In the years leading up to and following the passage of PRWORA a great deal of scholarly work attempted to link modern conceptions of welfare in the United States to similar conceptions embodied in the Elizabethan Poor

67. Helene Cooper, *All of Europe Watches as Britain's Tony Blair Hacks Away at Welfare*, WALL ST. J., June 25, 1998 at A18. See also New Deal Homepage, *supra* note 64.

68. See New Deal Homepage, *supra* note 64. The programs include "ordinary employment", volunteer work, participation in an environmental task force or entrance into a full-time education program.

69. See New Deal Homepage, *supra* note 64.

70. *Id.*

71. *Id.* The continuation of benefits apply to participation in volunteer work, participation in an environmental task force or entrance into a full-time education program. *Id.*

72. WRPA §§ 57-60.

73. WRPA § 60.

74. WRPA § 57.

75. WRPA § 62.

Laws.⁷⁶ The authors of these works concluded that the modern American welfare system is, fundamentally, no different from the Elizabethan Poor Laws in either the policy goals it pursues or in the mechanisms it utilizes to achieve those goals.⁷⁷

Although the primary purpose of this Note is not to establish the link between the modern American welfare system and its historic roots, a brief examination of that relationship is nevertheless useful for two reasons. First, such an examination of the common historical and philosophical roots of the modern Anglo-American welfare systems establishes a contextual link between the two that makes comparative analysis of the systems valuable. Second, analysis of the historically repetitive manner in which the Anglo-American system has approached poor relief strongly suggests that the approach is both inherently flawed and prone to continued failure.⁷⁸

The modern American welfare system has its roots in the Elizabethan Poor Laws⁷⁹ and was transplanted into this country during the colonial period with the adoption of the English legal tradition.⁸⁰ Like the Elizabethan Poor Laws both before and after it, and the modern American welfare system, the poor laws of the Elizabethan Era contained five characteristic conceptions of poor relief.⁸¹ These universal beliefs included:

- (1) the poor who can work must be forced to work; (2) helping the poor actually hurts the poor; (3) poverty is the result of individual failure and thus poor parents are bad parents; (4) assistance to the poor should be a local responsibility; and (5) assistance will not be given to the non-resident poor.⁸²

At an even more basic level, the Elizabethan Poor Laws contained the "fundamental notion that the socio-economic status quo was to be accepted as a given."⁸³ In that context, non-conformity was viewed as evidence of "social deviance" and was accordingly stigmatized.⁸⁴ Because of the rigid adherence to the status quo, as well as affirmation of the underlying

76. See, e.g., Quigley, *Backwards into the Future*, *supra* note 7; Backer, *Medieval Poor Laws*, *supra* note 7; Quigley, *Five Hundred Years of English Poor Laws*, *supra* note 7.

77. See, e.g., Quigley, *Backwards into the Future*, *supra* note 7; Backer, *Medieval Poor Laws*, *supra* note 7; Quigley, *Five Hundred Years of English Poor Laws*, *supra* note 7.

78. See, e.g., Quigley, *Backwards into the Future*, *supra* note 7; Backer, *Medieval Poor Laws*, *supra* note 7; Quigley, *Five Hundred Years of English Poor Laws*, *supra* note 7. See also, *supra* note 9 (citing authorities); Joel F. Handler, *The "Third Way" or the Old Way?*, 48 U. KAN. L. REV. 765, 787-92 (2000).

79. Backer, *Medieval Poor Law*, *supra* note 7, at 938.

80. Quigley, *Backwards into the Future*, *supra* note 7, at 102.

81. *Id.* at 103.

82. *Id.*

83. Backer, *Medieval Poor Law*, *supra* note 7, at 957.

84. *Id.* at 959-60.

beliefs that all able bodied persons must work and that poverty was the result of personal failure, the poor who were able to work, but did not, were considered defective.⁸⁵

Ultimately, this conception of the poor as socially and morally defective led to the categorization of the poor as being either “deserving”—those who were unable to work—or “undeserving”—those who could work, but did not.⁸⁶ The classification of the poor in terms that rely upon a value judgment about their conformity to societal norms eventually led to a system of poor relief which attempted to bring the behavior of the poor into line with that of the rest of society.⁸⁷

B. Fitting the Current Legislation into the Framework

Evidence that conceptions of poverty embodied in the Elizabethan Poor Laws still pervade the Anglo-American welfare system can be found in the proposals and rhetoric of the welfare debate. Both in the United States and in Great Britain, recent legislative efforts have produced welfare reform measures that use the welfare system as a means through which the behavior of the poor can be brought into line with the rest of society.

For example, the current Republican welfare reform proposals and the accompanying political rhetoric follow the traditional conservative effort to “pursue social integration through the traditional if not the romanticized institutions of American society: work, community and family.”⁸⁸ Indeed, despite an attempt to cast welfare work requirements in terms of enhancing the dignity of individuals,⁸⁹ Republicans of today continue to attempt to create a welfare state that makes economic self-sufficiency an “overarching goal,” and prevention of “family dissolution” a concurrent goal.⁹⁰ From those basic assumptions and goals, the basis of conservative welfare policy is shaped. In general, like the Elizabethan Poor Laws before it, that policy seeks to chastise those persons who are capable of working but do not.⁹¹

Building on a premise that has its origins in the Elizabethan Poor Laws, conservatives suggest that those who are poor or on welfare are “un-

85. Backer, *Poor Relief, Welfare Paralysis, and Assimilation*, *supra* note 9, at 35.

86. Handler, *supra* note 78, at 780.

87. Quigley, *Backwards into the Future*, *supra* note 7, at 106 (discussing the purposes and effects of legislative stigmatization of the poor).

88. Epstein, *supra* note 6, at 41.

89. See, e.g., Rick Santorum, *A Compassionate Conservative Agenda: Addressing Poverty for the Next Millennium*, 26 J. LEGIS. 93 (2000). But see, Robert K. Vischer, *Subsidiarity as a Principle of Governance: Beyond Devolution*, 35 IND. L. REV. 103 (2001) (arguing that “compassionate conservatism” depends upon an incomplete conception of human dignity).

90. Epstein, *supra* note 6, at 41.

91. *Id.*

deserving” because they earned their position as a result of their “immoral” behavior.⁹² Conservative welfare policy therefore attempts to correct that behavior.⁹³ Conservatives then create a corrective impetus by first portraying the existence of the poor as both physically and morally unpleasant. They then seek to make reality match that image by removing the “incentives” (i.e. welfare entitlements) to stay in that condition. Positive behavior, such as finding work, is then contrasted with the negative image of poverty by portraying self-sufficient behavior as both morally and socially more acceptable and desirable than accepting a welfare check.⁹⁴

Given this framework, one would expect conservative welfare proposals and rhetoric to contain strong inducements to work and strong support for traditional American institutions. The current Republican proposal (PRWFPA) and the rhetoric surrounding its passage confirm this suspicion.

For example, the Republicans have largely chosen to define the success of the 1996 welfare reform process in terms of the number of people it moved from welfare to work.⁹⁵ Moreover, the Republican Party has claimed an ideological victory over what some members of the party see as the Democrats’ “misguided opposition to the emphasis on work that took root in the 1996 law.”⁹⁶

The Republican leadership has made clear that they consider the 1996 welfare reform to be only a starting point, and that for true success, future welfare reform need to go even further towards promoting work and economic self-sufficiency.⁹⁷ President Bush, for example, has repeatedly made comments such as, “*most* of all, compassionate welfare reform must encourage more and more Americans to find the independence of a job.”⁹⁸ Senator Trent Lott has also come forward and stated that “work, marriage and state initiatives will remain the centerpiece of any further welfare reform.”⁹⁹ Lott has also followed the general party line by stating “work is critical to self-esteem, peace of mind and the realization of the American dream.”¹⁰⁰

92. *Id.* at 38.

93. *Id.* at 47.

94. *Id.* at 41-43.

95. *Welfare Overhaul Proposals: Hearing Before Subcomm. On Human Resources of the House Comm. on Ways and Means*, 107th Cong. (2002) (statement on Apr. 11, 2002 of Rep. Patsy T. Mink).

96. Goldstein, *supra* note 18 (quoting Rep. Bill Thomas “Some members of the other side can’t bring themselves to admit they were wrong.”).

97. Tommy G. Thompson, Editorial, *Giving New Workers the Tools to Succeed*, WASH. POST, May 28, 2002, at A17.

98. George W. Bush, *May 11th Radio Address to the Nation* (US Newswire, May 11, 2002).

99. Trent Lott, *Welfare Reform: Round Two*, Truth News, at <http://truthnews.net/comment/02060409.htm> (last visited Feb.16, 2002).

100. *Id.*

The Republican focus on work is so intense that Republicans have criticized Democratic and moderate welfare proposals on the grounds that they “eviscerate the work requirement and would effectively move us back to AFDC.”¹⁰¹ As Bush stated, “anything that weakens the work requirement in a welfare reauthorization bill hurts the people we’re trying to help.”¹⁰² The Bush administration felt so strongly that strict work requirements were necessary to the success of future welfare that it was willing to postpone seeking legislation on welfare reauthorization (an issue that has been described as a “key domestic goal”) unless that legislation contained a forty-hour work week and the seventy percent participation rate.¹⁰³

Finally, one can see the obvious desire to strengthen families as a traditional American institution in the provisions of PRWFPA that encourage marriage counseling, relationship skills development and two parent support of children.¹⁰⁴ In particular, the emphasis on “responsible fatherhood” contained within PRWFPA¹⁰⁵ inherently suggests an attempt to correct the perceived willingness of the unmarried poor, and society in general, to accept, as normal, single motherhood and absentee fathers.¹⁰⁶

Just as the Republican/conservative welfare legislation is informed by a set of basic assumptions about poverty, the Democrat/liberal position is also guided by its own assumptions about the roots of poverty. Although, as a political matter, Democrats accepted the “defeat” of 1996 and recognize the electoral mandate that welfare recipients be required to seek work,¹⁰⁷ Democratic welfare proposals do not simply impose work, but rather attempt to make access to work possible.¹⁰⁸

In general, Democrats still assume, and continue to base their proposals upon the premise that poverty is the result of an imperfect social structure.¹⁰⁹ In that context, it is the government’s role to step in and attempt to perfect the society.¹¹⁰ Growing out of the 1960s, the basic liberal welfare

101. Mary Leonard, *Bush Seeks Strict Rules on Welfare*, BOST. GLOBE, June 19, 2002, at A1 (quoting Wade Horn, the Assistant Secretary for Children and Families in the Department of Health and Human Services).

102. Fawn H. Johnson & Nancy Ognanovich, *Welfare: Bush Says Welfare Work Requirements Lower Poverty Rate, Reduce Caseloads*, THE WASH. INSIDER, June 5, 2002 available at WL 61512002 BW1 D2.

103. Leonard, *supra* note 101.

104. PRWFPA §§ 103, 119.

105. PRWFPA § 119.

106. Morgan B. Ward Doran and Dorothy E. Roberts, Symposium, *Welfare Reform and Families in the Child Welfare System*, 61 MD. L. REV. 386, 394-95 (2002).

107. Epstein, *supra* note 6, at 55. See also S. REP. NO. 107-221, at 2-7 (2002).

108. Epstein, *supra* note 6, at 38, 55-56.

109. *Id.* at 38.

110. *Id.*

position has been one that seeks to promote "compassion and equality."¹¹¹ To achieve those twin goals, Democrats tend to put forth three broad categories of welfare proposals: (1) conditions on cash assistance; (2) educational enhancement; and (3) social service support.¹¹² The ultimate goal of these proposals is to create equality between all Americans by providing the poor and disadvantaged with means to remove "barriers" to success and economic self-sufficiency.¹¹³

Of the three general proposals, it is evident that the last two, education and social service support, are the cornerstones of the current Democrat sponsored legislation. Indeed, there has been strong criticism from Democrats that the Republican emphasis on work is misguided.¹¹⁴ Such an exclusory emphasis on work, for Democrats, misses the real point, that simply moving people to work does not, necessarily, make them better off.¹¹⁵

Democrats generally attacked Republican proposals for their reliance on the "employment myth"—the belief that work will unilaterally reduce the problems of poverty—when, in fact, the solutions are much broader and more difficult to manage.¹¹⁶ As evidence of the "correctness" of their position, many Democrats point to the fact that while the number of welfare case loads are dropping, the poverty rate has not dropped significantly, and most people who have moved from welfare to work are only marginally above the poverty line.¹¹⁷

As a solution to this problem, Democrats have adopted a set of public supports that attempt to lift the poor out of poverty.¹¹⁸ For instance, Representative Bob Etheridge (D-NC) stood in opposition to PRWFPA saying, "[e]ducation, indeed life-long education, is the key to a successful future. Many of the folks who remain on the welfare roles today are the least prepared to enter the workforce. We *must* provide them with the tools they need to lift themselves and their families out of poverty."¹¹⁹

111. THE NEW WORLD OF WELFARE 196 (Rebecca M. Blank & Ron Haskins eds., Brookings Institute Press 2001).

112. Epstein, *supra* note 6, at 55.

113. *Id.* at 38, 55-56.

114. Masterson, *supra* note 17 (quoting Rep. Sheila Jackson Lee that "all Republicans want to do is brag about promoting work").

115. Johnson, *supra* note 102 (quoting the late Senator Paul Wellston's belief that the G.O.P. backed House bill's real goal is "not to end poverty but to punish welfare recipients").

116. See, e.g., Karen Syma Czapanskiy, *Parents, Children and Work-First Welfare Reform: Where is the C in TANF?* 61 MD. L. REV. 308 (2002); Katherine Hunt Federle, Symposium, *Welfare Reform and the Juvenile Courts: Child Welfare and the Juvenile Court* 60 OHIO ST. L.J. 1225, 1230-31 (1999) (arguing that the so called "employment myth"—"that employment will reduce poverty," is generally an erroneous assumption).

117. Peter Edelman, *The True Purpose of Welfare Reform*, N.Y. TIMES, May 29, 2002 at A21. (Peter Edelman is a former assistant secretary of HHS who resigned his post after Clinton signed PRWORA).

118. Leonard, *supra* note 101, at A1.

119. Representative Bob Etheridge, Speech to the House of Representatives (May 16, 2002), in 148 Cong. Rec. E893-03 (emphasis added).

In addition to viewing education as the principle manner of creating “acceptable” welfare case reduction, the Democrats have insisted upon the necessity of childcare.¹²⁰ Democrats have repeatedly criticized the forty-hour work week provision of PRWFPA as being manifestly unfair and counterproductive. Such a requirement is unfair because it forces welfare recipients to make an impossible choice between attending to their children’s needs and going to work.¹²¹ The forty-hour work week is counterproductive because in the absence of adequate childcare no mother or father could actually be a productive and efficient worker.¹²²

Although the Senate’s proposed legislation is apparently more egalitarian and compassionate than the Republican proposal, the Democratic position ultimately seeks to achieve similar goals as those promoted in the Republican bill. Although the Democratic legislation aims at assisting welfare recipients in overcoming “work hurdles” the underlying message—that one ought to conform to societal norms—remains the same.¹²³ In this context the attempts to remove structural barriers to poverty imply the unstated premise that the poor would not choose their condition if given the opportunity. In other words, the Democratic welfare proposal takes as a starting point the belief that the poor want to be like the rest of society—industrious, materially wealthy, educated, etc.—and must be given the chance to conform to social norms before they are condemned as undeserving.¹²⁴

Like the welfare reform proposals in the United States, the reforms implemented in Great Britain reflect conceptions and ideas about the poor similar to those embodied in the earlier Elizabethan Poor Law system.¹²⁵

The Labour Party’s recent view of welfare and the poor was occasioned, in part, by political necessity. Following a string of electoral defeats, many members of the Labour Party concluded that the party’s traditional views on many political issues were out of touch with the will of the electorate.¹²⁶ As the party sought ways to make itself more attractive to voters, members of the party came to believe that the public was unwilling to sup-

120. Leonard, *supra* note 101, at A1.

121. See, e.g., Representative Bob Etheridge, Speech to the House of Representatives (May 16, 2002), in 148 Cong. Rec. E893-03.

122. Goldstein, *supra* note 18 (quoting Rep. Charles B. Rangel).

123. Backer, *Medieval Poor Laws in Twentieth Century America*, *supra* note 7, at 900n.78.

124. See *supra* note 9 (citing authorities).

125. For the general proposition that reforms in the United Kingdom reflect the reforms in the United States, and especially the categorization of the poor as deserving or undeserving, see, e.g., Deacon, *supra* note 15; Prideaux, *supra* note 15. See also Green Paper, *supra* note 14 at 17-21 (drawing the historical connection between the “ages” of welfare and acknowledging that the history of welfare in Britain is a history of responses to developing problems within earlier systems).

126. Deacon, *Learning from the US?*, *supra* note 15, at 11.

port the massive cost of a universal unconditioned welfare system.¹²⁷ This was particularly true in light of the growing “classic right wing moral panic”¹²⁸ started by perceptions that such benefits sustained “‘idle thieving bastards’ deliberately living an alternative threatening lifestyle in contradistinction to the functional norms of society as a whole.”¹²⁹ In order to respond to those fears, the Labour Party attempted to reform the welfare system in such a way as to eliminate fraud and dependency.¹³⁰

Although political necessity occasioned the opportunity for a shift in the Labour Party’s ideological conception of welfare, it did not dictate the form that the shift would take. The “third way” eventually settled on by Labour was, in part, the result of the party’s response to the intellectual criticisms, both in the US and Britain, of the universal unconditioned welfare system. In particular, the Labour Party acknowledged the validity of the critiques of Charles Murray, Lawrence Mead and David Ellwood, which all, in various ways, attacked the premise that unconditional welfare systems had no effect on human behavior.¹³¹ These authors all argued that far from having no effect on human behavior, unconditional benefits systems created “perverse incentives” for self-interested individuals to stay on welfare.¹³² Such incentives to remain on welfare worked to erode personal responsibility and social obligation among welfare recipients, and ultimately suggested that at least some of the poor were responsible for their own condition.¹³³ The “dependency theorists” ultimately concluded that the only way to break the cycle of deliberate dependency was to use the distribution of benefits as a means to re-introduce personal responsibility (such as the work ethic) into the welfare class either by eliminating the benefits, or by restricting who could receive benefits.¹³⁴

Integration of the critiques of the dependency theorists into Britain’s welfare reform measures may not have been possible were it not for the Labour Party’s—and particularly the party leadership’s—concurrent affirmation of the principles of communitarianism.¹³⁵ Communitarianism, which

127. *Id.*

128. Prideaux, *supra* note 15, at 93 (quoting P. Bagguley & K. Mann, *Idle Thieving Bastards? Scholarly Representations of the Underclass*, 6 WORK, EMPLOYMENT & SOC’Y (Issue 1, 1992), as they characterize the effect Charles Murray’s portrayal of the underclass had on the public attitudes towards welfare policy).

129. *Id.*

130. Green Paper, *supra* note 14, at 1.

131. For evidence of the link between New Labour’s “third way” and earlier American sociological criticisms of welfare policy, see Deacon, *The Green Paper on Welfare Reform*, *supra* note 15; Deacon, *Learning from the US?*, *supra* note 15; Ross Mackay, *A Coat of Many Colours: Welfare Reform Around the World*, SOC. POL’Y J. OF N.Z. 1 (Dec. 1998); Prideaux, *supra* note 15.

132. Prideaux, *supra* note 15, at 93.

133. *Id.*

134. *Id.*

135. Deacon, *Learning from the US?*, *supra* note 15, at 11-13.

conceives of the relationship between the citizen and the government to be a contract of reciprocal rights and responsibilities designed to create a sense of shared community, demands that the individual be able participate in the community.¹³⁶

The ability of the individual to participate in the community was seen by the Labour Party as deriving from two sources. The first source is the government's responsibility to provide the mechanisms, or "opportunities" by which all individuals can obtain equal access to the community.¹³⁷ The second source is the individual's personal use of those opportunities to participate in the community.¹³⁸ Foundational to the Labour Party's conception of what constituted full participation in the community was the belief that work was an integral component of a normal, adult, human life.¹³⁹ Because being a full member of the community implies the dignity of the individual, it follows that a person living in true community is one who is working. Within that context, those who deliberately do not work, such as the willfully dependent welfare recipient, not only fails to fulfill their obligation to the larger community, but are also implicitly incomplete or defective.

Viewing the poor as defective is reminiscent of the Elizabethan Poor Law's conception of the poor as morally deficient. The similarity between the Labour Party's current view of the poor and the historical conception is further enhanced by the rhetoric that the Labour Party used to express their view. In particular, the Labour Party took great pains to distinguish between the poor who could not work and those who could work but did not.¹⁴⁰ As in the Poor Laws, the "undeserving" nature of the poor who could work but did not in the modern British reforms served as a justification to deny that class of the poor welfare benefits.¹⁴¹ The Labour Party made this point unequivocally when it stated that not only would there "be no fifth option of remaining permanently on benefits," but also that "those who unreasonably refuse an offer or fail to take up a place [in one of the other work orientated programs] will be sanctioned."¹⁴²

136. *Id.*

137. Robert Henry Cox, *The Consequences of Welfare Reform: How Conceptions of Social Rights are Changing*, 27 J. SOC. POL'Y 1, 11-13 (1998).

138. *Id.* See also, Deacon, *Learning from the US?*, *supra* note 15, at 11 (explaining the significance of the Labour Party's concurrent affirmation of Christian Socialism and their acceptance of individual moral responsibility).

139. Richard Sennett, *Caught in the Trap of Self-Sufficiency—Politicians Who Deny the Dignity of Dependence are Out of Touch*, THE GUARDIAN May 29, 2002 at P18.

140. The distinction drawn between the New Deal For Young Unemployed and the New Deal programs instituted for other groups that might traditionally be defined as the "deserving poor." WRPA §§ 57-60.

141. WRPA §§ 57-60.

142. Green Paper, *supra* note 14, at 31.

The imposition of sanctions on the “undeserving” poor that fail to enter the work force suggests a commitment to the use of the welfare system to modify the behavior of the poor. By demanding that unemployed persons find work or risk losing benefits, the Labour Party’s reforms send the message that not only is work supported as the positive alternative to poverty, but also that what could be perceived of as lazy or irresponsible behavior will be punished. In this way the sanctions act in a rather paternalistic manner to force the poor to behave in a manner consistent with the rest of society.

The Labour Party’s reforms also attempt to alter the behavior of the poor through the more subtle imposition of community. The Labour Party noted that it is a universal duty to “create a community.”¹⁴³ The mere existence of a shared community of values, however, presupposes that there exists one relatively common set of values already shared, or at least commonly desired. The adoption of reform measures directed at achieving the creation of that community, then, necessarily implies not only a desire for universal “sameness,” but also a definition of that sameness.

The rhetoric of the Labour Party surrounding the meaning of “opportunity” illustrates this point. The government understands its duty to be the creation of a society in which all citizens are provided with equal access to participation in the community. Generating that society requires government provide citizens with the opportunity to enter the community.¹⁴⁴ But providing opportunity to enter the community implies that all people truly want to be part of that community. Moreover, by determining that education and employment constitute “opportunity,” the government has implicitly decided that the community consists of educated working individuals. In this way, structuring the welfare system as a balance between the creation of access to community and the individual’s responsibility to take advantage of that opportunity delivers the message that certain behavior will be accepted by society, and that inclusion in the community is contingent upon compliance with that behavior. In other words, the welfare system functions to establish a conception of society while at the same time creating the mechanisms by which those outside of that vision can be drawn, either willingly or forcibly, into that “normal” society.

143. *Id.* at 93.

144. *Id.* at 80. See also Deacon, *supra* note 15, at 11-12 (quoting Prime Minister Tony Blair).

IV. COMPARING THE PAST AND PRESENT

The use of poor relief as a mechanism to create social conformity has characterized the American welfare system during much of its existence,¹⁴⁵ and the same use is re-emerging in the British system as new reforms take place.¹⁴⁶ Viewed against the backdrop of its historical origins, the current debate over welfare reform, both in the United States and the United Kingdom, confirms that poor relief in both countries has failed to move beyond its Medieval conceptions of the poor and the acceptable uses of poor relief.

What is most troubling about the inability of the Anglo-American welfare system to move beyond its original conceptions of poverty and the social norm is that the system consistently seems to fail at what it does.

For example PRWFPA, which is essentially a more stringent version of PRWORA, seems destined to fail for exactly the same reasons that PRWORA was not entirely successful. Certainly between PRWORA's enactment and its expiration in 2002 there was a reduction in the number of Americans receiving welfare benefits¹⁴⁷ and, until September of 2002, the poverty rate also showed a decline.¹⁴⁸ It is not, however, entirely clear that those who moved off welfare into the workforce during that time are either quantitatively or qualitatively better off than when they were on welfare.¹⁴⁹

The Senate proposal is not free from negative criticism. In respect to both the goals sought and the manner of implementation the Democratic welfare proposal bares little difference to New Deal programs or the Pension and Welfare Reform Act of 1999 in Great Britain. Both proposals demand work from recipients, but at the same time attempt to break down the structural barriers that make finding and keeping meaningful employment impossible. Both attempt to do this by providing increased services such as educational opportunities.¹⁵⁰

145. See *supra* note 9 (citing authorities); see also Morgan B. Ward *supra* note 106, 394-95.

146. See generally, *supra* note 15 (citing authorities).

147. PRWFPA § 4.

148. Steven Pearlstein, *U.S. Poverty Rate Rises, Income Drops; Increase in Ranks of Poor Is First in 8 Years*, WASH. POST, Sept. 25, 2002 at A3.

149. See, e.g., Handler, *supra* note 78, at 787-92; Jody Raphael, *Welfare Reform: Prescription for Abuse? A report on New Research Studies Documenting the Relationship of Domestic Violence and Welfare*, 19 L. & POL'Y 123 (1997) (pointing to studies which show a marked increase in domestic violence against single mothers who move from welfare to work); Ward, *supra* note 106; Janet Weinstein & Riccardo Weinstein, *Before it's too Late: Neuropsychological Consequences of Child Neglect and their Implications for Law and Social Policy*, 33 U. MICH. J.L. REF. 561 (2000); Susan Traub, Note, *Child Care and PRWORA: Paying the Babysitter or Investing in Early Education*, 9 GEO. J. ON POVERTY L & POL'Y 249 (2002); Shia Kapos, *Report Shows Mixed Results for Welfare Reform in Midwest*, CHIC. TRIB., Apr. 25, 2002 at N1 (noting that "millions of former welfare recipients . . . have entered the work force but still live at the poverty level.").

150. Cf. PWRA and WFA.

Yet, even this methodological approach to bringing the poor into a state of social conformity has not been entirely successful in Britain. In Britain, as in the United States, there has been a recent increase in the need for public support of the poor.¹⁵¹ Moreover, there is anecdotal evidence that access to developmental work skills programs does not immediately improve the condition of benefits recipients.¹⁵² Such evidence suggests, perhaps, that the creation of opportunity does not necessarily end poverty or dependency on its own or even when combined with the threat of sanctions.

What the combined failures of welfare reform strategies in the United States and Britain ultimately suggest is that the consistent tinkering with the means of welfare allocations accomplishes very little in the Anglo-American tradition. Rather than qualitatively or quantitatively enhancing the existence of welfare recipients, the Anglo-American tradition provides no escape from the repetition of the same proposals under new names and with slightly different twists.

V. THINKING ABOUT WELFARE REFORM AND THE PRINCIPLE OF SUBSIDIARITY

A. *The Principle of Subsidiarity as an Alternative Paradigm*

In the last analysis, the welfare reform measures being examined on both sides of the Atlantic depend upon similar negative conceptions of the poor to justify the use of the welfare system to coerce compliance with a specific moral ideology. Arguing against the use of the reforms of the welfare system to achieve this purpose, many scholars have claimed that the problem lies in our society's adherence to the particular value system we wish to promote.¹⁵³ Some of those authors also claim that it is western civilization's rigid acceptance of capitalism not only as an economic system, but also as a socio-political value system, that dictates the course of welfare reform towards time limits, work requirements, and the stigmatization of poverty.¹⁵⁴ In order to correct the welfare system, these authors argue, we must abandon, if not capitalism, then at least that system's implicit willingness to

151. Cooper, *supra* note 67 (noting that in at least some depressed areas of the United Kingdom, those losing Job Seeker's Allowance benefits are finding it difficult to find employment); Mervyn Kohler, *When Will Labour Listen to Pensioners?* THE TIMES Mar. 3, 2003 at 30 (noting a rise in poverty among Britain's elderly); *Labour's Welfare Reform Bill Shelved* BIRMINGHAM POST Nov. 26, 2001 at 7 (reporting the withdrawal of Tony Blair's government's plan to introduce a new welfare reform bill in the face of recent increases in the number of persons on support).

152. Hyde, *supra* note 15, at 79-80, 83-84.

153. See *supra* notes 6, 7, 9 and 15 (citing authorities).

154. See, e.g., Backer, *Medieval Poor Law*, *supra* note 7; Backer, *Of Handouts*, *supra* note 9; Prideaux, *supra* note 15.

create hierarchies, settle for inequality, and generally moralize against poverty.¹⁵⁵ In place of the capitalist value system, these critics argue, we as a society must instead promote a culture of near total social democracy of unconditioned, non-stigmatized poor relief.¹⁵⁶

Such criticisms of the Anglo-American welfare reforms do, to some extent, correctly identify the problems underlying those reforms. In particular, the criticisms properly locate the source of the reforms' failures in the connection between the principles that inform the policy debates and the mechanisms used to realize those principles. More specifically, the critics are right to argue that the course of welfare reform is dependent upon our conceptions of the poor and the acceptable uses of poor relief.¹⁵⁷ It is not so clear that those critics are right in concluding that the only solution to that problem is the adoption of an egalitarian rights based welfare system.

If, however, we accept that welfare reforms based on the coercive promotion of values and negative conceptions of the poor are failures, and if we accept that failure of the welfare system is largely a function of the principles that shape the mechanics of the welfare system, we must also conclude that our principles must be altered in order to make welfare successful in this country. Although an egalitarian approach may not be attractive or feasible, a welfare system respectful of the principle of subsidiarity and human freedom might provide more workable system for reform.

To explore that claim, we must first briefly examine the principle of subsidiarity, and the important role that human freedom plays with the structure of society.

The principle of subsidiarity expresses the proper relationship between individuals and the community as well the relationships between smaller communities and larger organizations.¹⁵⁸ In other words, subsidiarity constitutes the "basic norm for the proper ordering of society."¹⁵⁹ The specific nature of that proper ordering was originally fully formulated by Pope Pius XI in his encyclical *Quadragesimo Anno*.¹⁶⁰

155. See, e.g., Backer, *Medieval Poor Law*, *supra* note 7; Backer, *Of Handouts*, *supra* note 9; Prideaux, *supra* note 15.

156. See, e.g., Backer, *Medieval Poor Law*, *supra* note 7; Backer, *Of Handouts*, *supra* note 9; Prideaux, *supra* note 15.

157. Cox, *supra* note 137, at 5.

158. Robert A. Sirico, *Subsidiarity, Society, and Entitlements: Understanding and Applications*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 549, 550 (1997) (quoting Catechism of the Catholic Church).

159. Thomas C. Kohler, *Quadragesimo Anno*, in A CENTURY OF CATHOLIC SOCIAL THOUGHT: ESSAYS ON "RERUM NOVARUM" AND NINE OTHER KEY DOCUMENTS 27, 31 (George Weigel & Robert Royal eds., 1991).

160. Pius XI, *Quadragesimo Anno*, paragraph 30 available at <http://www.vatican.va/>.

As Pius XI wrote:

[J]ust as it is wrong to take away from individuals what they can accomplish by their own ability and effort and entrust it to a community, so is it an injury and at the same time both as serious evil and a disturbance of right order to assign to a larger and higher society what can be preformed successfully by smaller and lower communities. The reason is that all social activity, of its very power and nature, should supply help [subsidiary] to the members of the social body, but may never destroy them or absorb them. The state, then, should leave to these smaller groups the settlement of business and problems of minor importance, which would otherwise greatly distract it.¹⁶¹

Although the modern origins of the principle of subsidiarity are found within the social teachings of the Roman Catholic Church, the principle has also become embedded within more explicitly secular arenas as well. The most notable application of the principle of subsidiarity in modern politics is the European Community's adoption of the principle in the Treaty of Maastricht.¹⁶² The treaty, in Article 3b, explains the principle in this way:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the member-States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.¹⁶³

Thus, as in the Catholic understanding of subsidiarity, the European Union's vision of the principle is one that defines the proper relationship between a higher authority and lower orders of government. Specifically, the European Union's understanding of the principle of subsidiarity attempts to bring balance to the power structure of the Union by protecting the internal integrity of the Member States while at the same time providing the basis for legitimizing the role of a supranational governing authority.¹⁶⁴

The European Union's vision of the principle of subsidiarity largely conceives of the proper relationship between the Union and the individual states in terms of the negative that is, as a restriction on the applicability of the Union's authority over the legislative, judicial, and political decisions of

161. *Id.* at 79-80.

162. Treaty Establishing the European Community, (signed in Rome on Mar. 25, 1957), consolidating version, Nov. 10, 1997, O.J. (C340) [hereinafter Treaty].

163. *Id.* at art. 5 (ex art. 3(b)), O.J. (340) 173.

164. Christoph Henkel, *The Allocation of Powers in the European Union: A Closer Look at the Principle of Subsidiarity*, 20 BERKELEY J. INT'L L. 359, 360 (2002); Naomi Roht-Arriaza, *The Committee on the Regions and the Role of Regional Governments in the European Union*, 20 HASTINGS INT'L & COMP. L. REV. 413, 417 (1997).

Member States.¹⁶⁵ In fact, much of the defense of the European Union's adherence to the principle of subsidiarity is based on the argument that lower orders of government are typically better able to judge both their own needs and the most appropriate methods of satisfying those needs.¹⁶⁶ Application of the negative conception of subsidiarity, then, ultimately has the effect of enhancing the freedom of lower orders of government.

This tendency to conceive of subsidiarity as a mechanism for enhancing the freedoms of lower orders of government is not terribly surprising given the assumptions about the nature of the relationships among individuals and the various orders of society upon which the principle of subsidiarity rests. Indeed, at the conceptual heart of subsidiarity is the fundamental premise that "man is an individual who holds himself in hand by his intelligence and his will."¹⁶⁷ This notion of humans as autonomous, rational, and free "thus involves that of totality and independence; no matter how poor and crushed a person may be, as such he is a whole, and as a person, subsists in an independent manner."¹⁶⁸

It is this inherent completeness of the individual human that ultimately defines the relationship between the individual and society as a whole. It is precisely because humans are whole that the individual takes priority within society and that society exists to serve the person.¹⁶⁹ Indeed, to accept the principle of subsidiarity is to accept that society holds as its "chief value, the highest possible attainment (that is, the highest compatible with the good of the whole) of persons to their lives as persons, and to their freedom of expansion or autonomy. . . ."¹⁷⁰ Thus, the service that a society provides to its individual members is directed towards the individual's self-realization.

In spite of the completeness of the individual, however, the individual's association with larger communities is not entirely voluntary, because, to an extent, the individual's ability to obtain self-realization is contingent upon their successful integration into society.¹⁷¹ Although human nature may necessitate the existence of society to obtain self-realization, the inherent freedom of humans also dictates that the individual possess the right and

165. Paul D. Marquardt, *Subsidiarity and Sovereignty in the European Union*, 18 FORDHAM INT'L L.J. 616, 626-28 (1994).

166. See, e.g., Donald A. MacLean, Note, *Can the EC Kill the Irish Unborn?: An Investigation of the European Community's Ability to Impinge on the Moral Sovereignty of Member States*, 28 HOFSTRA L. REV. 527, 569-70 (1999).

167. JACQUES MARITAIN, *THE RIGHTS OF MAN AND NATURAL LAW* 3 (Doris C. Anson trans., 1943).

168. *Id.* at 3-4.

169. Kohler, *supra* note 159, at 31.

170. MARITAIN, *supra* note 167, at 9 (emphasis in original).

171. *Id.* at 6-7.

ability to choose both which society to participate in and in what way to participate with in society.¹⁷²

That freedom to choose in what way the individual participates in society implicitly carries with it the individual's freedom to choose, to an extent, his own best path towards self-realization. Because each community is created by free choice to assist individuals in the obtainment of their self-realization, improper limitations on the community's ability to aid in that realization are limitations on human freedom. Such limitations, by their definition, contravene the purpose of broader societies, such as federal governments, in providing for the common good of all of its members.¹⁷³

This results in the negative interpretation of subsidiarity as a duty of higher orders within societies to abstain from intervening in matters that lower orders may accomplish without aid.¹⁷⁴ Moreover, conceived of on the individual level, the negative interpretation of subsidiarity is a powerful defense in preserving personal freedom. That is, subsidiarity preserves the right to be largely free from interference by higher communities in matters of individual choices.¹⁷⁵

The principle of subsidiarity is not subject only to a negative interpretation; a positive interpretation of the principle also exists.¹⁷⁶ The positive interpretation anticipates that the proper ordering of society implies that when lesser communities are unable to fulfill their function of promoting the self-realization of their members, higher communities may intervene.¹⁷⁷ The European Union's conception of subsidiary incorporates that positive interpretation in the language of Article 3b. Specifically, the language of the treaty anticipates that, under certain circumstances, intervention on the part of the Union in the affairs of the Member States may be acceptable.¹⁷⁸

Although the principle of subsidiarity anticipates that governments may need to intervene in the freedom of lower orders, it is not always clear when, exactly, such intervention is appropriate.¹⁷⁹ To develop an under-

172. *Id.* at 20-21; SAMUEL STOLJAR, AN ANALYSIS OF RIGHTS 105 (St. Martin's Press 1984); Robert Royal, *Populorum Progressio*, in A CENTURY OF CATHOLIC SOCIAL THOUGHT: ESSAYS ON "RERUM NOVARUM" AND NINE OTHER KEY DOCUMENTS 115, 119 (George Weigel & Robert Royal eds., 1991); R. George Wright, *Welfare*, in NATURAL LAW AND CONTEMPORARY PUBLIC POLICY 280, 283 (David F. Forte ed., 1998).

173. This is not to say that respect for subsidiarity does not allow for the restriction of individual freedom. Activity that directly threatens the common good or the rights of others, for example, murder or bank robbery, could be restricted. David F. Forte, *Family, Nurture, and Liberty*, in NATURAL LAW AND CONTEMPORARY PUBLIC POLICY 95 (David F. Forte ed., 1998).

174. Kohler, *supra* note 159, at 31.

175. *Id.* at 31-32.

176. Vischer, *supra* note 89, at 113-16.

177. *Id.* at 119.

178. Treaty, *supra* note 162, at art. 5 (ex art. 3(b)), O.J. (340) 173.

179. Vischer, *supra* note 89, at 115.

standing of when such intervention may be appropriate, one must again return to the foundations of the principle of subsidiarity, and in particular the concepts of human freedom and self-realization.

That foundation suggests, on the personal level, that the positive interpretation of subsidiarity is perhaps best understood as a maximization of individual's freedom, through a maximization of the range of choices available to the individual.¹⁸⁰ In short, the positive interpretation of subsidiarity implies the existence of the right to have the opportunity to participate within a community as fully as possible.¹⁸¹ This is the basis for the proper intervention of higher orders of society, to provide lower orders of society and individuals with the tools necessary to integrate themselves within the broader society when such tools cannot otherwise be developed.¹⁸²

One must be cautious, however, of allowing the ability of higher communities to intervene in lower communities to be confused with higher communities interfering in the functioning of lower orders. Such caution must be exercised because the stakes are so high. While intervention may tend to enhance human freedom and empower the individual and lower communities, interference by higher orders in the operation of lower communities tends to do the opposite by robbing individuals of their freedom and thus denying them an essential element of their humanity.¹⁸³

Although adherence to the principle of subsidiarity demands caution in judging whether or not government action is intervention or interference, the principle does not dictate that any particular action necessarily falls

180. *Id.* at 133 (cautioning, however, that "[s]ubsidiarity is not simply a market-based framework under which individuals have the theoretical freedom to conduct their lives and solve their problems as they see fit, but rather a call for individuals to be equipped with the real-world tools for bettering themselves and those around them.").

181. JOHN FINNIS, *NATURAL LAW AND NATURAL RIGHTS* 147 (Clarendon Press 1980).

182. *Id.*

183. For a contemporary satirical illustration of the dangers of government interference, consider the Simpson's episode *Home Sweet Homediddly-Dum-Doodily* (Fox television broadcast, Oct. 1, 1995). In that episode, a string of accidents lead to Bart's infestation with lice, Lisa with a lisp and without shoes, Maggie drinking from a dog bowl and the Simpson house filled with stacks of decades old newspapers. These circumstances prompt the child welfare service to declare Marge and Homer unfit parents and to place the Simpson children in foster care with their next-door neighbor Ned Flanders. In his essay, *The Simpsons: Atomistic Politics and the Nuclear Family in THE SIMPSONS AND PHILOSOPHY* 160 (William Irwin et al. eds., 2001) Paul A. Cantor argues that this episode is a perfect example of what can happen when the government is too focused on correcting the minutia of family life. *Id.* at 168-70. Although Marge and Homer are not ideal parents, they are—given the context of the episode—far more capable of taking care of their children than they are given credit for. *Id.* Rather than allowing the Simpson parents to correct the problems, or at least make an accounting for the unusual and suspicious events, the government disrupts the family structure to the point that Maggie begins to turn into a Ned Flanders clone. *Simpsons, supra*. In addition, in order to get their children back the government exposes Marge and Homer to the humiliation of parenting classes that subject them to drug screenings and the reminder that milk must be kept refrigerated. *Id.* In short, the government interferes where a lower social order is capable of dealing with the problem precisely because it is a lower order, and in so doing, robs the Simpsons of their dignity, freedom, and community. *Cantor supra* at 168-70.

within a particular category.¹⁸⁴ Rather, subsidiarity provides a mechanism through which it is possible to debate and judge the appropriateness of taking a particular action.¹⁸⁵ Using the framework provided by subsidiarity, it is therefore possible to consider the appropriateness of the American welfare proposals in light of their consistency with the principle of subsidiarity.

B. Subsidiarity and American Welfare Legislation

The area with the greatest potential for intervention to lapse into interference is through the use of legislation to impose a particular set of values upon society as a whole. The danger in doing this comes not from the injustice of choosing one set of values over another,¹⁸⁶ but rather in the danger that the imposition of the values will, itself, be destructive of the common good and the quest for individual self-realization.¹⁸⁷

The most obvious objection to the use of legislation for coercive purposes is that the coercion of individual behavior strikes directly at the core concept of promoting human freedom.¹⁸⁸ To the extent that such legislation does so, it might best be avoided.¹⁸⁹ However, in certain circumstances the use of legislation as a coercive force may be justifiable.¹⁹⁰ Such circumstances, within the context of welfare, might include deliberate fraud. Here the basis for state intervention in the behavior of the individual might arise from the inability of lower orders of community to promote self-realization or the absolute danger to the common good caused by excessive "free riding." Notwithstanding this narrow exception to the use of legislation as inherently coercive, the exercise of that power, for purposes of subsidiarity, ought to remain limited.

Despite the implicit danger to human freedom posed by legislation that demands adherence to a particular set of values, this is precisely what the American welfare programs attempt to do. This is particularly true of the imposition of work requirements upon welfare recipients contained in both the Republican and Democratic proposals.

The Republican proposal, PRWFPA, is built upon a traditional conception of the poor as inherently defective.¹⁹¹ The fact of that defectiveness justifies the imposition of work requirements to correct the behavior of the

184. Vischer, *supra* note 89, at 127.

185. *Id.* at 128.

186. Finnis, *supra* note 181, at 222-23.

187. *Id.*

188. Wright, *supra* note 172, at 284-85.

189. Finnis, *supra* note 181, at 222-23.

190. *Id.*; Kohler, *supra* note 159, at 31.

191. See Epstein, *supra* note 6, at 41-43; *supra* note 9 (citing authorities).

poor.¹⁹² Admittedly, the rhetoric defining the current Republican proposal has moved away from explicit references to the defective nature of the poor in favor of justifying work requirements as necessary to enhance the dignity of welfare recipients.¹⁹³ The impulse to enhance the dignity of individuals through the independence of work is laudable in the sense that self-sufficiency is an important component in enhancing human existence.¹⁹⁴

However, work is not the only element necessary to create a dignified human existence. The opportunity for individuals to choose their own path to dignity, as well as respect for their choices, also play an integral role in defining a dignified human existence, because without such opportunity the individual is not truly free. Thus, by accepting an image of the poor that justifies the imposition of narrow communal values, the Republican proposal essentially violates the principle of subsidiarity by effectively eliminating the range of choices open to welfare recipients. In short, by seeking to correct the poor, PRWFPA unnecessarily interferes in the freedom of the lowest order of human society: the individual.

In comparison to the work requirements in PRWFPA, those contained in WORK, and the British welfare reform measures, arguably create opportunity for individual participation in a broader community. Funding support programs such as education and childcare arguably enhance the range of choices open to individuals to structure their own interaction with society beyond that provided by the imposition of relatively inflexible work requirements.

Although the work requirements in WORK enhance the range of choices available to the individual, the existence and nature of the requirements themselves suggests the imposition of a particular method of integration.¹⁹⁵ In short, WORK creates the fiction of choice by presenting individuals with a greater range of choices in how to become educated, working individuals. As with the British reforms, under WORK, there is no other option, either an individual participates in work programs or they are denied benefits.¹⁹⁶ Again, as in the Republican welfare proposal and the broader Anglo-American tradition in general, the proposals of WORK suggest a willingness to stigmatize the poor and force compliance with a relatively narrow

192. See *supra* note 9 (citing authorities).

193. See generally, Vischer, *supra* note 89 (noting the trend in "compassionate conservatism" to define conservative welfare proposals in terms of enhancing the dignity of the individual, but remaining critical of such proposals on the grounds that they do not truly empower individuals).

194. Christine Firer Hinze, *What is Work For? A Catholic Ethical Response to a Crucial Issue in U.S. Welfare Reform*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 649, 655-56 (1997).

195. See *supra* notes 9, 15 (citing authorities).

196. See, e.g., Green Paper, *supra* note 14, at 31.

set of cultural values.¹⁹⁷ This willingness to use work requirements and narrow educational opportunities as a coercive mechanism within WORK challenges the principle of subsidiarity's protection of free human choice in the path to individual self-realization.

VI. CONCLUSION

Even after such a brief examination of the American welfare system, and the philosophical conceptions of the poor that influence its structure, in light of the principle of subsidiarity, one is able to see that the system fails to respond to poverty and the poor. In one sense, the system fails on a practical level in that it neither truly reduces poverty nor provides for self-sufficiency through work. In another sense, the system is philosophically flawed in that the system's reliance on paternalistic policies to structure the program essentially robs individual recipients of their freedom and dignity.

Recognition of these flaws is, however, only a first step to correcting the American welfare system. If we are truly serious about reforming the welfare system, we must commit ourselves to a reexamination of the principles that allowed us to create such a flawed system. In particular, we must reconsider our willingness to accept the accuracy of the traditional Anglo-American conception of the defective poor. As a substitute, we ought to give serious consideration to premising our welfare system on the recognition and protection of human freedom contained within the principle of subsidiarity.

Shaped by the understanding of the proper relationship between society and the individual as described by the principle of subsidiarity, we can begin to understand what an American welfare system founded on that principle might look like. Certainly we ought to accept that some state intervention must exist if only to provide the opportunity for individuals to integrate themselves into society at large.¹⁹⁸ However, the government must recognize that its power to intervene in the lives of the poor is largely limited by its own role in society and necessary respect for human freedom and dignity.¹⁹⁹

On a philosophical level then, accepting subsidiarity thus requires that we alter our conception of the poor as deficient and in its place create a conception that more accurately appreciates the range of choices that rational

197. See *supra* notes 9, 15 (citing authorities).

198. Vischer, *supra* note 89, at 138.

199. *Id.* at 115 (quoting Oliver F. Williams, *Catholic Social Teaching: A Communitarian Democratic Capitalism for the New World Order*, in *CATHOLIC SOCIAL THOUGHT AND THE NEW WORLD ORDER* 18 (Oliver F. Williams & John W. Houck eds., 1993)).

individuals can make in determining what they consider to be the most appropriate pathway to full human existence. In essence, we must accept the poor as individual humans.²⁰⁰ As such, the poor person who chooses not to seek employment should not necessarily be regarded as defective. Rather, we ought to acknowledge that the individual may have made a rational decision to place the pursuit of other values, such as caring for a family or enhancing their education, higher than immediate monetary gain or self-sufficiency.

As a consequence, a welfare system that conforms to the principle of subsidiarity ought to move away from broad paternalistic demands and attitudes that coercively shape the individual's value structure and stigmatize the poor as defective. As a community, we may determine that some values, such as education or work ought to be promoted over others, that advocacy should not completely remove the individual's rational choice in the matter. Rather, society should attempt to provide the individual with access to real opportunities that allow the individual to structure his or her own life as much as possible.

In essence, then, a welfare reform debate informed by the principle of subsidiarity ought not to concentrate on imposing work requirements or clearing work hurdles. Nor should such a system seek to produce absolute conformity to a cultural norm. Instead, the debate should concentrate on how to authentically empower the poor so that they might participate in a community as truly free and independent humans.

200. Relating this concept of treating the poor as individuals plays an integral role in the United States Conference of Catholic Bishops' own proposals for welfare reform. See, *Welfare Overhaul Proposals, Hearing on TANF Reauthorization Proposals Before the House Comm. on Ways and Means*, 107th Cong. (2002) (statement of Kathleen A. Curran, Policy Advisor, The United States Conference of Catholic Bishops).

INSTRUCTIONS FOR AUTHORS

The *Journal of Legislation* is a semiannual publication by students at Notre Dame Law School. The *Journal* is a law review that focuses on statutory, regulatory, and public policy issues rather than on case law. The *Journal* believes in the open debate of all political ideologies and philosophical points of view. Therefore, the *Journal* has traditionally solicited legislators, judges, administrators, and prominent attorneys, as well as scholars and recognized experts from beyond the legal arena. The *Journal* publishes articles, legislative reform pieces, essays (scholarly editorials), book reviews and student notes.

Manuscripts submitted for publication should be typewritten on 8 1/2" x 11" paper and should be double-spaced. Authors should submit articles using Microsoft Word formatting. Footnotes should conform to A Uniform System of Citation (17th ed. 2000). Citations using large and small caps (e.g., law reviews, books, titles, etc.) should appear in bold with upper and lower case letters. A paragraph on the title page should provide the author's current occupation, position, and educational background.

Decisions on publications are typically made within four weeks of a manuscript's receipt. The *Journal* accepts submissions on a rolling basis. Most article selections for an issue are made two to six months prior to publication. Thus, to be considered for publication in the Spring issue, please send your manuscript between September and February; to be considered for our Fall issue, please submit your article between March and August.

Student editors edit articles accepted for publication, and the *Journal* submits editorial changes to the author for approval before publication. The *Journal* reserves the right of final decision concerning all manuscript changes. When an article is approved for publication, the *Journal* will request that the author assign the copyright for the manuscript to the *Journal* to comply with the copyright laws of the United States.

Manuscripts should be submitted to:

Editor-in-Chief
Journal of Legislation
Notre Dame Law School
Notre Dame, Indiana 46556
Phone: (574) 631-5918
Email: ndlsjl@nd.edu

Submissions by email are also welcome.

