

Changing the Subject: From Welfare to Poverty to a Living Income

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I. INTRODUCTION

¶1 For nearly forty years, the dominant political discourse about poverty in the United States has focused on welfare rather than poverty itself, even as disparities between the wealthiest and those at the bottom widened spectacularly. With the new century and a new administration, public attention has returned to issues of poverty and inequality. This Article explores the relevant history of the last four decades and suggests a comprehensive policy framework for substantially reducing poverty in the short run and for investing in the future.

II. HOW WELFARE BECAME THE SUBJECT

¶2 In 1996, President Clinton signed into law a radical change in welfare policy, culminating a backlash against “welfare”—cash assistance to mainly female-headed households with children—that began in 1967.¹ The new name for the program, Temporary Assistance to Needy Families (TANF), captured the fundamental nature of the change, replacing the previous name, Aid to Families with Dependent Children (AFDC).²

¶3 It is somewhat mysterious why relatively little attention has been paid since the 1970s to the larger frameworks within which welfare is situated: poverty, low-wage work, the amount of income required to meet an ordinary family’s basic needs, and the stunning growth in inequality that has occurred over those decades. Major labor-market changes that had significant negative effects on a third to a half of American families began to appear in the early 1970s, as did the acceleration in income and wealth increases at the top of the economic heap.³ Yet elected officials and other leaders did not focus extensively on the serious consequences of these changes.

¶4 No doubt it is relevant that at a critical time Ronald Reagan became President Reagan, and captured the imagination and devotion of millions of Americans with his sunny assurances that government was the problem. But President Reagan did not

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¹ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended at 42 U.S.C. §§ 601-617).

² AFDC was replaced by TANF with passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. *See id.*

³ ISABEL V. SAWHILL & JOHN E. MORTON, ECONOMIC MOBILITY PROJECT, ECONOMIC MOBILITY: IS THE AMERICAN DREAM ALIVE AND WELL? 6 (2007), available at <http://www.economicmobility.org/assets/pdfs/EMP%20American%20Dream%20Report.pdf%20>.

operate in a vacuum. Right-wing politicians and ideologues had begun a concerted effort as far back as 1967 to change the discourse and the agenda from talking about a war on poverty to conducting a war on welfare.⁴

¶15 Antipoverty policy moved forward in some important ways over the period. Social Security was indexed to inflation and Supplemental Security Income (SSI) was enacted.⁵ The income of the elderly and the disabled increased substantially as a consequence, and the elderly were transformed from the poorest age group to the least poor.⁶ Housing vouchers, Pell Grants for postsecondary education, the transformation of food stamps into a national program, and expansion of Medicare and Medicaid were all important developments, many enacted during Richard Nixon’s presidency—albeit by a Democratic Congress.

¶16 Nonetheless, the national debate that began in the late 1960s was not about poverty, except in the sense that the conservatives argued that ending welfare would force people—mainly mothers—to obtain employment, which would in turn—we were supposed to infer—end poverty. By the 1980s, the conservatives were driving the debate. Led by President Reagan, the attack was on government itself, with advocacy of deregulation and untrammelled reliance on market solutions the order of the day. If government was the problem generally, in President Reagan’s formulation, radically conservative welfare reform was the application of that “insight” when it came to the poor.

¶17 Why the war on welfare? Racial politics, mainly. In the 1960s, the politics of race and the operative reality of welfare eligibility had changed in ways that intersected to produce a racialized rendering of welfare politics for mass consumption.

¶18 Aid to Dependent Children, as it was originally called, was enacted in 1935 as part of the historic Social Security Act.⁷ It was designed as an exercise of “cooperative federalism,” with matching federal and state funding, and benefit levels to be set by the states.⁸ As a practical matter, states were left to serve whomever they thought was deserving, which, particularly in the South, led to rampant race discrimination. More broadly, the general assumption was that the program would fade away as Social Security took hold and widows—the major clientele of welfare—began receiving benefits based on their husbands’ work.

⁴ See generally LAWRENCE MEAD, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATION OF CITIZENSHIP* (1986) (arguing that welfare and other social programs not based on reciprocal obligations fail to inculcate personal responsibility); CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980* (1984) (blaming welfare for creating a culture of dependency).

⁵ Social Security Amendments of 1972, Pub. L. No. 92-603 § 301, 86 Stat. 1329, 1465-78 (codified as amended at 42 U.S.C. §§ 1381-83(c) (2000)) (Supplemental Security Income for the Aged, Blind, and Disabled); Pub. L. No. 92-336, §202(a)(1), 86 Stat. 406, 412-15 (codified as amended at 42 U.S.C. § 415(i) (2000)) (indexing Social Security benefits).

⁶ CARMEN DENAVAS-WAIT, BERNADETTE D. PROCTOR & JESSICA C. SMITH, U.S. CENSUS BUREAU, *INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2007*, 52 (2008) [hereinafter U.S. CENSUS BUREAU] (reporting that elderly poverty went down from 25% in 1968 to 9.7% in 2007, while child poverty went up from 15.6% to 18%).

⁷ Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301-1399 (2000)).

⁸ See JULIE A. NICE & LOUISE G. TRUBEK, *CASES AND MATERIALS ON POVERTY LAW: THEORY AND PRACTICE* 621 (1997) (“[T]he welfare system is frequently described as a scheme of ‘cooperative federalism,’ a phrase popularized by the Supreme Court in *King v. Smith*.”).

¶9 World War II changed things. Black families, who had been migrating from the South for decades, accelerated their migration to work in the war plants.⁹ They were affected disproportionately in the conversion to a peacetime economy and suffered higher unemployment and, consequently, a greater need for public assistance.¹⁰ In the 1960s, three forces came together to open welfare offices to people previously denied assistance. One was the civil rights movement, which spawned the welfare rights movement.¹¹ The second was the arrival, courtesy of the federal war on poverty, of legal services lawyers for the poor.¹² The third was a court system turned increasingly liberal under Chief Justice Earl Warren and by judicial appointments made throughout the system by Presidents John F. Kennedy and Lyndon B. Johnson.

¶10 The welfare rolls grew, not because more people became eligible, but because organized welfare clients pushed back at welfare officials, legal services lawyers sued for benefits, and courts responded, capped by the Supreme Court's 1968 decision in *King v. Smith*,¹³ which held that the 1935 law¹⁴ created a legal right to cash assistance for those named as eligible (although not at any particular level of benefits).

¶11 The backlash began with the increase in the rolls during the 1960s. Public impatience with welfare fed nicely into a new framing of racial politics. Attacks on welfare were a perfect way to appeal to racial stereotypes.¹⁵ A disproportionate number of the new recipients were black. Why? Because a disproportionate number of the poor were black and beyond that, a disproportionate number of those kept off welfare when it was effectively discretionary were also black. The myth of the lazy and shiftless person who preferred to live on welfare rather than get a job was a singularly useful political device.¹⁶

¶12 In retrospect, we can see that the 1970s were a perfect petri dish for culturing new backlash politics possessing broad appeal. Jobs, especially industrial jobs, were being lost to globalization and technology.¹⁷ Replacement jobs, and fortunately there were some, paid much less. Men were hit particularly hard. Women went to work, not always willingly, to maintain the family income. These were problems for millions of people—basically, the entire lower half of the income continuum.

¶13 For African-Americans, the issues were exacerbated by the increase in concentrated inner-city poverty. Concentrated urban poverty for disproportionate numbers of African-Americans occurred for two interlocking sets of reasons: the disproportionate effects on blacks of deindustrialization and globalization, and the neighborhood effects of the flight

⁹ WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* 33–34 (1987).

¹⁰ THOMAS J. SUGRUE, *THE ORIGINS OF THE URBAN CRISIS: RACE AND INEQUALITY IN POSTWAR DETROIT* 3–14 (1998).

¹¹ MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960–1973*, 56 (1993).

¹² FELICIA KORNBLUH, *THE BATTLE FOR WELFARE RIGHTS: POLITICS AND POVERTY IN MODERN AMERICA* 69 (2007).

¹³ 392 U.S. 311, 334 (1968).

¹⁴ Social Security Act of 1935, Pub. L. No. 74-271, 49 Stat. 620 (codified as amended at 42 U.S.C. §§ 301-1399 (2000)).

¹⁵ KORNBLUH, *supra* note 12, at 89–91.

¹⁶ *Id.*

¹⁷ SUGRUE, *supra* note 10, at 144.

of the black middle class to the suburbs.¹⁸ The inner cities, always racially segregated, had once been economically integrated.¹⁹ The civil unrest and consequent property destruction of the 1960s made inner cities less livable, and the Fair Housing Act of 1968 created a way out to the suburbs, by outlawing discrimination in the sale and rental of housing.²⁰ Those left behind were disproportionately the least able to fend for themselves. Especially following the demise of good-paying industrial jobs that had not required even a high school diploma, and given that blacks had been the last hired and were the first fired, the inner cities were highly vulnerable.

¶14 The real answers for everyone lay in focusing on finding ways to increase the returns from working—both wages and wage supplements—and ways to keep so much of the fruits of growth from going to such a tiny number of people at the very top. For inner-city residents, these answers needed to be supplemented by a thoughtful welfare-to-work policy, a proactive jobs policy, and national support for neighborhood revitalization.²¹

¶15 But blaming someone else, especially when real solutions are hard to achieve, is a classic political move. Instead of the real answers, which were expensive and lacked political support, what was available to the poor was mostly welfare. Blaming welfare recipients for soaking up the tax dollars of hard-working Americans was an easy way out and a political winner. This was joined by ever more aggressive law enforcement, which incarcerated increasing numbers of the young men in the community.²²

¶16 Thus, there came to be evidence to which those playing the blame game could point. The concentration of poverty and the lack of thoughtful policies to counter it produced outcomes—crime, violence, drugs, teen births and unmarried births, and dropping out of school—that were made to order for those who blamed welfare for everything.

¶17 The attack on welfare accelerated with the Reagan era. It abated temporarily with the Family Support Act of 1988,²³ but began again with the recession of 1989-90. Governor Bill Clinton was elected president on a promise to “end welfare as we know it.”²⁴ He proposed legislation that was more incremental than his campaign slogan, but when the Republicans took over Congress they served him up a bill that took his bumper sticker literally.²⁵ Looking toward re-election, he signed it.

¹⁸ See generally WILSON, *supra* note 9.

¹⁹ See generally SUGRUE, *supra* note 10.

²⁰ Pub. L. No. 90-284, 82 Stat. 61 (codified as amended at 42 U.S.C. §§ 3601-3619, 3631 (2000)).

²¹ See BRENDAN O’CONNOR, *A POLITICAL HISTORY OF THE AMERICAN WELFARE SYSTEM: WHEN IDEAS HAVE CONSEQUENCES* 71–90 (2003) (arguing that a lack of liberal consensus in the 1970s led to many lost opportunities to provide a guaranteed income).

²² WILSON, *supra* note 9, at 30–32.

²³ Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988) (codified in scattered sections of 42 U.S.C.).

²⁴ BILL CLINTON & AL GORE, *PUTTING PEOPLE FIRST: HOW WE CAN ALL CHANGE AMERICA* 164 (1992).

²⁵ Message to the Congress Transmitting Welfare Reform Legislation, 1 PUB. PAPERS 1112 (June 21, 1994).

III. THE TANF EXPERIENCE

¶18 Shortly after President Clinton took office, the number of people on welfare reached 14.2 million—about one-third adults, mainly women, and two-thirds children.²⁶ I believe that was too many. We had never had a thoughtful national welfare-to-work policy, and too many people stayed on the welfare rolls for too long. We did not give a thoughtful policy in 1996. Congress and President Clinton chose a policy with a rigid time limit, which states could make even shorter at their discretion, and wide state discretion in most other respects. States had no legal obligation to provide help to anyone and had virtually complete freedom to impose sanctions for noncompliance, including lifetime disqualification. The flexibility of the block grant approach paved the way for a few states to choose a constructive path, but the main message conveyed to the states by the legislation was to pare the roles, period. They did.

¶19 The welfare rolls were reduced by nearly two-thirds, to about five million recipients, by the time President Clinton left office, and they have stayed at that level for the better part of a decade.²⁷ While there was some variation among the states, the main thrust of the policy was to push people off welfare whether they had a job or not, and to limit severely the number of new applicants allowed on the rolls—the legal obligation to serve all those eligible had been repealed in TANF. One consequence of this policy is that the number of poor children on welfare has been nearly halved, so that welfare now reaches about half of those eligible and about a third of poor children overall.²⁸ TANF's effectiveness as part of a social safety net is grossly inadequate.

¶20 Proponents of the 1996 law point to the fact that about sixty percent of the women who left the rolls in the years following the law's enactment went to work, although that number has declined significantly since 2000.²⁹ Many women did go to work, but only about half of those who found jobs escaped poverty.³⁰ A key reason so many women went to work was because jobs were widely available in the unprecedented hot economy of the late 1990s, a state of affairs that no one foresaw or could have foreseen when the law was passed.

¶21 In all, a net of some three million women (and their six million children) have left the rolls since 1994. The forty percent of recent leavers who do not have a job would, with their children, add up to roughly 3.6 million people if one could apply that percentage to the nine million who have left the rolls over the years.³¹ Some married, moved in with a partner or family, or obtained SSI benefits, but even if all of those

²⁶ See ADMIN. FOR CHILDREN & FAMILIES, U.S. DEP'T OF HEALTH AND HUMAN SERV., STATISTICS ON TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, 1960–1990 (2000).

²⁷ H. COMM. ON WAYS AND MEANS, 108TH CONG., 2004 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 7-31, 7-89 (Comm. Print 2004).

²⁸ CENTER FOR AMERICAN PROGRESS TASK FORCE ON POVERTY, FROM POVERTY TO PROSPERITY: A NATIONAL STRATEGY TO CUT POVERTY IN HALF 52 (2007) [hereinafter CAP POVERTY TASK FORCE REPORT].

²⁹ See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2003, 391 (2004).

³⁰ See, e.g., JASON DEPARLE, AMERICAN DREAM: THREE WOMEN, TEN KIDS, AND A NATION'S DRIVE TO END WELFARE (2004) (chronicling the effects of welfare reform on three mothers living in Milwaukee, WI); R. KENT WEAVER, ENDING WELFARE AS WE KNOW IT (2000) (detailing the changes made with the welfare reform bill).

³¹ Pamela J. Loprest, *Making the Transition from Welfare to Work*, in WELFARE REFORM: THE NEXT ACT 17, 24–25 (Alan Weil & Kenneth Feingold, eds., 2002).

arrangements were satisfactory, about half of that 3.6 million remained completely disconnected: living in households with no job, no welfare, no marriage, no shared residential arrangement, and no disability benefits—what I call “out out out.”³²

¶22 If my extrapolation is anywhere near correct, it would mean that 600,000 women and 1.2 million children who recently left welfare, a troubling number, are disconnected. This highly vulnerable group undoubtedly constituted a portion of the fifteen-plus million people who were in extreme poverty in 2006, with incomes of less than half the poverty line, or less than \$8000 for a family of three. To underscore, over five percent of the American people live in extreme poverty.³³ That is troubling indeed.

¶23 TANF remains a deeply flawed program. A new national debate is needed about who is expected to work and who is not, about exceptions to time limits and work requirements, about eligibility for legal immigrants, and about limits on states’ power to impose harsh sanctions, as well as a host of other issues.

IV. THE CORRECT PERSPECTIVE: ENDING POVERTY AND THEN SOME

A. *The Facts*

¶24 An enormous paradox exists in the United States. We are a wealthy nation and yet we have millions of people—far more than the 37.3 million we called poor in 2007—who do not earn enough each month to make ends meet.³⁴

¶25 Poverty and economic struggle have many faces—elderly, disabled, rural, minority, illiterate, homeless, immigrant, chronically unemployed, mentally ill, addicted—but one factor that a larger number of people share than any other is the factor of low-wage work.

¶26 Our labor market constitutes a giant case of market failure, perhaps not in a technical economic sense, but in the sense that huge numbers of people are working as hard as they can and do not make enough money to meet their families’ basic needs.

¶27 We need to understand some basic facts.

¶28 One, the so-called poverty line is totally unrealistic. It was based on a calculation of the cost of minimum subsistence that, to put it mildly, is completely unsophisticated.³⁵ It was about \$16,580 for a family of three and \$21,200 for a family of four in 2007.³⁶ There are very few places in this country where one can actually subsist on an income at that level.³⁷ Even so, about one in eight people has an income below the poverty line.³⁸

³² See PAMELA J. LOPREST, *THE URBAN INST., FEWER WELFARE LEAVERS EMPLOYED IN WEAK ECONOMY* 1, available at <http://www.urban.org/publications/310837.html>.

³³ U.S. CENSUS BUREAU, *supra* note 6, at 16.

³⁴ *Id.* at 12.

³⁵ The number of poor Americans is calculated by determining the number of people whose income falls below a threshold amount known as the poverty line, which varies according to family size and is adjusted annually to account for inflation. The actual dollar figure for current thresholds is essentially an arbitrary figure—it reflects an early-1960s calculation estimating the cost of a nutritionally adequate diet designed for temporary or emergency use, multiplied by three because food represented about one-third of a family budget in 1955, and then adjusted only for changes in the consumer price index. The admittedly arbitrary nature of the calculation of the poverty line has been criticized in that it underestimates the true extent of poverty. PATRICIA RUGGLES, *DRAWING THE LINE: ALTERNATIVE POVERTY MEASURES AND THEIR IMPLICATIONS FOR PUBLIC POLICY* 47–52, 167–68 (1990) (arguing that the 1950s survey results on which the poverty line was based bear little resemblance to current expenditure patterns).

³⁶ U.S. CENSUS BUREAU, *supra* note 6, at 45.

³⁷ See HEATHER BOUSHEY, CHAUNA BROCHT, BETHENY GUNDERSEN & JARED BERNSTEIN, *HARDSHIPS IN*

¶29 Two, several studies have concluded that, roughly speaking, an income of about twice the poverty line—with wide geographic variation above and below—is required to meet one’s basic financial obligations.³⁹ About ninety million people, or thirty percent of the population, have incomes below that level.⁴⁰ No one, including most of those included in the larger group of ninety million, would call all of these individuals “poor,” but they are not making an adequate income.

¶30 Three, the common denominator among most of the adults in the group of ninety million is low-wage work. Why? We all know the “good” jobs disappeared and were replaced by “lousy” jobs. But many of us do not extrapolate from that fact and think about what it means for real people. The entire lower half of wage earners in the United States has been stuck with roughly the same pay for a third of a century. The median wage job paid \$13.91 an hour in 1973 (in 2007 dollars) and \$15.11 an hour in 2007, an increase of less than 10%, or less than three-tenths of a percent a year, over 34 years.⁴¹ Thus, half the jobs in the country paid about \$29,000 annually in 1973 (if one held the job full-time for the full year), and went up to \$31,400 by 2005. A quarter of the jobs in the country do not pay enough to get a family of four out of poverty.⁴²

¶31 Men actually lost ground over the years. Men 30 to 39 years of age had a median income of about \$40,000 in 1974, and their counterparts in 2004 had a median income of about \$35,000, or a loss of about 12%.⁴³ Families gained ground, but only because of those that could send a second wage earner into the labor market.

¶32 Four, the economy was growing even as the wages of the lower half were stagnant. The top 1% of earners gained 176% after taxes from 1979 to 2004 while the bottom 20% gained only 9%.⁴⁴ CEO pay went from 24 times that of the average worker in 1965 to 275 times more in 2007.⁴⁵ Some people did very well indeed.

¶33 Five, whatever is true about poverty and low-wage work generally, the picture cannot be brought into full focus without considering race and ethnicity. African-Americans, Latinos, and Native Americans are poor at rates two to two and a half times those of whites.⁴⁶ They earn less than whites. Their position on the economic ladder is less secure than that of whites. African-American, Latino, and Native American children are disproportionately ill-served by the schools they attend, and drop out at rates far higher than whites. As they get older, the criminal justice system arrests, tries, convicts, and incarcerates them at rates far higher than whites.⁴⁷ Discrimination in jobs, housing, education, and credit continues to operate as a barrier that does not confront whites. Just

AMERICA: THE REAL STORY OF WORKING FAMILIES 16–17 (2001).

³⁸ U.S. CENSUS BUREAU, *supra* note 6, at 12.

³⁹ See CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 8; see also BOUSHEY, BROCHT, GUNDERSEN & BERNSTEIN, *supra* note 37, at 11–12.

⁴⁰ *Id.*

⁴¹ LAWRENCE MISHEL, JARED BERNSTEIN & SYLVIA ALLEGRETTO, ECON. POL’Y INST., THE STATE OF WORKING AMERICA 134 (2008).

⁴² CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 19. The poverty line for a family of four in 2007 was \$21,300. U.S. CENSUS BUREAU, *supra* note 6, at 45.

⁴³ Julia B. Isaacs, *Economic Mobility of Men and Women*, in GETTING AHEAD OR LOSING GROUND: ECONOMIC MOBILITY IN AMERICA 61, 62 (Ron Haskins, Julia B. Isaacs & Isabel V. Sawhill, eds., 2008).

⁴⁴ SAWHILL & MORTON, *supra* note 3, at 3.

⁴⁵ MISHEL, BERNSTEIN & ALLEGRETTO, *supra* note 41, at 9.

⁴⁶ U.S. CENSUS BUREAU, *supra* note 6, at 52.

⁴⁷ Peter B. Edelman, *Toward a Comprehensive Antipoverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L.J. 1697, 1698–1700 (1993).

as the debate over welfare was heavily laden with racial overtones, debate and discussion about ending poverty and achieving an adequate income for everyone cannot occur without making sure that our progress includes ending all disparities of race and ethnicity in the functioning of our economy.

B. What Should Be Done?

- ¶34 While we cannot undo what has been done over the past thirty-five years, we should learn from that history to inform discussion of what should be done now.
- ¶35 There is no simple answer, but I can say that I was pleased to co-chair a Poverty Task Force for the Center for American Progress, which issued its report in 2007. It is pertinent here.⁴⁸ We made recommendations that would not only cut poverty in half in the United States over the next decade, but would also raise incomes for those with incomes between 100% and 200% of the poverty line.⁴⁹
- ¶36 Of course, policy recommendations are one thing. Implementing them is something else. It is critical to have people in elective office who will act and it is critical for the populace to take the actions necessary to make sure their elected officials do act. In addition, much of what needs to be done entails responsibility beyond public policy. Business, labor, faith, and other local leaders must lead initiatives that move things forward, sometimes in partnership with government and sometimes not. The idea of responsibility is individual and personal as well. Individual success requires the exercise of individual responsibility to act in one's own behalf and all of us to have a responsibility to do what we can to help others.

1. Income from Work

- ¶37 Ideally, work should pay enough to give every worker an adequate income. When I used the term “market failure” to describe what has happened to the American labor market, one thing I included is that the problem of low-wage work will not, in the foreseeable future, be solved fully by increases in what the employer pays the employee. Nonetheless, some of the key steps are matters for which the employer should be directly responsible to the worker.

i) The Minimum Wage

- ¶38 The United States recently, finally, raised the minimum wage after a long period of inaction, and that will help improve the current situation. When the increase (to \$7.25 an hour) is fully implemented,⁵⁰ a minimum-wage job will pay a full-time worker a little over \$15,000 annually. This is based on a calculation of working full-time for the entire year. The CAP Task Force proposed continued increases in the minimum wage until it reaches half the average wage—about \$8.40 at present. After that, the minimum wage would be indexed to inflation.⁵¹

⁴⁸ See generally CAP POVERTY TASK FORCE REPORT, *supra* note 28.

⁴⁹ *Id.*

⁵⁰ The minimum wage increase becomes effective July 24, 2009. See U.S. Department of Labor, Compliance Assistance—Fair Labor Standards Act (FLSA), <http://www.dol.gov/esa/whd/flsa> (last visited March 1, 2009).

⁵¹ CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 27.

¶39 This is more than an antipoverty measure. The Urban Institute, which analyzed a number of the CAP Task Force’s recommendations, calculated that indexing the minimum wage at half the average wage would raise 1.7 million workers out of poverty, raise wages for about 4.6 million workers with below-poverty incomes (many of them part-time and/or seasonal workers), and increase incomes for about 9 million workers with incomes between 100% and 200% of poverty.⁵²

ii) The Earned Income Tax Credit

¶40 Because the minimum wage cannot (either economically or politically) be raised to a level at which it would remove all workers from poverty, let alone to the point where all workers would have an adequate income, Congress enacted the Earned Income Tax Credit (EITC). It has evolved into a powerful antipoverty weapon, which adds more than \$4,800 to the income of a minimum-wage worker with two children.⁵³ When the recent increase in the minimum wage is fully applicable, the EITC combined with the new minimum wage will get such a family out of poverty.⁵⁴

¶41 Nonetheless, because so many jobs will continue to leave families either in or near poverty even when the EITC is added to the maximum feasible minimum wage, the EITC needs further improvement. The EITC should have a category for families with three or more children, an easing of the marriage penalty now embedded in it,⁵⁵ an extension of its peak payment to a higher income level,⁵⁶ and a more gradual reduction from its peak as workers’ incomes rise.⁵⁷ Especially important is a significant increase in the small (\$428 in 2007)⁵⁸ EITC currently available to low-wage workers who have no children or are noncustodial parents. The Urban Institute calculated that the CAP Task Force’s EITC recommendations would reduce the number of people living in poverty by 2.2 million.⁵⁹

¶42 The idea that in a country as wealthy as the United States half the jobs essentially pay too little to support a family is deeply troubling. Yet the predominance of low-wage jobs is a fact, not just in the United States, but throughout the industrialized world.⁶⁰ Income supplementation is a necessity.

¶43 It is important to understand that the minimum wage and the EITC must operate in tandem, and in tension with one another. The minimum wage should be as high as it can

⁵² *Id.* at 61.

⁵³ Tax Reduction Act of 1975, Pub. L. No. 94-12 § 204(a), 89 Stat. 26 (codified as amended in scattered sections of 26 U.S.C.).

⁵⁴ In 2009, when the minimum wage will reach \$7.25, the poverty line for a family of three will be nearly \$18,000.

⁵⁵ For example, the EITC serves as a “marriage penalty” for employed single mothers “for whom there is a greater likelihood that adding a husband’s income to their tax return would place them in the phase-out range of the credit, or above the income eligibility ceiling altogether.” STEVE HOLT, *THE EARNED INCOME TAX CREDIT AT AGE 30: WHAT WE KNOW* 15 (2006).

⁵⁶ In 2007, the peak payment for a family with two children began to decrease when the family income reached \$15,400. INTERNAL REVENUE SERV., U.S. DEP’T OF THE TREASURY, PUBLICATION NO. 596, *EARNED INCOME CREDIT (EIC) 44–47* (2006) (providing the 2006 Earned Income Credit Table).

⁵⁷ In 2007, the “tax” on each dollar earned above \$15,400 by a family with two children was 21.06%, and EITC eligibility ended at \$37,783. *Id.* at 48.

⁵⁸ INTERNAL REVENUE SERV., *EITC THRESHOLDS AND TAX LAW UPDATES, CURRENT TAX YEAR 2007*, <http://www.irs.gov/individuals/article/0,,id=150513,00.html> (last visited Feb 26, 2009).

⁵⁹ CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 61.

⁶⁰ See generally HM TREASURY, *CHILD POVERTY REVIEW* (2004), available at http://www.hm-treasury.gov.uk/d/childpoverty_complete_290704.pdf.

be without destroying jobs, so that employers assume the maximum feasible responsibility for their workers. The Earned Income Tax Credit should add to workers' income without turning into a subsidy for low-wage employers. This is a tension that must be maintained.

iii) The Child Tax Credit

¶44 The Child Tax Credit adds to the income of taxpayers and covers some people who do not owe federal income taxes.⁶¹ It provides a credit against federal income taxes of \$1000 per child for up to three children, and, in addition, is partially "refundable," which means it pays a partial credit to some low-wage workers with children who owe no income tax.⁶² As originally enacted, however, eligibility for the partial refundable credit did not begin until a family has a certain minimum amount of income, a figure that increases each year—\$11,300 in 2006.⁶³ The CAP Task Force recommended making parents eligible for the full credit no matter their income.⁶⁴

¶45 Extending eligibility would go a long way toward combating poverty. In the "bail-out" legislation enacted in 2008, Congress reduced the threshold income for receiving the Child Tax Credit to \$8500, which will have a significant antipoverty effect.⁶⁵ Extending eligibility to zero income would do even more. The Urban Institute found that reducing the threshold to zero from the previous \$11,300 minimum would reduce poverty by 3.3 million people, nearly 10%.⁶⁶ Because it would add income for people at the very bottom of the income continuum, it is an especially important tool to reduce extreme poverty—the term used to describe the status of the 15-plus million people with incomes below half the poverty line, or below about \$8000 annually for a family of three.⁶⁷

iv) Removing Barriers to Union Organizing

¶46 Labor unions can be vital institutions in our society that improve wages and working conditions for low-wage workers, provided they can organize, win representation elections, and enter into collective-bargaining agreements with employers. As things are, the law permits employers to thwart organizing, engage in undue influence in elections, and refuse to bargain with unions that employees have chosen as their representatives. Barriers to organizing present themselves both in laws and in decisions made by the National Labor Relations Board (NLRB). Whenever it becomes politically achievable, the long-pending Employee Free Choice Act should be enacted to attack the ways in which current law impedes organizing, and one can hope that the NLRB will be differently constituted in the Obama Administration.⁶⁸ Instances where unions have won

⁶¹ 26 U.S.C. § 24 (2006), amended by 26 U.S.C.A. § 24 (2008).

⁶² CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 28.

⁶³ STAFF OF H. COMM. ON WAYS AND MEANS, 108TH CONG., BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS 13-59 (Comm. Print 2004); 26 U.S.C. § 24(d)(1)(B)(i) (2000).

⁶⁴ CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 28–29.

⁶⁵ President Obama's recently signed stimulus legislation provides that for tax years 2009 and 2010, the minimum income for eligibility for the refundable Child Tax Credit is \$3000. *See* 155 CONG. REC. H1360 (daily ed. Feb. 12, 2009).

⁶⁶ CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 61.

⁶⁷ U.S. CENSUS BUREAU, *supra* note 6, at 45.

⁶⁸ The bipartisan Employee Free Choice Act would authorize court orders to stop employers from firing or

elections and achieved contracts in recent years have illustrated the important difference they can make in the wages and working conditions of low-wage workers.⁶⁹

2. Societal Responsibilities that also Increase Income

¶47 The challenges associated with low-wage work include key items that are not the primary responsibility of employers. The larger society bears a fundamental share of the responsibility for such matters as health coverage, child care, housing, and the cost of college. Insofar as the public subsidizes these items, they effectively add to the personal income of those who benefit from them.

i) Health Coverage

¶48 The issue of health coverage for lower-income people can be considered either as one aspect of a plan to extend health coverage to all of the 45.7 million people currently uninsured,⁷⁰ or as a set of measures to achieve full inclusion of lower-income people in the existing patchwork of health care programs and plans. What is of interest here is not the substance of the design but the income implications of the matter. Either way, if the aim is to offer a sliding-scale subsidy to those with incomes up to twice the poverty line—or even higher as is currently the case for coverage of children in many states under the State Child Health Insurance Program (SCHIP)—the subsidy will increase the effective income of those subsidized.⁷¹ Providing health care for everyone is obviously important in and of itself, but it will also add a new measure of income security for millions of people. The health policy and political issues involved in the exact design of what would ultimately be enacted are extremely complex, to say the least. My purpose here is to point out that health coverage is also a key item in a strategy to achieve an adequate income for everyone.

ii) Financial Aid for Postsecondary Education

¶49 Congress recently increased the value of the Pell Grant, which is the main federal policy to assist lower-income students with the cost of college,⁷² but the work is by no means complete. As with health coverage, the relevant point here does not lie in the substantive details, but in the fact that public subsidy of the cost of college has a simultaneous effect on family income. This is primarily a matter of state and local public responsibility. In recent years public colleges and universities have repeatedly increased tuition and fees, to the point where substantial numbers of young people have now been

threatening union advocates, strengthen current penalties, and require employers to come to the table to negotiate a first contract. See H.R. 800, 110th Cong. (2007); S. 1041, 110th Cong. (2007).

⁶⁹ The exercise of collective bargaining by low-wage workers results in approximately sixteen percent higher wages and a twenty-five percent-point higher probability of having health insurance. JOHN SCHMITT, MARGY WALLER, SHAWN FREMSTAD & BEN ZIPPERER, CTR. FOR ECON. POL'Y & RESEARCH, UNIONS AND UPWARD MOBILITY FOR LOW-WAGE WORKERS 2 (2007), available at www.mobilityagenda.org/upward.pdf.

⁷⁰ U.S. CENSUS BUREAU, *supra* note 6, at 19.

⁷¹ State Children's Health Insurance Program (SCHIP), Title XXI of the Social Security Act, Pub. L. No. 105-33, 111 Stat 552 (codified at 42 U.S.C. § 1397aa *et seq.*) (effective Aug. 5, 1997).

⁷² Pell Grant Program, Pub. L. No. 96-374, § 402, 94 Stat. 1367, 1401 (1980) (codified as 20 U.S.C. § 1070a *et seq.*). President Obama's recently signed stimulus legislation provides that the maximum payment for the academic year 2009-2010 is \$4860. See 155 CONG. REC. H1325 (daily ed. Feb. 12, 2009).

priced out of the possibility of pursuing a college degree, even with the help that is available from Pell Grants.⁷³ A major purpose of having a system of public higher education is to create broad-based access to college.⁷⁴ That purpose has been substantially undermined in recent years.

iii) *Child Care and Early Child Development*

¶50 The issue of public investment in child care, and early child development more broadly, has a twofold purpose in relation to a discussion of income policy. One is to add to the income of current workers by contributing to the cost of the child care their children receive, and the other is to contribute at an early stage to the education of future workers, so that they can earn more as adults than they might have otherwise. Current federal support for child care reaches only a fraction of those who are even eligible for help even according to current income standards. The CAP Task Force recommended increasing eligibility for federally financed child care assistance to twice the poverty line.⁷⁵ The Urban Institute concluded that this action would reduce poverty by 2.7 million people.⁷⁶

iv) *Housing*

¶51 Housing vouchers, the main federal program to help defray the cost of rental housing for lower-income people, reach only about one in four eligible families. The steadily increasing shortage of affordable housing pushes rents up to ever-higher levels. The CAP Task Force recommended creating two million new housing vouchers over a ten-year period.⁷⁷ The Urban Institute estimated that this step would reduce poverty by 1.8 million individuals.⁷⁸

3. A Decent Safety Net

¶52 The nation's safety net for families and individuals who are not working, work only sporadically or part-time, or are in very low-income jobs has frayed markedly in recent decades. As indicated earlier, TANF reaches only one in three poor children, a fifty percent reduction from the proportion who received assistance under the AFDC program, which TANF replaced.⁷⁹ The food stamp program reaches sixty percent of those eligible⁸⁰ and unemployment compensation has deteriorated to the point where it reaches

⁷³ See, e.g., David T. Ellwood & Thomas Kane, *Who is Getting a College Education? Family Background and the Growing Gaps in Enrollment*, in *SECURING THE FUTURE: INVESTING IN CHILDREN FROM BIRTH TO COLLEGE* (Sheldon Danziger & Jane Waldfogel, eds., 2000) (finding that lower-income students are far less likely to enroll in post-secondary education than their higher-income peers and that the enrollment gap has widened over time).

⁷⁴ See, e.g., CLARK KERR, *THE USES OF THE UNIVERSITY* (2001).

⁷⁵ CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 33.

⁷⁶ *Id.* at 61.

⁷⁷ *Id.* at 36.

⁷⁸ *Id.* at 59.

⁷⁹ *Id.* at 32.

⁸⁰ ROBERT M. GOERGE, MAIREAD REIDY, SANDRA LYONS, MEEJUNG CHIN & ALLISON HARRIS, U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., *UNDERSTANDING THE FOOD STAMP PROGRAM PARTICIPATION DECISIONS OF TANF LEAVERS 19* (2004), available at <http://www.ers.usda.gov/publications/efan04011/>.

only about thirty-five percent of the unemployed (and an even smaller percentage of unemployed low-wage workers).⁸¹

¶53 These programs need attention. Unemployment insurance needs a thorough overhaul, especially to extend benefits to the lowest-wage workers and part-time workers. The level of food stamp benefits requires attention, and significant outreach to enroll eligible people who do not participate is a high priority, too. The Urban Institute estimated that raising food stamp participation to 85% of those eligible would reduce poverty by 1.4 million people.⁸² As indicated earlier, TANF is deeply flawed, and should be thoroughly re-examined in a number of respects. Modest changes in federal policy can encourage states to provide more personalized help to TANF recipients to find and hold on to jobs, extend help to legal immigrants, allow more people who have caregiving responsibilities to continue to receive cash assistance, and prevent people from being removed from the rolls without an individualized inquiry into their personal situation.

4. Investing in Children

¶54 Our focus up to now has been on raising income in the here and now, with policies reaching people with incomes up to twice the poverty line. But we must have an agenda for the future as well—to produce a work force with the education they need to qualify for the jobs of the twenty-first century.

¶55 It should go without saying that investing in children means far more than education. It begins before birth, and must involve an extensive investment from birth onward. Health care, child care, child development, and pre-kindergarten are all necessary, as are measures to help parents fulfill their vital responsibilities. Every child should come to school at age five, ready to learn.

¶56 This is a major responsibility for local communities. Every city or county needs to create a true system for preschool children, improving and reinventing its early childhood, child care, Head Start, and pre-kindergarten activities to create a seamless program that works all day and all year.

¶57 As for the schools themselves, our national goal must be a public education system that is no longer K-12 but P-14, committing to every child a public system that begins with pre-kindergarten and extends, for those who choose it, through community college and beyond.

¶58 The off-school hours are a vital part of the investment, too. The Harlem Children's Zone (HCZ) is what we want to emulate.⁸³ It is a comprehensive model (which took Geoffrey Canada and his colleagues thirty years to build), but it now stands for what a neighborhood can do to take responsibility for all of its children.⁸⁴ It is critical to

⁸¹ CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 46. President Obama's stimulus legislation contains major reforms to the unemployment compensation system as it extends the Emergency Unemployment Compensation Program and increases unemployment benefits. *See* 155 CONG. REC. H1391-92 (daily ed. Feb. 12, 2009).

⁸² CAP POVERTY TASK FORCE REPORT, *supra* note 28, at 62.

⁸³ PETER EDELMAN, HARRY HOLZER & PAUL OFFNER, RECONNECTING DISADVANTAGED YOUNG MEN 41-42, 68, 127 (2006).

⁸⁴ The Harlem Children's Zone is a paradigm. Recognizing that it is difficult, if not impossible, to raise healthy children in a disintegrated community, HCZ is a comprehensive model that integrates a tightly knit neighborhood network of services and support to provide: family stability; opportunities for employment; decent and affordable housing; quality education; and youth development activities. For example, schools within the Zone are held to a high standard of performance. At the same time, HCZ recognizes that schools

understand that even perfect schools cannot do the job all by themselves. HCZ stays with children through childhood and on up until they are successfully into college or the job market. The off-school hours have received considerable attention over the past decade-plus, and some cities do have extensive citywide initiatives, but far more needs to be done.

¶59 A crucial challenge is to invest, as HCZ does, in those young people who are most at risk of becoming disconnected from the mainstream society and create second chances for those who are already disconnected. In the 1990s, for better or worse, we paid extensive attention to changing the welfare system, emphasizing the need for women receiving cash assistance for themselves and their children to go to work outside the home.

¶60 We had no similar focus on young men, except insofar as one could say that prison was our policy for them.⁸⁵ The results were devastating. In a decade when nearly everyone else did better, young African-American men did much worse. The percentage of eighteen to twenty-four year old African-American men with less than a high school education who had jobs fell from fifty-nine percent, already a low number, to fifty-two percent, and this number did not count the young men who were in prison.⁸⁶

¶61 This is truly a national crisis. We are losing successive generations of young men of color (and too many young women as well). High schools need to work with the employer community and install proven programs that lead to jobs at the end of the road. Community colleges need to recruit and accept youths who are out of school and out of work, bringing them into a continuum that offers them a high school degree, followed by a community college education. Promising programs like YouthBuild and the Conservation and Service Corps need increased funding.⁸⁷ Communities need to build partnerships among employers, schools and community colleges, and nonprofit community organizations to create clear pathways to the job market for youth who are otherwise headed for wasted lives. Ex-offenders need more assistance to surmount the huge barriers they confront coming out of prison.

5. Paying Attention to Neighborhoods, but in a Regional Context

¶62 For some, escaping poverty and doing even better is closely connected to issues of geography and geographic mobility—improving the quality of life where they live now, increasing their choices of where to live, and creating access to jobs in the regional economy.

¶63 To elaborate, a complete strategy includes:

cannot do the job by themselves. Accordingly, HCZ's Baby College is a model parent education program that attacks the issues of parental responsibility for school readiness. President Obama has proposed replicating HCZ in twenty sites around the country.

⁸⁵ See CHILDREN'S DEF. FUND, AMERICA'S CRADLE TO PRISON PIPELINE (2007), available at http://www.childrensdefense.org/site/DocServer/PPP_report_2007.pdf?docID=5041 (identifying a trajectory that systematically leads to the juvenile justice system: as the risks and disadvantages of pervasive poverty and racial disparities accumulate, successful transition to productive adulthood is significantly less likely while involvement in the criminal justice system is significantly more likely).

⁸⁶ *Id.*

⁸⁷ YouthBuild and Service and Conservation Corps both report turning away double the participants they have funds to accept. CAP POVERTY TASK FORCE Report, *supra* note 28, at 39; see also EDELMAN, HOLZER & OFFNER, *supra* note 83.

- (1) Support for organizing people on the ground to press for needed changes in public policy and corporate behavior;
- (2) Increased supply and financial accessibility of housing for lower-income people throughout the region;
- (3) Helping inner-city residents find and hold onto jobs in the regional economy, including paying close attention to transportation needs;
- (4) Attracting middle-income people back to lower-income neighborhoods (in part by ensuring public safety and improving public schools), but doing so in a way that does not push current residents out; and
- (5) Reducing the high cost of being poor in inner-city neighborhoods by attracting stores that sell goods at nationally competitive prices and regulating overreaching by predatory and payday lenders and check-cashing proprietors.

¶64 It is particularly important to create housing choices throughout the region. Housing Production Trust Fund legislation was pending in Congress with bipartisan support for a number of years. Recent enactment of this legislation finally creates the first concerted federal effort to increase the supply of affordable housing in over two decades.⁸⁸ At the same time, as mentioned earlier, the federal housing voucher program needs overhaul and expansion.

¶65 Community development corporations and city and business leaders need to work together to improve training, placement, and transportation strategies for inner-city residents. Many people either do not have the wherewithal to move to the suburbs or prefer to stay in the neighborhood that has been their home for many decades.

¶66 As obvious as these strategic elements seem to be, they are not the norm in most metropolitan areas around the nation. Most jobs are accessible from the inner-city if the effort is made to make them so. Targeted federal funding can help make this happen. If more people can go out each day to work and bring back, collectively, more money to be spent in their neighborhoods, the social and economic isolation will be reduced and a healthier community will result.

6. Other Services

¶67 For many, personal and family problems bar the way to getting out of poverty or achieving a higher income. Domestic violence, depression, and substance abuse, for example, compound the difficulty of moving up. Our public mental health systems have been allowed to deteriorate to the point of being dysfunctional and unresponsive.⁸⁹ Numerous studies show that civil legal services are typically available to meet only about twenty percent of the legal needs of low-income people.⁹⁰ Health care may be available in theory but not in practice if hospitals and health professionals are not accessible—and if physicians and dentists refuse to serve patients who are on Medicaid. The things that are most responsible for perpetuating poverty and near-poverty are the structural and

⁸⁸ Housing Trust Fund, 12 U.S.C. § 4568 (2008).

⁸⁹ See, e.g., BAZELON CENTER FOR MENTAL HEALTH LAW, DISINTEGRATING SYSTEMS: THE STATE OF STATES' PUBLIC MENTAL HEALTH SYSTEMS (2001).

⁹⁰ See, e.g., LEGAL SERVICES CORPORATION, DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL NEEDS OF LOW-INCOME AMERICANS 13 (2005), available at http://www.lsc.gov/press/documents/LSC%20Justice%20Gap_FINAL_1001.pdf.

policy problems posed by low-wage jobs, weak safety nets, and ineffective schools. While no one can achieve self-sufficiency without exercising personal responsibility, millions of people face individual problems and challenges for which they need individual assistance. That assistance is too often unavailable.

V. CONCLUSION

¶68 We need to change the subject. From the end of the 1960s through the 1990s, the national subject concerning poor people was welfare. It is past time to reinvent the public discussion and refocus it as a challenge not just to end poverty in this wealthy nation, but to see that everyone has a living income.