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The Problem Child: An Empirical Survey and Rhetorical Analysis of Child Poverty in the United States

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THE PROBLEM CHILD: AN EMPIRICAL SURVEY AND RHETORICAL ANALYSIS OF CHILD POVERTY IN THE UNITED STATES

*Peter M. Cicchino**

INTRODUCTION

*Pauper ubique jacet.*¹

In one of the most dramatic moments of Plato's *Republic*, Socrates is interrupted and then verbally attacked by a rhetorician named Thrasymachus. Thrasymachus, who holds the position that justice "is nothing other than the advantage of the stronger,"² has been "hunched up like a wild beast"³ as Socrates and another of the dialogue's interlocutors, Polemarchus, have been inquiring into the notion whether justice is helping friends and injuring enemies.⁴ Suddenly, Thrasymachus throws himself at Socrates and Polemarchus, "as if to tear them to pieces."⁵ Shouting at Socrates, Thrasymachus demands that Socrates cease questioning others and provide his own definition of justice for examination. Thrasymachus, however, imposes a few conditions:

And see to it you don't tell me that it (justice) is the needful, or the helpful, or the profitable, or the gainful, or

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¹ "The poor are everywhere in subjection." Marx attributes these words to Queen Elizabeth I of England after she had taken a tour of her realm. KARL MARX, 1 CAPITAL 882 (Ben Fowkes trans., 1976).

² PLATO, REPUBLIC 338c (H. Bloom trans., 1st ed. 1968).

³ *Id.* at 335b-c.

⁴ *Id.* at 332d.

⁵ *Id.*

the advantageous; but tell me clearly and precisely what you mean, for I won't accept such inanities.⁶

In response, Socrates suggests that speaking about justice without mentioning any of the topics Thrasymachus has forbidden is like being asked, "How much is twelve?" without being allowed to answer "two times six, or three times four, or six times two, or four times three."⁷

This scene from the *Republic* mirrors, in many ways, the current state of discourse about a wide variety of social issues in the United States, particularly the problems confronting our haphazard institutions of poor relief (less accurately, though more commonly called "welfare")⁸ and our highly punitive methods of controlling certain types of what is perceived to be anti-social behavior (less accurately, though more commonly called "criminal justice").⁹ So far to the right is the political center, so dominant is the ideology of the market, that any serious attempt at interjecting discussion of the structural failings of our economic system; the debilitating effects of material deprivation on developing minds and bodies; or the enduring legacy of subordinating people on the basis

⁶ *Id.* at 335d.

⁷ *Id.* at 337a-c.

⁸ For a description of the confused and inadequate system of poor relief in this country, see generally FRANCES F. PIVEN & RICHARD CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (2d ed. 1993). The thesis of Piven and Cloward's book is that public welfare policies (poor relief) are expanded during times of civil instability, as a means of pacifying unrest, and are contracted (or abolished) once the crisis appears to have been averted. *Id.* at xv. In tracing the development of various types of poor relief in the United States, Piven and Cloward depict the unsystematic and often ad hoc manner in which various institutions of poor relief, from alms houses to public assistance programs, were created by local, state, and federal governments. Chapters three (on the New Deal and the Social Security Act of 1935), nine, and 10 (on the Great Society and its programs) are particularly good at illustrating the compromises, contradictions, and complexities of the various programs that are supposed to provide assistance to poor people.

⁹ For informative discussions of the highly punitive trend in local, state, and federal criminal justice systems, see WENDY KAMINER, *IT'S ALL THE RAGE: CRIME AND CULTURE* (1995); *THE REAL WAR ON CRIME, THE REPORT OF THE NATIONAL CRIMINAL JUSTICE COMMISSION* (Steven R. Donziger ed., 1996) [hereinafter *WAR ON CRIME*].

of race, gender, and sexual orientation is dismissed as denying personal responsibility, or treated as the mindless reaction of an outdated and knee-jerk liberalism. Indeed, even to use the term “capitalism” in any context other than to celebrate its unalloyed triumph over communism is to risk being regarded as an out-of-touch ideologue or a tired old leftist.¹⁰

Like Socrates, however, we must never stop “plying [our] thankless elenctic task,”¹¹ exposing the ways in which so many of the evil orthodoxies of our age conflict with our culture’s deepest and best values. This Article is written in that spirit.

Specifically, this Article undertakes both an empirical survey and rhetorical analysis of the problem of child¹² poverty in the United States. From an empirical standpoint, the Article examines the present scope, trends, effects, and causes of child poverty in the United States. From the standpoint of rhetorical analysis, the Article considers the various ways in which adherents to the set of ideas associated with contemporary conservative politics in the United States respond to the empirical reality of child poverty. This Article critically evaluates the various attempts of conservatives to explain the causes of child poverty; discusses some of the policy proposals that those explanations are meant to justify; and concludes by arguing that child poverty presents a special problem for the contemporary conservative ideology.

¹⁰ The truncation of discussion about social issues in the United States is hardly a recent phenomenon, nor is it limited to politicians and ideologues. As one scholar of poverty and public assistance has put it:

By individualizing poverty, many American social scientists have aided the mystification of its origins and obscured its politics. In much American social science, poverty remains profoundly apolitical. Discussions of how to influence the level of social benefits along a fairly narrow band of possibilities pass for political discussion. About the real politics of poverty, American social science remains largely silent.

MICHAEL KATZ, *THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE* 237 (1989).

¹¹ GREGORY VLASTOS, *SOCRATES: IRONIST AND MORAL PHILOSOPHER* 234 (1991).

¹² Unless indicated otherwise, “child” is meant to designate a person under the age of 18.

While conceptually distinguishable, empirical and rhetorical analyses are interwoven throughout the Article. Each section considers statistical data relevant to child poverty, while also taking up the ideological disputes over the meaning of that data. In presenting the conservative response to the problem of poverty, and child poverty in particular, the Article attempts to convey not just the substance, but the rhetoric and tone of the conservative position. To accomplish that end, the Article frequently quotes from and offers summaries of the writings of leading proponents of the conservative position.

The argument has five parts. Part I summarizes current data on child poverty rates in the United States. Part II analyzes trends in that data in terms of both the trajectory and demographics of child poverty rates in this country. Part III undertakes a limited phenomenology of child poverty, briefly touching upon some of the most severe consequences of being young and poor. Part IV examines competing accounts of the causes of child poverty in the United States. Finally, this Article concludes that child poverty poses a particularly unsettling challenge for the conservative position, and that understanding the problem of child poverty is indispensable for formulating sound public policy in, among other areas, welfare. Planning changes in the welfare system without giving careful attention to the causes and characteristics of child poverty is an exercise in either stupidity or deception. It is also the dominant mode of discourse for much of the contemporary discussion surrounding the so-called "reform" of welfare.

To head off an objection at the start, it should be granted that the term "conservative," as employed by this Article, suffers from a certain lack of precision. Indisputably, there are problems with terms like "conservative" and "liberal." Among the most obvious of those problems is that the terms change with context. Moreover, when used to describe political movements or groups of people, the terms give a false impression of ideological unity. There are, it is true, economic conservatives who are social liberals and, in the case of the U.S. Roman Catholic bishops, for example, economic liberals who are social conservatives.

Other terms, however, are not much better. "Right wing" seems too disparaging a term and, like "left wing," suffers from the same inexactness as "conservative" and "liberal." "Market-ideology" may

be more descriptive, but fails to capture adequately the social prejudices, moral convictions, and religious beliefs that motivate many contemporary defenders of capitalism. Additionally, the term “market-ideology” obscures the fact that, as Noam Chomsky is fond of pointing out, many of its staunchest defenders believe in markets only for others and not for themselves.¹³

The fact, however, is that groups of citizens and groups of elected representatives do share, to a significant and observable degree, similar views and basic beliefs about a variety of issues now under debate. Since talking about those groups and their views requires using labels, this Article adopts the terms favored by the groups themselves and readily understood by most Americans.

What this Article henceforth calls the “conservative position” is the set of beliefs and policy prescriptions supported by the Republican majority in the U.S. House of Representatives of the 104th Congress, as well as the majority of Republican governors. From a purely phenomenological standpoint, the conservative position can be identified with, *inter alia*, the lowering of taxes on the wealthiest citizens; the elimination of most health, safety, and environmental regulations; the abolition of affirmative action programs; draconian cuts in public assistance and other social programs; the expansion of military expenditures from current levels; the restriction of reproductive rights; hostility to the social and political equality of gay people; longer sentences for persons convicted of criminal offenses and greater public expenditures on prisons. Philosophically, the conservative position is characterized by a commitment to capitalism (market economics) and, with that, minimal government regulation of business, maximum deregulation of the economy, privatization of public services, delegitimation of any group rights, and a concomitant exaltation of the individual as economic and political agent.

Ultimately, this Article argues that the reason child poverty presents such a difficult problem for conservative politics is that the subjects of child poverty—children—resist the two rhetorical strategies upon which contemporary conservatives have so heavily

¹³ See NOAM CHOMSKY, *THE PROSPEROUS FEW AND THE RESTLESS MANY* 9-14 (1993).

and effectively relied in the debate over social policy in the United States: blaming the victim and the perfection of the market.

I. ABSOLUTE AND COMPARATIVE MAGNITUDE OF CHILD POVERTY IN THE UNITED STATES

Throughout, I work on an assumption that cannot be proved by Government figures It is an ethical proposition, and it can be simply stated: In a nation with a technology that could provide every citizen with a decent life, it is an outrage and a scandal that there should be such social misery.

—Michael Harrington¹⁴

According to the most recent estimates of the Census Bureau, there are approximately 69,277,000 children in the United States, or about 26% of the total population.¹⁵ The vast majority of those children (83.7%) are under the age of fourteen.¹⁶ In 1993, slightly more than one in five children in the United States (22.7%) lived in poverty,¹⁷ though more recent estimates range between 24% and 29%.¹⁸ The highly respected Luxembourg Income Study puts the present child poverty rate in the United States at 26%, or equal to the representation of children in the general population.¹⁹

¹⁴ THE OTHER AMERICA 17 (1st ed. 1964).

¹⁵ Telephone Interview with United States Bureau of the Census, Populations Division (July 12, 1996). The total U.S. population is 264,755,000. The child population breaks down as follows: 19,454,000 (under age five); 19,503,000 (ages five to nine); 19,054,000 (ages 10 to 14); 11,266,000 (ages 15 to 18). *Id.* The percentage of the population under 18 years of age has steadily declined from 40% in 1900, to 36% in 1960, to the present 26%. Robert Pear, *Thousands to Rally in Capital on Children's Behalf*, N.Y. TIMES, June 1, 1996, §1, at 10.

¹⁶ Pear, *supra* note 15, at 10 (noting that 83.7% of children in the United States are under 18-years-old).

¹⁷ RANDY ALBELDA ET AL., THE WAR ON THE POOR: A DEFENSE MANUAL 27 (1996) (noting that 22.7% of U.S. children lived in poverty in 1993) (citing CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN 19 (1995)).

¹⁸ Jean Hopfensperger, *In France, a Security Blanket for All Families with Children*, STAR TRIB., Apr. 14, 1996, at 1A.

¹⁹ Pear, *supra* note 15, at 10.

By comparison, the poverty rate for all persons in the United States in 1993 was approximately 15%.²⁰ In total numbers, children make up about 40% of all those persons officially defined as poor in the United States.²¹

Relative to other developed nations, the United States experiences significantly higher levels of child poverty or as one commentator has put it: "When it comes to children, the United States is the poorest of rich nations."²² In a 1995 study of industrialized countries, only Ireland and Israel had child poverty rates comparable to that of the United States.²³ Fourteen other nations studied—Australia, Austria, Belgium, Britain, Canada, Denmark, Finland, France, Germany, Italy, Luxembourg, Netherlands, Sweden, and Switzerland—had lower rates of child poverty, some less than one tenth that of the United States.²⁴ The same study, conducted three years earlier, had made similar findings. Then, the United States was found to have a child poverty rate of approximately 20.4%.²⁵ Canada, at 9.3%, had a child poverty rate less than half that of the United States.²⁶ Other western nations had even lower rates: Australia (9%); Britain (7.4%); France (4.6%); Holland (3.8%); Germany (2.8%); and Sweden (1.6%).²⁷ The figures are all the more striking in light of the fact that the United States, with a Gross National Product of

²⁰ URIE BRONFENBRENNER ET AL., *THE STATE OF AMERICANS: THE DISTURBING FACTS AND FIGURES ON CHANGING VALUES, CRIME, THE ECONOMY, POVERTY, FAMILY, EDUCATION, THE AGING POPULATION AND WHAT THEY MEAN FOR OUR FUTURE* 66 (1996).

²¹ *Id.* at 147.

²² HOLLY SKLAR, *CHAOS OR COMMUNITY: SEEKING SOLUTIONS, NOT SCAPEGOATS FOR BAD ECONOMICS* 15 (1995).

²³ Keith Bradsher, *Low Ranking for Poor American Children*, N.Y. TIMES, Aug. 14, 1995, at A9 (reporting results of 1995 Luxembourg Income Study).

²⁴ *Id.*

²⁵ BRONFENBRENNER ET AL., *supra* note 20, at 148.

²⁶ BRONFENBRENNER ET AL., *supra* note 20, at 148 (citing 1992 Luxembourg Income Study). Bronfenbrenner and his co-authors note that since 1992, child poverty rates in the United States have been rising: "For this and other reasons . . . the rank order of the United States in this international comparison (and others to follow) is not likely to have changed appreciably in the past 10 years." BRONFENBRENNER ET AL., *supra* note 20, at 281, n.4.

²⁷ BRONFENBRENNER ET AL., *supra* note 20, at 148.

\$6.7 trillion dollars is by far the richest nation in the world.²⁸ Per capita income in the United States is also among the highest in the world, significantly higher than some of the nations that have child poverty rates only a fraction of that of the United States.²⁹

To speak of children in poverty, in this context, means that those children reside in households (of any size) that have income or cash assistance less than an amount equal to what is known as the federal poverty line.³⁰ Table 1, below, shows the poverty line and “deep poverty line”³¹ in 1995, for households of various sizes.

²⁸ *Luxembourg First in Per Capita Income: U.S. Ranked Sixth*, World Bank Atlas Says, BNA Management Briefing, Jan. 2, 1996, available in LEXIS, bna Library, bnamb File. The United States, with a per capita Gross National Product (“GNP”) of \$25,860.00, is ranked sixth in per capita GNP in the world. The five nations with larger per capita GNP are: (1) Luxembourg—\$39,850.00; (2) Switzerland—\$37,180.00;(3)Japan—\$34,630.00;(4)Denmark—\$28,110.00;and (5) Norway—\$26,480.00. *Id.* By purchasing power, however, the United States ranked second in the world, behind only Luxembourg. *Id.*

²⁹ See Steven Greenhouse, *New Tally of World's Economies Catapults China Into Third Place*, N.Y. TIMES, May 20, 1993, at A1. The 1993 figures are suitable for comparing child poverty rates and per capita income. France and Italy, for example, with child poverty rates in 1993 (and now) significantly lower than the United States, had much smaller per capita incomes (as well as Gross National Products) than the United States. *Id.* In 1993, the U.S. per capita income (measured in terms of purchasing power) was \$22,204.00. *Id.* In France the figure was \$18,227.00 (18% lower than the United States), and in Italy the figure was \$16,896.00 (24% lower than the United States). *Id.* Nevertheless, both nations, then and now, had rates of child poverty well below that of the United States. For an excellent analysis of why France, with more limited economic resources, has far lower rates of child poverty, see Hopfensperger, *supra* note 18, at 1A.

³⁰ JOEL F. HANDLER, THE POVERTY OF WELFARE REFORM 33 (1995). The terms “poverty line” and “poverty rate” are used throughout this Article. The “poverty line” is explained in the text. The “poverty rate” is the percentage of the U.S. population that lives in households, of any size, with income below the poverty line. Accordingly, altering the poverty line will almost always alter the poverty rate.

³¹ See *infra* Part II (discussing the “deep poverty line”).

Table 1. *Federal Poverty Line and Deep Poverty Line By Family Size (1995)*:³²

Size of Household	Poverty Line 1995	Deep Poverty Line 1995
1	\$7,470	\$3,735
2	\$10,030	\$5,015
3	\$12,590	\$6,295
4	\$15,150	\$7,755
5	\$17,710	\$8,855
6	\$20,270	\$10,135
7	\$22,830	\$11,415
8	\$25,390	\$12,695

The definition of poverty used to compute the federal poverty line was developed by the Social Security Administration in 1964, with revisions by interagency committees in 1969 and 1981.³³ As explained by the Bureau of the Census:

The original poverty index provided a range of income cutoffs adjusted by such factors as family size, sex of the family head, and the number of children under 18 years old At the core of this definition of poverty was the economy food plan, the least costly of four nutritionally adequate food plans developed by the Department of Agriculture. It was determined from [the department's] survey of food consumption that families of three or more persons spent approximately one-third of their income on food; the poverty level was therefore set at three times the cost of the economy food plan. For smaller families and

³² Suzanne Gamboa, *Federal Poverty Yardstick Is Flawed: Statistician Says She Never Intended Her Formula to Be Used to Define Who is Poor*, AUSTIN AM. STATESMAN, Nov. 26, 1995, at A11 (citing 60 Fed. Reg. 27 (1995)).

³³ BRONFENBRENNER ET AL., *supra* note 20, at 147 (citing U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES (1960-1992)).

persons living alone, the cost of the economy food plan was multiplied by factors that were slightly higher in order to compensate for the relatively larger fixed expenses of these smaller households.³⁴

Simply (but still more or less accurately) put, the poverty line is an inflation adjusted estimate of the *least costly* food budget for a family times three.³⁵

Some conservatives have argued that the poverty line exaggerates the perception of poverty in the United States by not including the cash value of various in-kind benefits, including food stamps and, most significantly, Medicaid.³⁶ Progressives, conversely, argue that the poverty line understates the problem of poverty by setting the threshold of impoverishment far too low.³⁷

There are three strong arguments for why the poverty line does, in fact, underestimate what is required for a family to rise out of poverty. First, the federal poverty line, itself based on a minimally adequate diet, underestimates the percentage of family income devoted to housing, transportation, and costs incurred by parents working outside the home, most significantly, child care.³⁸ Statistics on child care expenditures for employed mothers paying for child care (with the youngest child younger than five) at least partially confirm that point. Families with working mothers, and family income beneath the poverty line, paid 23% of family income

³⁴ BRONFENBRENNER ET AL., *supra* note 20, at 147. For a brief, informative discussion of the way in which the poverty line was first calculated, see MICHAEL HARRINGTON, *THE NEW AMERICAN POVERTY* 69-70 (1984). Harrington draws attention to the political interests that were involved in setting the federal poverty line at a level that would understate the actual levels of poverty in the United States. It is worth noting that the person who first drew up the poverty line, Mollie Orshansky, gave an interview in 1995 in which she claimed that the purpose of the line was to assess poverty among the elderly, and that she never intended it to be used to measure the poverty rate in the general population. Gamboa, *supra* note 32, at A11.

³⁵ HANDLER, *supra* note 30, at 33-34.

³⁶ HANDLER, *supra* note 30, at 34.

³⁷ HANDLER, *supra* note 30, at 34.

³⁸ ALBELDA ET AL., *supra* note 17, at 13.

in child care expenditures.³⁹ By contrast, families with working mothers, and family income above the poverty line, paid 9% of family income in child care expenditures.⁴⁰ Indeed, with one slight fluctuation for families with income between \$35,000.00 and \$49,999.00, the percentage of family income spent on child care *decreases* as family income bracket *increases*.⁴¹ Table 2 illustrates that point.

Table 2. *Mean Weekly Child Care Expenditures, Employed Mothers Paying for Child Care, Youngest Child Younger Than Age Five (1990)*.⁴²

Family Income	Weekly Expenditure (dollars)	Percentage of Income
Below Poverty Line	37.27	23
Above Poverty Line	65.45	9
\$15,000-\$24,999	50.72	13
\$25,000-\$34,999	50.71	9
\$35,000-\$49,999	64.53	10
\$50,000 or More	85.11	6

³⁹ Barbara R. Bergmann, *Child Care: The Key to Ending Child Poverty*, in SOCIAL POLICIES FOR CHILDREN 112, 116 tbl.4-1 (Irwin Garfinkel et al. eds., 1996).

⁴⁰ *Id.* at 116 tbl.4-1.

⁴¹ *Id.* at 116.

⁴² *Id.* (reprinting SANDRA L. HOFFERTH ET AL., NATIONAL CHILD CARE SURVEY 164-65 (1991)).

In the same vein, at a time when the official poverty rate in the United States was 13%, a 1988 study found that when the poverty line was adjusted for then current housing costs, the poverty rate in the United States rose to 23%—10% higher than the unadjusted poverty rate.⁴³ Adjusting the poverty line for then current food costs increased the poverty rate even further to 25.8%, almost double the numbers of those defined as poor.⁴⁴ A similar adjustment for noncash benefits resulted in a poverty rate of 11.6%, a decrease of only 1.4% from the 1988 official poverty rate.⁴⁵ In considering the slight downward effect of adjusting the poverty line to include noncash benefits, it should be noted that:

[M]ore than one out of four officially poor people (in 1992) receive[d] no government assistance of any kind—cash or noncash. Fewer than one out of five officially poor people live[d] in public or subsidized housing. Half live[d] in households that receive[d] no food stamps. Moreover, according to the Census Bureau, despite the existence of such programs as Medicaid and Medicare, 29 percent of the officially poor had no public or private medical insurance of any kind at any time during 1993.⁴⁶

Secondly, the poverty line treats poverty as simply a matter of income. It ignores the relative nature of poverty, that is, the way in which the experience of poverty changes as a society grows more prosperous. Christopher Jencks explains the concept as follows:

[P]eople need more goods and services when their society gets richer. Needs increase not just because people think they need more when their neighbors have more, but also for practical reasons.⁴⁷

⁴³ SKLAR, *supra* note 22, at 14 tbl.5 (“Adjusting the Poverty Rate for Food/Housing Costs and NonCash Benefits, 1988.”).

⁴⁴ SKLAR, *supra* note 22, at 14 tbl.5.

⁴⁵ SKLAR, *supra* note 22, at 14 tbl.5.

⁴⁶ SKLAR, *supra* note 22, at 13, 14 tbl.5 (citing UNITED STATES BUREAU OF THE CENSUS, POVERTY IN THE UNITED STATES: 1992 xvii-xviii, tpls.F, G (1993); UNITED STATES BUREAU OF THE CENSUS, STATISTICAL BRIEF: HEALTH INSURANCE COVERAGE 1993 (1994)).

⁴⁷ CHRISTOPHER JENCKS, RETHINKING SOCIAL POLICY: RACE, POVERTY, AND THE UNDERCLASS 7 (1992).

Jencks uses the examples of the automobile and the telephone as two devices that, considered luxuries in 1900, have effectively become necessities today, not because a vast number of people in the United States have cars and telephones, but because our society has become so structured that not having those items affects the ability to find and keep a job, go to and from work, shop and obtain access to medical care.⁴⁸

Jencks' point can be expanded to include items beyond those that have become "necessities." If instead of focusing on what is needed to maintain some bare level of physical existence, such as food and shelter, one looks to items that allow a family to participate, in some meaningful way, in the society in which the family exists,⁴⁹ the inadequacy of the federal poverty level becomes even more apparent.

Thirdly, as unscientific but nevertheless probative evidence of the fact that the federal poverty line understates the problem of poverty in the United States, many Americans believe that significantly more than what is determined by the federal poverty line is needed to lift a family out of poverty.⁵⁰ When asked by the Gallop organization, "What amount of weekly income would you use as a poverty line for a family of four (husband, wife and two children) in this community?" the average response was \$303.00 per week or \$15,700.00 per year.⁵¹ Those polled who lived in cities of one million or more people gave an even higher yearly figure of \$17,600.00.⁵² At the time the poll was taken in 1989, the federal poverty line for a family of four was \$12,675.00.⁵³ In other words, those polled believed, on average, that a poor family

⁴⁸ *Id.*

⁴⁹ HARRINGTON, *supra* note 34, at 74. Peter Townsend, in his *Poverty in the United Kingdom*, defined poverty as "the lack of resources necessary to permit participation in the activities, customs, and diets commonly approved by society." HARRINGTON, *supra* note 34, at 74 (citing PETER TOWNSEND, *POVERTY IN THE UNITED KINGDOM: A SURVEY OF HOUSEHOLD RESOURCES AND STANDARDS OF LIVING* 31 (1979)).

⁵⁰ JENCKS, *supra* note 47, at 209.

⁵¹ JENCKS, *supra* note 47, at 209.

⁵² JENCKS, *supra* note 47, at 209.

⁵³ JENCKS, *supra* note 47, at 209.

would need an amount 24% higher than the federal poverty line to leave the ranks of the impoverished.⁵⁴

The debate over the poverty line is particularly germane to the discussion of children in poverty since so many children live in households at or near the poverty line. In 1993, 34% of all children in the United States lived in households with incomes up to 150% of the poverty line, and 39.8% lived in households with incomes up to 175% of the poverty line.⁵⁵

Table 3. *Dollar Amounts for the Official Poverty Line In 1993, 150% of that Line and 175% of that Line.*⁵⁶

Household Composition	1993 Poverty Line	150% of 1993 Poverty Line	175% of 1993 Poverty Line
1 Person < 65	\$7,518	\$11,277	\$13,156
2 People, with 1 Child < 18	\$9,960	\$14,940	\$17,430
3 People, with 1 Child < 18	\$11,631	\$17,446	\$20,354
4 People, with 2 Children < 18	\$14,654	\$21,981	\$25,644

⁵⁴ JENCKS, *supra* note 47, at 209. *But see* ROBERT RECTOR & WILLIAM F. LAUBER, *AMERICA'S FAILED \$5.4 TRILLION WAR ON POVERTY 24* (1995) (article reprinted as a book) (arguing, without any polling data, that "[t]o the man on the street, to say someone is poor implies that he is malnourished, poorly clothed, and living in filthy, dilapidated, and overcrowded housing. In reality there is little material poverty in the U.S. in the sense generally understood by the public.").

⁵⁵ SKLAR, *supra* note 22, at 12 tbl.4.

⁵⁶ SKLAR, *supra* note 22, at 12 tbl.4.

Even a relatively small upward adjustment in the poverty line would increase significantly the number of children officially considered poor. It should be noted that, according to the results of the Gallop poll discussed above, most Americans implicitly favor such an adjustment, since they believe that the poverty line should be set at about 125% of its current level.

In that intuition, if not in the specific adjustment they would make, the American people are joined by experts at the National Academy of Sciences who have studied the way in which poverty is defined in the United States.⁵⁷ The "Panel on Poverty and Family Assistance" has recommended to Congress that the poverty line be redefined so as to include noncash benefits, but also take into consideration taxes, work expenses, child care costs, and out of pocket medical expenses.⁵⁸ The net result of adopting the panel's recommendations would be an increase in the number of people officially determined to be poor in the United States.⁵⁹ For example, following the panel's recommendations, the 1992 overall poverty rate of 14.5% would have increased to somewhere between 15% and 16% and, depending on whether all of the panel's recommendations are accepted, could have exceeded 18%.⁶⁰ In short, the United States not only has the highest rates of child poverty of any industrialized democracy, but the official computation of those rates probably understates the number of children who are poor. The aggregate numbers of poor children, however, does not tell the full story of child poverty in the United States. It is to a closer analysis of those aggregate figures that this discussion now turns.

II. TRENDS IN CHILD POVERTY

Looking more closely at the number of children in poverty, several disturbing trends become apparent. First, the rate of child

⁵⁷ Robert Pear, *A Proposed Definition of Poverty May Raise Number of U.S. Poor*, N.Y. TIMES, Apr. 30, 1995, §1, at 1.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

poverty is increasing.⁶¹ The percentage of people living in poverty in the United States, after a steady and almost precipitous drop from 1960 to 1973, has exhibited, with fluctuations, a general upward trend since 1974, and a steady increase in poverty rates since 1988.⁶² Both the levels of poverty and rates of increase in the levels of poverty have been even more pronounced for children. The child poverty rate has gone from about 15% in 1974; to about 22% in 1993; to between 24% and 29% today.⁶³ Moreover, poverty among working families with children increased by nearly 48%.⁶⁴ From 1977 to 1993, the poverty rate for such families climbed from 7.7% to 11.4%.⁶⁵ This is particularly significant since more than one third of poor children live in working families, an increase of 30% from 1989 to 1994.⁶⁶ For all children in the population, those with both employed and unemployed parents, the most recent data indicate a child poverty rate almost twice that of the general population.⁶⁷ In short, what the historian of childhood Hugh Cunningham said of sixteenth century Europe is true of the United States in the 1990s: “[T]he evidence is that for a large part of the life cycle, children contributed to, rather than relieved, the problem of poverty. . . . Children constituted a large percentage of the poor.”⁶⁸

⁶¹ See GENERAL ACCOUNTING OFFICE, SCHOOL-AGE CHILDREN: POVERTY AND DIVERSITY CHALLENGE SCHOOLS NATIONWIDE 4 (Apr. 4, 1994) (reporting that “national poverty rate for school-age children . . . increased from 15.3 percent in 1980 to 17.1 percent in 1990. The poverty rate for all children has continued to increase since 1990.”) [hereinafter SCHOOL AGE CHILDREN].

⁶² BRONFENBRENNER ET AL., *supra* note 20, at 66 fig.3-8.

⁶³ BRONFENBRENNER ET AL., *supra* note 20, at 66; see also Hopfensperger, *supra* note 18, at 1A (citing the same statistics of children who are poor based on wage income).

⁶⁴ BRONFENBRENNER ET AL., *supra* note 20, at 66.

⁶⁵ BRONFENBRENNER ET AL., *supra* note 20, at 66.

⁶⁶ John Rivera, *Study Sheds Light on Poverty; A Third of Poor Children Have Parent Who Works, Survey of States Finds*, AUSTIN AM. STATESMAN, June 3, 1996, at A2 (reporting on Casie Foundation study of youth poverty).

⁶⁷ *Id.*

⁶⁸ HUGH CUNNINGHAM, CHILDREN & CHILDHOOD IN WESTERN SOCIETY SINCE 1500, at 111 (1995).

Apart from the sheer numbers of children in poverty, the intensity of child poverty is particularly acute and seems to be worsening. This is a second trend apparent in the U.S. census data: children tend not only to be poor in disproportionate numbers, but tend disproportionately to be among the poorest of the poor.⁶⁹ Over the past two decades, the number of children living in so-called deep poverty (defined by the Census Bureau as household income equal to or less than half the official poverty line) "has more than doubled, from 1.1 million in 1975 to 2.8 million in 1994."⁷⁰ Nearly half of all young children live in deep poverty.⁷¹ Moreover, a growing percentage of the homeless, arguably the poorest of the poor, are families with children. In 1985, families with children accounted for 27% of the homeless. By 1991, such families accounted for 34%.⁷² By 1994, families with children accounted for 39% of the homeless population.⁷³

Thirdly, the younger a child is, the more likely the child is to be poor. Prior to the mid-1970s, older people in the United States experienced comparatively higher levels of poverty. Since that time, however, the poverty rates of children and young adults and the poverty rates of older people converged, and then diverged, but with the positions reversed: children and young adults now experience significantly higher rates of poverty than older people.⁷⁴

By age bracket, current poverty rates can be graphed, with one minor deviation, on an inverted (and asymmetrical) bell curve. The highest rates of poverty (26%) are experienced by the youngest children (newborns to five), decline to 20% for children age six to seventeen, drop to 18% for young adults (eighteen to twenty-four), drop to 13% for adults aged twenty-five to thirty-four, and reach their nadir among that part of the population aged forty-five to fifty-four. For those persons aged fifty-five and older, poverty rates

⁶⁹ BRONFENBRENNER ET AL., *supra* note 20, at 181-82.

⁷⁰ BRONFENBRENNER ET AL., *supra* note 20, at 181.

⁷¹ BRONFENBRENNER ET AL., *supra* note 20, at 181.

⁷² NANCY FOLBRE, CENTER FOR POPULAR ECONOMICS, THE NEW FIELD GUIDE TO THE U.S. ECONOMY 6.12 (1995).

⁷³ ALBELDA ET AL., *supra* note 17, at 38.

⁷⁴ BRONFENBRENNER ET AL., *supra* note 20, at 155 tbl.5-5.

begin to climb (though not as steeply as they descended from the youngest age groups), growing from 8% for people aged forty-five to fifty-four; 10% (fifty-five to fifty-nine); 11% (sixty to sixty-four); 10% (sixty-five to seventy-four); and 14% (over seventy-five).⁷⁵

Relatively higher levels of poverty for the youngest children are not a recent phenomenon. At least since 1959, children under six years of age have experienced rates of poverty greater than children from six to seventeen years of age.⁷⁶ That trend, however, has grown more pronounced since 1981. According to 1993 data about a six point difference exists in the poverty rates between children under age six (approximately 26% in poverty), and those between ages six and seventeen (approximately 20% live in poverty).⁷⁷ Younger children also tend to be more negatively affected by short-term economic changes, largely because their families are generally younger and are more likely to be impoverished during periods of recession.⁷⁸

The fourth trend discernable in the data on child poverty is that child poverty is significantly correlated, in scope, intensity, and duration to the race of the child. Specifically, Black and Latino⁷⁹ children experience rates of poverty much greater than the total child population. "In 1993, 46% of all African-American children and 41% of all Latino children lived in families with incomes below the poverty level."⁸⁰ It is true that the difference between the poverty rate of Black children and the poverty rate of White

⁷⁵ BRONFENBRENNER ET AL., *supra* note 20, at 155 tbl.5-5.

⁷⁶ BRONFENBRENNER ET AL., *supra* note 20, at 151 tbl.5-3.

⁷⁷ BRONFENBRENNER ET AL., *supra* note 20, at 151 tbl.5-3.

⁷⁸ See BRONFENBRENNER ET AL., *supra* note 20, at 151-52 (discussing the correlation between income inequality and child poverty, and how this has negatively affected young families and their children). See also *infra* Part IV.B.1.C (discussing the way in which poverty rates among young parents disproportionately affect young children).

⁷⁹ This Article's focus on Black and Latino children, in discussing racial disparities in child poverty, is purely a function of available data and space limitations. Child poverty is also a significant problem for Asian American children and Native American children, among others.

⁸⁰ ALBELDA ET AL., *supra* note 17, at 27 (citing THE STATE OF AMERICA'S CHILDREN YEARBOOK 1995 101 (1995)).

children has, for the most part, decreased since 1960.⁸¹ In that year, White children experienced a poverty rate of 20%, compared to 65.5% for Black children (a 45.5 point difference).⁸² Ten years later, the child poverty rates for White children stood at 10.5%, and for Black children 41.5% (a 31% difference).⁸³ It is no accident that a dramatic decrease in relative and absolute child poverty rates, like a similar decrease in poverty rates for the elderly and the general population, happened to coincide with the most intensive period of spending on poor relief in the past three decades, that is the "Great Society" and "War on Poverty" programs instituted by Lyndon Johnson and, for the most part, continued through the first Nixon administration.

By 1980, absolute rates of child poverty had begun to climb, but the difference in rates of poverty between White and Black children had narrowed, albeit very slightly, once again. White children experienced a poverty rate of 13.4%, compared to 42.1% for Black children (a 28.7% difference).⁸⁴ By 1990, the poverty rates of both groups had climbed further, but now the gap between the two groups widened once again. White children had a poverty rate of 13.7% in 1990, compared to a rate of 45.9% for Black children (a 32.2% difference).⁸⁵

The most recent data reveal a continued and marked disparity in poverty rates between White and Black children, but the difference in poverty rates between the two groups has dropped slightly. According to 1994 government data, 16.9% of White children lived in poverty compared to 46.6% of Black children (a 29.7% difference).⁸⁶

⁸¹ Irwin Garfinkel et al., *Introduction to Child Care: The Key to Ending Child Poverty*, in SOCIAL POLICIES FOR CHILDREN, *supra* note 39, at 1, 8-9 tbl.1-1.

⁸² *Id.* at 8 tbl.1-1.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ See Carl T. Rowan, 'Reformers' Buy Into Welfare Myths, CHI. SUN-TIMES, June 17, 1994, at 41 (discussing the large number of poor people in the United States who lack the training and opportunity to find work).

Race differences are also evident in rates of deep poverty. Approximately 8.2% of all children under age six live in deep poverty.⁸⁷ For young White children the percentage in deep poverty is 7.7%.⁸⁸ For Black children, however, the percentage in deep poverty is nearly 33%.⁸⁹

In summary, child poverty is growing greater in both magnitude and intensity, and those trends are most pronounced for young children of color.

III. THE EFFECTS OF CHILD POVERTY

Focusing upon how many children are poor, and the characteristics of those children, can obscure the empirical effects of poverty, the measurable and highly deleterious impact that poverty has on the physical, emotional, and intellectual growth of human beings. Accordingly, some inventory of those terrible effects is in order.

If space and the conventions of law review literature allowed it, the best person to turn to for such an inventory would be Jonathan Kozol. Kozol has spent much of the past three decades learning and writing about the lives of poor children and their families.⁹⁰ Kozol's method is based on total immersion: he goes to live with his subjects, sharing their lives as completely as he can. His writing style is narrative and not without its critics. Kozol attempts to let the people, the mostly poor children and their families about whom he writes, speak for themselves.

Unfortunately, Kozol's style of reportage does not lend itself to summarization. The whole point of his work is to recreate for the reader the experience of listening to a poor child speak about the details; the innumerable, frequently surprising, sometimes heart-breaking details of what it means to be young and poor in the United States. The limits of this essay regrettably prevent that.

⁸⁷ BRONFENBRENNER ET AL., *supra* note 20, at 181.

⁸⁸ BRONFENBRENNER ET AL., *supra* note 20, at 181.

⁸⁹ BRONFENBRENNER ET AL., *supra* note 20, at 181.

⁹⁰ Kozol's books include: *AMAZING GRACE: THE LIVES OF CHILDREN AND THE CONSCIENCE OF A NATION* (1995); *DEATH AT AN EARLY AGE* (1967); *RACHEL AND HER CHILDREN: HOMELESS FAMILIES IN AMERICA* (1988); and *SAVAGE INEQUALITIES: CHILDREN IN AMERICA'S SCHOOLS* (1991).

Instead, a bare recitation of some salient facts about the lives of poor children is offered. Behind those facts, however, are real human beings, children.

Data on the harmful effects of impoverishment on children can usefully be surveyed in three categories: (1) physical and psychological health; (2) intellectual development and education; and (3) crime victimization and crime commission. With regard to the first category, the straightforward conclusion is that poverty has a close correlation to death and disease in childhood. As one commentator on child poverty has put it: "In America, being poor is deadly."⁹¹

The harmful effects of economic deprivation on the physical health of children are both severe and well documented:

- Every day, twenty-seven children die from the effects of poverty.⁹²
- Poor children are more than twice as likely as other children to suffer from severe physical or mental disabilities, fatal accidental injuries, iron deficiency, and severe asthma.⁹³
- Between 33% and 50% of poor children consume significantly less than the federally recommended level of calories and nutrients.⁹⁴

⁹¹ James Garbarino, *The Meaning of Poverty in the World of Children*, reprinted in CHILDREN IN CRISIS 119, 127 (Robin Brown ed., 1994).

⁹² Kerri Ann Law, Note, *Hope for the Future, Overcoming Jurisdictional Concerns to Achieve U.S. Ratification of the Convention on the Rights of Children*, 62 FORDHAM L. REV. 1851, 1861 (1994).

⁹³ ALBELDA ET AL., *supra* note 17, at 27.

⁹⁴ ALBELDA ET AL., *supra* note 17, at 35. *But see* RECTOR & LAUBER, *supra* note 54, at 24. Rector argues that:

Children living in 'poverty' today, far from being malnourished, actually grow up to be one inch taller and ten pounds heavier than the average child of the same age in the general population in the late 1950s. The principle nutrition-related problem facing poor persons in the U.S. today is obesity, not 'hunger'; the poor have a higher rate of obesity than do members of other socioeconomic groups in the U.S.

RECTOR & LAUBER, *supra* note 54, at 24.

Rector is apparently unaware that obesity and malnutrition can, and frequently do, co-exist.

- Poor children are more likely to have stunted growth because of malnutrition.⁹⁵
- In Chicago, the poorest third of the city's neighborhoods had infant mortality rates five times that of the most affluent third.⁹⁶
- The infant mortality rate for Blacks, who are disproportionately represented among both the poor and Aid to Families with Dependent Children ("AFDC") recipients, is double that for Whites.⁹⁷
- The life expectancy of Black children in the United States is seven years shorter than that of White children. If ranked on a global scale, the infant mortality rate of Blacks would place thirty-fifth in the world, equal to infant mortality rates in China and Bulgaria and worse than the infant mortality rates of Jamaica, Sri Lanka, Poland, Cuba, and Kuwait.⁹⁸
- Poor children are far more likely to lack health insurance. Even when insured through Medicaid, poor children are far less likely to receive adequate preventative care including regular physical and dental examinations.⁹⁹
- Children who lack health insurance are less likely to be immunized against preventable childhood diseases; are less likely to see a doctor regularly; and are far more likely to have treatment of health problems delayed. Because of delays in treatment, uninsured children are at greater risk of being hospitalized for complications due to untreated conditions.¹⁰⁰
- The United States has the highest infant mortality rate in the developed world. Compared with Canadian children, U.S.

⁹⁵ ALBELDA ET AL., *supra* note 17, at 34.

⁹⁶ Garbarino, *supra* note 91, at 127.

⁹⁷ Philip Seib, *Political Meddling Can Endanger Dallas County Health Care*, DALLAS MORNING NEWS, Feb. 24, 1995, at 27A.

⁹⁸ SKLAR, *supra* note 22, at 15.

⁹⁹ GENERAL ACCOUNTING OFFICE, HEALTH INSURANCE FOR CHILDREN—STATE AND PRIVATE PROGRAMS CREATE NEW STRATEGIES TO INSURE CHILDREN, Feb. 20, 1996, available in 1996 WL 136863.

¹⁰⁰ Michael D. Kogan et al., *The Effect of Gaps in Health Insurance on Continuity of a Regular Source of Care Among Preschool-Aged Children in the United States*, 274 JAMA 1429, 1429 (1995):

children under fifteen years of age had 28% more disability days and 44% more days when they were sick in bed. Children under one year of age had a 14% higher mortality rate, and children one to four years of age had a mortality rate 8% higher than Canadian children.¹⁰¹

The harmful health consequences of poverty also have a profound psychological and emotional impact.

- Poor children suffer from significantly higher levels of depression, anti-social behavior, and impulsivity. They are far less likely to be hopeful, self-directed, and confident about the future.¹⁰²
- Poor children, by age five, also demonstrate significantly higher levels of fearfulness, anxiety, and unhappiness than children who were never poor.¹⁰³
- Poor children exhibit higher levels, than non-poor children, of behavior problems like tantrum throwing and property destruction.¹⁰⁴

Living in poverty also correlates strongly with poor academic performance.

- By age five, children in persistently or occasionally poor families have markedly lower intelligence quotients (“IQs”) than children in never-poor families.¹⁰⁵
- Poor children are far more at risk, than non-poor children, of poor school performance and academic failure.¹⁰⁶

¹⁰¹ Jane Currie & Thomas Duncan, *Medical Care for Children: Public Insurance, Private Insurance, and Racial Differences in Utilization*, 30 J. HUM. RESOURCES 135, 135 (1995) (citations omitted).

¹⁰² Craig Haney, *The Social Context of Capital Murder: Social Histories and the Logic of Mitigation*, 35 SANTA CLARA L. REV. 547, 563 (1995).

¹⁰³ Bruce Bower, *Growing up Poor; Poverty Packs Several Punches for Child Development*, SCI. NEWS, Jul. 9, 1994, at 24 (reporting on the results of a study conducted by University of Michigan Social Scientist Greg J. Duncan and his colleagues).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See SCHOOL AGE CHILDREN, *supra* note 61, at 2 (reporting that poor children are more likely to experience academic failure that will continue throughout their entire lives).

- Poor children are more likely than non-poor children to change schools frequently. Children who change schools frequently are more likely to have lower academic performance. For example, “41 percent of the children who changed schools frequently read below their grade level compared with 26 percent of those who have never changed schools.”¹⁰⁷ Furthermore, children who change schools frequently are more likely to experience behavioral problems.¹⁰⁸
- Poverty is the strongest predictor that a child will drop out of school before obtaining a high school diploma.¹⁰⁹
- Poor children who also have limited proficiency in English are not only more likely to drop out of school because of academic failure, but once dropping out are more likely than high school graduates to be arrested and to become unmarried parents.¹¹⁰
- Schools with a high rate of child poverty have a much greater number of children who are low achievers. As a result, these schools are more likely to retain children at a particular grade level than schools with lower numbers of poor children. In addition, these schools have a higher rate of absenteeism.¹¹¹

Children in poverty are also more likely to be both the victims of crime and to be incarcerated for criminal activity.

- The vast majority of children under the supervision of the juvenile justice system come from poor families. Poverty is strongly correlated to both juvenile delinquency and the likelihood of arrest or incarceration as an adult.¹¹²

¹⁰⁷ SCHOOL AGE CHILDREN, *supra* note 61, at 12.

¹⁰⁸ SCHOOL AGE CHILDREN, *supra* note 61, at 12.

¹⁰⁹ Nancy E. David, *Stigmatizing Single Parents*, 18 HARV. WOMEN'S L.J. 19, 26 (1995).

¹¹⁰ SCHOOL AGE CHILDREN, *supra* note 61, at 2.

¹¹¹ SCHOOL AGE CHILDREN, *supra* note 61, at 12.

¹¹² Catherine R. Guttman, Note, *Listen to the Children: The Decision to Transfer Juveniles to Adult Court*, 30 HARV. C.R.-C.L. L. REV. 507, 517 (1995).

- Poverty can also be strongly linked to child maltreatment on both the individual and community level.¹¹³
- Poor children, like poor adults, are much more likely to be victims of crime. For people over twelve years of age, those in families with annual incomes under \$7500.00 experience a crime victimization rate of 89.5 per 1000. By contrast, those with annual incomes over \$75,000.00 experience a crime victimization rate of 38.2 per 1000.¹¹⁴

Finally, children from poor families are three times as likely as their middle-class peers to be poor as adults. The likelihood of a poor child ending up in poverty as an adult is even greater for Blacks.¹¹⁵ Gender, too, affects the likelihood that a poor child will be a poor adult. Controlling for race, daughters of poor families are more likely than sons of poor families to grow up to be poor adults.¹¹⁶ In what is perhaps the saddest commentary on child poverty in the United States, even if a child survives growing up amid the health hazards, higher crime rates and poor schools that plague America's impoverished communities, the statistical likelihood is that a poor child will simply become a poor adult.

IV. THE CAUSES OF CHILD POVERTY

The causes of child poverty, like the causes of poverty generally, are the subject of considerable and sometimes acrimonious debate. What is not often acknowledged, however, is that there is widespread agreement across the ideological spectrum about what causes children to be poor. Two factors combine to create child poverty: (1) children cannot support themselves economically; and (2) those upon whom children rely for care—parents, guardians, public or private institutions—are unable or unwilling to discharge that responsibility.

About the first factor, there is no serious dispute. It is in the second factor, however, that the bone of contention is buried. The central question of the debate around child poverty, a question that

¹¹³ Garbarino, *supra* note 91, at 127.

¹¹⁴ BRONFENBRENNER ET AL., *supra* note 20, at 22 fig.1-17.

¹¹⁵ BRONFENBRENNER ET AL., *supra* note 20, at 178.

¹¹⁶ BRONFENBRENNER ET AL., *supra* note 20, at 178.

implicates the larger debate about poverty in the United States, is *why* the caretakers of children, primarily parents, are unable or unwilling to provide adequately for the children in their care. While both conservatives and progressives direct attention toward both parents and government, the conservative position tends to explain the problem of poverty in terms of parental failure encouraged by misguided government policies.

The conservative position holds that teenage pregnancy, non-marital births,¹¹⁷ drug abuse, and the absence of a work ethic among parents of poor children offer an explanation for why the caretakers of children cannot provide for those children adequately. Government intervention is regarded as, at best, unhelpful and, at worst, counterproductive. Indeed, as will be seen later,¹¹⁸ a central tenet of the conservative position is that government attempts to relieve poverty, and child poverty particularly, have only exacerbated the problem.¹¹⁹

Progressives, in contrast, understand the problem of child poverty to be the result of larger economic forces that prevent significant numbers of poor parents from earning enough to support their children, and an inadequate system of government assistance to help offset the impoverishing effects of those economic forces. That is not to say that economic conditions do not often have cultural effects. All but the most dogmatic economic reductionists have long recognized that poverty is more than a matter of deprivation of material goods: it is a set of material conditions that have profound physical and psychological consequences, including all sorts of maladaptive responses.

¹¹⁷ Following the practice of the Census Department, this Article uses the term "nonmarital births" (or some variant thereof) as a nonpejorative synonym for "illegitimate births" (and variations thereon). When a cited authority uses the term "illegitimacy" (or some variation), the original term is retained.

¹¹⁸ See *infra* Part IV.A.2 (discussing conservative criticism of government attempts to relieve poverty).

¹¹⁹ See, e.g., CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980* (10th anniversary ed. 1994) (arguing that poor relief programs encourage social pathology among the poor). *Losing Ground* is, in many ways, the charter of the modern movement to abolish poor relief programs.

Poverty provides fertile ground for the growth of vice, and barren soil for the cultivation of virtue. Anger, alienation, violence, drug abuse, and despair are often responses to and flourish within the material conditions of deprivation known as poverty.¹²⁰ Poverty, or more accurately, the impoverishment of millions of families, is not, according to the progressive view, the result of the wickedness of the poor (though it may well be in significant part a product of the wickedness of the rich). Rather, progressives cite unemployment, the decline in wages of working families, the absence of universal health insurance, the unavailability of affordable child care, and the absence of an adequate system of state provided assistance to poor and working class families as the most significant causes of the massive numbers of American children who live in poverty.¹²¹

It is, of course, impossible to provide a thorough discussion of the conservative and progressive positions in an Article of this length. Nevertheless, an accurate sketch can be made of the most important points in each position. For the conservative position those points are two: (1) destructive behavior by parents, especially irresponsible sexual behavior and its consequence, nonmarital

¹²⁰ There is nothing surprising, or novel, or particularly "liberal" about this position. Plato and Aristotle, for instance, took it for granted that in order to cultivate virtue in human beings, to live a genuinely good human life, to educate the young for citizenship, and from that to create and sustain a stable and just political order, it is indispensable that citizens and their children be provided with or at least have the means of producing or acquiring the material goods sufficient not just to maintain existence, but to sustain a level of material comfort sufficient to undertake the necessary tasks of education (when a child) and governance (when an adult). See PLATO, *supra* note 2, at 369a-374e (establishing, as the first priority in setting up the ideal city, that the inhabitants have a sufficient level of material well being), 421d-423b (arguing that both poverty and excessive wealth weaken the city and, especially at 423a, that inequalities of income undermine political stability); ARISTOTLE, POLITICS 1253b (Jowett trans., 1947) (arguing that a sufficient amount of property is absolutely essential for a household (the basis of the healthy city) to flourish for "no man can live well, or indeed live at all, unless he be provided with the necessaries").

¹²¹ See, e.g., SKLAR, *supra* note 22, at 69-102 (discussing the scapegoating of the poor and locating the causes of impoverishment in the economy).

births,¹²² are the primary reason for the growing number of children in poverty; and (2) government attempts at alleviating poverty have accomplished little or nothing and, in many instances, have created a disincentive to work and encouraged various forms of cultural pathology that lead parents to be unable or unwilling to provide for the children in their care. For the progressive position, two contentions need to be examined: (1) the economy of the United States maintains unacceptably high levels of unemployment, and the wages paid by the jobs that are available are, in a large and growing number of cases, both inadequate to preserve a family from poverty and decreasing in real purchasing power over time; and (2) the level of government assistance, of all types, to poor children and their parents is insufficient to offset the systemic failures of the U.S. economy. It is to each of these positions that some attention will now be given.¹²³

¹²² See Charles Murray, *The Coming White Underclass*, WALL ST. J., Oct. 29, 1993, at A14. While divorce and failure to pay child support are frequently decried by conservatives, those issues pale in comparison to the focus on illegitimacy in the conservative position on child poverty. See, e.g., DAVID BLANKENHORN, *FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM* (1995) (arguing that contemporary American society views fathers as optional and marriage as provisional).

¹²³ It is important to recognize that there are other, arguably more radical, progressive interpretations of the causes of poverty, and child poverty in particular. Among those is the theory that a certain level of suffering due to impoverishment is an integral part of depressing labor costs (by creating a labor surplus) and maintaining labor "discipline" by keeping the harsh consequences of refusing to work—strikes being the prime example of such refusal—ever before the eyes of the working class. That, of course, was a critical aspect of Marx's theory of "The General Law of Capitalist Accumulation," in Volume I, Chapter 25 of *Capital*. MARX, *supra* note 1, at 762-870 (especially Parts three and four, "The Progressive Production of a Relative Surplus Population or Industrial Reserve Army" and "Different Forms of Existence of the Relative Surplus Population," at 781-802). Poor children, what Marx termed "orphans and pauper children," were one of the three categories of the *lumpenproletariat*, "the lowest sediment of the relative surplus population." MARX, *supra* note 1, at 797. Such theories, both functionalist and structuralist, are touched upon in the introduction to Part IV.B, *infra*.

A. Parental Faults and Government Failures

1. Parental Faults

Marvin Olasky, one of the most influential proponents of the conservative position on poor relief, begins his book *The Tragedy of American Compassion* by quoting approvingly some words of the puritan cleric Cotton Mather to his congregation: "Instead of exhorting you to augment your charity, I will rather utter an exhortation . . . that you may not *abuse* your charity by misapplying it."¹²⁴ Olasky praises Mather's "restraint" in not assuming that "all men (and women) naturally *want* to work."¹²⁵ Mather's admonition launches Olasky's argument for the thesis that there are deserving and undeserving poor people and that indiscriminate charity—assistance without conditions and incentives backed by the threat of destitution—has a corrupting influence on its recipients. Olasky identifies the federal government, primarily through the AFDC program,¹²⁶ as the most egregious dispenser of such "misapplied" charity.¹²⁷

¹²⁴ MARVIN OLASKY, *TRAGEDY OF AMERICAN COMPASSION* 9 (1994).

¹²⁵ *Id.* (emphasis in original).

¹²⁶ See *infra* Part IV.B.2 (discussing Aid to Families with Dependent Children ("AFDC") payments). With the enactment of House Bill 3734 in August 1996, the AFDC program was officially brought to an end. H.R. 3734, 104th Cong., 2d Sess. (1996) (enacted). Substantively, the end of AFDC meant, *inter alia*, an abolition of the federal entitlement of assistance to poor children and their families; the restructuring of federal poor relief assistance as block grants to the states; the imposition of time limits on recipients of poor relief; the exclusion of legal immigrants from most provisions of poor relief and the food stamp program; and the granting of almost unfettered discretion to the states in the administration of the program. Terminologically, AFDC was changed to Temporary Assistance to Needy Families or TANF. It will take months, some predict years, for House Bill 3734 to be fully implemented. At the time of the publication of this Article, and most likely for some time to come, AFDC is still universally used to refer to those programs administered under Title I of the Social Security Act of 1935. Accordingly, the AFDC terminology has been retained throughout this Article.

¹²⁷ OLASKY, *supra* note 124, at 9.

Olasky's thesis is an echo of what Charles Murray wrote nearly a decade earlier in *Losing Ground*:

The most compelling explanation for the marked shift in the fortunes of the poor is that they continued to respond, as they always had, to the world as they found it, but that we—meaning the not-poor and un-disadvantaged—had changed the rules of their world. Not of our world, just of theirs. The first effect of the new rules was to make it profitable for the poor to behave in the short term in ways that were destructive in the long term. Their second effect was to mask these long-term losses—to subsidize irretrievable mistakes. We tried to provide more for the poor and produced more poor instead. We tried to remove the barriers to escape from poverty, and inadvertently built a trap.¹²⁸

The most obvious destructive behaviors to which Murray refers are an unwillingness to work, and a tendency to indolence exacerbated by the government's willingness to ameliorate the harsh discipline of poverty.¹²⁹ Crime and educational failure are also examples of secondary or tertiary effects of the perverse incentives conservatives believe the federal system of poor relief has created.¹³⁰ But the purportedly destructive behavior that has drawn the most attention, provoked the most extreme cries of

¹²⁸ MURRAY, *supra* note 119, at 9.

¹²⁹ MURRAY, *supra* note 119, at 154-64. Murray offers three thought experiments, involving a fictional couple (Harold and Phyllis), on the disincentives to work (and marry) created by AFDC. *Id.* See *infra* Part IV.A.2-B (analyzing further the argument that the poor on public assistance are unwilling to work, and that government support promotes that unwillingness).

¹³⁰ MURRAY, *supra* note 119, at 167-77. Murray does not assert that what he interprets to be the dramatic rise in crime, especially among juveniles, is caused solely by federal poor relief. Rather, Murray believes societal permissiveness, an unwillingness to apprehend offenders and mete out sufficiently severe punishment, contributes to a dramatic increase in juvenile crime. The sealing of juvenile records and the insulation from public exposure and shame that anonymity provides is, according to Murray, one of the ways in which society has provided an incentive to young people to commit crime. MURRAY, *supra* note 119, at 171.

alarm,¹³¹ convinced many putative liberals,¹³² and been most directly connected to public assistance is nonmarital births.¹³³ As Charles Murray put it in an influential 1993 piece for the *Wall Street Journal*:

My proposition is that illegitimacy is the single most important social problem of our time—more important than crime, drugs, poverty, illiteracy, welfare or homelessness because it drives everything else.¹³⁴

The argument that federal poor relief programs have created, or at least worsened,¹³⁵ the crisis in nonmarital births has three parts.

¹³¹ See, e.g., Murray, *supra* note 122, at A14. Murray begins his analysis of the problem of illegitimacy among Whites with the words: “Every once in a while the sky really is falling, and this seems to be the case with the latest national statistics on illegitimacy.” Murray, *supra* note 122, at A14. See Michael Novak, *Uncle Sam’s Children: Without Welfare Reform, Illegitimacy Will Extend its Ills*, ROCKY MOUNTAIN NEWS, Sept. 11, 1994, at 92A. Novak writes that:

The problem is that AFDC is doing such devastating harm to the nation that unless it is halted—unless, in President Clinton’s words, we achieve EWAWKI, the ‘end of welfare as we know it’—the twin contagions of illegitimacy and more or less permanent welfare dependency are likely to spread throughout more than half the childbearing population.

Id. Novak goes on to quote approvingly Daniel Patrick Moynihan’s conclusion that out-of-wedlock births have the potential of “destroying the democratic dream.” *Id.*

¹³² MICHAEL LIND, UP FROM CONSERVATISM: WHY THE RIGHT IS WRONG FOR AMERICA 168 (1996). Lind not only demolishes the myth of an epidemic of illegitimacy, but provides an interesting account of why and how the issue came to be used as a weapon in the conservative rhetorical arsenal. *Id.* at 168-78.

¹³³ MURRAY, *supra* note 119, at 125-28. See also Nina J. Easton, *Merchants of Virtue: By Shifting Their Party’s Longtime Focus From Money to Values a Trio of Thinkers Hopes to Win Over the Agenda—and the Soul—of the GOP*, L.A. TIMES, Aug. 21, 1994, (Magazine), at 16 (“Murray’s followers have shifted the debate further to the right, saying work [for welfare recipients] isn’t the answer, marriage is. Cost isn’t the issue, illegitimacy is.”).

¹³⁴ Murray, *supra* note 122, at A14.

¹³⁵ As with juvenile crime, Murray now insists that he is not arguing that public poor relief programs alone are the cause of the rise in unmarried births. Murray grants that cultural forces, particularly those lessening the stigma of unmarried parenthood (read: motherhood), have played a significant role. Nevertheless, Murray continues to insist that public poor relief programs

First, proponents of the argument contend that census data reveal a dramatic increase in the percentage of nonmarital births, especially among Blacks, since the 1960s, when the so-called "War on Poverty" was launched and availability of AFDC benefits significantly expanded.

In fact, for the past three decades the number of nonmarital births per 1000 unmarried women aged fifteen to forty-four has increased. In 1991, the year on which Murray based his analysis in his influential op-ed piece for the *Wall Street Journal*, "The Coming White Underclass,"¹³⁶ nonmarital births constituted about 30% of all live births, or about 1.2 million children.¹³⁷ For Blacks, the statistics seemed even more alarming: "from 23 percent in 1960 to 28 percent in 1969, to 45 percent in 1980, to 62 percent at the beginning of the 1990s."¹³⁸ About the same time (1991), the proportion of nonmarital births to live births for Whites stood at 22%.¹³⁹ Thus proponents of the argument assert that both in absolute terms (numbers of children born to unmarried mothers) and as a proportion of live births, there has been a dramatic increase in the number of children born to unmarried mothers.

Second, those who raise the alarm about the crisis in unmarried births point to the positive correlation between single parent families and various forms of social pathology,

contribute, in themselves, to cultural changes that make unmarried parenthood acceptable:

If you got rid of the welfare system, it would entail such a huge jolt—to the economics, yes, but also to the milieu in which all these actions take place. So it would drastically reduce the number of kids born out of wedlock. . . . We're trying to get the government to stop social engineering among people, to let civil society and the play of forces within civil society once again be the determining factors in how families are formed. Civil society will say very powerfully to children entering adolescence that sexual behavior must be confined within all sorts of penalties and rewards, and it's going to be the same kinds of penalties and rewards that mankind has used since Day 1.

Easton, *supra* note 133, at 16.

¹³⁶ Murray, *supra* note 122, at A14.

¹³⁷ Murray, *supra* note 122, at A14.

¹³⁸ LIND, *supra*, note 132, at 167.

¹³⁹ Murray, *supra* note 122, at A14.

including poverty.¹⁴⁰ Studies of family composition of poor families indicate that rates of poverty are higher for children growing up in single-parent families, and especially high for children growing up in households headed by an unmarried single-parent mother.¹⁴¹

Looking at families with young children in poverty, there seems to be a strong correlation between poverty rates and family composition. For families with one child under the age of six, only 9% of families headed by two married parents have children living in poverty. By contrast, 14% of families with one child under six and headed by a single divorced father, and 51% of families with one child under six and headed by a single divorced mother, have children living in poverty.¹⁴² The rates are still higher for never-married single parents. For families with one child under six that are headed by a never-married father, the percent of children living in poverty is 33%; for families with one child under six

¹⁴⁰ See MURRAY, *supra* note 119, at 125-33 (documenting the rise of single-mother families in America and the poverty that results for such families. “[P]oor, uneducated, single teenaged mothers are in a bad position to raise children, however much they may love them.”); Easton, *supra* note 133, at 16 (explaining Charles Murray’s reliance on studies showing higher crime, drug abuse, truancy, and other problems for children raised by single mothers).

¹⁴¹ BRONFENBRENNER ET AL., *supra* note 20, at 167. In 1985, single parent families in the European Union also experienced rates of poverty between 1.5 to two times greater than all households. Michael F. Forster, *The Effects of Net Transfers on Low Incomes Among Non-Elderly Families*, 22 OECD ECON. STUD. 181 (1994).

¹⁴² It is probable that the difference in poverty rates between families headed by divorced mothers and families headed by divorced fathers has something to do with the problem of unpaid child support in this country. Nationwide, approximately \$35 billion in outstanding child support payments still goes uncollected. Russell L. Weaver, 98 W. VA. L. REV. 815, 852 n.137 (1996). Nevertheless, while enforcing child support more vigorously would undoubtedly have some salutary effects, it would hardly be enough to lift most children out of poverty. See JOEL F. HANDLER & YESHEKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY* 223-24 (1991) (offering evidence to demonstrate that many absent fathers of AFDC children do contribute child support, but that their low wages make it unlikely that even 100% collection of child support awards would have a significant effect on AFDC rolls).

headed by a never-married mother the percent of children in poverty is 66%.¹⁴³

The percent of poor children in single-mother families has been growing steadily since 1960. The absolute numbers and rate of growth, however, has been greater for Black children than for White children.¹⁴⁴ At present, more than 80% of poor Black children live with a single parent, almost all single mothers. Nearly half of poor White children now reside in single parent homes, the vast majority of those single parents being mothers.¹⁴⁵

When families have more than one child under six, the percent of children in poverty is even greater. Sixteen percent of children in families with *more than one* child under the age of six and headed by two married parents have children living in poverty. An astonishing 77% of families, with more than one child under six and headed by a single divorced mother, have children living in poverty. For families with more than one child under six that are headed by an unmarried father, the percent of children living in poverty is nearly unchanged at 34%; but for families with more than one child under six headed by an unmarried mother the percent of children in poverty jumps to 88%. In other words, almost nine out of ten children who live with unmarried single mothers live in poverty.¹⁴⁶

Third, and last, proponents of the argument that child poverty can be attributed to the undesirable behavior of parents, in this case, unmarried parenthood, maintain that public assistance, particularly the AFDC program, has encouraged unmarried people, especially adolescents, to engage in sexual activity and to bear children without being married. Conservatives also contend that the AFDC program has allowed young fathers to abdicate responsibility and, where fathers are interested in marriage and parental duties, the AFDC program has created a disincentive for young mothers to marry the fathers of their children.¹⁴⁷

¹⁴³ BRONFENBRENNER ET AL., *supra* note 20, at 166 fig.5-13.

¹⁴⁴ BRONFENBRENNER ET AL., *supra* note 20, at 172 fig.5-16.

¹⁴⁵ BRONFENBRENNER ET AL., *supra* note 20, at 173.

¹⁴⁶ BRONFENBRENNER ET AL., *supra* note 20, at 166 fig.5-13.

¹⁴⁷ MURRAY, *supra* note 119, at 156-62. Murray presents the first of the "Harold and Phyllis" thought experiments in which a young, poor, unmarried

Moreover, conservatives argue that because the AFDC budget increases with family size, the program has created a cash incentive for poor people to have more children. That conviction has led to calls for "child exclusion" provisions that deny additional support to any children born to a family while on AFDC.¹⁴⁸ Nearly three quarters of families on AFDC are headed by single parents (overwhelmingly women).¹⁴⁹ Forty-five percent of AFDC families are headed by an adult who has never been married.¹⁵⁰ Thirty percent of AFDC families are single parents as a result of divorce or separation.¹⁵¹

The arguments, outlined above, have had an astonishing degree of success with the public and even with putative liberals. The problem is that they are based, as Michael Lind has put it in a recent book, on "a ludicrous misreading of the relevant data."¹⁵² If the conservative argument about the connection between public poor relief programs, in this case AFDC, and parental pathology were correct, several things would be expected.

First, when the value of AFDC benefits were rising nonmarital birth rates would increase. Presumably the converse would also be

couple expecting a child tries to make decisions such as whether Harold should go to work or live with Phyllis. *Id.* Though Murray has complained that his thought experiment has been unfairly lampooned, his depiction of a poor, young, expectant couple engaging in a carefully calculated, thoroughly quantifiable, rational cost-benefit analysis, will strike anyone who has any knowledge of poor people, young people, or human beings in general, as unintentionally hilarious. See Easton, *supra* note 133, at 16 (reporting on the ridicule given by advocates and social scientists to Murray's "Harold and Phyllis" thought experiment); see also JENCKS, *supra* note 47, at 80-85 (criticizing and responding to the "Harold and Phyllis" thought experiments).

¹⁴⁸ For an insightful discussion and critique of one state's child-exclusion provision, see James M. Sullivan, *The New Jersey Child Exclusion: Model or Mess?*, 2 GEO. J. FIGHTING POVERTY 127 (1994). Early versions of Republican sponsored legislation to change the AFDC program have included child exclusion. See, e.g., H.R. 4, 104th Cong., 1st Sess. Title I (1995) (prohibiting the use of block grants for providing cash benefits to minor children born to welfare recipients).

¹⁴⁹ HANDLER, *supra* note 30, at 46.

¹⁵⁰ HANDLER, *supra* note 30, at 46.

¹⁵¹ HANDLER, *supra* note 30, at 46.

¹⁵² LIND, *supra* note 132, at 169.

true: a reduction in the value of AFDC benefits would cause a drop in the numbers of nonmarital births. Second, states with higher AFDC benefits would experience rates of unmarried births greater than states with lower benefits. Third, the average AFDC family would be significantly larger than the average non-AFDC family, because the AFDC program “rewards” additional births by increasing the benefits’ budget but, since no known employer increases salary based upon family size, non-AFDC families experience children as net costs to the household budget. In fact, none of these three things turns out to happen in reality.

With regard to the data on nonmarital births, what appears to be a dramatic increase in the rate of nonmarital births is much more a reflection of a *decrease* in marital fertility than an *increase* in nonmarital fertility.¹⁵³ In order to understand why that is so, it is necessary to revisit data on fertility rates in the past four decades.

For reasons other than the invention of rock and roll, the 1950s was an extraordinary decade. During the 1950s Americans married younger, became parents younger and, relative to the preceding and succeeding decades, gave birth to more children. Thus marital fertility experienced a dramatic increase in the 1950s, what is more commonly called the “baby boom.”¹⁵⁴

During the 1960s and into the mid-1970s, however, marital fertility experienced a sharp decline. Between 1960 and 1975 the marital fertility rate fell by more than 40%. At the end of the 1950s, the marital fertility rate stood at 157 per 1000 married women. By 1975, the rate had fallen to ninety-two births per 1000 married women.¹⁵⁵ The number of births per 1000 unmarried women during the same period, what Murray identifies as the beginning of the “illegitimacy crisis,” remained roughly the same,

¹⁵³ LIND, *supra* note 132, at 170 (emphasis supplied). While this Article agrees with Lind’s critique of what he terms the conservative “illegitimacy hoax,” the Article relies for data and analysis of demographic trends on Sara McLanahan & Lynne Casper, *Growing Diversity and Inequality in the American Family*, in STATE OF THE UNION: AMERICA IN THE 1990S 10-12 (Reynolds Farley ed., 1994).

¹⁵⁴ McLanahan & Casper, *supra* note 153, at 10.

¹⁵⁵ McLanahan & Casper, *supra* note 153, at 10.

but the nonmarital birth rate increased sharply. The reason for that apparent increase was that even though the rate of nonmarital births between 1960 and 1975 remained relatively constant (between twenty-two and twenty-four per 1000 unmarried women), the decline in marital fertility and delaying of marriage resulted in a significant increase in the ratio of unmarried births to married births.¹⁵⁶

In the simplest terms, since the “illegitimacy rate” of which Murray speaks is a ratio of married births to unmarried births, the rate can be increased in at least three ways: (1) an increase in nonmarital fertility while marital fertility remains constant; (2) an increase in nonmarital fertility surpassing that of a simultaneous increase in marital fertility; or (3) as is the case in American history between 1960 and 1975, a *decrease* in marital fertility while nonmarital fertility remains constant.

In fairness, it should be noted that marital fertility rates levelled off in the late 1970s and have not declined significantly since then. Moreover, in absolute terms, nonmarital fertility rates since that time have been on the rise. In 1960 the rate of births to unmarried women was 21.6 per 1000 unmarried women.¹⁵⁷ Ten years later, the number stood at 26.4 per 1000 unmarried women.¹⁵⁸ By 1980, the rate of births for unmarried women was 29.4 per 1000; and by 1990 the rate reached 43.8.¹⁵⁹ The increase from 21.6 to 43.8 births per 1000 unmarried women may be a cause for discussion. But the increase in nonmarital births hardly justifies the “sky is falling” rhetoric of Murray and other conservatives.¹⁶⁰ It should also be noted that in 1994 the rate of births to unmarried women declined for the nation as a whole, from 30% to 26%, but *increased* for older, wealthier women.¹⁶¹ With regard to Black rates of unmarried births, Christopher Lind writes:

¹⁵⁶ McLanahan & Casper, *supra* note 153, at 11.

¹⁵⁷ NATIONAL CTR. FOR HEALTH STATS., VITAL STATISTICS OF THE UNITED STATES, 1991, at 199 tbl.1-77 (1995).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Murray, *supra* note 122, at A14.

¹⁶¹ *More Older U.S. Women Having Babies Out of Wedlock*, REUTERS N. AM. WIRE, Nov. 7, 1995, available in LEXIS, Nexis Library, Reuna File.

According to a 1995 Census Bureau Report on Characteristics of the Black Population, "the rate of babies being born to unwed black teenagers—about 80 per 1000 unmarried teenagers—remained virtually the same from 1920 through 1990." The rise in the number of illegitimate births from 23 percent in 1960 to 62 percent in 1992 reflects, not greater fertility by poor blacks, but a significant decline in the number of legitimate births among the non-poor black majority.¹⁶²

What is most critical about these statistics to the conservative argument about public assistance and unmarried births is not just that the data reveal exaggerated and sensationalized claims by authors like Murray. What is most critical is that the actual rate of nonmarital fertility, for all races, showed little or no increase precisely during that period (1960-1975) when both access to and the value of welfare benefits was increasing. From 1975 to the present, when the real value of food stamps and AFDC benefits fell by 20%¹⁶³ and median AFDC benefits declined by more than 40%,¹⁶⁴ unmarried fertility rates have risen unevenly. Thus the first predicted consequence of the conservative argument, that

¹⁶² LIND, *supra* note 132, at 169 (quoting Claudette Bennett, *The Black Population in the United States*, U.S. BUREAU OF THE CENSUS CURRENT POPULATION REPORTS 20-480 (1995) (citations omitted)). While the thesis of Lind's argument is sound, it should not give the impression that there has not been an increase in the actual number of unmarried births, for the population as a whole, and for Blacks in particular. Additionally, Lind's quotation on Census Department Data requires clarification. For Black women 15- to 17-years-old, the unmarried birth rate has hovered at about 80 per 1000 for the past six decades. For Black women 18- to 19-years-old, the unmarried birth rate has gone from 128.4 in 1969 (the last year for which data were available to the author) to 141.6 in 1993. McLanahan & Casper, *supra* note 153, at tbl.6.

¹⁶³ ALBELDA ET AL., *supra* note 17, at 16.

¹⁶⁴ Janice L. Peterson & Carol Dawn Peterson, *Single Mother Families and the Dual Welfare State*, 52 REV. SOC. ECON. 314, 323 (1994). In some states, the decline has been even more pronounced. In Texas, for example, the inflation-adjusted value of AFDC benefits has fallen 60% since 1970. Suzanne Gamboa, *Poverty's Unrelenting Grip on Texas: Thirty Years After LBJ Launched His Great Society, Congress Wants to Give Responsibility for the Poor Back to the States. What Have We Learned, and What Does the Future Hold for Texas' Impoverished?*, AUSTIN AM. STATESMAN, Nov. 26, 1995, at A1.

unmarried birth rates will rise and fall with the rise and fall of the value of AFDC benefits, is contradicted by at least three decades of census data.

Second, as noted above, if the conservative argument were true, one would expect states with higher benefits to have unmarried birth rates greater than states with lower benefits. Again, that does not turn out to be the case. Mississippi and Alabama, for example, provide the lowest AFDC benefits in the nation, yet have birth rates significantly higher than states that provide much higher benefits. In fact, the unmarried birth rates in Mississippi and Alabama are among the highest in the nation.¹⁶⁵

Third, if the conservative argument about the connection between poor relief and unmarried birth rates was correct, one would expect a corollary of that argument to be that the heads of households receiving AFDC benefits would maximize the number of children they have in order to maximize the amount of their benefits. As by now should be expected, nothing of the sort occurs in reality. AFDC family size, between 1969 and 1992, declined by more than 25%: from 4.0 persons (inclusive of adults) to 2.9 persons.¹⁶⁶ Extensive study of the family size of AFDC recipients indicates that:

In 72.7 percent of the [AFDC] families, there are one or two children. Another 15.5 percent have three children. And there are four or more children in 10.1 percent of the families. The average AFDC family is either about the same size or slightly smaller than the average non-AFDC family.¹⁶⁷

In this context it is also important to note that a favorite mantra of conservative rhetoric to eliminate public assistance to poor families and their children, "babies having babies," is also not born out by reality. Only a very small percentage of AFDC mothers are teenagers, 7.6%.¹⁶⁸ Of that number, only 2% are fifteen or younger. The vast majority, 90%, are over seventeen; 80% are over

¹⁶⁵ ALBELDA ET AL., *supra* note 17, at 42.

¹⁶⁶ HANDLER, *supra* note 30, at 46.

¹⁶⁷ HANDLER, *supra* note 30, at 46.

¹⁶⁸ HANDLER, *supra* note 30, at 46.

eighteen; and somewhat more than 50% are over nineteen.¹⁶⁹ During the 1950s, the golden era to which contemporary conservatives look back with yearning, the birth rate for teenagers was much higher than it is today, three decades after the war on poverty was launched.¹⁷⁰

What, then, is causing an increase in the number of single-parent families? Answering that question would entail a far-reaching analysis of cultural and economic trends in the United States over the past forty years. Even more importantly, it must be kept in mind that single-parenthood is a phenomenon that has expanded across classes and races in this country, and in Western Europe. It is, by no means, the exclusive province of the poor and racial minorities.

Having said that, what does seem clear is that broader cultural and economic forces are at work: a sharp decline in the real earnings of young adults;¹⁷¹ changes in sexual mores; the lack of effective sex education and difficulty in obtaining birth control for teenagers;¹⁷² larger numbers of women entering the work-force, itself partly the result of the decline in family wages; greater freedom on the part of women to refuse to enter or choose to leave unhappy relationships; increased rates of incarceration of young men, particularly among Blacks and the poor; and perhaps poverty itself. Recent research indicates that “women who grow up in

¹⁶⁹ HANDLER, *supra* note 30, at 46.

¹⁷⁰ HANDLER, *supra* note 30, at 46.

¹⁷¹ See *infra* Part IV.B.1.C (comparing socio-economic trends between the wealthiest and poorest classes in American society, and the correlation to child poverty).

¹⁷² See Douglas J. Besharov, *The Contraceptive Gap: Millions for Cosmetics, Pennies for Better Birth Control*, WASH. POST, Mar. 12, 1995, at C1. (noting the difficulties that many young women face in trying to avoid becoming pregnant. These include problems, both real and perceived, with the available contraceptive methods and deeply rooted convictions antagonistic to the use of contraceptives.). Cf. Jane Mauldon and Kristin Luker, *Does Liberalism Cause Sex*, AM. PROSPECT, Winter 1996, at 80 (arguing that pregnancy rates among sexually active teenagers have dropped and sex education programs have encouraged youth to limit number of partners, delay sex, and use condoms).

poverty are more likely than those from middle-class backgrounds to become single parents."¹⁷³

Without sentimentality, it does not seem irrational to speculate that one of the reasons that poor people may choose to have children outside of marriage is that one of the few consolations available to those who live in poverty is intimacy with another person. Parenthood is one privilege that the poor still enjoy with the rich. Especially for a poor young woman who is not faring very well in school and who suffers from low self-esteem, having a baby may seem like a way to gain affirmation, attention, and respect.

Ann C. Divers-Stamnes, in her moving account of children in one of this country's poorest communities, *Lives in the Balance*,¹⁷⁴ confirms some of this speculation by her own extensive observations of poor children in Watts:

For students who had never achieved, who had not been able to succeed in school, who were in fact failing or falling behind their peers, the production of a child was considered an achievement of which they could be proud. They became the center of attention as their peers admired the baby, their accomplishment. The babies were handed around and admired at the school. For some, it was a chance to receive some desperately needed attention. One young woman was excited to have a baby because the infant received gifts of stuffed animals with which the mother loved to play. A child herself, she enjoyed the toys her infant daughter received. For those young women who were lacking love in their lives, a child was a person of their own to love.¹⁷⁵

Apart from providing an incentive for nonmarital births, poverty also plays a significant role in causing single-parenthood through divorce, abandonment, and separation. According to Census Bureau

¹⁷³ BRONFENBRENNER ET AL., *supra* note 20, at 174.

¹⁷⁴ ANN C. DIVER-STAMNES, *LIVES IN THE BALANCE: YOUTH, POVERTY, AND EDUCATION IN WATTS* (1995).

¹⁷⁵ *Id.* at 43. Diver-Stamnes concludes her criticism of the argument that AFDC payments induce poor women to have children outside of marriage with the observation that "[a]pplying for AFDC was a response to these young mothers' new life situation, not the reason for it." *Id.* at 45.

statistics on family dissolution, poor families, for both Whites and Blacks, are twice as likely to break up than non-poor families, due, the Census Bureau reasonably suggests, to the stresses arising from being poor.¹⁷⁶

Non-marital births and single-parenthood are, of course, only one of the behaviors to which conservatives point in locating the problem of child poverty with poor parents. Crime, drug use, incomplete educations, and, most importantly, unwillingness to work are also among the most serious charges in the conservative indictment of poor parents. As Richard Neuhaus has put it,

[t]he underclass is the most concentrated population of those who cannot or will not cope when it comes to family responsibility, education, work, and living within the criminal law.¹⁷⁷

Later, this Article takes up, in the context of assessing the effect of government relief programs on the poor, the question of whether poor parents who receive AFDC are unwilling to work. For the rest of the pathologies for which poor parents are blamed for their own poverty, the previous discussion of unmarried fertility stands as a paradigm. That is to say, when one examines the data carefully, the putative pathologies of the poor either turn out to be nonexistent or are more the consequence than the cause of poverty.¹⁷⁸

Parental failures, however, are only a part of the conservative explanation of child poverty. Another part, arguably an equally important part, of the conservative explanation of the problem of child poverty is misguided government intervention.

¹⁷⁶ SKLAR, *supra* note 22, at 13 (citing U.S. BUREAU OF THE CENSUS, STUDIES IN HOUSEHOLD AND FAMILY FORMATION: WHEN HOUSEHOLDS CONTINUE, DISCONTINUE, AND FORM 29-30 (1992)).

¹⁷⁷ RICHARD JOHN NEUHAUS, AMERICA AGAINST ITSELF: MORAL VISION AND THE PUBLIC ORDER 89 (1992).

¹⁷⁸ See DAVID M. GORDON, FAT AND MEAN: THE CORPORATE SQUEEZE OF WORKING AMERICANS AND THE MYTH OF MANAGERIAL "DOWNSIZING," 115-43 (1996) (providing a detailed rebuttal of the conservative argument on the "underclass" and its supposed lack of values).

2. Government Failures

The phrase, “[i]t takes a village to raise a child” has validity only if the “village” is friends, extended family, neighbors, and other privately assembled groups who can reinforce the lessons of home. But if the “village” is government, then the endeavor is doomed to fail.

—Dan Quayle & Diane Medved¹⁷⁹

As that quote from Dan Quayle and Diane Medved’s book makes clear, one of the fundamental convictions of the conservative position on child poverty is that government has little, if any, role in alleviating the problem. That conclusion follows ineluctably from an even more fundamental premise of the conservative position: government intervention on behalf of poor people in the past thirty years has been an unmitigated disaster.

Robert Rector, in the title of an article¹⁸⁰ that has been widely cited and provided a mantra for conservative enemies of the welfare state, described the last thirty years of government poor relief efforts this way: “America’s Failed \$5.4 Trillion War on Poverty.”¹⁸¹ Rector’s argument is perhaps the best single source for a brief statement of all the major themes of conservative rhetoric on poor relief. From its opening passages denying that there is any significant material poverty in the United States; to its progress through the litany of illegitimacy, laziness, welfare

¹⁷⁹ DAN QUAYLE & DIANE MEDVED, *THE AMERICAN FAMILY: DISCOVERING THE VALUES THAT MAKE US STRONG* 277 (1996). In what may have been a conscious play on the most well known slogan of the National Rifle Association, Quayle and Medved conclude their point with the words: “Governments don’t raise children. Parents do.” *Id.* at 277.

¹⁸⁰ RECTOR & LAUBER, *supra* note 54 (reprinted as a book).

¹⁸¹ RECTOR & LAUBER, *supra* note 54, at 23. Rector’s article (reprinted as a book) has been widely cited by conservative politicians and commentators. Its basic argument can be found in a variety of conservative sources, including House Bill 4, the so-called “welfare reform” bill introduced by conservatives in the 104th Congress. See H.R. 4, 104th Cong., 1st Sess. (1996). The proposed bill’s synopsis reads: “A bill to restore the American family, reduce illegitimacy, control welfare spending, and reduce welfare dependence.” *Id.*

dependency, and crime as the reasons the poor are poor; to its concluding prophecies about the emerging White underclass; Rector's piece epitomizes the conservative position on poor relief. For that reason alone it is worth quoting at length:

Despite massive spending, in many respects the fate of lower income Americans has become worse, not better, in the last quarter century. Today, one child in seven is being raised on welfare through the AFDC program In welfare, as in most other things, you get what you pay for. For thirty years the welfare system has paid for non-work and non-marriage and has achieved massive increases in both. By undermining the work ethic and rewarding illegitimacy, the welfare system insidiously generates its own clientele. The more that is spent, the more people in apparent need of aid who appear. The government is trapped in a cycle in which spending generates illegitimacy and dependency, which in turn generate demands for even greater spending.¹⁸²

Stated most succinctly, the conservative position on the effect of government intervention to ameliorate child poverty has three points: (1) the federal government has engaged in massive spending on means-tested poor relief in the past thirty years; (2) that spending has done little to reduce poverty, particularly child poverty; and (3) the observable effects of federal spending on poor relief are uniformly negative—an increase in nonmarital births and family breakdown and an undermining of a work ethic among the poor that has resulted in so-called “welfare dependency.”¹⁸³ The conservative position does not merely believe that government poor relief programs do not help to prevent poverty. The conservative position holds that government programs to help the poor actually create poverty.

In a manner analogous to the way in which this Article investigated Charles Murray's purported crisis in nonmarital births,

¹⁸² RECTOR & LAUBER, *supra* note 54, at 23.

¹⁸³ See Spencer Rich, *Behind Reagan's Welfare Study*, WASH. POST, Apr. 5, 1986, at A7 (discussing the Reagan administration's view of “welfare dependency” and the “welfare culture”).

each of the above-stated premises will now be examined. For the third premise, having dealt with the issue of nonmarital births and family breakdown, the discussion will instead focus on the so-called problem of welfare dependency.

Rector's first premise is that federal and state governments have engaged in massive spending on what he terms "welfare." In its popular usage "welfare" stands for the cash assistance, nutritional assistance, and medical insurance afforded the poorest citizens—in other words, AFDC (or for single adults and childless couples in some states, Home Relief or General Assistance), food stamps, and Medicaid. Rector, exploiting the rhetorical advantage of the negative connotation of "welfare" in the public mind, uses the term, however, to encompass every means-tested program sponsored by the federal government.¹⁸⁴ Thus Rector's list of seventy-eight programs predictably contains AFDC, food stamps, State General Assistance, Supplemental Security Income ("SSI"), and Medicaid; but also includes programs such as General Assistance to Indians, Supplemental Educational Opportunity Grants ("SEOG"), Fellowships for Graduate and Professional Study for Disadvantaged Minorities, Pell Grants, and the Earned Income Tax Credit ("EITC").¹⁸⁵ By adding up the monies spent on all federal means-tested programs since 1963, Rector comes up with his figure (in adjusted dollars) of \$5.4 trillion.¹⁸⁶

The shortest accurate response to this assertion of Rector comes from Political Consultant James Carville: "[N]ot in our wildest dreams have we spent that much."¹⁸⁷ A more elaborate refutation may, however, be in order.

First, as noted above, Rector includes in his list of anti-poverty programs (drawn from the Congressional Research Service) a

¹⁸⁴ Robert Rector, *The U.S. Welfare System: Means-Tested Assistance Programs and Aid to Economically Distressed Communities in Fiscal Year 1993* (Heritage Found. Reps.), July 1, 1995, at 47. This piece serves as an appendix to Rector's article. It consists of an alphabetical (by category) listing of all state and federal means-tested programs with expenditures for fiscal years 1990-1992.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ JAMES CARVILLE, *WE'RE RIGHT, THEY'RE WRONG* 25 (1996). Carville then adds, "and we don't do nearly enough (to assist poor people)." *Id.*

number of programs that are not targeted toward nor used by people beneath the poverty line, or the population that qualifies for AFDC. SEOG grants, for example, have no upper income threshold for eligibility.¹⁸⁸ The Special Programs for Students from Disadvantaged Backgrounds require that at least two-thirds of recipients be low income, defined as family incomes not in excess of 150% of the poverty line, but fully one-third of beneficiaries need not be low-income.¹⁸⁹ Fellowships for Graduate and Professional Study for Disadvantaged Minorities are awarded on the basis of a national competition among educational institutions and are based on the "financial need" of candidates who may or may not fall at or beneath the poverty line. The EITC, among the largest items on Rector's list, also benefits many families with incomes above the poverty line.¹⁹⁰

The obvious conservative retort to this line of criticism is that it is quibbling. The really big-ticket items—AFDC, food stamps, and especially Medicaid—have eligibility criteria expressly linked to the poorest citizens. Granting that, for the sake of argument, the first premise of Rector's argument still does not hold up.

If the total number of adjusted dollars spent on means-tested programs is viewed in absolute terms, it is obvious that Rector has wildly overstated government spending on the poor. As Robert Greenstein, in his testimony before the Human Resources Subcommittee of the House Ways and Means Committee pointed out, total federal spending for programs for low-income people was \$177 billion in 1994,¹⁹¹ slightly more than 12% of the federal budget. Providing medical assistance is by far the single most

¹⁸⁸ SEOG eligibility depends upon the "expected family payment" which is determined by such non-income factors as family size, number of children in college, cost of the college's tuition, value of family assets, etc. Rector, *supra* note 184, at 47.

¹⁸⁹ Rector, *supra* note 184, at 47.

¹⁹⁰ Rector, *supra* note 184, at 47.

¹⁹¹ CENTER ON BUDGET AND POLICY PRIORITIES, HOUSE WAYS AND MEANS WELFARE REVISION, TESTIMONY OF ROBERT GREENSTEIN, EXECUTIVE DIRECTOR, Jan. 13, 1995, available in LEXIS, Legis Library, Cngtst File [hereinafter GREENSTEIN].

costly government expenditure on poor people, and the great bulk of that money goes to Medicaid.¹⁹²

In 1993, for example, the federal, state, and local governments spent only \$25 billion on AFDC, but nearly \$132 billion on Medicaid.¹⁹³ In fact, of the six programs for poor relief on which local, state, and the federal government spent money, Medicaid cost more than the other five combined: (1) Medicaid—\$132 billion; (2) SSI—\$26 billion; (3) food stamps—\$26 billion; (4) AFDC—\$25 billion; (5) low-income housing subsidies—\$20 billion; and (6) Head Start and other compensatory education programs—\$10 billion.¹⁹⁴ Less than one-fifth of Medicaid spending, however, is on medical services for families receiving AFDC.¹⁹⁵ As Robert Greenstein observes:

The average cost of Medicaid services for a child receiving AFDC is only about one-quarter the cost of caring for an elderly Medicaid recipient and about one-seventh the cost of caring for a disabled individual.¹⁹⁶

If viewed in relative terms, the rhetorical effect of Rector's purported \$5.4 billion dollars of government spending in means-tested programs is diminished even further. Since 1965, total federal spending has equaled, in adjusted dollars, \$31 trillion. The total Gross Domestic Product ("GDP") over the same period, in adjusted dollars, was \$143 trillion. Thus, even if one accepts Rector's accounting of poor relief programs—an accounting that includes many programs that benefit people with incomes above the poverty line—the percentage spent by the U.S. government on means-tested programs does not seem that great: 16% of total federal spending and 4% of total GDP.¹⁹⁷ If AFDC is considered alone, the percentage of federal spending over the last thirty years drops to 1.5%.¹⁹⁸ By contrast, since 1945, Department of Defense

¹⁹² *Id.*

¹⁹³ Susan Mayer & Christopher Jencks, *War on Poverty: No Apologies*, *Please*, N.Y. TIMES, Nov. 9, 1995, at A29.

¹⁹⁴ *Id.*

¹⁹⁵ GREENSTEIN, *supra* note 191.

¹⁹⁶ GREENSTEIN, *supra* note 191.

¹⁹⁷ GREENSTEIN, *supra* note 191.

¹⁹⁸ GREENSTEIN, *supra* note 191.

expenditures on the nuclear weapons program alone averaged more than three times as much per year.¹⁹⁹

Rector's argument, however, does not fall apart because the "massive" government spending it alleges turns out not to be nearly as massive as Rector makes it out to be. Even if Rector were to concede that spending on poor relief were only one-half, or even one-tenth, of what he claims, his second premise, that the money spent on government poor relief programs has done little or nothing to relieve poverty, would still prove a powerful indictment of those programs. The question, then, is whether Rector's second premise can withstand critical scrutiny. Is it, in fact, correct to say that "the fate of lower income Americans has become worse, not better" as a result of federal welfare spending?²⁰⁰

In responding to that question, the first point to be made is that none of the programs that made up the "War on Poverty" or constitute the current system of poor relief in the United States were designed to lift people out of poverty. The popular metaphor of a safety net is useful in this respect: a safety net does not keep one on one's feet or prevent one from falling, it merely sets a lower, non-lethal, limit to the depth of one's descent.²⁰¹ Only in Alaska and Hawaii, for example, do the effect of AFDC and food stamps bring a family above the poverty line.²⁰² In every other state, even with full AFDC and food stamp assistance, poor mothers and their children remain below the poverty line. Because of the steady erosion of the value of AFDC benefits and food

¹⁹⁹ Stephen I. Schwartz, *Four Trillion Dollars and Counting*, 51 BULLETIN OF THE ATOM. SCIENTIST 32 (Nov. 1995). The \$80 billion figure is in adjusted 1995 dollars. Schwartz, based upon a Brookings Institute Study he co-authored, estimates that, since 1945, the federal government has spent *at least* \$4 trillion on the nuclear weapons program alone, and believes that the actual figure may be as much as \$5 trillion. Using the lower figure of \$4 trillion, dividing by the fifty years between 1945 and 1995 (the end date of the Brookings Institute study), the average annual federal expenditure on nuclear weapons was \$80 billion per year—more than three times the \$25 billion spent on AFDC in 1993.

²⁰⁰ RECTOR & LAUBER, *supra* note 54, at 23.

²⁰¹ See *infra* Part IV.B.2-V (discussing the meagerness of the U.S. system of poor relief, including AFDC).

²⁰² Maureen Harrington, *Perceptions of Poor Clouded by Emotion*, DENVER POST, June 19, 1995, at A1.

stamps, between 1979 and 1992, the percent of single-parent families lifted out of poverty by government assistance fell from 39% to 25%.²⁰³

Despite the paltry and ever-diminishing value of government assistance to poor people in the United States, the ameliorative effect of that assistance has been significant. Two respected social scientists who have studied both poverty and the welfare system, Susan Mayer, professor of public policy at the University of Chicago, and Christopher Jencks, professor of sociology at Northwestern University, have conducted an assessment of the effects of federal, state, and local spending on programs for poor people since 1965.²⁰⁴ Their conclusions stand in striking contrast to the contention that the "War on Poverty" has accomplished little or nothing.

Mayer and Jencks note that every major poor relief program the federal government has undertaken has demonstrated significant success in alleviating the effects of poverty.²⁰⁵ In housing, for the past twenty years federal funds for low-income housing assistance have gone toward helping poor families pay their rent, *not* toward the notorious "projects" that dominate the conservative caricature of public housing. The private units that government funds have helped poor families obtain are, in most respects, decent housing. As Mayer and Jencks note:

The Census Bureau's housing survey shows that nearly every measure of poor families' housing conditions has improved since the early 1970's. The poor are less likely to have holes in their floors, cracks in their walls or ceilings, and leaky roofs. They are more likely to have complete plumbing, central heat and electrical outlets in every room.²⁰⁶

Government programs have also significantly alleviated the problem of hunger among the poorest people in the United States. Results of the National Food Consumption Survey have shown that

²⁰³ ALBELDA ET AL., *supra* note 17, at 17.

²⁰⁴ Mayer & Jencks, *supra* note 193, at A29.

²⁰⁵ Mayer & Jencks, *supra* note 193, at A29.

²⁰⁶ Mayer & Jencks, *supra* note 193, at A29.

the food stamp program has had a significant effect on reducing hunger and malnutrition, reducing by half the effect of family income on food consumption.²⁰⁷

In medical care and education, government spending on programs to assist the poor has done much, if not enough. Medicaid, although afflicted by the rapid inflation of health costs that have affected the U.S. health care system generally, has been effective in improving access to medical care for the nation's poorest people.²⁰⁸ Various compensatory education programs like Head Start have often demonstrated that children enrolled in such programs perform better than similarly situated unenrolled peers. While it is true that the advantages conferred by such programs seem to fade when children are withdrawn from the programs, nevertheless, the reduction in the proportion of seventeen-year-olds who have very low math and reading skills may be interpreted as a sign that compensatory education programs are having a cumulative beneficial effect.²⁰⁹

The group that has profited most from federal poor relief programs stands at the opposite end, from children, on the age spectrum: the elderly. The combination of indexing Social Security benefits to inflation, and the creation of the SSI program in 1972, have coincided with a marked drop in poverty rates among the elderly: from 19% in 1972, to 15% in 1982, and to 12% in 1992.²¹⁰

Finally, with regard to AFDC, the program was designed to be and remains the least expensive way in which to provide for dependent children, in the care of a parent (mother), within a private household. Though its benefits are meager, the AFDC program keeps millions of women and dependent children from homelessness and hunger. A Rutgers University study of women in states with low AFDC benefits found that such women and their

²⁰⁷ Mayer & Jencks, *supra* note 193, at A29.

²⁰⁸ Mayer & Jencks, *supra* note 193, at A29.

²⁰⁹ Mayer & Jencks, *supra* note 193, at A29.

²¹⁰ Mayer & Jencks, *supra* note 193, at A29.

children were significantly more likely to experience various hardships, including going without food and losing housing.²¹¹

Once it is acknowledged that government poor relief programs in the United States are, by design, a palliative for and not a prophylactic against poverty, the unfairness of the conservative criticism of programs to assist the poor becomes all the more apparent. The conservative allegation about the ineffectiveness of such programs amounts to this: the programs have been in existence for thirty years and not only is there still poverty in the United States, but the number of poor people is growing. The defense to that allegation is that programs cannot be rationally accused of failing to fulfill a purpose for which they were not intended and have not been adequately funded. The only fair standard of judgment to use—the only standard justified by the history, structure, and funding of poor relief programs in the United States—is the degree to which programs like AFDC have diminished the worst aspects of being poor. As the research of Jencks and Mayer indicates, by that criterion government poor relief programs have had significant success.

It is incumbent upon those who claim that government poor relief programs have accomplished nothing to answer this question directly. What would have been the consequences had programs like AFDC, food stamps, SSI, and Medicaid *not* existed? In the past thirty years, under those programs alone, millions of meals have been served to hungry children and elderly people; countless months of rent and utilities have been paid; tens of millions of prescriptions have been filled, vaccinations administered, bones set, infections treated, and life-saving surgical procedures performed. Surely the suffering of poor people, and the dehumanizing effects of poverty, would have been much, much greater had programs like AFDC not existed.

The conservative position has only two responses to that challenge: (1) in the absence of government poor relief programs, a combination of private charity, self-help, and market forces would

²¹¹ Jason DeParle, *Less Is More: Faith and Facts About Welfare Reform*, N.Y. TIMES, Dec. 3, 1995, §4, at 1 (reporting on study by Rutgers University Sociologist Kathryn Edin of women in high and low AFDC benefits states).

have provided all those meals, months of rent, and medical care; or (2) the nation would have been better off if the poor people, nearly two-thirds of them children, who made use of those services never received them.

The overwhelming majority of Americans are likely to greet the first response with howls of derisive laughter, and the second with cries of moral outrage. For that reason, whatever the demands of common decency and intellectual honesty, advocates for the conservative position are unlikely ever to speak openly either of those responses. However refreshing such candor, it would constitute a rhetorical disaster.

What remains of this consideration of the conservative critique of government poor relief programs of the past thirty years is to interrogate its third premise, namely, that those programs have encouraged what Robert Rector calls "behavioral poverty,"²¹² that is, various forms of social pathology on the part of the poor. Chief among those alleged pathologies, older in its ideological pedigree than even illegitimacy, is indolence, an unwillingness to work. The evidence offered by the conservative position for the undermining effect of poor relief programs on the work ethic of the poor is the phenomenon of so-called "welfare dependency," that is to say, the apparent tendency of some AFDC recipients to remain on welfare rolls for long periods of time and, in some cases, for the children and grandchildren of those recipients to rely on AFDC when they become adults.²¹³

There are three responses that can be made to the indolence argument: (1) AFDC benefits simply are not great enough to discourage work; (2) fully half of families that receive AFDC leave the welfare rolls within two years, and nearly two-thirds leave within four years; and (3) a significant percentage of women who receive AFDC assistance *do work* while receiving benefits, and an even larger percentage actively seek work while on AFDC.

²¹² RECTOR & LAUBER, *supra* note 54, at 24.

²¹³ See, e.g., Mona Charen, *GOP Deserves the High Ground*, ATLANTA J. & CONST., Mar. 28, 1995, at 9A; Representative Clay Shaw, *Republican Response to President Clinton's Weekly Radio Address* (radio broadcast Jan. 13, 1996) (transcript on file with *Journal of Law and Policy*).

It is a point that has been made before in this Article and will be made again at greater length. Nevertheless, it bears repeating here: AFDC benefits are extraordinarily paltry. The average monthly AFDC benefit for a family of three in 1992 was \$374.00, about 40% of the poverty line.²¹⁴

With regard to the average length of stay on AFDC rolls, the first point to be made is that frequently opponents of poor relief programs engage in a kind of statistical sleight-of-hand to make the number of long-term AFDC recipients appear greater than it actually is. The mechanism by which that illusion is accomplished is a simple one: opponents of poor relief programs will present a "snapshot" picture of AFDC roles. In other words, before presenting some startling statistic on the number of long-term AFDC recipients, opponents of the program, at least the more conscientious among them, will preface the statistic with the words "on any given day." The illusion created by such statistics is explained in a 1994 study of the House Ways and Means Committee.

Consider a 13-bed hospital in which 12 beds are occupied for an entire year by 12 chronically ill patients, while the other bed is used by 52 patients, each of whom stays exactly 1 week. On any given day, a hospital census would find that about 85% of the patients (12/13) were in the midst of long spells of hospitalization. Nevertheless, viewed over the course of a year, short-term use clearly dominates: out of 64 patients using hospital services, about 80% (52/64) spent only 1 week in the hospital.²¹⁵

By analogy, a state may have any average of 10,000 people, on any one day, receiving AFDC. Stipulate that in a given year, the state has 120,000 people who receive AFDC: 8000 for the whole year, 112,000 for a period of one month or less. If the conservative governor of the state looks at the welfare rolls on any given day, he will be technically correct in saying that 80% (8000/10,000) of the AFDC recipients on any given day are long term. In fact,

²¹⁴ FOLBRE, *supra* note 72, at 6.9.

²¹⁵ Joel Handler, *Ending Welfare as We Know It—Wrong for Welfare, Wrong for Poverty*, 2 GEO. J. ON FIGHTING POVERTY 3, 14 (1994) (citing COMM. ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, OVERVIEW OF ENTITLEMENT PROGRAMS, 1994 GREEN BOOK (1994)).

however, the vast majority of recipients in this hypothetical state (112,000/120,000 or 93.3%) are short term recipients.

In the United States as a whole, only 11.8% of households received any AFDC funds during the 1980s;²¹⁶ 4.3% of households received at least \$1.00 of AFDC for three to seven years, with 2% receiving at least \$1.00 of AFDC for eight to ten years.²¹⁷ A 1984 study of daughters in families that had received AFDC found that the great majority of those daughters did not receive AFDC as adults.²¹⁸ As a portion of total AFDC recipients, 50% of recipients are on the welfare rolls for two years or less. Sixty-two percent (62%) remain on the rolls no longer than four years.²¹⁹ If monthly statistics are examined, the movement on and off AFDC rolls are even more pronounced.²²⁰

It is true that many AFDC families will recycle through the system. Departures and returns to AFDC rolls are driven, however, by job acquisition and loss; the next point to consider in refuting the indolence argument.

The most important point to be made about work and women on AFDC is that a significant percentage of them hold jobs, almost invariably minimum wage jobs, while on welfare. A study of Census Bureau data on Income from 1984 to 1989, by the Institute for Women's Policy Research, found that 43% of mothers who had received AFDC benefits, for at least two months in the past two years, work an average of 950 hours per year.²²¹ The study found

²¹⁶ COMM. ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, OVERVIEW OF ENTITLEMENT PROGRAMS, 1994 GREEN BOOK 446 tbl.10-46 (1994) [hereinafter 1994 GREEN BOOK].

²¹⁷ *Id.*

²¹⁸ *Id.* at 447-49 tbl.10-48.

²¹⁹ Handler, *supra* note 215, at 14; see *Time on Welfare and Welfare Dependency: Hearings on Welfare Time Limits Before the Subcomm. on Human Resources of the House Committee on Ways and Means*, 104th Cong., 2d Sess. (1996) (providing the statement of Dr. Ladonna A. Pavetti, research associate at the Urban Institute).

²²⁰ Handler, *supra* note 215, at 14.

²²¹ *Welfare to Work: The Job Opportunities of AFDC Recipients*, RESEARCH-IN-BRIEF (Inst. for Women's Pol'y Res., Wash., D.C.), Mar. 1995 [hereinafter *Welfare to Work*](summarizing study of U.S. Bureau of the Census' Survey of Income and Program Participation (1984-1989) involving sample of 1181 AFDC

that the jobs worked by AFDC mothers paid an average (in 1990 dollars) of \$4.29 per hour.²²² The low pay and absence of benefits of the jobs found by AFDC mothers was not surprising. Most of those jobs were in the lowest-wage occupations predominantly held by women, for example, maids, waitresses, cashiers, nursing aides, and childcare workers.²²³

A 1995 University of Tennessee study found somewhat lower rates of job participation, *while receiving AFDC*, by adult AFDC recipients. The basic findings of the study, however, support the conclusion that a significant percentage of adult recipients of AFDC work, and work for very little pay.

The Tennessee study reported that 20% of the state's AFDC heads-of-households (caretakers) were employed while receiving AFDC, 60% of them in jobs paying \$5.00 or less.²²⁴ Half of the employed AFDC caretakers worked at least twenty-six hours per week; 56.6% of AFDC caretakers had worked sometime in the previous thirty-six months. More than one-quarter or 26.8% of the caretakers who did not work gave health problems as the reason.²²⁵ Lack of transportation and childcare, and unavailability of jobs were also reported by non-working caretakers as reasons they were not employed.²²⁶ Studies done in other states have found similar results.²²⁷

A 20% employment rate among adult AFDC recipients may not seem very significant. When one considers that the real rate of

mothers, representing about 2.8 million women or 80% of all adult AFDC recipients) (on file with *Journal of Law and Policy*).

²²² *Id.* at 214.

²²³ *Id.*

²²⁴ CENTER FOR BUSINESS AND ECONOMIC RESEARCH, UNIV. OF TENN., AID TO FAMILIES WITH DEPENDENT CHILDREN: 1995 CASE CHARACTERISTICS STUDY xv (1996) [hereinafter TENNESSEE STUDY].

²²⁵ *Id.* at xv.

²²⁶ *Id.*

²²⁷ Joel F. Handler, *Women, Families, Work and Poverty: A Cloudy Future*, 6 UCLA WOMEN'S L.J. 375, 398-99 (noting that virtually all of the AFDC recipients polled in Chicago, Illinois, obtained additional income to cover their expenses. This article also states that this study has been replicated in Cambridge, Charleston, and San Antonio with the same results).

unemployment is estimated at 14%,²²⁸ that these workers are among the least educated and most disadvantaged in the workforce,²²⁹ and the obstacles they face in securing adequate child care and transportation to and from work, the 20% figure seems quite impressive.

Moreover, the 20% figure—mothers on AFDC who are working without any assistance in securing or keeping jobs—is about half of the employment rate of the most successful welfare-to-work program ever run. In the summer of 1995, the Manpower Demonstration Research Corporation of New York issued a report on a program in three cities,²³⁰ in which welfare recipients were required to seek jobs in order to continue to receive benefits. Only about 50% of the participants in the experiment found jobs, and after two years their average income, while having risen 26%, was still only \$285.00 per month.²³¹ Similarly, a Brookings Institution study that tracked a group of working welfare recipients from 1979 to 1990, found that, after inflation, their wages rose only about six cents per hour per year.²³²

Ultimately, an adequate response to the conservative explanation for why parents are poor and, by extension, why so many children are poor, requires an alternative account of the causes of poverty. It is to such an account that the discussion now turns.

B. Economic Forces and Government Policies

Pauperism is the hospital of the active labour-army and the dead weight of the industrial reserve army. Its production is included in that of the relative surplus population, its necessity implied by their necessity; along with the surplus population, pauperism forms a condition of capitalist

²²⁸ Lester Thurow, *The Crusade That's Killing Prosperity*, AM. PROSPECT, Mar.-Apr. 1996, at 54, 56.

²²⁹ TENNESSEE STUDY, *supra* note 224, at xv (reporting that 54.6% of AFDC caretakers had not completed 12 years of school, and only 40% had high school diploma).

²³⁰ DeParle, *supra* note 211, §4, at 1.

²³¹ *Id.*

²³² *Id.*

production, and of the capitalist development of wealth. It forms part of the *faux frais* (“incidental expenses”) of capitalist production: but capital usually knows how to transfer these from its own shoulders to those of the working class and the petty bourgeoisie.

—Marx²³³

Why are the parents of so many children poor? One answer to that question has already been examined: they are poor because of their own faults, made worse by the misguided intervention of government. There are, however, other answers to the question of why people are poor. One of those answers, one that this Article will term “the progressive response,” locates the problem of poverty in the interaction of two realities: an economic system that fails to provide enough jobs that pay a living wage and a political system that does not do enough to compensate for that failure.

Before turning to examine the premises of the progressive response, it would be remiss not to recall that there are other ways of answering the question “Why are people poor?” beyond treating the poor as villains responsible for their own undoing, or treating the poor as victims of larger macroeconomic forces. One kind of approach, an approach that long commanded the respect of many decent, intelligent people, is typified in the quotation from Marx with which this section began.

This particular kind of approach to the problem of why people are poor, sometimes termed “structuralist” but including “functionalism” as it is broadly understood, takes seriously the possibility that poverty may not be a merely incidental and universally unwanted defect of a set of economic and political arrangements.²³⁴ Rather, this approach to the problem of poverty inquires whether, despite all the pious rhetoric about dreaming of a day when no child goes to bed hungry, the existence of poor people and

²³³ MARX, *supra* note 1, at 797.

²³⁴ For a highly critical, and frequently unfair, discussion of structuralist and functionalist approaches to social analysis, see ANTHONY FLEW, *THINKING ABOUT SOCIAL THINKING* 105-12 (2d ed. 1995).

the evident nature of their suffering serves certain powerful social interests.

For Marx, the answer was clear: the maintenance of the poor in their affliction is necessary for the maintenance of the rich in their comfort. The poor represent a constant pool of reserve labor. By keeping the labor supply plentiful, indeed by keeping the labor supply well above that which can be employed at any one time by the productive economy, capitalism thereby depresses labor costs. The presence of the poor, and the witness of their misery, also serve as a reminder of the penalties for failing to work. That fear, which nothing can keep more palpable than the sight of impoverished children begging in the streets, also serves to heighten the insecurity of workers, thereby undermining class solidarity, and making it unlikely that organized collective action will ever be taken against the owners of the means of production.

Such an analysis of poverty may strike the post-Cold War reader as outdated Communist cant. Yet this kind of analysis of the problem of poverty, or at least related kinds of analysis, can be found in works of some of the most respected scholars in the field of welfare policy. Herbert Gans, for example, has analyzed anti-poverty policy in the United States in terms of the interests that are served by labelling one group of people as a morally and intellectually deficient, and therefore undeserving "underclass."²³⁵ Gans considers thirteen different purposes²³⁶ that are realized by treating the poor as underserving, including the idea of the poor as an army of reserve labor.²³⁷

The point in raising the examples of Marx and Gans is not to dwell at any length on the analysis of poverty they provide. That task is undoubtedly worthwhile, but not within the purview of this Article. Being cognizant of structuralist and functionalist approaches to the existence of so many impoverished people provides a corrective for the progressive response to the problem of poverty: that poverty might not be too blithely treated as the

²³⁵ HERBERT J. GANS, *THE WAR AGAINST THE POOR: THE UNDERCLASS AND ANTIPOVERTY POLICY* 2 (1995).

²³⁶ *Id.* at 91-102.

²³⁷ *Id.* at 94.

unhappy accident of the historically contingent intersection of certain economic and political trends.

1. *Economic Forces*

In the past two decades, the United States economy has exhibited three trends that have a direct bearing on the poverty rate generally and, specifically, the poverty of children. The first of those trends is the decrease in full-time employment, both in terms of the increase in overall unemployment rates, and the increase in part-time or temporary positions in place of what were formerly full-time work situations. The second is the decline of real wages. The third trend is a marked increase in income inequality. In their separate and cumulative effect, those trends have resulted in an increase in child poverty rates.

a. *Rising Unemployment and Underemployment*

For the past four decades, the unemployment rate in the United States has grown steadily and significantly: from an average of 4.5% in the 1950s; to 4.8% in the 1960s; to 6.2% in the 1970s; to 7.3% in the 1980s.²³⁸ Since the recession of 1992, unemployment rates have hovered around 6%.²³⁹ For Blacks, the official unemployment rate was about twice that.²⁴⁰

The official unemployment rate does not include people who want to work but cannot because of child-care or transportation problems; people who are involuntary part-time employees; and so-called “discouraged” workers, or people who have given up looking for work.²⁴¹ To that extent, the official unemployment rate no doubt understates the true extent of under- and unemployment. As the economist Lester Thurow writes:

²³⁸ SKLAR, *supra* note 22, at 54 fig.5.

²³⁹ SKLAR, *supra* note 22, at 55.

²⁴⁰ SKLAR, *supra* note 22, at 63.

²⁴¹ As Holly Sklar points out, “The official [unemployment] rate doesn’t include would-be workers who have searched for work in the past year, or even the last five weeks—but not in the past *four* weeks.” SKLAR, *supra* note 22, at 60.

If we combine the 7.5 to 8 million officially unemployed workers, the 5 to 6 million people who are not working but who do not meet any of the tests for being active in the workforce and are therefore not considered unemployed, and the 4.5 million part-time workers who would like full-time work, there are 17 to 18.5 million Americans looking for more work. This brings the real unemployment rate to almost 14 percent.²⁴²

Even a rate of 14% does not capture the full extent of unemployment and underemployment in the United States. Fully 4% of the workforce, roughly 5.8 million males between the ages of twenty-five to sixty, is simply "missing" from labor statistics.²⁴³ Those males show up in Census Bureau data on the population, but are not reflected in employment or unemployment statistics.²⁴⁴ There is reasonable speculation that some of those missing men are homeless, some may be employed in the underground economy.²⁴⁵ Neither of those explanations, though, can account for all the missing males. Finally, if one adds to the total the 10.1 million Americans who work in temporary jobs or "on call," and the approximately eleven million documented and undocumented immigrants who entered the United States between 1980 and 1993, it becomes apparent that "one has a sea of unemployed workers, underemployed workers, and newcomers looking for work."²⁴⁶

Negative trends in national employment statistics have been even more severe in the nation's cities where the largest concentrations of poor people live. In New York City, for example, between 1989 and 1992 alone the city lost 326,000 jobs.²⁴⁷

²⁴² Thurow, *supra* note 228, at 56. In the 20 years between 1970 and 1990, temporary employment expanded at a rate almost four times that of all employment. Involuntary part-time employment also expanded significantly, up 121% from 1970 to 1990. FOLBRE, *supra* note 72, at 2.4.

²⁴³ *Id.*

²⁴⁴ Thurow, *supra* note 228, at 56.

²⁴⁵ Thurow, *supra* note 228, at 56.

²⁴⁶ Thurow, *supra* note 228, at 56.

²⁴⁷ LIZ KRUEGER & PATRICIA SWANN, WORK TO BE DONE: REPORT OF THE [MANHATTAN] BOROUGH PRESIDENT'S TASK FORCE ON EDUCATION, EMPLOYMENT, AND WELFARE 21 (1995).

In 1995, the city had 855,783 people receiving AFDC; 59,008 receiving Home Relief (General Assistance) as families; and 225,662 receiving Home Relief as single adults. The total number of persons receiving public assistance in New York City for 1995 was 1,140,453.²⁴⁸ If one subtracts from that total the number of children on AFDC (580,248 or 51% of the total) and disabled adults classified as “unemployable” (220,000), that leaves 340,000 adults on public assistance on any given day in need of employment.²⁴⁹

There are, however, an average of 50,000 job openings on any given day in New York. Many of those jobs require levels of education, experience, and training far above those possessed by the average recipient of public assistance. Still, even if every public assistance recipient were qualified to take an available job, there would still be 290,000 fewer jobs than people on public assistance in need of them. That figure does not take into account the roughly 200,000 unemployed people who are not public assistance recipients who, on any given day, are also competing for those jobs.²⁵⁰

What accounts for the increase in unemployment? Partly, the increase may be driven by the decline in world economic growth from an average of 5% in the 1960s, to 3.6% in the 1970s, to 2.8% in the 1980s, to 2% in the 1990s.²⁵¹ A decline in productivity (in this context defined as the ratio of output to total hours worked), from a growth rate of 62.2% between 1955 and 1973, to 23.8% from 1974 to 1992, may also contribute to the consistent expansion of the ranks of the unemployed in the United States.²⁵²

National macroeconomic policy decisions, however, have also played a significant part in exacerbating the problem of unemployment. In the area of fiscal policy, an obsession with balancing the federal budget, and the spending cuts that have come with it, have had a contracting effect on the economy. Besides disabling the federal government from engaging in public works spending to

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Thurow, *supra* note 228, at 55.

²⁵² Thurow, *supra* note 228, at 57.

create jobs, the reduction in federal spending to achieve a balanced budget has also resulted in a real loss of jobs and benefits.²⁵³

In the area of monetary policy, the Federal Reserve under the leadership of Paul Volcker and then Alan Greenspan, has pursued monetary policies that have kept inflation extraordinarily low at the price of high unemployment.²⁵⁴ The “nonaccelerating-inflation-rate of unemployment” (“NAIRU”), or what some economists call the “Natural Rate of Unemployment,” is a concept that now forms part of the core of macroeconomic orthodoxy among economists in the United States. It is the rate below which economists believe inflation will not only rise—as in the older Phillips curve model of the rates of inflation and unemployment operating in an inverse relationship—but accelerate.²⁵⁵ Accordingly, whenever actual unemployment falls below the NAIRU, the Federal Reserve acts to tighten the money supply, thereby contracting the economy and warding off imagined fears of accelerating inflation. For example, in 1994, when the NAIRU was estimated at 6%, the official unemployment rate fell to 5.8%.²⁵⁶ While there was no evidence of any threat of accelerating inflation, the Federal Reserve raised interest rates. Once the unemployment rate had again risen to 6%, the Federal Reserve relaxed its hold on the money supply.²⁵⁷

In short, government and capital, following the lead of the financial markets, have adopted as their goal a low wage, very low inflation economy. To achieve that goal, unemployment must remain high.

²⁵³ See, e.g., Frank Riessman, *The Balanced Budget Myth*, TIKKUN, May-June 1996, at 54.

²⁵⁴ See, e.g., SKLAR, *supra* note 22, at 55; Robert Eisner, *Our NAIRU Limit: The Governing Myth of Economic Policy*, AM. PROSPECT, Spring 1995, at 58 (criticizing the Federal Reserve’s “war on inflation, which is low, at the expense of employment”); James K. Galbraith, *The Surrender of Economic Policy*, AM. PROSPECT, Mar.-Apr. 1996, at 60-67 (providing graphs showing estimates of NAIRU and the relationship between inflation and unemployment).

²⁵⁵ Galbraith, *supra* note 254, at 61.

²⁵⁶ Galbraith, *supra* note 254, at 62.

²⁵⁷ Galbraith, *supra* note 254, at 62. Galbraith points out, however, that the Federal Reserve began cutting interest rates in July 1995, even though the unemployment rate was slightly below 6%.

This constitutes one of the great internal contradictions of the conservative position on poor relief. No one suggests that capitalism maintains a full-employment economy. No one disputes that when the Federal Reserve, to the cheers of bond markets, raises interest rates the intended effect is to depress employment. The conservative position embraces the low wage, low inflation economic policy now pursued by both the Federal Reserve and, despite protestations that President Bill Clinton is a liberal, the federal government. At the same time, however, the conservative position on poor relief is that every recipient can and should get a job—something which, were it to become an empirical reality, would undoubtedly lower the unemployment rate beneath the NAIRU of 6%. That would trigger the raising of interest rates by the Federal Reserve, thereby contracting the money supply, resulting in a rise in unemployment.

The contradiction is so blatant as to be unworthy of belaboring. Nevertheless, it remains almost entirely unspoken by conservatives or their liberal opponents in government.

b. Declining Wages

In 1979, then chairman of the Federal Reserve Board Paul Volcker, in describing the measures he believed were necessary to reduce inflation, declared that “[t]he standard of living of the average American has to decline.”²⁵⁸ Volcker’s pronouncement would prove not only an accurate forecast of things to come, but also a good description of what was then taking place. For more than twenty years, American workers have been laboring longer for less money.²⁵⁹ In constant dollars, from 1973 to 1993, the average weekly wages of production and nonsupervisory workers (who make up 80% of the workforce) declined by 16.1%. The average

²⁵⁸ SKLAR, *supra* note 22, at 17; Steven Rattner, *Volcker Asserts U.S. Must Trim Living Standard*, N.Y. TIMES, Oct. 18, 1979, at A1.

²⁵⁹ For the best single work on this subject, see JULIET B. SCHOR, *THE OVERWORKED AMERICAN: THE UNEXPECTED DECLINE OF LEISURE* (1992). In this widely acclaimed study, Schor carefully documents the significant and still growing increase in the average number of hours worked by Americans along with the concomitant reduction in real earnings.

hourly wages of such workers declined by 10.2%.²⁶⁰ In 1993 dollars, average weekly earnings declined from \$445.10 in 1973 to \$373.64 in 1993.²⁶¹ If one were to graph the real spendable hourly earnings of American workers in constant dollars from 1948 to the present, one would find a sharp and steady rise from 1948 until 1972. After that period, with one brief deviation, wages of American workers have been in a steady and significant decline.²⁶² By 1994, "real spendable hourly earnings had fallen back to below the level they had last reached in 1967."²⁶³ By 1994, the average full-time production employee, after taxes, took home approximately \$16,833.00, leaving very little margin above the poverty line for a family of four.²⁶⁴

On an international scale, real hourly compensation in the United States has fallen well behind Japan and most western democracies. According to the U.S. Bureau of Labor Statistics, in 1994, the United States ranked behind Belgium, Denmark, Germany, Japan, Netherlands, Norway, and Sweden in real hourly compensation.²⁶⁵

For the poorest workers, the wage squeeze has been even more severe. Since the wages of the lowest paid workers are tied to the minimum wage, erosion in the value of the minimum wage has a particularly pronounced effect upon them. In 1994, "the real value of the minimum wage . . . was lower than it was in 1950."²⁶⁶ A full-time minimum wage worker in 1994 earned \$4.25 per hour, \$170.00 per week or \$8500.00 per year (excluding taxes, Federal Insurance Contributions Act ("FICA"), and other payroll deductions).²⁶⁷ If the full-time minimum wage worker had a

²⁶⁰ SKLAR, *supra* note 22, at 18 tbl.6.

²⁶¹ SKLAR, *supra* note 22, at 18 tbl.6.

²⁶² GORDON, *supra* note 178, at 19 fig.1.1.

²⁶³ GORDON, *supra* note 178, at 20.

²⁶⁴ GORDON, *supra* note 178, at 21.

²⁶⁵ GORDON, *supra* note 178, at 29.

²⁶⁶ FOLBRE, *supra* note 72, at 2.7.

²⁶⁷ The minimum wage remained at \$4.25 until the fall of 1996, when the 104th Congress enacted, and the president signed, legislation raising the minimum wage as of October 1, 1996 to \$4.75 per hour and as of September 1, 1997 to \$5.15 per hour. Small Business Job Protection Act of 1996, Pub. L. No. 104-188 § 2104, 110 Stat. 1755, 1928.

child—precisely the situation in which an AFDC recipient who finds work is most likely to be—her before-tax yearly income will fall about \$1500.00 short of the poverty line. It is important to note, in this context, that minimum wage jobs are unlikely to afford health insurance benefits to workers.²⁶⁸

Some conservatives, Ben Wattenberg for example, maintain that data on falling wages fail to take into account the rising value of benefits such as health insurance.²⁶⁹ Several responses can be made to that assertion. First, the number of jobs that provide benefits has been falling steadily. In 1980, 97% of full-time employees received some form of medical coverage, and 71% had coverage wholly financed by employer contribution. By 1993, those figures had fallen to 82% and 37%, respectively.²⁷⁰ In 1980, 87% of full-time workers had retirement benefits. By 1993, the proportion of full-time workers with retirement benefits had fallen to 78%.²⁷¹

Second, if the value of benefits covered by employers is included in the calculations, the decline in real wages is only slightly less. Real spendable hourly earnings (after-tax) declined 7.8% (including benefits) as opposed to 8.6% (excluding benefits).²⁷²

Third, in a point analogous to that made about Medicaid spending on poor people, money spent on health benefits, the most expensive part of a worker's benefits package, does not go into the pockets of the worker and her family. While the worker enjoys the benefit of the medical care provided by her health insurance, the payment for that care goes to doctors, radiologists, hospital administrators, etc. To illustrate this point, imagine a worker who has cancer and received \$100,000.00 of chemotherapy covered by

²⁶⁸ *Welfare to Work*, *supra* note 221, at 1.

²⁶⁹ See, e.g., BEN WATTENBERG, *VALUES MATTER MOST: HOW REPUBLICANS OR DEMOCRATS OR A THIRD PARTY CAN WIN AND RENEW THE AMERICAN WAY OF LIFE* 78 (1995) (arguing that the declining economic condition of the middle class is not as grave as the wage data represents because the unreported health pension benefits represent an important part of middle-class income).

²⁷⁰ FOLBRE, *supra* note 72, at 2.8.

²⁷¹ FOLBRE, *supra* note 72, at 2.8.

²⁷² GORDON, *supra* note 178, at 31 tbl.1.A.

her health insurance. What would be her reaction if Wattenberg greeted her on the street and said, "Hey, I heard you made over 100 grand this year!"? In all likelihood she, and every other sane person, would find Wattenberg's remark utterly bizarre.

The decline in wages has a particular effect on child poverty because families with children have seen their wages deteriorate most.²⁷³ For young families, particularly, the negative trend has been even more pronounced. For families with children headed by persons younger than thirty, the decline in median income (in 1990 dollars) between 1973 and 1990 was 32.1%.²⁷⁴ The drop was worst for families with young children headed by single women, 27.2%. For families with young children headed by single men, the decline in median income was about half that or 13.7%. Families with children headed by married couples experienced a slightly smaller but still quite significant decline in median income, 12.8%.²⁷⁵

For all races, median income declined for families with young children. The most severe decline, however, was for Black, non-Latino families, 48.3%. That figure compares with a decline of 22% for White families and 27.9% for Latino families.²⁷⁶

The decline in earnings among families with young children is, itself, an effect of a general decline in the earnings of young adults who tend, disproportionately, to head families with young children. Workers aged sixteen to twenty-four have generally experienced an erosion in real earnings more severe than their older counterparts, or the working population. Between 1973 and 1994, the inflation-adjusted earnings of men under twenty-five who were employed full-time fell by 31%.²⁷⁷ For women, who were similarly situated, the decline in earnings was a smaller, but still significant, 14%.²⁷⁸ Median weekly earnings in 1993 dollars of sixteen- to twenty-four-year-olds fell, for men, from \$386.00 in 1967 (the first year the

²⁷³ BRONFENBRENNER ET AL., *supra* note 20, at 59-60.

²⁷⁴ SKLAR, *supra* note 22, at 19 tbl.7.

²⁷⁵ SKLAR, *supra* note 22, at 19 tbl.7.

²⁷⁶ SKLAR, *supra* note 22, at 19 tbl.7.

²⁷⁷ Andrew M. Sum et al., *The Economics of Despair*, AM. PROSPECT, July-Aug. 1996, at 83.

²⁷⁸ *Id.* at 83-84.

Bureau of Labor Statistics began gathering such information) to \$286.00 in 1994. For women, aged sixteen to twenty-four, median weekly earnings declined from \$294.00 in 1967 to \$271.00 in 1994.²⁷⁹ Among the effects of what some commentators have called a lengthening of “economic adolescence” have been “a sharp increase in the age of first marriages; . . . a rise in young single-parent families; reduced economic support of children; . . . [and] the sustained rise in the numbers of young men incarcerated in jail and prison.”²⁸⁰

The falling income of young adults and families with young children goes far toward explaining why young children experience the highest rates of both poverty and deep poverty. By 1990, the official poverty rate for children in families headed by someone younger than thirty was 40%.²⁸¹

Many reasons are offered to explain the decline in wages, among them global competition and the anti-inflationary policies of the Federal Reserve Board discussed above. Another likely factor in suppressing wages was the decline in unionized labor in the United States. As a percentage of all employees, the proportion of unionized workers has sharply declined since 1954. In that year, union workers represented 34% of all employees. By 1993, union members constituted only 16% of all employees.²⁸² Unions remain strong among public sector employees, where union members constitute nearly 37% of all employees.²⁸³ But among private sector employees, union members dropped to 11.5% in 1992, and may drop to as low as 5% by the year 2000.²⁸⁴ In the first Reagan administration alone, unions lost 2.7 million members, largely because of job loss attributable to recessions in those years.²⁸⁵

²⁷⁹ *Id.* at 84.

²⁸⁰ *Id.* at 84.

²⁸¹ SKLAR, *supra* note 22, at 18.

²⁸² FOLBRE, *supra* note 72, at 2.15.

²⁸³ SKLAR, *supra* note 22, at 29.

²⁸⁴ SKLAR, *supra* note 22, at 29.

²⁸⁵ SKLAR, *supra* note 22, at 29. Ironically, Charles Murray, in the last of his Harold and Phyllis thought experiments, has Harold get a *union* job that provides him with a salary that, though “barely enough to go around . . . did go around.”

c. *Income Inequality*

The suffering caused by falling wages and rising unemployment has not, however, been felt by all Americans. While the poorest Americans (here defined as the lowest quintile in income), saw their income fall by 10% between 1977 and 1989, for those at the top of the economic pecking order the past two decades have been a time of plenty. From 1977 to 1989, for example, the richest 1% accounted for 60% of all after-tax income gains.²⁸⁶ Furthermore, between 1983 and 1989 the richest 1% of Americans increased their wealth (or share of net worth) from 31% to 37% of total national wealth.²⁸⁷ The richest 1% of Americans now own more than the bottom 90%.²⁸⁸

Considering the distribution of income and net worth by household, the top 20%, in 1991, owned 45% of all household wealth, while the bottom 20% owned about 7%.²⁸⁹ The median net worth of the top 20% (\$123,166.00) is almost twenty-five times that of the bottom 20% (\$5224.00).²⁹⁰ As a share of the total value of family-owned assets in 1989,

[t]he richest 1% of families held: 45% of all nonresidential real estate, 62% of all business assets, 49% of all publicly held stock, and 78% of all bonds. The richest 10% of families held: 80% of all nonresidential real estate, 91% of all business assets, 85% of all publicly held stock, and 94% of all bonds.²⁹¹

Contributing to the widening gap between rich and poor was the dramatic decrease, during the Reagan years, in the top tax rate from 90% to 31%,²⁹² and the rising gap between the pay of an average worker and that of a chief executive officer ("CEO"). After-tax

MURRAY, *supra* note 119, at 176.

²⁸⁶ SKLAR, *supra* note 22, at 7 fig.2.

²⁸⁷ FOLBRE, *supra* note 72, at 1.2.

²⁸⁸ FOLBRE, *supra* note 72, at 1.2.

²⁸⁹ FOLBRE, *supra* note 72, at 1.1.

²⁹⁰ FOLBRE, *supra* note 72, at 1.1.

²⁹¹ FOLBRE, *supra* note 72, at 1.4.

²⁹² FOLBRE, *supra* note 72, at 1.2.

income for CEOs during the 1980s increased in inflation adjusted terms by 66%. During the same period, production workers' real hourly pay decreased by 7%.²⁹³

During the period when workers' wages have been falling, executive compensation has skyrocketed. In 1960, the average CEO earned in a year about forty times what the average factory worker earned in a year. By 1993, the average CEO earned 149 times the average annual income of a factory worker, or \$3,772,000.00 for the CEO to \$25,317.00 for the factory worker.²⁹⁴ Executive compensation in the United States is considerably higher than that in other wealthy democracies. In Japan, for example, in 1992 the average CEO earned in a year thirty-two times what the average factory worker earned in a year.²⁹⁵

Partly due to those trends, the United States now has the highest differential in yearly incomes between rich and poor families. In the United States, low-income families earn an average of \$10,923.00 per year, while high income families earn an average of \$65,536.00. Sweden, by contrast, has an average income for low-income families of \$18,129.00, and an average income for high-income families of \$46,152.00.²⁹⁶ Sweden also has a rate of child poverty less than one-tenth that of the United States.²⁹⁷

Income inequality, whatever its other ill-effects on democracy, also seems to be strongly correlated with child poverty. That is to say, societies with greater levels of income inequality also have greater levels of child poverty. A comparison of rankings for child poverty rates and family income inequality reveals that correlation. Table 4 provides a 1992 ranking of eight western nations by child poverty (most to least) and family income inequality (most to least). Note that the United States has the highest level of income inequality and the highest level of child poverty.

²⁹³ GORDON, *supra* note 178, at 34.

²⁹⁴ FOLBRE, *supra* note 72, at 1.6.

²⁹⁵ FOLBRE, *supra* note 72, at 1.6.

²⁹⁶ BRONFENBRENNER ET AL., *supra* note 20, at 148 tbl.5-1.

²⁹⁷ BRONFENBRENNER ET AL., *supra* note 20, at 149.

Table 4. 1992 Rankings by Child Poverty and Family Income Inequality:²⁹⁸

Nation	Ranking In Child Poverty Rate	Ranking In Family Income Inequality
United States	1	1
Canada	2	2
Australia	3	3
United Kingdom	4	5
France	5	6
Netherlands	6	7
Germany	7	4
Sweden	8	8

As the preceding discussion makes clear, the vast majority of workers in the United States have seen the value of their earnings decline, scope of health and retirement benefits decrease, opportunities for full-time employment grow more scarce, and inequality of wealth between the rich and everyone else increase dramatically. All those economic trends have had the effect of pushing more and more families into poverty and, with those families, the children who belong to them. As the data reveal, young families have suffered most in the past twenty years from the three economic trends discussed above. It is those families that tend to have young children, precisely the group for whom poverty and deep poverty rates have increased most dramatically.

2. Government Policies

The basic contention of the progressive position about government poor relief programs is that they provide too little aid and

²⁹⁸ BRONFENBRENNER ET AL., *supra* note 20, at 148 tbl.5-1, 149 tbl.5-2.

only after too many obstacles have been overcome. In order to explain that contention, it is helpful to say something about the history of poor relief for children in this country.

Poor children, especially those who live on the streets, have been recognized as a social problem for centuries. In 1849, for example, the New York City Chief of Police complained in a report of the "incredible" and "constantly increasing numbers of vagrant, idle and vicious children."²⁹⁹ The journalist Jacob Riis made these children the subject of his now famous work. Those children struggled to survive through a combination of day-labor (e.g., "flower-girls" and "newsies"), street crime, and prostitution. Until the beginning of the nineteenth century, child prostitution was a major social problem in America's cities. The favored method of dealing with such children, from at least the end of the eighteenth century up until the mid-twentieth century,³⁰⁰ was some form of "indoor" relief.³⁰¹

Poor relief in western societies has traditionally been divided into two broad categories: indoor and outdoor relief.³⁰² Indoor relief is roughly synonymous with institutionalization: putative assistance offered in centralized, supervised settings. Outdoor relief is either in-kind or cash assistance provided to poor people in their homes. The AFDC program is an example of outdoor relief: assistance is provided to poor families and their dependent children by providing monthly benefits, at home, to the adult care-taker of the children.³⁰³

As Dickens detailed in his novels, early institutions of poor relief, particularly those for children, were marked by the most appalling conditions of cruelty and deprivation. The punitive character of institutions for poor relief was, by no means, accidental. As the English Poor Law Commissioners wrote in 1834:

²⁹⁹ CUNNINGHAM, *supra* note 68, at 145.

³⁰⁰ CUNNINGHAM, *supra* note 68, at 146-47.

³⁰¹ HANDLER & HASENFELD, *supra* note 142, at 54.

³⁰² For a discussion of the history of outdoor and indoor poor relief, particularly as it pertains to the United States, see HANDLER, *supra* note 30, at 10-31.

³⁰³ See generally HANDLER & HASENFELD, *supra* note 142, at 44-81 (discussing the development of AFDC to its present form).

Into such a house none will enter voluntarily; work, confinement, and discipline, will deter the indolent and vicious; and nothing but extreme necessity will induce any to accept the comfort which must be obtained by the surrender of their free agency, and the sacrifice of their accustomed habits and gratifications. Thus the parish officer, being furnished an unerring test of the necessity of applicants, is relieved from his painful and difficult responsibility; while all have the gratification of knowing that while the necessitous are abundantly relieved, the funds of charity are not wasted by idleness and fraud.³⁰⁴

The logic of His Majesty's Commissioners was functionally indistinguishable from that of adherents to the conservative position today: poor relief should be so meager and its conditions so harshly onerous that only those in the most dire need will submit to accept it, thus deterring indolence and encouraging self-reliance and the work ethic. Since, prior to the child labor laws of the mid-twentieth century, children represented an important part of the labor supply in western capitalist societies, it was important that any relief arrangements for them should not encourage "idleness." The deplorable conditions of the workhouse, then, served a dual function with regard to child poverty: (1) they screened undeserving applicants by making conditions so horrible that only the most desperately needy would have recourse to them; and (2) they guaranteed that children would be socialized into an expanding proletarian workforce or, as an English statute of 1576 put it, "youth may be accustomed and brought up in labor and work," by demanding of the adult and child residents of workhouses an intense daily regime of manual labor.³⁰⁵

Gradually, a somewhat less punitive approach to child poverty emerged in western societies. By the middle of the nineteenth century, children and childhood were beginning to be regarded as particularly vulnerable and in need of protection. That spirit is illustrated by the English reformer Mary Carpenter who, in the 1850s, wrote that the best cure for juvenile criminal offenders was

³⁰⁴ PIVEN & CLOWARD, *supra* note 8, at 33-34.

³⁰⁵ PIVEN & CLOWARD, *supra* note 8, at 24.

love, for only love could restore to the juvenile offender “the nature of the child, as a child.”³⁰⁶

In the United States, relief institutions for children spread dramatically from the 1830s through the post-Civil War period.

By 1850 in New York State alone there were twenty-seven public and private institutions caring for children. In the country as a whole, the seventy-seven private orphanages of 1851 had increased to 613 by 1880, and there were a further 474 established over the following twenty years. By 1910 there were over 150,000 dependent, neglected and delinquent children cared for in 1,151 institutions.³⁰⁷

By today’s standards, those numbers do not seem quite impressive. By the standards of the period, however, they marked a significant shift in both attitudes toward and methods for dealing with children in need. Moreover, the term “orphanage” may be misleading in this context. Many of the children resident in these institutions were not orphans in the strict sense of the word—having no living parent or parent whose whereabouts were known. A study of the clientele of four orphanages in one mid-western state, for example, revealed that two-thirds of the children resident in those orphanages had two living parents.³⁰⁸ It is reasonable to surmise, therefore, that a significant number of nineteenth century “orphans” were actually children from destitute families.

At the time of the passage of the Social Security Act of 1935,³⁰⁹ many of the institutions by which assistance was provided to poor children had come under severe criticism. Social Security, unemployment insurance, and AFDC were responses to the magnitude of poverty and suffering caused by the

³⁰⁶ CUNNINGHAM, *supra* note 68, at 146 (quoting Mary Carpenter) (emphasis omitted).

³⁰⁷ CUNNINGHAM, *supra* note 68, at 147.

³⁰⁸ CUNNINGHAM, *supra* note 68, at 147.

³⁰⁹ 42 U.S.C. § 301 et seq. (1935). See 42 U.S.C. §§ 401-403, 405, 422-423, 425, 902-903, 1320b-15, 1382, 1382c, 1383, 1383c, 1383e (1996) (enumerating the provisions for the 1996 amendment). In August 1996, the Congress passed and the president signed legislation abolishing the AFDC program, radically changing the nature of poor relief in the United States and ending the federal guarantee of food and cash assistance to poor children.

Great Depression. The federal legislation that created those programs was also a response to the disorganization and inadequacy of the confused patchwork of poor relief programs maintained by the several states. The legislation contained three main relief provisions: (1) unemployment insurance financed by a federal payroll tax, but administered by the states; (2) old-age insurance, also financed by federal wage and payroll taxes, to be paid to eligible persons, on a monthly basis, beginning at age sixty-five; and (3) a program of federal aid to states that chose to provide relief to various "unemployable" persons, particularly the elderly not eligible for the new old-age insurance, the blind, and the orphaned.³¹⁰ It was out of the third element of the Social Security Act that the AFDC program emerged.

It is important to acknowledge, however, that prior to the Social Security Act of 1935, almost all states had some form of Aid to Dependent Children ("ADC") or "mothers' pensions" program.³¹¹ While these programs did not require all mothers to work, indeed the programs were predicated upon the idea that the mother-beneficiary could stay home and care for her children, it would be wrong to see state ADC programs as embracing mothers with dependent children as among the "deserving poor."³¹² There were a number of conditions imposed upon recipients, among them the requirement that a mother be "fit and proper."³¹³ In most jurisdictions, ADC mothers were subject to work requirements, and could be made to work if officials administering the program deemed it so.³¹⁴

When the Social Security Act of 1935 created a federal ADC program, it left the states with almost total responsibility for administering that program. Indeed, as Joel Handler has pointed out, it would be more accurate to see the ADC program created by the Social Security Act of 1935 as a "grant in aid" program to the states for a circumscribed class of women with

³¹⁰ PIVEN & CLOWARD, *supra* note 8, at 92.

³¹¹ HANDLER, *supra* note 30, at 23.

³¹² HANDLER, *supra* note 30, at 24.

³¹³ HANDLER, *supra* note 30, at 24.

³¹⁴ HANDLER, *supra* note 30, at 25.

dependent children.³¹⁵ For the first three decades of its existence, the primary beneficiaries of the federal ADC program were White widows and their children.³¹⁶

In the 1960s, important changes occurred in the federal ADC program. First, in 1962 the program was amended to expand significantly its scope.³¹⁷ In other legislative acts that had a dramatic effect on poor relief in this country, in 1965 Congress established the Medicaid program, a system of health insurance for indigent people. Five years later, Congress created the federal Food Stamp program and imposed upon the states a minimum benefit level.³¹⁸

Second, a series of court decisions helped remove some of the most egregiously discriminatory barriers to access to the AFDC program. From its inception, the AFDC program, like its state predecessors, had been plagued by barriers to access based upon invidious characteristics such as race. Moreover, state administrators frequently ignored even the most basic due process guarantees in denying or terminating benefits. In decisions like *King v. Smith*,³¹⁹ *Shapiro v. Thompson*,³²⁰ and *Goldberg v. Kelly*,³²¹ the Supreme Court significantly widened the ability of eligible poor women and their children to gain access to assistance through the AFDC program. Those decisions had a particularly significant effect on Black women and children who had, through racial discrimination, been disproportionately excluded from the assistance of the AFDC program.³²²

³¹⁵ HANDLER, *supra* note 30, at 28.

³¹⁶ HANDLER, *supra* note 30, at 28.

³¹⁷ Laurence C. Nolan, *The Unconstitutional Conditions Doctrine and Mandating Norplant for Women on Welfare Discourse*, 3 AM. U. J. GENDER & LAW 15, 18 (1994).

³¹⁸ JENCKS, *supra* note 47, at 9.

³¹⁹ 392 U.S. 309 (1968) (striking down Alabama "man in the house" rule, disqualifying from AFDC benefits any woman who cohabited with a man other than her husband).

³²⁰ 394 U.S. 618 (1969) (striking down requirement that AFDC recipient be resident in jurisdiction for certain length of time prior to application).

³²¹ 397 U.S. 254 (1970) (recognizing property interest in welfare benefits and holding that interest to be protected by procedural due process guarantees).

³²² PIVEN & CLOWARD, *supra* note 8, at 193-94.

For these and other reasons,³²³ the number of AFDC recipients grew from about one million in 1940, to two million in 1950, to three million in 1960, to nine million in 1970, to eleven million in 1975. The number of AFDC recipients has remained relatively constant since that time, with children constituting two-thirds of the recipients.³²⁴

The first point to be made about the AFDC program is that, however much the number of recipients grew in the 1960s and 1970s, the AFDC program has never assisted all eligible children and their families. So, for example, in 1992, when the child poverty rate was 22%, approximately 14.6 million children lived in poverty. Yet only 9.2 million children lived in families that received AFDC benefits.³²⁵ Thus 37% of the children living in families with incomes beneath the official poverty line were not receiving assistance from the AFDC program.

Secondly, and perhaps most importantly, AFDC benefits, even when combined with food stamps and other forms of assistance (including housing), do not raise a family above the poverty line. It is hard for most Americans to grasp how meager AFDC benefits truly are.

AFDC benefits vary widely throughout the country. In Tennessee, for example, a family of three receives \$183.00 per month in AFDC benefits.³²⁶ In Alabama, the amount is even lower, \$115.00 per month.³²⁷ In New York, which has one of the highest AFDC payment schedules, a family of three receives \$291.00.00 per month for food and other expenses. An eligible family can receive another \$286.00 in shelter assistance. If a family is able to gain access to both, the total monthly budget for an

³²³ There has been extensive discussion of what caused the rise in AFDC roles in the 1960s and early 1970s. For examples of such discussions, see HANDLER & HASENFELD, *supra* note 142, at 113-31; PIVEN & CLOWARD, *supra* note 8, at 196. Not least among the reasons for the growth in the number of families gaining assistance from AFDC was a growing welfare rights movement, by which poor people asserted their moral right to assistance from the side-effects of an economy that enriches some and reduces many to misery.

³²⁴ HANDLER & HASENFELD, *supra* note 142, at 113.

³²⁵ Handler, *supra* note 215, at 8.

³²⁶ TENNESSEE STUDY, *supra* note 224, at x.

³²⁷ FOLBRE, *supra* note 72, at 6.9 (reporting 1990 statistics).

AFDC family of three in New York City is \$577.00 or \$6924.00 a year. The official poverty line for a family of three in 1995 was \$12,590.00.³²⁸ Thus an AFDC family of three in New York City would receive a household income equal to about 54% of the poverty line or just above what the Census Bureau considers "deep poverty."

Across the nation, the average monthly AFDC payment per family has dropped from about \$620.00 in 1972 to about \$375.00 today.³²⁹ Even when food stamps are included with AFDC, the combined median benefits are only 72% of the poverty line.³³⁰ In dollar terms, in 1992 the average AFDC benefit *per recipient* was \$136.00 per month. Food stamps contributed another \$68.50 per month, bringing the total to \$204.50 per month.³³¹

Consider raising a child on \$54.12 a week and the reason so many children are poor in this country becomes less difficult to understand. In fact, a General Accounting Office ("GAO") study of poverty trends between 1980 and 1988 found that a decreasingly smaller percentage of poor families headed by single parents were lifted out of poverty by the benefits of federal poor relief programs.³³²

In 1979 approximately 30 percent of individuals in single-parent families were removed from poverty as the result of means-tested transfers, food and housing benefits, and Federal tax policy. By 1990, this had declined to 20 percent.³³³

The report concluded that "the primary reason for the apparent poverty rate increase among women heading single-parent families living alone is the decrease in [AFDC and other] transfer payments."³³⁴

The inadequacy of AFDC and other poor relief payments to lift families and their children out of poverty is exacerbated by the

³²⁸ See *supra* Part I tbl.1.

³²⁹ BRONFENBRENNER ET AL., *supra* at note 21, at 160 fig.5-8.

³³⁰ SKLAR, *supra* note 22, at 95.

³³¹ ALBELDA ET AL., *supra* note 17, at 16.

³³² SKLAR, *supra* note 22, at 95.

³³³ SKLAR, *supra* note 22, at 95.

³³⁴ SKLAR, *supra* note 22, at 95.

obstacles that are put in the way of poor families in gaining access to those admittedly meager benefits. At this point, it seems appropriate to digress into first person narrative, if only very briefly.

As an attorney working with poor youth, primarily gay and lesbian youth some of whom are homeless because of parental rejection, I can attest personally to the intimidating maze of hostile bureaucracy and incomprehensible formalities that stand between a poor person and the receipt of AFDC, general relief, food stamps, Medicaid or shelter assistance. The agency with which I work, the Urban Justice Center, through its outreach to homeless families and individuals, gay and lesbian street youth, indigent consumers of mental health services, and women and children who are victims of domestic violence, deals on a daily basis with the public assistance system in New York. Besides undertaking impact litigation, each year the Urban Justice Center handles literally thousands of cases of people who have been unfairly denied or terminated from public assistance benefits.

From more than thirteen years of experience, advocates at the Urban Justice Center can attest to the myriad ways in which deserving people are denied desperately needed assistance. What is almost totally ignored, in contemporary discussion of programs such as "workfare" or "learnfare" or any other of the dozens of conditions that have been or will be placed upon the receipt of public assistance, is that all of those conditions have the same penalty: termination or reduction of benefits. Thus, to use New York City for example, the Work Experience Program ("WEP") (New York City's equivalent of workfare) demands that recipients make various appointments for evaluation, assignment to a worksite, and then report to the worksite itself. There are recertifications for food stamps and AFDC. There are home visits and spot checks the putative purpose of which is to prevent fraud, but instead result in massive invasions of privacy as public assistance workers talk to neighbors, landlords, and sometimes perfect strangers about a recipient's status as a public assistance beneficiary. There are demands for all sorts of documents in the application process, and then a completely redundant set of demands for Eligibility Verification Review or ("EVR"). EVR is a process that gathers no new information, contributes nothing substantive to the

determination of eligibility, but serves purely and simply as another obstacle to prevent poor people from obtaining what paltry assistance our society affords them.

At any point in the process a misdirected notice, a computer error, a bureaucratic blunder, a health crisis that causes an appointment to be missed without notice, a negligent caseworker or any of a score of other factors can cause a case to be closed. The only resort is to apply for a state fair hearing, a process that often takes months to resolve, or to find an advocacy organization that will attempt to resolve the matter in the recipient's favor. Many public assistance recipients, however, lack the skills, the knowledge or the good luck to navigate the process successfully or to find free legal assistance when they have come upon the shoals of a system of poor relief designed to be as parsimonious as it is punitive.

In a study of 2540 of its clients over an eight-month period in 1990, the Urban Justice Center found that fully 50% of those who received referrals to income maintenance centers ("welfare" centers in New York City) either never completed the applications process, or had their cases closed shortly after referral.³³⁵ Fully three-quarters of the clients in the study who began receiving public assistance before July 1, 1990, had their benefits terminated, for one reason or another, by the end of the year.³³⁶ While it is true that almost all of the clients who turn to the Urban Justice Center for assistance have their cases reopened either through administrative advocacy or through successful state fair hearings, the fact remains that thousands of people who are either denied benefits or have their public assistance cases closed never find legal assistance.

The findings of the Urban Justice Center are given support by data on the use of various forms of poor relief by people under the poverty line in the United States. In 1992, less than half of the people officially defined as poor received any form of cash assistance.³³⁷ Slightly more than half received food stamps or

³³⁵ LEGAL ACTION CENTER FOR THE HOMELESS, *LONG DAY'S JOURNEY INTO NIGHT: TRACKING APPLICANTS THROUGH THE ENTITLEMENTS MAZE* 8 (1993).

³³⁶ *Id.* at 2.

³³⁷ ALBELDA ET AL., *supra* note 17, at 17.

medical insurance through Medicaid.³³⁸ In 1973, child beneficiaries of AFDC constituted 81% of the total number of children in families with incomes under the poverty line. By 1992, children benefitting from the AFDC program made up only 63% of the total number of children living in families with incomes under the poverty line.³³⁹ "The number of all AFDC recipients as a percent of the pre-welfare official poverty population dropped from 55 percent in 1979 to 49 percent in 1991."³⁴⁰

Despite conservative rhetoric that depicts poor relief programs in the United States as both generous and indiscriminate in awarding benefits, in fact, the so-called safety net in this country is both tattered and shrinking. In 1992, only 43% of poor people who lived in households participating in federal poor relief programs received any kind of means-tested cash assistance. Only 56% of such persons lived in households where one or more people was covered by Medicaid. Furthermore, only 18% of such persons lived in households that received some form of public or subsidized housing.³⁴¹

The conclusion of the progressive position is that the problem of poverty in the United States does not require recourse to theories of a lazy, promiscuous, and violent underclass. Psychological problems and moral failures plague all human beings, regardless of class, race or other personal attribute. The progressive position maintains that an economy that fails, on a greater and greater level, to provide an adequate number of decent jobs at decent wages; along with a system of poor relief that provides far too little, and only after far too many obstacles have been overcome; are, if not the whole answer, at least the greater part of the answer to the problem of poverty in the United States, a problem of which child poverty is arguably the most tragic aspect.

³³⁸ SKLAR, *supra* note 22, at 94.

³³⁹ SKLAR, *supra* note 22, at 94.

³⁴⁰ SKLAR, *supra* note 22, at 94.

³⁴¹ FOLBRE, *supra* note 72, at 6.8.

CONCLUSION

The next subject to discuss is style; for it is not enough to have a supply of things to say, but it is also necessary to say it in the right way, and this contributes much toward the speech seeming to have a certain quality.

—Aristotle³⁴²

In the introduction to the tenth anniversary edition of *Losing Ground*, Charles Murray recounts how what was, in his opinion, the best title for the book was suggested by a friend: *Fucking Over the Poor: The Missionary Position*.³⁴³ Murray explains that although he thought the title “perfect” because it “encapsulate[d] the narrative and thesis of the entire book in seven words,” he rejected it because he “just couldn’t see [him]self proposing it to the folks at Basic Books (the publishers of the original edition).”³⁴⁴ One has to wonder if, apart from Murray’s perception of his publisher’s prudery, he also worried that the more prosaic title suggested by his friend would invite a more accurate interpretation of the substance and effect of the book’s policy prescriptions for poor people.

The question is not rhetorical, or rather it *is* rhetorical in the most literal sense of the term. That is to say, there is something significant and revealing about the fact that Murray rejected a title for his book that, though descriptively accurate was perceived to be rhetorically deficient, perhaps because it allowed an interpretation of the book that Murray found dangerously unacceptable. The significance of the point is magnified in the light of its context, for although *Losing Ground* is an important book for the fact that it proposed eliminating the federal system of poor relief entirely³⁴⁵ and had an enormous influence on contemporary conservative

³⁴² ARISTOTLE, ON RHETORIC: A THEORY OF CIVIC DISCOURSE 1404a (George A. Kennedy trans., 1991). Kennedy leaves the Greek *lexis* which in the quotation has been translated as “style.”

³⁴³ MURRAY, *supra* at note 119, at xiii.

³⁴⁴ MURRAY, *supra* at note 119, at xiv.

³⁴⁵ MURRAY, *supra* note 119, at 227.

policy makers, *Losing Ground* is also, perhaps equally, important for the *style* it employed.

Murray's distinctive contribution to the contemporary conservative rhetorical arsenal, a contribution still not sufficiently appreciated, was that he did not employ a tone of admonishment and condemnation of the poor. Rather, Murray couched the shocking brutality and vicious implications of his arguments in the most benign prose. Depriving poor families of the meager allotment of food and money they received through AFDC was thus presented as an exercise in compassion.³⁴⁶ Critics noted the same of Murray's 1994 book, *The Bell Curve*,³⁴⁷ which assumed a tone of troubled and tentative perplexity about what Murray alleges are race differences in intelligence, all the while arguing the thesis that race significantly determines intelligence, with Whites superior in intelligence to Blacks.³⁴⁸

Murray's rhetorical tactic is by no means original. Nevertheless, the scope and effectiveness of its adoption by conservative advocates of the abolition of poor relief testifies to its importance as a tool of political presentation and persuasion. The problem with this strategy, however, is that it is extraordinarily vulnerable to the facts. That is to say, if a political figure makes compassion for the poor a hallmark of his or her rhetoric, it is highly likely that, when confronted by the real suffering of poor people, the public may expect him or her actually to demonstrate compassion. The problem is all the more intense when those who suffer are, for whatever reasons, particularly sympathetic to the public.

Therein lies the problem of child poverty for the conservative position: poor children are exceptionally resistant, from both a logical and emotional standpoint, to the major rhetorical strategies

³⁴⁶ Accordingly, we may assume that the agent of the verb in Murray's rejected title was the federal government and progressives who support poor relief programs; not conservatives like Murray who want to abolish such programs to "save" poor people from themselves.

³⁴⁷ See generally RICHARD HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994) (alleging correlation between ethnicity, intelligence, and economic achievement).

³⁴⁸ See, e.g., Katha Pollitt, *Subject to Debate: The Republican Party and Unwed Mothers*, *NATION*, Dec. 12, 1994, at 717.

with which the conservative position has waged its highly successful assault on poor relief in the United States. To understand that point, it is necessary to consider the most fundamental premise of the conservative position; the chief rhetorical strategies employed to defend that premise; and the specific ways in which poor children fail to be susceptible to those strategies. Prior to considering those points, however, something must be said about the method of the rhetorical analysis undertaken here.

A. A Method of Rhetorical Analysis

The assumption, what some might call the naively optimistic assumption, behind this mode of rhetorical analysis is that raw appeals to emotion have extremely limited utility, and diminish in effectiveness over time. Over the long haul, successful rhetoric, especially as in this context rhetoric deployed in the public disputations of politics, must combine as Aristotle saw facts, style, and delivery.³⁴⁹ The last of those reconceived for the corrupt audiences of the electronic age as including all the aspects of audio-visual presentation through the mass media. Based on that assumption, it can be inferred that rhetoric, understood most broadly as persuasive speech, in order to be effective must respect the constraints of logic and experience, while simultaneously engaging the passions. The exposure of factual errors or faulty reasoning will, over time, prove fatal to even the most emotionally appealing pieces of oratory.

Thus, independent of whether the speaker means what she says, she nevertheless experiences certain logical and empirical constraints on the sorts of arguments she can effectively deploy in defense of her position. Additionally, given that persuasive speech invariably involves an appeal to the passions, the argument must be presented in a manner that engages the sympathy of the audience.

With regard to the debate about poverty and poor relief in the United States, some have argued that the fuel that powers the engine of conservative rhetoric is hate and fear; especially of

³⁴⁹ ARISTOTLE, *supra* note 342, at 1404a.

Blacks, other racial minorities, and women.³⁵⁰ That there is much truth to that point cannot be denied. Indeed, it may well be that the larger part of the success of conservative rhetoric over welfare is due to animosity toward people of color and women, both of whom are over-represented among the poor and people on AFDC.

Nevertheless, that is not the approach of this analysis. Rather, for the purposes of this analysis, the relevant consideration is the rhetoric that is actually deployed by the adherents of the conservative position. In that rhetoric, overt appeals to racism or sexism are rare, though not nonexistent.

Early in the debate in the 104th Congress over dismantling the present system of poor relief, the rhetoric of conservatives tended to be harsh and accusatory, derogating recipients of AFDC as “alligators” and “wolves.”³⁵¹ Not long after, polls showed a drop in the approval ratings of House Speaker Newt Gingrich, largely attributable to public perception of his “style.”³⁵² In what may have been a conscious change of rhetorical strategy, in the second session of the 104th Congress the rhetoric of Gingrich and House Republicans on poor people and welfare softened considerably. Like Murray, House Republicans tended to speak of the poor as victims of an uncaring welfare state, driven into all sorts of anti-social behavior by the misguided charity of the federal government.

³⁵⁰ For an analysis of racism and sexism in the debate over changes in public assistance in the United States, see, for example, Lucy White, *The Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719 (1992); Andrew Hacker, *The Crackdown on African-Americans*, NATION, July 10, 1995, at 45; see also GANS *supra* note 235, which can be viewed as an elaboration of this basic point. While not focusing exclusively on racism or misogyny, Gans nonetheless sees the poor as screens onto which the nonpoor project anxieties and animus. The poor are scapegoats for a host of societal ills. Accordingly, for Gans, changing terminology—redefining the poor out of the “underclass”—moves poor people out of the focus of societal hatred and aggression, and creates the possibility of constructing a rational system of poor relief.

³⁵¹ Robert Pear, *House Approves Shift on Welfare*, N.Y. TIMES, July 19, 1996, at A1.

³⁵² Michael Wines, *Public Gives Congress Good Marks, But Is Mixed on Gingrich*, N.Y. TIMES, Apr. 11, 1995, at A22.

Similarly, poor children were cast as the most tragic casualties of the "War on Poverty."³⁵³

In its successful drive to eliminate the sixty-year-old guarantee of basic cash and nutritional assistance to poor children and their parents, the dominant rhetorical technique of the conservative position has been to move public passion by appeal to those values that people believe themselves to hold dear: responsibility, self-reliance, industriousness, compassion, and fair-play. Rather than maintaining that altruistic rhetoric is merely cover for racist, classist or misogynist animus—an entirely plausible position to take—this analysis treats advocates of the conservative position as meaning what they say and saying what they mean. Thus when Representative E. Clay Shaw (R-Fla.), one of the primary authors of the Personal Responsibility Act of 1995³⁵⁴ (the original House Republican legislation to end the federal guarantee of assistance to poor children and their parents), assures the public that neither he nor the conservative House leadership would "put up with thousands of children going into foster care or with people starving,"³⁵⁵ he will be taken at his word. Consequently, when thousands of children are homeless and hungry, the presumption will be that Representative Shaw's argument has a problem: he must either devise a new justification for his position; explain the challenging phenomenon of neglected children in a manner that does not conflict with the basic premises of his position; or, as a last resort, surrender his position.

Accordingly, in analyzing the conservative response to the phenomenon of child poverty, the question that will be asked is: What implications does the existence of poor children have for the basic premises of the conservative position; and what are the ways in which child poverty would have to be understood and addressed in order not to upset those premises?

³⁵³ Charles Krauthammer, *GOP Will Lose Election Due to Lack of Gumption*, CHI. TRIB., Sept. 23, 1996, at 17 (arguing that the Republican Party has softened its stance on the welfare state in response to the public).

³⁵⁴ H.R. 4, 104th Cong., 1st Sess. (1996).

³⁵⁵ *Iowa Plan Tries to Cut Off the Cash*, N.Y. TIMES, Apr. 7, 1995, at A1 (quoting the remarks of Representative E. Clay Shaw Jr.) [hereinafter *Iowa Plan*].

B. Basic Premises

The basic premise of the conservative position on poor relief, a premise shared by contemporary conservatives despite differences on issues like reproductive rights, is that capitalism, here treated as synonymous with the “market” economy, is best suited for providing the material basis of a democratic society. While the market generates some level of suffering due to impoverishment, that level of suffering is not sufficiently great to be either morally intolerable or politically destabilizing to a democratic society. Government intervention to ameliorate or eliminate poverty invariably interferes with the basic operation of the market and, if only in its unintended consequences, does more harm than good.

The market, by contrast, is good because it is efficient and, in the long run, fair. In its ability to provide incentives to work and invest, stimulate innovation, create wealth, bring about a happy congruence between what is desired and what is produced, the market is unsurpassed and unsurpassable. While it can be harsh and seemingly capricious in its short term operation, in the long term the market’s extraordinary ability to create wealth redounds to the benefit of all society. The market is the sea whose rising tide lifts all boats.

For that reason, capitalism is ultimately the most rational economic system, more rational in the way it is suited to human nature and in the material betterment of humankind it generates than any planned economy. On this view, one of the great ironies of history is that advocates of planned economies, in their attempts to “rationalize” economic activity, were engaging in a most irrational enterprise. The laws of supply and demand that govern the market are to human nature in a situation of scarce resources what Sir Isaac Newton’s laws are to moving bodies. Endeavors to construct an economic system that ignore or reject those laws, Socialism being the chief historical example of such quixotic efforts, are as sure to fail as endeavors to construct a skyscraper that ignore the laws of physics.

At its most extreme, the position described above would oppose any state intervention in the market.³⁵⁶ Political reality makes it unlikely that someone who holds such an extreme position will hold public office for long. In practice, adherents of the conservative position exhibit their preference for the *laissez-faire* ideal by relentless opposition to government regulation of or intervention in the market. Failures of the market, particularly those recurrent, systemic failures that seem to be a non-incidental product of the structure of the market itself, i.e., “market pathologies,” constitute, therefore, a serious and ongoing problem for the conservative position. Such failures, besides providing compelling reasons for state intervention in the market, undermine the basic premise of the conservative position about the efficiency and benevolence of the market economy.

C. Rhetorical Strategies

The persistence of a significant level of poverty is one of the most challenging phenomena with which defenders of the market must deal. When the numbers of people in poverty is increasing, and the misery due to that poverty is particularly intense, the political problem of defenders of the market is greatly magnified. If to the sheer scope and intensity of poverty is added particularly sympathetic attributes of those who are poor, for example, the small bodies, innocent faces, and guileless characters of children, the crisis in legitimacy for the market becomes especially acute and, therefore, the rationale for state intervention becomes practically irrefutable.

For the defender of the market the problem can be stated simply: if the poor are innocent or “deserving” then the market is failing in both efficiency and fairness. In other words, if the poor are innocent, the market must be guilty of their impoverishment.

³⁵⁶ While market intervention by the state is the primary focus of conservative criticism, there is no principled reason why conservative defenders of the market should not object to intervention in the market by agents other than the state. If monetary assistance to able-bodied, unemployed adults does, in fact, cause indolence and illegitimacy, that effect should be the same whether the source of the funds is the state, a church or an individual.

The poor are capitalism's problem children: they do not behave, they will not be silent, they cannot go away. The poor, then, are living evidence of a fundamental defect at the heart of the market. By their very existence the poor have, to use Herbert Marcuse's term, a "deligitimating" effect on the political economy of capitalism.

It follows, then, that if the market is to retain its moral legitimacy, the poor cannot be regarded as innocent. Either through their own faults—indolence, promiscuity, inability to delay gratification, stupidity—or because of the anti-social behavior encouraged in the poor by misguided government charity, the poor must be seen as the primary agents of their own impoverishment. That, of course, is nothing more than a summary of the central thesis and motivating spirit of the works considered in the preceding discussion: Murray, Rector, Olasky, Gingrich, House Bill 4, and the recently passed House Bill 3734³⁵⁷ that abolished the six-decade-old federal guarantee of a basic level of cash and nutritional assistance to poor children and their families.

Herbert Gans, in his *The War Against the Poor*, argues that the need to depict the poor as somehow culpable for their own poverty, as *undeserving*, is not unique to capitalism.³⁵⁸ Noting that the poor have been depicted as undeserving for nearly five centuries, Gans concludes that the presence of the poor is always a threat to the better off, and "judging some poor people as undeserving has positive uses or benefits for various institutions and interest groups in society."³⁵⁹

Surely Gans is right to contend that any society marked by significant inequalities of wealth will need to fashion an ideological response to the problem of poverty.³⁶⁰ The have-nots will always present a problem for the haves, if only for the fact that the latter possess something that the former desire yet do not possess. Gans goes too far, however, in understating the way in which particular

³⁵⁷ H.R. 3734, 104th Cong., 2d Sess. (1996) (enacted) (repealing the 60-year federal guarantee of assistance to poor children and their parents).

³⁵⁸ GANS, *supra* note 235, at 75.

³⁵⁹ GANS, *supra* note 235, at 75.

³⁶⁰ See generally GANS, *supra* note 235, at 103-32 (suggesting components of anti-poverty policy).

economic arrangements, and the sorts of inequality they generate, will determine the particular forms of blaming the poor: i.e., the special ways in which the poor are depicted as undeserving.³⁶¹ As explained above, the poor represent a specific indictment of the market economy in which they exist, and the sorts of theories that are generated to explain the poor in their poverty will be forced to meet the specific legitimation needs of a market economy.

For much of Western history, the ideological responses of the dominant and propertied classes to the existence of both inequalities of wealth and vast numbers of poor people did not rely upon depicting the poor as the immoral agents of their own impoverishment. Those responses, theological in character, used elaborate metaphysical systems, along with significant amounts of popular piety, to offer an explanation, apparently a rather effective explanation, to account for the small numbers of haves and large numbers of have-nots in society. Since they did not require it, these explanations of the poverty of the poor did not posit character flaws such as indolence or concupiscence in the poor. Rather, a combination of fatalistic theology (one's economic and social station as the effect of God's will for one's life) and the promise of consolation in the afterlife (the reward of the poor in heaven as in the story of Dives and Lazarus) provided a reasonably effective response to theoretical challenges to the status quo.³⁶²

Even for the defender of a capitalist or emerging capitalist economy, the sorts of arguments used to explain the existence of

³⁶¹ GANS, *supra* note 235, at 76-77.

³⁶² A contemporary illustration of this point is the theology of liberation, a progressive form of Roman Catholic Christianity that drew heavily from the writings of Marx. Originating in Latin America during the late 1960s, within a society that, though part of a larger capitalist economy was nevertheless still significantly agrarian and for many practical considerations feudal, the theology of liberation initially took as its chief theoretical opponent the sort of fatalistic and other-worldly theology described in the text. See generally GUSTAVO GUTIERREZ, *A THEOLOGY OF LIBERATION* (Caridad Inda & John Eagleson trans., 1973) (reflecting upon the experience and meaning of the faith based on the commitment to abolish injustice and to build a new society); JUAN LUIS SEGUNDO, *THE LIBERATION OF THEOLOGY* (John Drury trans., 4th ed. 1976) (offering a critique of Latin American theology through an examination of its methodology, its premises, and its fidelity to biblical text).

the poor, while defending the goodness of the market, will change depending upon the other interests that are also being defended. John Bird Sumner (1780-1862), for example, was an ardent defender of a laissez-faire economy and a strong supporter of the Poor Law Reform Act of 1834. Sumner was also an Anglican cleric and Archbishop of Canterbury.³⁶³

Sumner, in many ways, can be seen as an ideological and rhetorical bridge between the medieval explanation of why the poor are poor and the modern approach of blaming the poor for their poverty. In trying to explain the existence of so many poor people in his society, while still defending the goodness of the market economy, Sumner argued that God had created human beings to learn to live with the problem of growing population, unlimited wants, and scarce resources.³⁶⁴ While it is true that Sumner believed that ignorance or lack of education was the primary reason that poor people were poor, his defense of the market relied even more strongly on the divine purpose, for the betterment of humanity, that Sumner discerned in the market's workings.³⁶⁵

The essence of a market economy, for Sumner, was a principle whose operation

fill[s] the world with competitors for support, enforces labour and encourages industry, by the advantages it gives to the industrious and laborious at the expense of the indolent and extravagant. The ultimate effect of it is, to foster those arts and improvements which most dignify the character and refine the mind of man; and lastly, to place mankind in that situation which best enables them to improve their natural faculties, and at the same time best exercises, and most clearly displays, their virtues.³⁶⁶

Contemporary conservatives, unlike Sumner, confront a more pluralistic, more secularized society. Explanations of why the poor

³⁶³ John Bird Sumner, *Introduction to Reconciling Inequality and God's Purposes in the Free Market*, in CHRISTIAN SOCIAL ETHICS: A READER 333, 333 (John Atherton ed., 1994). For some discussion of the Poor Law Reform Act of 1834, see PIVEN & CLOWARD, *supra* note 8, at 33-41.

³⁶⁴ Sumner, *supra* note 363, at 335-36.

³⁶⁵ Sumner, *supra* note 363, at 344-45.

³⁶⁶ Sumner, *supra* note 363, at 341-42.

are poor that rely on accepting the idea that God created capitalism are unlikely to be rhetorical successes.³⁶⁷ Accordingly, the other part of Sumner's defense of the market—blaming the poor for their poverty—necessarily plays a much more important role in contemporary conservative rhetoric on the phenomenon of poverty. The harsher aspect of that rhetorical strategy is manifest in outright attacks on the poor as indolent or immoral. The less harsh aspect of conservative rhetoric about poor people places direct responsibility on the government for attempting to eliminate poverty in a manner that leaves poor people materially deprived and morally deprived.

Children, however, are especially resistant to both those strategies. First, because they are incapable of taking care of themselves, or at least the overwhelming social consensus is that children cannot care for themselves; and second, because, for purely sentimental reasons, children are appealing victims and unlikely villains. Childhood and innocence, in modern American culture, are largely synonymous.

The blaming the victim strategy evident in conservative contentions about illegitimacy and indolence among the poor loses its effectiveness when applied to poor children. Assertions that poor children are responsible for their own poverty are likely to be perceived as heartless and cruel. Moreover, because the contemporary social understanding of childhood is that childhood is supposed to be characterized by dependence, conservative indictments of government poor relief programs as discouraging industry and self-reliance seem seriously misplaced when applied to the problem of child poverty. Indeed, when it comes to criticism of government

³⁶⁷ While biblical defenses of capitalism may not be terribly persuasive to most Americans, nevertheless, the way in which the rise of the so-called "Christian Right" has contributed to a resurgence of the defense of the market economy from a religious or biblical perspective should not be ignored. News accounts of the 1995 national convention of the Christian Coalition reported that the greatest positive reaction from the participants was to a Black woman and self-described former welfare recipient who triumphantly declared, "God is a Capitalist." Jake Thompson, *GOP Hopefuls Woo Christian Coalition*, KAN. CITY STAR, Sept. 9, 1995, at A1.

assistance to poor children, the likelihood is that the public will demand more and not less.

What, then, is the conservative critic of welfare and defender of the market to do? Four responses are possible: (1) blame poor parents for their children's poverty; (2) blame poor children for their own poverty; (3) simply ignore the problem of child poverty; and (4) claim to be assisting poor children while cutting off their means of support.

To criticism of the first strategy, the bulk of this Article has been devoted. What remains to discuss here is one additional criticism: virtually all of the conditions upon poor relief proposed or implemented by conservatives in the 104th Congress have one incentive to compliance: reduction or termination of benefits. Senator Daniel Patrick Moynihan described the welfare legislation passed in August 1996 by the 104th Congress as based upon the premise that "the behavior of certain adults can be changed by making the lives of their children as wretched as possible."³⁶⁸ If poor parents cannot find jobs or fail to comply with the various conditions placed upon their receipt of AFDC and other poor relief programs, they will be denied benefits and their children will be without support.

The radical curtailment of federal poor relief programs has not been limited to AFDC and food stamps, two programs most often associated with "welfare." For example, in May 1996, the House of Representatives passed House Bill 2406,³⁶⁹ the United States Housing Act of 1996, which denies public housing and assistance to any person "who, after the date of the enactment of this Act, has been convicted of illegal possession with intent to sell any controlled substance."³⁷⁰ House Bill 2406 also makes persons in recovery from alcohol and drug problems ineligible for any housing

³⁶⁸ Robert Pear, *Senate Passes Welfare Measure, Sending It for Clinton's Signature*, N.Y. TIMES, Aug. 2, 1996, at A1 (quoting the remarks of Senator Moynihan).

³⁶⁹ H.R. 2406, 104th Cong., 2d Sess., 142 CONG. REC. H4837-06 (1996)(enacted).

³⁷⁰ *Id.* § 105(d).

or housing assistance designated for individuals with disabilities.³⁷¹

If enacted into law, both provisions would have a profoundly detrimental effect on poor people with children. Under the former provision, a mother who had been convicted for possession with intent to distribute marijuana, yet who has been free of drug use for several years, found employment, and was trying to raise her family in the best way she could, would be denied public housing or housing assistance. Her children, then, would be denied shelter assistance because of a mistake their mother made once in her life. In the case of the second provision, a parent who was once an intravenous drug user and contracted human immunodeficiency virus ("HIV"), but has undergone rehabilitation, was pulling his or her life together and was in need of public housing assistance for the disabled, would be disqualified, despite the debilitating effects of the acquired immune deficiency syndrome ("AIDS"), from receiving such assistance.

The second rhetorical strategy for dealing with the problem of child poverty has already been discussed, but it is nonetheless worth noting that the "villainization of children is neither unknown nor entirely ineffective in our culture."³⁷² In the past few years a revolution in the approach to criminal justice policy for juveniles has taken place.³⁷³ The distinguishing mark of that revolution is a wholesale abandonment of rehabilitative or therapeutic ideals in the treatment of juvenile offenders.³⁷⁴ Courts and prosecutors are being ordered or given discretion to try younger and younger children as adults.³⁷⁵ In some states, there is no minimum age limit at which a child can be tried as an adult for certain specified offenses.³⁷⁶ Longer and harsher sentences are being imposed on

³⁷¹ *Id.* § 102(12).

³⁷² See generally Robert B. Acton, Note, *Gubernatorial Initiatives and Rhetoric of Juvenile Justice Reform*, 5 J.L. & POL'Y 277 (1996) (surveying gubernatorial proposals for a more punitive juvenile justice system).

³⁷³ *Id.* at 279.

³⁷⁴ *Id.* at 282.

³⁷⁵ *Id.* at 283-92.

³⁷⁶ *Id.* at 290 (discussing Missouri's judicial transfer statute).

children,³⁷⁷ and the United States has still not committed itself to banning the execution of children.³⁷⁸ The administrative segregation of child prisoners, from the adult prison population, has also come under assault as “coddling” young offenders.³⁷⁹ The rhetoric that has accompanied these changes has frequently depicted young offenders as predatory animals.³⁸⁰

Despite those disturbing trends, as noted earlier, blaming poor children for their poverty is unlikely to succeed as a rhetorical strategy, especially since the poorest children in the United States are the youngest children, most under the age of six.³⁸¹ That brings the discussion to the third strategy: simply ignoring the problem of child poverty.

To some extent, simple denial of the real dimensions of child poverty has been the operative strategy of the current assault on poor relief programs in the United States. As noted above, while it was entirely obvious that all of the various conditions placed upon public assistance, learnfare, workfare, drug testing, time limits, etc., were based upon an incentive structure that denied already inadequate assistance to the children of sanctioned adults, there has been, except from progressives and child advocates, remarkably little discussion of that fact.

In what may serve as an epitome of this strategy of denial, during the first session of the 104th Congress, when President Clinton vetoed two bills that would have ended the federal entitlement to assistance to poor children and their families, the Department of Health and Human Services conducted a study demonstrating that the effect of such legislation would have been to force at least 1.2 million children into poverty. In the summer of 1996, with a general election approaching and a mounting sense of

³⁷⁷ *Id.* at 293-98.

³⁷⁸ See WAR ON CRIME, *supra* note 9, at 133 (reporting that the United States allows “the death penalty to be imposed against teenagers”).

³⁷⁹ Fox Butterfield, *Republicans Challenge Notion of Separate Jails for Juveniles*, N.Y. TIMES, June 24, 1996, at A1.

³⁸⁰ See Governor Tom Ridge, Address to the Joint Session of the Pennsylvania General Assembly 4 (Jan. 23, 1994) (transcript on file with *Journal of Law and Policy*) (referring to juvenile offenders as “youthful predators”).

³⁸¹ See *supra* Part II (discussing trends in child poverty).

urgency that the President had to keep his 1992 campaign promise to “end welfare as we know it,” the White House refused to conduct a similar assessment of the Republican-sponsored legislation. According to press accounts, the senior senator from New York, Patrick Moynihan, made three separate requests for such a study and was rebuffed each time. Finally, the senator turned to a private progressive think-tank, the Urban Institute, which estimated, based upon Census Bureau data, that the legislation would force a similar number of children (1.1 million) into poverty.³⁸²

On July 26, 1996, the same day on which the Urban Institute Report was issued, President Clinton’s press secretary, Mike McCurry was asked at a press briefing about the Urban Institute report.

Question: Republicans are saying that Clinton will sign any welfare bill. He’s dying to sign it. He thinks this is what the American people want. That’s one part of my question. And is the president aware of the Urban Institute’s study that will show that one million children will be thrown into poverty?

Mr. McCurry: He —

Question: Could he really accept a bill that does that?

Mr. McCurry: The president can accept a bill that has tough work requirements, that helps ease the transition from welfare dependency to work, that helps protect kids who are going to be caught up in that transition, to make sure that the safety net is available to them, and in many, many respects, we have moved

³⁸² Matthew Rees, *Clinton’s Welfare Waffle*, WEEKLY STANDARD, Aug. 5, 1996, at 15.

welfare reform in that direction. Now, there is still a ways to go. We keep acknowledging that. We keep saying that we will watch very carefully what the conference committee does. The analysis that you referred to is not an analysis of our government. It was done by a private institute, and the methodology of that analysis I cannot vouch for.³⁸³

The evasiveness in McCurry's response is evident on its face. McCurry begins with simple non-responsiveness; talking about work requirements the president can accept without addressing the question of what level of child poverty the president will not accept. After offering some platitudes about there being "a way to go" and careful monitoring of developments in the legislation, McCurry then calls into question the accuracy of the report, without mentioning that the report's conclusions were substantively identical to those of an earlier study by a department of the administration itself, or that the Clinton administration had refused repeated requests for precisely the kind of study the Urban Institute undertook. The central problem of child poverty, and the exacerbating effect of changes in programs for poor relief for children, are simply not engaged.

This example, taken from the Clinton administration as proof that the conservative position on poor relief has adherents or at least accomplices within the Democratic Party, illustrates well the third rhetorical strategy of avoidance and denial. By simply ignoring the problem of child poverty, by remaining silent about the way in which proposed changes in the welfare system will expand the numbers and worsen the conditions of poor children in the United States, opponents of government assistance to the poor are able to discourage or prevent public debate from wandering into terrain that is inhospitable to the primary rhetorical strategies that

³⁸³ *White House Briefing*, July 26, 1996, available in LEXIS, News Library, Fednew File.

the conservative position employs to make the poor seem responsible for their own poverty.

The fourth strategy for dealing with the problem of child poverty is the one, as noted above, that has become ascendant in conservative rhetoric about the abolition or radical curtailment of poor relief programs; the language of compassion, sometimes expressed as “tough love.” This is the rhetoric of Speaker Gingrich’s book, *To Renew America*.³⁸⁴ In the opening paragraph of his chapter on “Replacing the Welfare State with an Opportunity Society,” Speaker Gingrich writes:

The greatest moral imperative we face is replacing the welfare state with an opportunity society. For every day that we allow the current conditions to continue, we are condemning the poor—and particularly poor children—to being deprived of their basic rights as Americans. The welfare state reduces the poor from citizens to clients. It breaks up families, minimizes work incentives, blocks people from saving and acquiring property, and overshadows dreams of a promised future with a present despair born of poverty, violence, and hopelessness.³⁸⁵

Speaker Gingrich, of course, is the leader of those forces in the U.S. House of Representatives who succeeded, in August 1996, in abrogating a sixty-year commitment to guarantee a basic level of cash and nutritional assistance to poor children.³⁸⁶ Notwithstanding that fact, he adopts a tone of solicitousness toward the poor more befitting Dorothy Day than Marie Antoinette.

The tone of Mr. Gingrich’s rhetoric is echoed in remarks by leading advocates of the abolition of poor relief programs.³⁸⁷

³⁸⁴ NEWT GINGRICH, *TO RENEW AMERICA* (1996).

³⁸⁵ *Id.* at 76.

³⁸⁶ H.R. 3734, 104th Cong., 2d Sess. (enacted).

³⁸⁷ *See, e.g.*, Press Release of Rep. Bill Baker (R-Cal.) (Jul. 18, 1996) (pouting Representative Baker’s opinion that a new welfare proposal will open doors of opportunity for millions of Americans allegedly trapped in a cycle of welfare dependency); Press Release of Sen. Rod Grams (R-Minn.) (Dec. 22, 1995) (claiming that Senator Gram made efforts to preserve tax relief for families in the budget agreement); Press Release of Rep. Don Nickles (R-Okla.) (Dec. 12, 1995) (arguing that Senate action on welfare will reduce illegitimacy

Thus Governor Tommy Thompson (R-Wis.) berated the Roman Catholic Archbishop of Milwaukee Rembert Weakland, and the Wisconsin Catholic Conference, for their opposition to Republican legislation to abolish the federal guarantee of assistance to poor children and their families:

The entitlement the Wisconsin Catholic Conference wants to protect so badly has done nothing but harm children for the past 60 years. It is the padlock that has closed the gate trapping families in a well of dependency and despair . . . And the people harmed most severely by the AFDC (Aid to Families with Dependent Children) "entitlement" have clearly been the children.³⁸⁸

The flaw inherent in this rhetorical strategy has already been identified: the public may take the language of compassion seriously. When the empirical effects of present policies that dramatically reduce or abolish assistance to poor adults and their children have their anticipated effect—for example, an explosion in the rates of child poverty—proponents of the rhetoric of compassion may find themselves constrained to reinstitute the very measures of government poor relief the abolition of which their rhetoric was meant to facilitate.

The crisis for conservative rhetoric depends, of course, on the realization of an empirical condition: that poor parents denied assistance will be unable to find jobs or sources of private charity to support themselves and their children. That eventuality, however, is by no means far-fetched. As noted above, a number of credible studies have already reached that conclusion.

Besides the disaster in human suffering that the impoverishment of so many more children would represent, it would also represent a rhetorical disaster for the conservative position on poor relief not only because of the debilitating effect of the witness of so many impoverished children on the moral legitimacy of the market economy; not only because of the practical demands such an increase in child poverty would make for expanded government poor relief programs; but also because such a dramatic increase in

and promote work ethic).

³⁸⁸ *Gov Swings Again at Archbishop*, CAP. TIMES, Jul. 10, 1996, at 3A.

the numbers of poor children with parents unable to care for them would expose one of the more glaring bits of intellectual dishonesty within the conservative position on poor relief: the refusal to admit the need for massive institutionalization of poor children. The argument exposing that intellectual dishonesty has four premises.

Premise number one is that in our society there are three means of providing care for children: the biological family, the foster or adoptive family, and congregate or institutional care (for which the traditional term was "orphanage").

Premise number two is that where the biological family fails the foster or adoptive family is the next resource for providing child care. In the case of the debate over AFDC, this would include all those parents whose means of subsistence are terminated for failing to comply with the various conditions or exhausting the time limits placed upon federal assistance.

Premise number three is that there are not a sufficient number of foster or adoptive families to absorb the number of children who it is reasonably anticipated will be forced into destitution by the recent abolition of the federal guarantee of a minimal level of cash and nutritional assistance. The United States has approximately 420,000 children in foster care.³⁸⁹ Estimates of the number of poor children whose parents will no longer be able to care for them as a result of changes in federal poor relief programs range from 1.2 to 5.3 million.³⁹⁰ It is generally agreed that it would be impossible to place any significant fraction of the children displaced from loss of AFDC benefits into foster care. That leaves the third mode of child care in the United States: institutionalization.

Premise number four is that supplying a sufficient number of institutions to care for destitute children will constitute an economic and humanitarian disaster. Congregate care facilities for poor children, what were once termed "orphanages," house nearly 30,000

³⁸⁹ Douglas J. Besharov, *Orphanages Aren't Welfare Reform*, N.Y. TIMES, Dec. 20, 1994, at A23.

³⁹⁰ *Id. See, e.g.*, Judy Mann, *Welfare Cuts: Making the Children Pay*, WASH. POST, Dec. 6, 1995, at C26 (predicting that AFDC cuts will cause foster families to become homeless and abusive to children).

children nationwide.³⁹¹ The average yearly cost of caring for a child in a congregate facility is \$36,000.00.³⁹² In 1994, there were 5.5 million families receiving AFDC. Those families were comprised of 13,623,000 people, 9,224,000 of whom were children.³⁹³ If only 10% of those families (550,000), a very conservative estimate, have parents whose benefits are terminated before the parent has found a job to support the family, the number of children forced into destitution would be approximately 922,400. Presuming that all those children will need to be placed in congregate care facilities, the yearly cost of caring for those children would be in excess of \$33.2 billion, about \$10 billion more than all that was spent on AFDC in 1996.

The conclusion of the argument, then, is that advocates of the conservative position on poor relief should be devoting considerable energy to talking about the need for institutional care for poor children, and working to supply adequate funding and material resources in order to create a massive system of congregate care facilities for poor children.

Such talk, however, will never be heard from opponents of government poor relief programs. The reasons for that are partly practical; the nation does not have the resources and the public would not tolerate such massive expenditures on institutionalizing poor children. There is also, however, a political reason for avoiding such rhetoric: talk of orphanages for poor children has proven to be highly unpopular with the American people. House Speaker Gingrich learned that lesson early in the 104th Congress and, since that time, has not revisited the subject.³⁹⁴

Therein lies the fundamental intellectual dishonesty of the conservative position on child poverty and poor relief. Unable to blame poor children for their own poverty and unwilling to acknowledge the consequences of denying public assistance to poor parents, the conservative advocates of abolishing the federal

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ 1994 GREEN BOOK, *supra* note 216, at 1152.

³⁹⁴ *Iowa Plan*, *supra* note 355, at A1 (reporting that Representative E. Clay Shaw Jr., of Florida called House Speaker Newt Gingrich's recommendation of orphanages "an offhand remark," thus "downplay[ing] the orphanage option").

guarantee of some basic level of assistance to poor children and their families are disabled from realistically facing, practically or rhetorically, the problem of child poverty.

The logical incoherence, factual inconsistencies, and intellectual dishonesty of the conservative position on poor relief generally and child poverty specifically present progressives with an opportunity. Focusing progressive rhetoric on the plight of children may well be the most effective means by which to persuade the American public that the poor are not responsible for their own poverty, and that withdrawing what was, by any standard, rather meager assistance from government poor relief programs was a terrible moral and political mistake.

The danger in focusing upon children is that an emphasis on their innocence, their lack of culpability in their own poverty, may reinforce a sense that poor adults *are* to blame for being poor. Acknowledging some poor people as deserving, implicitly affirms that other poor people are undeserving. It would be a cruel irony if progressives succeeded in restoring and expanding government assistance to poor children, only to reinforce the unjustified animus that now prevails toward childless adults and the poor parents of poor children.

Contemporary defenders of the conservative position place their faith in the market. For them the market exhibits the same attributes as the God of monotheism: omnipotence and benevolence. Whatever the problem—providing health care, ending poverty, curing disease, protecting the environment, educating the young—the market, the conservative position tells us, will provide. There is simply nothing it cannot do, and what it does is good. This cult of the market finds evidence of market failure—child poverty the most morally egregious example of such failure—simply intolerable.

For those who reject that position, who believe that capitalism does not and cannot adequately provide a decent level of material existence for all human beings, among the most effective weapons in the rhetorical arsenal is a simple empirical fact: like the gods of old, the cult of the market demands the sacrifice of children.

