

PROMOTING FAMILY BY PROMOTING WORK: THE HOLE IN MARTHA FINEMAN'S DOUGHNUT

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I. INTRODUCTION

Martha Fineman's call for a more robust idea of the family in our public policy and public attitudes is important and worthwhile.¹ A major failing of current welfare policy is its lack of constructive emphasis on families and its focus on work above all else. The politicians who promoted the so-called welfare reform legislation of 1996² said the problem was that too many people were remaining on welfare for too long instead of going out and getting jobs.³ Their solution was to make people—mainly women—go to work.⁴

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1. Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER, SOC. POL'Y & L. 13 (2000).

2. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 1305 (1996).

3. See generally H.R. CONF. REP. NO. 104-403, at 4 (1995) (stating that "[t]he welfare system contradicts fundamental American values that ought to be encouraged and rewarded: work, family, personal responsibility and self-sufficiency.").

4. See Jennifer M. Mason, Note, *Buying Time for Survivors of Domestic Violence: A Proposal for Implementing an Exception to Welfare Time Limits*, 78 N.Y.U. L. REV. 621, 628 (1998) (noting that

However, the women they pursued were also parents. They have children and what happens to the children is of critical importance. Pushing parents to work outside of the home without regard to the effects on their children will have disastrous effects. The "reformers" should have paid attention to real family values. Professor Fineman does.

On the other hand, I believe strongly in work. And I wonder if Martha Fineman attaches enough weight to the value of mothers working outside the home. She does say that many caretakers today also must work.⁵ She also says, quite appropriately, that "[t]he state must ensure that market institutions positively respond to dependency burdens,"⁶ meaning that public policy should push to assure that the workplace is family-friendly.⁷ Nonetheless, these references seem incidental to the larger point of the piece, that "caretaking work . . . creates a collective or social debt."⁸ She says the military "have [the] right to be compensated for their services from collective resources Caretakers should have the same right"⁹

These and similar statements cause me to question whether the family-strengthening potential of work outside the home receives enough attention from Professor Fineman's formulation. I fear that when she unpacks what she calls the "foundational myths" of "independence, autonomy, and self,"¹⁰ she does not accord enough importance to working outside the home as an avenue to achieve genuine independence, autonomy and a real sense of self-worth, and as a positive model for children. The welfare "reformers" went too far in their single-minded emphasis on work, but Professor Fineman may err in the other direction. That is the main point I will make in this brief Essay.

The new law is not friendly to families. Its arbitrary lifetime limit on federally financed cash assistance ignores individual family facts (as well as local and national economic realities), as does its bumper-

one of the primary goals of the Personal Responsibility Act of 1996 was to get people working); see also Patricia M. Anderson & Phillip B. Levine, *Child Care and Mothers' Employment Decisions*, prepared for the N.V. 1998 Joint Center for Policy Research Conference, "Labor Markets and Less-Skilled Workers" (visited June 27, 1999) <http://www.jcpr.org/anderson_levine.html> [hereinafter *Mothers' Employment Decisions*].

5. Fineman, *supra* note 1, at 21.

6. Fineman, *supra* note 1, at 27.

7. Fineman, *supra* note 1, at 27.

8. Fineman, *supra* note 1, at 18.

9. Fineman, *supra* note 1, at 19.

10. Fineman, *supra* note 1, at 14.

sticker "Work First" attitude. Its block grant "trust the states"¹¹ structure ignores the punitive anti-family animus of states like Idaho and Mississippi and numerous localities that have been cut loose by their states to be as mean as they want to be. Adults, generally mothers, are widely required to go to work when their children are as young as twelve weeks old. Mention is made of child care, but the reality is that infant and toddler care ranges from being in short supply to nonexistent, and is very expensive, too.

Elected officials and others are now saying that economically advantaged mothers should remain at home.¹² Many of these new child advocates are just practicing old-style sexism in new dress, but it is also true that there are new findings about brain development and, consequently, new reasons to stress stimulative interaction between adults and children from the very beginning. Caring adults, interacting lovingly, are more important than ever. Does that mean mom shouldn't go to work? How about dad? And what about the fact that research shows that good child care coupled with good parenting works as well as mom staying home, or dad.

Still, we hear these calls that mom should stay home. Except poor moms, of course. Many of the same people who think mothers of small children should stay home are the leading proponents of requiring low-income mothers to go to work.¹³ This is rank hypocrisy, and it shows, dramatically, how family-unfriendly the new welfare world is.

So Martha Fineman implies—and I agree—that one welfare policy we should re-examine immediately is how old a child should be before mom should be working outside the home, and that we should advocate the same recommended bonding period for poor folks that we do for everyone else.¹⁴ At this point Professor Fineman and I diverge. She propounds "a theory of collective responsibility for dependency,"¹⁵ which means that caretaking work creates a collective or societal debt. She says that "caretakers should be

11. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 601 (1996).

12. See Faye B. Zuckerman, *How Dr. Laura Would Clean Up the Mess*, PROV. J.-BULL., Jan. 25, 1996, at H6 (indicating Dr. Laura Schlesinger's approval of mothers staying at home to parent kids).

13. See Ruth Conniff, *Republican Women On & Off the Yacht*, THE PROGRESSIVE, Oct. 1, 1996, at 1 (noting Phyllis Schlafly's admission that although mothers should stay at home with their children, they should not do so if they rely on welfare for support).

14. Fineman, *supra* note 1, at 14.

15. Fineman, *supra* note 1, at 16.

compensated,"¹⁶ and that "conferral of value requires the transfer of some economic resources from the collective to caretakers."¹⁷

If Professor Fineman's position is that the caretaking parent should receive support from the state to stay home until the last child is eighteen years old, she loses me. I would require some mothers to work outside the home as a condition of receiving a full measure of cash assistance, although I would ring that requirement with a number of standards and protections that are not present in current federal law.

To the extent that Professor Fineman's call for societal support of parents in the care of their children includes a broader demand for a more family-sensitive intersection between the workplace and child-rearing responsibilities, we are on the same page. She says that "[q]uite often, [workers] are dually responsible for economic and caretaking activities,"¹⁸ and calls for "[r]estructuring workplaces to reflect that reality."¹⁹ If that is at the heart of Professor Fineman's definition of collective responsibility, my suggested emphasis on the value of work outside the home is perhaps more in the nature of a friendly amendment than a disagreement.

II. THE IMPORTANCE OF WORK OUTSIDE THE HOME

Most people agree that those who are independently wealthy should not be required to work. Whatever our views about the effect on children of not seeing their wealthy parents earning money from work, no one suggests there should be a law governing the subject. If there are two parents in a household and they can sustain themselves with only one of them working outside the home, that is also fine, whether the purpose of the arrangement is for one of them to be a full-time parent or for any other reason. Again, there is no legal obligation to work.

A problem begins to arise when a mom (or dad) with caretaking responsibilities has to work if the family is to make ends meet without receiving a caretaking allowance. This is not about what our wealthy society can afford. If that were the issue, I would be with Martha Fineman. We can afford to pay for a caretaking allowance. This has to do with the beneficial effect on one's self-esteem from working outside the home, which also affects the emotional health and well-

16. Fineman, *supra* note 1, at 21-22.

17. Fineman, *supra* note 1, at 26.

18. Fineman, *supra* note 1, at 27.

19. Fineman, *supra* note 1, at 27.

being of the family. While there are numerous conditions and qualifications, children who see a parent earning an income see someone who typically feels better about herself than she would if survival came from a check issued by the state. Children see a positive model for their own future.

The hardest issue for me is whether we should compel anyone to work as a condition of receiving a full measure of cash assistance. Over the years, I have come to the reluctant conclusion that what I call real welfare reform has to include an incidental element of compulsion to work, because welfare reform is not just about an adequate income. Welfare reform is about good welfare-to-work policy coupled with a reliable safety net, and good welfare-to-work policy unfortunately turns out to entail a degree of compulsion.

There is a major societal responsibility in the circumstance when a caretaking parent, in the absence of state subsidies, would have to work in order for the family to make ends meet, but it is much more complex than the idea that the state should pay for caretaking by the parent in the home in every situation. This societal responsibility values work and family both, and in my view, by valuing work, values family more. Professor Fineman says in brief references throughout that she does see this societal responsibility in broader terms.²⁰ I would be more comfortable if that had been a more central tenet of her argument.

I turn now to exploring the details of society's responsibility to see that work outside the home is genuinely supportive of families.

III. THE LIVING WAGE

Let us assume the caretaking parent can find a job. (This can be a big assumption. A national recession, local economic problems, spatial mismatch between residence and job location, discrimination, skill gaps, and personal problems can all get in the way.)²¹ Let us assume further that both parents are working and the earnings still do not amount to enough to get by. This is very likely to be the fact. A full-time minimum-wage job pays a little over \$10,000.²² The poverty line for a family of three is about \$13,000, and for a family of

20. Fineman, *supra* note 1, at 19.

21. See generally Anderson & Levine, *Mothers' Employment Decisions*, *supra* note 4. See also STATEMENT ON KEY WELFARE REFORM ISSUES: THE EMPIRICAL EVIDENCE, CENTER ON HUNGER, POVERTY AND NUTRITION (1995) [hereinafter KEY ISSUES].

22. Based on the following calculation: (Minimum Wage: \$5.15 per hour) X (Full-time Employment: 40 hours per week) X (52 weeks per year) = \$10,712.

four is about \$16,500.²³ When you total rent, food, transportation, clothing, health care, and everything else, the minimum survival cost for families of three or four is in fact far above these figures.

The vast majority of the adult, non-disabled, non-elderly poor has income from work and still cannot get out of poverty. This does not include the far larger number who do not make a living wage by a standard that is more realistic than the poverty line. A decent income from work and appropriate supplementary sources is a fundamental plank in a pro-family, pro-child policy.²⁴ No single factor helps children more than growing up in circumstances of at least minimum economic sufficiency.²⁵ This means a number of things.

The issue of collective bargaining is one key matter. We need a complete re-examination of the National Labor Relations Act²⁶ to identify all of the ways in which it unfairly creates barriers to organizing. Unions need to undertake stronger organizing efforts in low-wage sectors, as well. (A complete critique of the willingness of the unions to organize low-income workers is in order, too. The majority of international unions evidence little interest in the low end of the labor market).²⁷ Related to labor organizing and collective bargaining are state and local campaigns to enact laws that require a living wage for all public employees, all employees of those who contract with state and local government, and all companies that get special tax breaks from state and local government.²⁸ Successful living wage campaigns affect enough workers to have a "spillover" effect into the low-wage labor market generally, causing wages for jobs not covered by the living wage law to rise as well.

The issue of minimum wage payments is also important. We cannot use it to do everything we want done, because increasing it too much destroys jobs. We can, however, raise it to some extent

23. U.S. Census Bureau, Poverty Thresholds (last visited June 27, 1999) <<http://www.census.gov/hhes/poverty/threshold/98prelim.html>> (estimating the 1998 poverty threshold for a family of three at \$13,001 and for a family of four at \$16,655).

24. See generally Sarah K. Gideonse & William R. Meyers, *Why the Family Support Act Will Fail*, CHALLENGE, Sept.-Oct. 1989, at 33 (discussing the neglected components essential in effective antipoverty policy).

25. See Anderson & Levine, *Mothers' Employment Decisions*, *supra* note 4.

26. 25 U.S.C.A. § 151 *et seq.* (West 1999).

27. See Karl E. Klare, *Symposium: New Approaches to Poverty Law, Teaching and Practice: Toward New Strategies for Low-Wage Workers*, 4 B.U. PUB. INT. L.J. 245, 266 (1995) (stating that most unions and labor movements have a strained relationship with the poor).

28. Cf. *Living Wage Campaigns Rage On in ACORN Cities and States*, ACORN REP., July 1999, at 1; VT. STAT. ANN. tit. 21, § 384(a) (1999) (creating a committee to report on the effects of the livable wage).

without being unfair to employers, and states can choose to have a higher minimum wage than the Congress sets, when Congress is unwilling to set it at the highest workable level.

The Earned Income Tax Credit (EITC) is another area of opportunity. We can now go beyond the increases that were adopted in 1993,²⁹ and states with income taxes should adopt their own earned income tax credits. We have to be extremely careful not to create an imbalance between the minimum wage and the EITC that lets low-wage employers off the hook, but we need to take equal care not to push the minimum wage to the breaking point. The EITC is a crucial element of social policy.

IV. NON-CASH ELEMENTS OF A LIVING WAGE: CHILD CARE AND ALL THE REST

Cash is not the only element in a living wage framework. Child care, health care, housing assistance, and education assistance can all be viewed, at least conceptually, as living wage issues.

Child care policy is the concrete bridge between the family and the workplace. Although an adequate cash income will enable parents to purchase it without subsidy (provided they can find it, of course), there are many other problems. Literally millions of Americans with small children have a child care problem,³⁰ and when after-school hours and summer time are factored in with regard to school-aged children, the number multiplies.

In too many states, implementation of the so-called welfare reform is especially hypocritical or at least short-sighted when it comes to child care. Many states provide transitional child-care subsidies for a year or two, assuming that women will receive sufficient pay raises or get better jobs within those time frames so as to make further subsidies unnecessary. The need for child-care assistance for people coming off welfare and for large numbers of people who were never on welfare is a continuing one. To make matters worse, most states have not spent the federal money available to them under their welfare block grants, which could easily be spent on meeting these child care needs.

The child care issue raises the question of fairness. Millions of women who have been steadily working and never received welfare have struggled to find and pay for adequate childcare. They have

29. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 457 (1993).

30. See Helen Blank, *Helping Parents Work and Children Succeed: A Guide to Child Care and the 1996 Welfare Act*, CHILDREN'S DEFENSE FUND, Jan. 1997, at 9, 13, 42-43 (discussing child care shortages).

been egged on by demagogic politicians to be angry at people who do not work, and this anger is exacerbated by the reality of their lives—not being financially assisted while working for low wages and paying for child care.

The focus should be child care policies that make it less difficult for women to work if they want to or need to. This does not mean simply warehousing or parking children somewhere so mom can work. Nor is basic safety for the child enough, although it is certainly a *sine qua non*. The focus should also be on developmental child care that assures readiness to start school. The long list of other issues include infant and toddler care, “odd hour” care for swing-shift and graveyard-shift jobs, better training and better pay, and better oversight and accountability. Most importantly, discussions should focus on child care assistance on a sliding scale for everyone who has a need for as long as they have a need. For too many Americans, low-wage jobs are a way of life. Their need for help does not evaporate.

Universal health coverage is essential and right for many reasons, including fairness. As is the case with child care, health coverage should not be tied exclusively to work. Young children need developmental support whether their parents are working or not, although not at as early an age if a caretaker parent is at home. Health coverage also has to be available whether one is working or not. Nonetheless, most of those who lack coverage are in fact working, but at jobs that do not offer health coverage. Finding a way to subsidize health coverage for those who can not afford it, an area that has seen substantial progress recently in getting coverage for children, is a part of a living wage agenda.

Housing assistance has been off the national table for a long time. The numbers are staggering, with half the poor renting apartments spending sixty percent or more of their income on rent. The question of decent and affordable housing should not solely be a function of adequate recompense for work. The fact that many millions of people are working as hard as they can and still have to make excruciating decisions to forego having enough food on the table so they can pay the rent, or face ending up homeless, tells us that housing assistance is a part of the fairness agenda for workers.

Higher education assistance is on my fairness list as well. Federal grants help large numbers of low-income people afford college. However, even with the state-subsidized tuition of public institutions, large numbers of lower-income people cannot afford to send their children to college.

So, point one is that there is a societal responsibility to see that

people get a fair return from their work outside the home, and to make the workplace friendlier to families in general. I don't want to be unfair to Professor Fineman. However, I think her emphasis on societal responsibility to support caretaking in the home takes attention away from the very practical and pressing agenda for a fair return from work outside the home. She also draws attention away from the fact that sensitivity of employers to family needs would be of tangible and immediate benefit to millions. Again, she certainly says that "money . . . is not enough,"³¹ and that we "must also structure accommodation of the needs of caretaking into society's institutions,"³² but these comments seem tangential to the main thrust of her argument for compensation of caretakers.

V. THE FAMILY AND THE COMMUNITY: THE ROLE OF CIVIC RENEWAL

All of these issues help dramatize and crystallize the larger questions we should be asking. What help do parents need to do their jobs as parents? What help do families need to succeed as families? How should public policy be structured to support parents and families? How should the community's attitudes and responses be structured to support parents and families? Professor Fineman's emphasis on family is helpful, but the question as to the kind of help families need to raise their children successfully takes me to destinations that may not be on Professor Fineman's itinerary.

I used the word "community" just now. Child care is another area where Professor Fineman and I diverge. She talks about the need for an "active state," and appears to dichotomize "the state" and "market forces" as the only extant players in forming society's attitudes toward families.³³ I would introduce a third player. I suggest that we cannot succeed in delivering the help that families need unless we have an active community as well as an active state.

Although an active state is needed in order to provide funding and quality control, we will not accomplish our goals in child care without a full-scale commitment from the community as well. Civic leadership and participation are essential to the creation of a child care system that is financially accessible to parents that want to use it. I can offer one illustration of what has to take place. David Lawrence recently quit his powerful and important job as editor and publisher of the *Miami Herald* to spearhead an effort to create a child

31. Fineman, *supra* note 1, at 26.

32. Fineman, *supra* note 1, at 26-27.

33. Fineman, *supra* note 1, at 26-27.

development system for Miami and Dade County. Lawrence was at the peak of his journalism career when he decided that accomplishing school readiness for every child in Dade County was more important than anything he would ever contribute to the field of journalism.

Unless there is a systematic approach to help with financial and management skills, bureaucratic know-how, and proper child care training, child care services will not appear in sufficient volume, especially in low-income neighborhoods. Therefore, Lawrence's effort will entail the enlistment of every part of the Dade County community including: business, labor, the legal and medical professions, philanthropy, faith institutions, schools, higher education institutions (especially community colleges), community-based organizations of all kinds, individual civic and community leaders, and parents.

Child care is a great business opportunity for community development corporations to pursue, either directly or by acting as an intermediary to help others. However, without the technical assistance structure just described, the opportunity will not arise. Child care provides an excellent job opportunity for women coming off the welfare rolls, but training structures have to be in place to bring this possibility to fruition. Public funding can help, but expanded child care opportunities will not occur without top-to-bottom, wall-to-wall civic commitment from the community.

David Lawrence has undertaken this task.³⁴ America needs a Dave Lawrence in every community.

VI. A REAL JOBS PROGRAM

If we want people to work outside the home who are not now doing so (whether or not there is an element of compulsion in the policy), my formulation of societal responsibility includes provision of a job if one is otherwise unavailable.³⁵ Even now, with our nation at the height of prosperity, there is a job gap at the low end of the labor market.³⁶ Jobs have to be geographically accessible and relevant to

34. See David Lawrence, *Miami-Dade's Elected Officials, Community Leaders, Health Care Professionals, Law Enforcement Officials, Child Development Experts, and Others Convene for Three-Day Retreat to Develop an Outline for Children's Education Readiness* (visited June 27, 1999) <<http://www.co.miamidade.fl.us/internet/mayor/champchildrenretreatrelease.htm>> (discussing the holistic approach to child readiness undertaken in Miami-Dade).

35. See generally Andrew S. Gruber, *Promoting Long-Term Self-Sufficiency for Welfare Recipients*, 93 NW. U. L. REV. 247, 290 (1998) (stating that the increase in demand for workers with more advanced skills and education will increase the shortage of opportunities for low-skilled employees).

36. See Chris Brenner, *Growing Together or Drifting Apart; A Status Report on Social and*

people's skill levels. Study after study around the country projects that, when all of those who are required to work under the new welfare law are in the job market there will be two or three seekers for every job, and in large cities the ratio will be even higher.³⁷ Other than leaving people destitute, our choices at that time will be to create jobs or let people stay on the cash assistance rolls (or both, in some combination). Whenever a recession comes we will face the same dilemma. If the two times coincide, the problem will be greatly exacerbated.

In practice, designing what I call a "real jobs" program is complex. One piece of it, a transitional jobs program that is part of a training and placement strategy, is easy to describe, although not so simple to implement. A plan for longer-term jobs for those who cannot find them raises even harder design questions.

A transitional jobs program should be a key part of a system to help people get and keep jobs. I am talking about men and women, particularly young members of disfavored minority groups who often live in the "wrong" part of town, who have difficulty gaining access to the labor market. The tasks performed would help individuals develop and demonstrate work skills. Necessary job training, literacy, and job placement assistance would also be built in. The overall strategy would also include the living wage elements mentioned above, plus other key elements like transit, drug and alcohol treatment, mental health services, domestic violence, and "coaching" once a person is on the job.

A transitional jobs program is distinguishable from "workfare." Workfare is simply putting people to work doing tasks that do not make them more marketable, because it is unaccompanied by training, basic skills education, or assistance in finding a job.³⁸ Despite applicable federal law, workfare jobs often do not pay the minimum wage. At the end of the workfare period, the welfare recipient typically has no job and returns to cash assistance unless he or she has run up against the time limit.

If we are serious about helping people get and keep jobs, our societal responsibility includes paying attention to the continuing impact of racial issues in keeping people out of the job market or in

Economic Well-Being in Silicon Valley, 30 (1998) (indicating a job gap of three job seekers to every low-level job in Silicon Valley).

37. *See id.*

38. *See* Cynthia A. Bailey, *Workfare and Involuntary Servitude – What You Wanted to Know But Were Afraid to Ask*, 15 B.C. THIRD WORLD L.J. 285 (1995) (defining workfare as an idea set up by the federal government requiring welfare recipients to work for their benefits).

worse jobs than they otherwise would have. African-American and Latino poverty rates are still triple the white poverty rates, and unemployment among the two groups is still double that of whites.³⁹ The disparity in employment rates is not merely accidental. Employers discriminate in hiring. Use of simulated job applicants to do employment testing has proven this point repeatedly, if proof was even necessary.

What we need is nothing less than a new system in every community to connect low-income people, especially those who are young and/or of color, to the labor market. This means providing them with jobs in the regional economy. With all of the efforts that might and should be made to revitalize low-income inner-city neighborhoods, and I am a strong proponent of such efforts, there will never be enough jobs in the inner city to employ everyone living there who needs a job. We have to build the bridges, both physical and psychological, between the inner city and other jobs in the region. We should also revisit the issues of low-income housing and metropolitan use of low-income housing vouchers.

This is another challenge for civic engagement. Fully equal access to jobs cannot be left to the operation of the market without some kind of intervention. However, it is equally true that government intervention alone will not create the new system we need. Government can lead in the enforcement of anti-discrimination laws while providing funding and leadership in other ways. Civic leadership of all kinds, from the bottom to the top and cutting across all sectors, is essential. Employers need to be asked what their requirements are for entry-level workers, and training programs need to be designed in partnership with the employer community. Further, the race issue needs to be confronted by education and discussion as well as by enforcement.

The design of a longer-term jobs program raises difficult questions. One form it could take is an increased investment in sheltered work environments, like those we have for people who are legally or functionally disabled and are never going to succeed in getting unsubsidized employment.⁴⁰ Although an increasing number of the

39. National Household Survey, *The Employment Situation: May 1999* (last modified June 4, 1999) <<http://stats.bls.gov.newsrels.htm>> (stating that unemployment for whites is 3.7%, for blacks is 7.5%, and for Hispanics is 6.7%).

40. See generally Theo Liebmann & Ann Peters, Student Research, *Employment Programs for Individuals with Disabilities: Reducing Poverty in America?*, 1 GEO. J. ON FIGHTING POVERTY 132, 133 (1993) (reporting that sheltered workshops employ "approximately one-quarter of a million individuals").

legally disabled would like to work, they find it difficult to do so.⁴¹ Also, many of the chronically poor, which includes those who are still on the welfare rolls even after all the shrinkage that has occurred, are only marginally employable at best. For these reasons, a sheltered workshop concept might be a better solution.

Many adherents of a longer-term job creation strategy point to the Work Projects Administration (WPA) and the Civilian Conservation Corps (CCC) programs of the New Deal as models.⁴² Those programs, however, were counter-cyclical models, employing people with long work experience who were out of work because of the Depression. The clients of our longer-term program are not in a cyclical situation. Many of them have been mired in impoverished neighborhoods or personal depression for a long time. Other than providing inspiration, I do not see the WPA or the CCC serving as models to solve their problems.

Our overall aim should be to employ the maximum number of people possible on private payrolls. Government jobs (and private-sector jobs financed with public money) should be kept to the minimum needed to do what we think we need to accomplish the government services we think we want. There is no point in using public money to employ someone to do something that the public does not want done with public money.

My best thought is that, to the extent that we estimate the existence of a structural job gap⁴³ of three to five million jobs, we should decide what types of jobs are the highest priority among things not being currently done and invest more in those areas. The jobs would have to be jobs that relatively unskilled people can perform. Thus, if it was found that society needed more child care workers, home health care workers, conservation workers, housing re-builders, or highway builders, we could invest more heavily in those areas and stipulate that unemployed or underemployed low-income people be hired to perform these added jobs.

VII. THE ISSUE OF COMPULSION

Martha Fineman might agree with the my ideas about living wages

41. *See id.* at 133 (stating that disabled people have a difficult time finding and keeping work and that as a whole, disabled people represent the smallest group in the workforce).

42. *See* Peter Dreier, *America's Urban Crisis: Symptoms, Causes, Solutions*, 71 N.C. L. REV. 1351, 1388 (1993) (noting that later administrations have emulated the New Deal work programs as a counter-cyclical tool to combat high unemployment).

43. *See* Gruber, *supra* note 35, at 288 (citing a job gap of over 280,000 in Illinois).

from work, access to the job market and job creation.⁴⁴ Her disagreement would be over who should work outside the home. I include discussion of the terms and conditions and very existence of work in partial response to her call for collective support for caretaking because I want to clarify that if I am going to require people to work outside the home I am going to insist that they be treated fairly (and, for that matter, that all workers and job seekers be treated fairly).

The issue of whether to compel anyone to work outside the home as a condition of receiving benefits should be a subject of renewed debate. There will always be moral issues involved in coercing anyone to work. Equally or maybe more important, rules to govern the behavior of assistance recipients are administered by bureaucrats, and there is tremendous room for overreaching. Still, I have come to believe that one of the flaws of the old system is that not only did it not offer people enough help to get jobs, but it did not do enough to push people to look for work.

My premise is that working outside the home is a good thing. Clearly, children should be cared for properly, and the pay and associated publicly financed benefits should at least get people out of poverty. But working outside the home, for parents other than those with small children, is beneficial according to the widely accepted mores of this society, and perhaps according to the fundamental rules of human nature.

I would design the assistance program so that it is much more carrot than stick, but I think there must be some stick. I used to believe that all that was necessary was to make work pay enough more than welfare (without cutting benefits) so that almost no one would want to stay home. That has, unfortunately, turned out to be unrealistic, for two reasons.

First, in the real world the differences between benefits and take-home pay from work are not large enough to make work a sufficiently better deal, and are sometimes even negative. Work should yield substantially more than even an adequate welfare subvention, but for too many people that is not going to be the case in the immediate future.

Second, one of the consequences of the massive increase in concentrated poverty over the past thirty years is that there are neighborhoods, and especially public housing projects, where there are large numbers of people not working. The non-working poor in

44. See Fineman, *supra* note 1, at 20 (citing the economic and labor costs of caretaking).

these neighborhoods are a minority of the poor generally, and much of their non-employment would be cured (as is occurring to some extent at the moment) by the visible availability of work.⁴⁵ Unfortunately, the idea of not working has become ingrained enough that there are observable numbers of people who will not bestir themselves to seek work unless they have to. Most welfare recipients would prefer to work,⁴⁶ but some need a push, as they live disproportionately in neighborhoods where welfare is most prevalent. For this reason, an element of compulsion may be necessary.

Nonetheless, in any welfare office for which I had responsibility, the workers would be instructed to be positive and helpful, figuring out what needed to be done to get a recipient into a job and helping her to hold on to it. Sanctions would be a secondary feature, never resulting in removal of the whole family from the rolls, never permanent in their effect, and always used fairly and as a last resort. The promotion of work would be constructive and affirmative, and the protection of children would be a consideration of equal magnitude and importance. Currently, there are only a handful of states where I believe these statements describe the policies that govern implementation of the so-called welfare reform.

More often these days, current recipients are subject to escalating sanctions, or at least termination from the rolls, if they do not cooperate with detailed and demanding rules of attendance for frequent mandatory appointments at the welfare office, demonstrating numbers of jobs applied for, and punctual, perfectly faithful attendance at assigned work and training tasks.⁴⁷ The sanctions and termination are typically applied without procedural safeguards, and in many states, dereliction results in removal of the whole family from the rolls. In a few states removal is permanent.⁴⁸ As to new applicants the attitude is that they should turn around and go look for a job. In many offices around the country cash help is

45. See Archbishop Rembert G. Weakland, Speech "Hear the Cries of the Poor: The Urban Poor and Churches" in *Beyond Welfare Reform and Charity, Poverty is More Challenging Problem*, NAT. CATH. REP., Nov. 1, 1996, at 9 (noting that poverty will always be linked to the availability of work).

46. See Joel F. Handler, "Ending Welfare as We Know It": *Wrong for Welfare, Wrong for Poverty*, 2 GEO. J. ON FIGHTING POVERTY 3, 25-26, 29 (1994) (arguing that most welfare recipients prefer to work).

47. See Walter M. Leurs, *Workfare Wages Under the Fair Labor Standards Act*, 68 FORDHAM L. REV. 203, 221-23 (1998) (describing the use of sanctions implemented against non-compliant welfare recipients under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

48. See *id.* at 221 n.189 (recognizing that states have discretionary power to impose harsher sanctions upon non-compliant welfare recipients).

routinely denied initially, and often applicants are not told that they are immediately eligible for Medicaid and food stamps under federal law.⁴⁹

Even more important than a sensible welfare policy itself would be a reminder that the aim should be to reduce poverty, not simply to cut the welfare rolls. We certainly want to have fewer people on welfare, but we should accomplish this by reducing the need for it. This means even more than the living wage and jobs policies described above. It means ensuring that public schools teach all children successfully, and providing safe and supportive community environments in which to live and raise children. Mothers with preschool children, who would be eligible for Professor Fineman's caretaking payment on a means-tested basis,⁵⁰ should have the supports necessary to work outside the home if that is what they want to do. If we had a true anti-poverty policy, the need for welfare would be greatly diminished, and the debates over who should be required to go to work, or over welfare time limits, or any of the other hot-button aspects of welfare would shrink from sight.

VIII. CONCLUSION

The *raison d'être* of welfare policy has become making sure that every last loafer and cheater is cleared off the rolls, with the effect that large numbers of people who never loafed or cheated, but may have been confused or intimidated or didn't understand or had a personal problem of one kind or another, have also been cut off. It does make one wonder what kind of a country we have become, and why, with all our wealth, we cannot make the presumption run in the other direction, and have the mistakes we make be in the direction of keeping a few people on the rolls who should not be there, to make sure those who should be there are not knocked off. We have become so vindictive, so determined to root out every miscreant. We could afford to be kinder with our welfare policy programming.

We should be able to keep two ideas in our head: the value of work for parents and children, and the need for a safety net to protect

49. See generally Sharon Keigher, *Welfare at Ground Zero: Having to Fly Without a Safety Net*, HEALTH & SOC. WORK, Aug. 1, 1998, at 233 (citing a report published by the Institute for Wisconsin's Future which found that under Wisconsin's recommendation for social workers to use a "light touch," the state has encouraged social workers not to inform welfare applicants of all the benefits available to them). Although the state claimed to have not intended this policy to apply to Medicaid and food stamp programs, the report stated that a recent random sampling of 138 W-2 participants demonstrated that significant numbers of participants were not informed of Medicaid and food stamp benefits. *Id.*

50. See Fineman, *supra* note 1, at 19 (citing the collective debt society owes to care-takers).

children. These two ideas do not mesh simply, and I have laid out some of the complexities of their interaction. Maintaining a safety net would mean no arbitrary time limits on assistance, sensible sanctions administered as an adjunct to a positive work assistance policy, and clear exceptions to work requirements for mothers of preschool children and mothers caring for infirm relatives and chronically ill children.

Martha Fineman is right when she says we should attach more societal value to the caretaking of children.⁵¹ She falls short, however, when she under-emphasizes the potential of work outside the home to strengthen families, provided that the state and the community fulfill their collective responsibility to help parents meet their obligations to their children. The conversation as a whole falls short if it fails to situate itself in the context of what it would take to reduce the unacceptably high rate of poverty in the wealthiest nation in the history of the world.

51. Fineman, *supra* note 1, at 26.

