

Is there A Progressive Alternative to Conservative Welfare Reform?

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Contents

I. INTRODUCTION: THE POLITICAL FAILURE OF THE PROGRESSIVE RESPONSE TO CONSERVATIVE WELFARE REFORM	1
II. THE COLLAPSE OF THE FULL-EMPLOYMENT POLICY GOAL IN MARKET SOCIETIES	10
A. Labor Market Conditions	10
B. The Rise and Fall of Full Employment as A Public Policy Goal	13
C. The Renewal of Progressive Interest in Income and Work Guarantee Proposals	17
III. THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AS A POLICY GUIDE	19
IV. COMPARING THE BASIC INCOME AND EMPLOYMENT GUARANTEE STRATEGIES	24
A. The Relative Cost of the Strategies	24
B. Achieving Administrative Simplicity and Protecting the Dignity of the Poor	35
C. The Social Insurance Function	39
D. Addressing the Problem of Unemployment	42
E. Improving the Quality of Low Wage Work	46
F. The Right to Personal Development and Freedom	47
V. CONCLUSION	49

I

Introduction: The Political Failure of the Progressive Response to Conservative Welfare Reform

Despite the political resurgence of American conservatism during the past several decades,¹ the movement has achieved only modest success in scaling back the American welfare state.² With few exceptions, the social welfare programs established by progressive reformers during the New Deal and Great Society eras have remained intact.³ Moreover, this is especially true of the relatively small number of programs that account for most social welfare spending in the United States – Social Security, Medicare, and Medicaid.⁴ Indeed, if we compare the multitude of programs and legal reforms that progressives were able to put in place during the 1930s and 1960s with the limited gains achieved by conservatives in rolling back those programs and reforms, the conservative “revolution”⁵ would have to be judged a failure – with one dramatic exception. That exception is “welfare reform” – the redesign of public assistance programs for impoverished adults and their families.⁶

¹ For an account of the rise of the American conservative movement by a mainstream liberal historian, see Alan Brinkley, *America Since 1945: The Rise of the Right*, Columbia University Interactive, undated, available at <http://cero.columbia.edu/0720/index.html>. For an account of the same history by a conservative historian, see See LEE EDWARDS, *THE CONSERVATIVE REVOLUTION: THE MOVEMENT THAT REMADE AMERICA* (1999).

² For the importance of this goal to the conservative reform agenda, see MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* 161-95 (1962); GEORGE GILDER, *WEALTH AND POVERTY* (1981); and CHARLES A. MURRAY, *LOSING GROUND, AMERICAN SOCIAL POLICY, 1950-1980* (1984).

³ I shall use the term “progressive” to refer to the people and political tendencies generally encompassed by the term “liberal” in the United States or “social democratic” in Europe, along with elements of the democratic left that have been critical of American “liberalism” or European “social democracy” for failing to pursue progressive values with sufficient vigor. The Universal Declaration of Human Rights and its progeny – including the economic and social human rights recognized therein – provide the best summary statement of the values I am characterizing as “progressive” in this usage. See DAVID WEISSBRODT, ET AL., *SELECTED INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND BIBLIOGRAPHY FOR RESEARCH ON INTERNATIONAL HUMAN RIGHTS LAW*, 3rd Ed. (2001).

⁴ Real, per capita government transfer payments to individuals increased 65.2 percent between 1980 and 2003. This figure was dominated by a 199.4 percent increase in medical payments (mostly Medicare and Medicaid), but retirement and disability payments (Social Security) increased 30.7 percent on a per capita basis over this period, and income maintenance payments (a much smaller absolute figure consisting of means-tested aid) increased 29.9 percent. Authors calculations based on data from U.S. Bureau of the Census, *Statistical Abstract of the United States 2006*, 358, Table 527.

⁵ See EDWARDS, *supra* n. 1.

⁶ The New Dealers’ response to this population focused on direct job creation in programs like the WPA and CCC, but these programs were eliminated when full employment was achieved during World War II. See PHILIP HARVEY, *SECURING THE RIGHT TO EMPLOYMENT: SOCIAL WELFARE POLICY AND THE UNEMPLOYED IN THE UNITED STATES*, 16-20, 99-106 (1989). Following the demise of this commitment to job creation as a social welfare measure, the Aid to Dependent Children (ADC) program – later renamed the Aid to Families with Dependent Children (AFDC) program – became the principal source of public aid for destitute families with non-working heads. Originally established in 1935, Social Security Act, Pub. L. No. 74-271, §§ 401-406, 49 Stat. 620, 627-29 (1935), this program provided means-tested public assistance benefits to poor families with children who had lost the

In this area conservatives have been not only successful, but spectacularly so, achieving dramatic reductions in both the value of individual public assistance benefits⁷ and overall expenditure levels,⁸ the addition of substantial work requirements for the receipt of benefits,⁹ and a significant devolution of control over public assistance programs to the states (whose administration of such programs historically has been more in keeping with conservative social welfare doctrine).¹⁰

Long a target of conservative criticism,¹¹ the defunding of the Aid for Families with Dependent Children (AFDC) program began in the mid-1970s when state legislatures established

support of a parent (almost always the father) as a result of the parent's death, incapacity, desertion, or (in about half the states after 1961) unemployment. The New Deal social welfare planners who proposed this program thought of it as "[a]id to fatherless children." Their goal was to relieve the mothers of these "dependent" children of the necessity of working outside the home, so they could instead devote themselves to raising their children. COMMITTEE ON ECONOMIC SECURITY, REPORT 36 (1935), reprinted in NATIONAL CONFERENCE ON SOCIAL WELFARE, THE REPORT OF THE COMMITTEE ON ECONOMIC SECURITY OF 1935 AND OTHER BASIC DOCUMENTS RELATING TO THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 56 (1985). Had the New Dealers thought these mothers should be working, there would have been no need for the program, since they simply could have been offered work (perhaps on a preferential basis) in one of the New Deal's jobs programs. Despite this intent, though, the state-administered programs established with ADC funding conformed more to the old poor law tradition (which presumed the able-bodied poor were work shy laggards who should be supporting themselves) than to the New Deal goal of providing mothers who lost their mate's support a "mother's pension" allowing them to stay home with their children. For a description of the poor law tradition in the United States, see MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA 3-213 (1986, 1996); and Philip Harvey, *Joblessness and the Law Before the New Deal* 6 GEO. J. ON POVERTY L. & POL'Y 21-41 (1999). For an account of the history of the ADC/AFDC program which focuses on the role work expectations played in its administration, see GERTRUDE SCHAFFNER GOLDBERT AND SHEILA D. COLLINS, WASHINGTON'S NEW POOR LAW: WELFARE "REFORM" AND THE ROADS NOT TAKEN, 1935 TO THE PRESENT (2001).

⁷ See Committee on Ways and Means, U.S. House of Representatives, 1996 GREEN BOOK, 448 (November 4, 1996).

⁸ See THEODORE R. MARMOR, JERRY L. MASHAW, & PHILIP L. HARVEY, AMERICA'S MISUNDERSTOOD WELFARE STATE: PERSISTANT MYTHS, ENDURING REALITIES, 85 (1990); ANN. STAT. SUPP. SOC. SEC. BULL., 2005, Social Security Administration Publication No. 13-11700 (Feb. 2006), Table 9.G1.

⁹ See Family Support Act of 1988, PL 100-485, § 201, 102 Stat 2343 (October 13, 1988) (Hereinafter Family Support Act of 1988) (requiring "all recipients of aid to families with dependent children ... to participate in the [job opportunities and basic skills training] program); Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, §§ 103, 365, 824, 110 Stat. 2105 (August 22, 1996) (Hereinafter PRWORA) (various work requirements throughout including for welfare and food stamp recipients).

¹⁰ See PRWORA, *supra* n. 9. See also Ahmed A. White, *Capitalism, Social Marginality, and the Rule of Law's Uncertain Fate in Modern Society*, 37 Ariz. St. L.J. 759, 805 (stating that the "PRWORA almost completely 'devolved' to the states the role of administering public assistance" and it "'totally reorganized federal/state relations on welfare requirements[,] thereby ending a sixty-year-old federal entitlement system designed to provide a safety net for America's poor'" (citing Brendon O'Connor, *A Political History of the American Welfare System: When Ideas Have Consequences* 228-35 (2004)); Gail P. Dave et al., *Developments in Policy: Welfare Reform*, 16 Yale L. & Pol'y Rev. 221 (1997).

¹¹ Conservative criticism of ADC began in the early 1950s, paused during the Eisenhower years, resumed during the Kennedy administration, and has been unstinting ever since then. See GOLDBERG AND COLLINS, WASHINGTON'S NEW POOR LAW, *supra* n. 6, at 49-53, 128-201.

a practice of failing to increase AFDC benefits enough to match price increases.¹² During the 1980s conservative reformers were able to achieve reductions in federally mandated program benefits and the imposition of work requirements for the receipt of benefits.¹³ The real turning point came in the 1990s, though, when the conservative critique of “welfare” began to attract significant support from the middle of the political spectrum. Epitomized by President Clinton’s support for “welfare reform” legislation in 1996, this center-right coalition achieved a fundamental restructuring of public assistance policy along conservative lines.¹⁴

These trends were strongly criticized by progressive scholars and anti-poverty advocates in the late 1990s,¹⁵ but this criticism died down when the harsh effects feared by opponents of the reforms failed to materialize.¹⁶ In recent years, most progressive anti-poverty advocates appear to have reconciled themselves to the promotion of private-sector employment as a means of escaping poverty. Instead of maintaining their opposition to the 1990s reforms, progressive anti-poverty advocates have shifted the focus of their efforts to expanding the range and amount of assistance provided needy individuals in finding jobs,¹⁷ pushing for improvements in private-

¹² See *supra* n. 7 & n. 8.

¹³ See Omnibus Budget Reconciliation Act of 1981 (OBRA), PL 97-35, 95 Stat 357 (August 13, 1981) (imposing a gross income limit for AFDC eligibility, capping the deduction for child care costs, establishing a standard deduction for other work expenses and ending the work incentive disregard after 4 months on the job); Family Support Act of 1988, *supra* n.9 (adding work requirements). For a discussion of the changes in AFDC enacted in 1988, see THEODORE R. MARMOR, JERRY L. MASHAW, & PHILIP L. HARVEY, AMERICA’S MISUNDERSTOOD WELFARE STATE: PERSISTENT MYTHS, ENDURING REALITIES, 114-27 (1990).

¹⁴ Similar trends emerged in Europe at approximately the same time, with centrists like United Kingdom Prime Minister Tony Blair and German Chancellor Gerhard Schroeder playing a similarly decisive role in pushing what hitherto had been viewed as a conservative reform agenda. See Tony Blair and Gerhard Schroeder, *Europe: The Third Way*, Joint Statement by Tony Blair, British Labour Party Prime Minister, and Gerhard Schroeder, German Social Democrats Prime Minister, June 8, 1999, available at <http://www.socialdemocrats.org/blairandschroeder6-8-99.html>. For an account of the similarities in “welfare reform” the United States and Western Europe during this period, see JOEL F. HANDLER, SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE: THE PARADOX OF INCLUSION (2004).

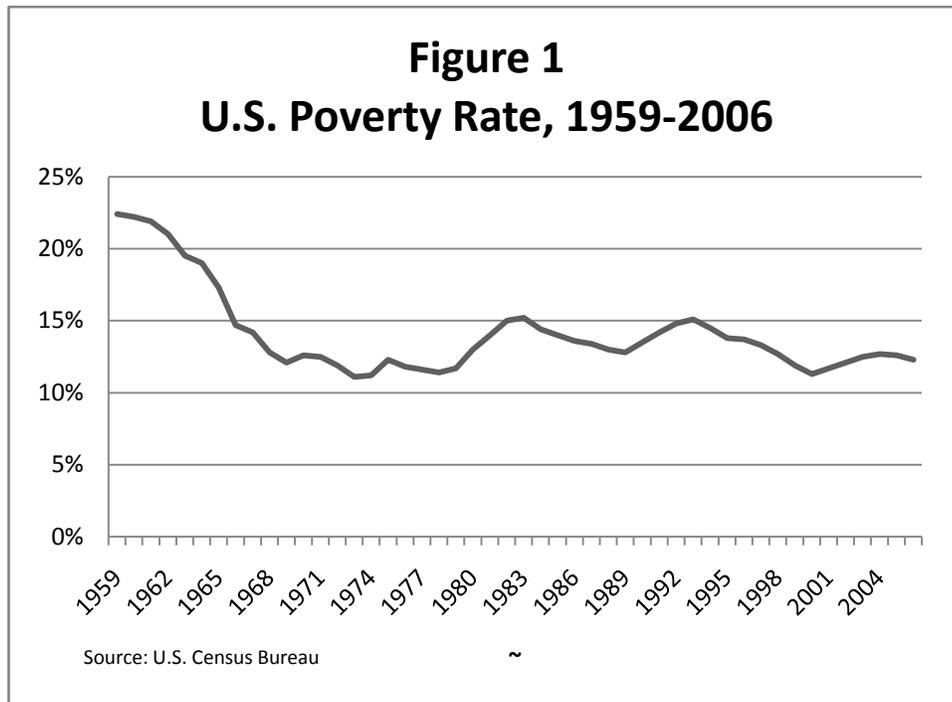
¹⁵ See, e.g., Peter Edelman, *The Worst Thing Bill Clinton Has Done*, THE ATLANTIC MONTHLY, Vol. 279, No. 3 (March 1997), pp. 43–58; David A. Super, Sharon Parrott, Susan Steinmetz, and Cindy Mann, *The New Welfare Law*, Center on Budget and Policy Priorities (August 13, 1996); Patricia Ireland, then president of the National Organization for Women, Quoted in Lisa Bennet-Haigney, *Welfare Bill Further Endangers Domestic Violence Survivor*, National NOW Times (January 1997) (stating that the new law “places 12.8 million people on welfare at risk of sinking further into poverty and homelessness”).

¹⁶ See Rebecca M. Blank, *What Did the 1990s Welfare Reforms Accomplish?* in PUBLIC POLICY AND THE INCOME DISTRIBUTION 33-79 (Alan J. Auerbach et al., eds., 2006).

¹⁷ See, e.g., web site for Seedco, “a national nonprofit organization that works with local partners to create economic opportunities for disadvantaged job seekers, workers and neighborhood entrepreneurs,” available at <http://www.seedco.org/>.

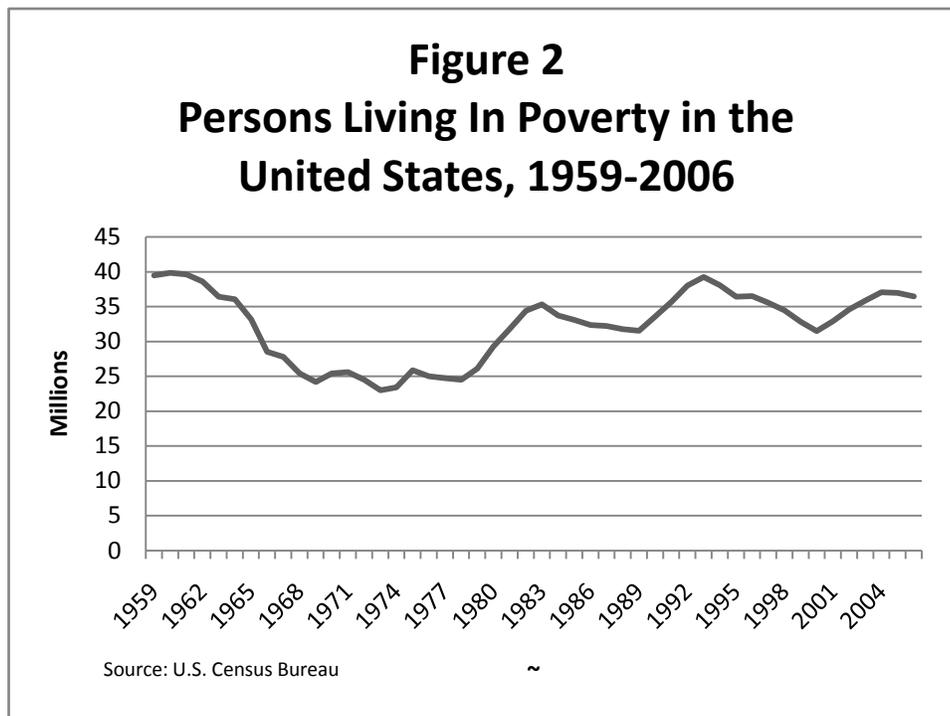
sector wages and benefits,¹⁸ and promoting the provision of publicly-funded wage supplements.¹⁹

The result has been a blurring of the distinction between conservative and progressive welfare reform initiatives and a consequent reduction in the political salience of policy debate in this area. Welfare reform is no longer a hot button issue. Left-of-center politicians may be thankful for that, since in recent decades the issue was used mainly by conservatives to beat up on them. Still, with overall poverty rates stuck above the levels achieved in the early 1970s and the absolute number of individuals living in poverty trending upward since then (See Figures 1 and 2) progressives have reason to question the adequacy of their current policy stance.



¹⁸ The so-called “Living Wage Campaign” led by the Association of Community Organizations for Reform Now (ACORN) exemplifies these efforts in the United States. See <http://www.livingwagecampaign.org/>.

¹⁹ See, e.g., Randy Albelda et al., *Bridging the Gaps: A Picture of How Work Supports Work in Ten States*, Center for Economic and Policy Research, Washington DC, and The Center for Social Policy, University of Massachusetts, Boston, Oct. 10, 2007.



There is little doubt that poverty rates would decline if progressives got what they currently say they want, but for reasons I will explain below, there is no reason to believe this strategy is capable of eliminating poverty. If progressives seriously want to pursue the goal of eliminating poverty, they need a strategy that breaks more decisively with the existing policy regime. The purpose of this article is to identify and compare two candidates for that role which progressive scholars working outside the political mainstream have developed in recent decades.

The first proposal is that all members of society be guaranteed an unconditional Basic Income without imposing any work requirements in exchange for the benefit. As explained on the web site of the U.S. Basic Income Guarantee (USBIG) Network,

[A] Basic Income Guarantee (BIG) is a government ensured guarantee that no one's income will fall below the level necessary to meet their most basic needs for any reason. As Bertrand Russell put it in 1918, "A certain small income, sufficient for necessities, should be secured for all, whether they work or not, and that a larger income ... should be given to those who are willing to engage in some work which the community recognizes as useful. On this basis we may build further." Thus, with BIG no one is destitute but everyone has the positive incentive to work. BIG is an efficient, effective, and equitable solution to poverty that promotes individual freedom and leaves the beneficial aspects of a market economy in place.²⁰

²⁰ U.S. Basic Income Guarantee Network, *What Is the Basic Income Guarantee?*, available at <http://www.widerquist.com/usbig/>.

As the reference to Bertrand Russell in this quote illustrates, guaranteed income proposals are not new,²¹ but the contemporary Basic Income advocacy movement originated in Western Europe only in the mid-1980s.²² Despite its relatively recent origins, however, the movement has grown rapidly during the past two decades and now commands support from a wide array of left libertarians, anti-poverty advocates, feminists, and greens around the world.²³

A Basic Income (BI) guarantee could be provided in various ways, but the two most frequently proposed mechanisms are a negative income tax and a universal grant system.²⁴ A negative income tax would pay benefits only to persons whose income fell below a specified level, with the size of their benefit varying inversely with the amount of income they received from other sources. With a universal grant system, the same BI benefit would be paid to all persons regardless of their income, though assuming the benefit was funded with income tax receipts, persons in higher tax brackets would pay more to fund the system than the BI grant they received.²⁵ Supporters of the BI strategy have suggested that it could replace a wide array of government transfer benefits in market societies, including all means-tested public assistance.

²¹ See Philippe Van Parijs, *A Short History of Basic Income*, available at <http://www.etes.ucl.ac.be/BIEN/BI/HistoryBI.htm>.

²² Basic Income European Network (BIEN), *A Short History of BIEN*, available at <http://www.etes.ucl.ac.be/BIEN/BIEN/HistoryBIEN.htm>. Since the “Basic Income” designation has achieved almost iconic status among advocates of the idea, I shall capitalize the term whenever it is used to refer to the ideas or policy proposals of the contemporary guaranteed income advocacy movement.

²³ Philippe Van Parijs, a philosopher who teaches at the Catholic University of Louvain in Belgium and Harvard, Guy Standing, formerly Director of the Socio-Economic Security Program of the International Labor Organization, and Brazilian Federal Senator Eduardo Suplicy are the leading contemporary exponents of the Basic Income idea. See PHILIPPE VAN PARIJS, *REAL FREEDOM FOR ALL: WHAT (IF ANYTHING) CAN JUSTIFY CAPITALISM?* (1995); GUY STANDING, *BEYOND THE NEW PATERNALISM: BASIC SECURITY AS EQUALITY* (2002); and EDUARDO MATARAZZO SUP LICY, *RENDA DE CIDADANIA: A SAÍDA É PELA PORTA*, 3rd ed. (2004). American legal scholars who have endorsed Basic Income proposals in their work include Joel Handler, Anne Alstott, and Amy Wax. See HANDLER, *SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE*, *supra* note 14 **Error! Bookmark not defined.**, at 272-78; Anne Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies* 108 *YALE L.J.* 967-1058 (1999). Amy L. Wax, *Something for Nothing: Liberal Justice and Welfare Work Requirements*, 52 *EMORY L.J.* 1 (2003). Links to Basic Income advocacy web sites around the world and extensive bibliographies on the subject of Basic Income guarantees can be found at the websites of both the Basic Income European Network (BIEN) <<http://www.basicincome.org>> and the U.S. Basic Income Guarantee Network (USBIG) <<http://www.usbig.net>>.

²⁴ For discussions of the similarities and differences between a negative income tax and universal grant system, see Philippe Van Parijs, *Basic Income: A Simple and Powerful Idea for the 21st Century*, in *REDESIGNING DISTRIBUTION: BASIC INCOME AND STAKEHOLDER GRANTS AS CORNERSTONES FOR AN EGALITARIAN CAPITALISM* 3-42 (Erik Olin Wright, ed., 2006); and Alstott, *supra* note 23.

²⁵ Royalty payments or other acquisition fees paid to government for the exploitation of publicly owned natural resources have been proposed as an alternative source of funding for a Basic Income guarantee, and Alaska actually does provide its residents a modest Basic Income grant funded in this manner. See Scott Goldsmith, *The Alaska Permanent Fund Dividend: An Experiment in Wealth Redistribution*, (paper presented at the 9th International Congress of the Basic Income European Network, Geneva, Sept. 12-14, 2002), available at <http://www.etes.ucl.ac.be/BIEN/Files/Papers/2002Goldsmith.pdf>.

The second proposal is that poverty be eliminated by combining a guarantee of decent employment for everyone who wants a job with an income guarantee for those persons who are unable or not expected to earn their own livelihood. The first prong of this strategy would use direct job creation by government to guarantee the availability of an adequate supply of jobs. The second prong would use conventional transfer programs to provide a range income security benefits. For purely descriptive purposes, I shall refer to this as the “Jobs and Income” (JI) strategy in this article.²⁶

Like the BI strategy described above, the idea of using a combination of work and income guarantees to combat poverty has a long history.²⁷ It was expressed quite clearly over two centuries ago in the French Constitution of 1793 which declared that “[p]ublic aid is a sacred debt. Society owes subsistence to the unfortunate, either by procuring them work, or by assuring the means of existence to those who are unable to work.”²⁸ In the United States the idea achieved its most authoritative endorsement during the New Deal era, when social welfare planners within the Roosevelt administration proposed that the federal government combine direct job creation with other social insurance benefits to guarantee the economic security of all Americans.²⁹ An early but impressively complete expression of this proposal can be found in the Report of the cabinet-level Committee on Economic Security whose recommendations in early 1935 led to the enactment of the New Deal’s most significant social welfare legislation.³⁰ The Committee

²⁶ A variety of terms have been used to describe this strategy, a result of the fact that proposals embodying the idea were developed independently by a number of people in the late 1980s and 1990s. I originally referred to the strategy as an Employment Assurance Policy (EAP) in deference to the New Deal social welfare planners who promoted it in the 1930s. See HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 6. Scholars affiliated with the Levy Economics Institute at Bard College (<http://www.levy.org/>) and the Center for Full Employment and Price Stability (CFEPS) at the University of Missouri – Kansas City (<http://www.cfeps.org/>) refer to proposals of this type as “Employer of Last Resort” (ELR) schemes. Scholars affiliated with the Center of Full Employment and Equity (CofFEE) at the University of Newcastle in Australia and the University of Maastricht in the Netherlands (<http://e1.newcastle.edu.au/coffee/>) refer to the policy as a “Job Guarantee” (JG). More generally, the use of direct job creation to expand employment opportunities for disadvantaged population groups without necessarily guaranteeing work for all job seekers is commonly referred to as Public Service Employment (PSE). See, e.g., Elwood and Welty, *supra* n. 36.

²⁷ See RICHARD LEWIS SIEGEL, EMPLOYMENT AND HUMAN RIGHTS: THE INTERNATIONAL DIMENSION 23-71 (1994); Philip Harvey, *The History of Right to Work Claims* (Rutgers-Camden Series of Occasional Papers No. 1, 1998), available at <http://www-camlaw.rutgers.edu/faculty/occasional/1-harvey.html>.

²⁸ Constitution of 1793, Declaration of the Rights of Man and of the Citizen, art. 21, in 2 JOHN HARDMAN, FRENCH REVOLUTION DOCUMENTS 141 (1973). For an account of the role of right to work claims in the French revolution, see R.B. ROSE, GRACCHUS BABEUF: THE FIRST REVOLUTIONARY COMMUNIST (1978). A similar provision recognizing the right to work was included in Frederick the Great’s contemporaneously promulgated Prussian Civil Code. See SIEGEL, *supra* note 27, at 31.

²⁹ Philip Harvey, *Combating Joblessness: An Analysis of the Principal Strategies That Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 BERKELEY J. EMP. & LAB. L. 675, 689-94.

³⁰ The Committee was appointed by President Roosevelt in the summer of 1934 to make recommendations as to how the American people could be provided “safeguards ‘against misfortunes which cannot be wholly eliminated in this man-made world of ours.’” Committee on Economic Security, Letter of Transmittal, January 15, 1935, reprinted in NATIONAL CONFERENCE ON SOCIAL WELFARE, THE REPORT OF THE COMMITTEE ON ECONOMIC

explained the job guarantee component of its overall social welfare strategy in the following terms.

Since most people must live by work, the first objective in a program of economic security must be maximum employment. As the major contribution of the Federal Government to providing a save guard against unemployment we suggest employment assurance – the stimulation of private employment and the provision of public employment for those able-bodied workers whom industry cannot employ at a given time. Public-work programs are most necessary in periods of severe depression, but may be needed in normal times, as well, to help meet the problems of stranded communities and over-manned or declining industries.³¹

In addition to its “employment assurance” proposal – which led to the establishment of the New Deal’s most ambitious direct job creation program³² – the Committee proposed the establishment of the nation’s Social Security and Unemployment Insurance programs, means-tested public assistance programs for children and the elderly, and the U.S. Public Health Service. The Committee also indicated its support for the establishment of a national health insurance program that would provide both wage replacement and medical insurance benefits.³³

For reasons I shall discuss below, the New Deal commitment to direct job creation as a means of achieving full employment disappeared from the progressive reform agenda during the 1940s,³⁴ and it was not until the mid 1980s that the strategy once again began to attract attention. In recent years post-Keynesian economists have developed an interest in direct job creation as a means of achieving full employment with price stability.³⁵ Anti-poverty analysts have viewed it

SECURITY OF 1935 AND OTHER BASIC DOCUMENTS RELATING TO THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 17-18 (1985) (Hereinafter REPORT OF THE COMMITTEE ON ECONOMIC SECURITY). It was chaired by Secretary of Labor Frances Perkins and included Secretary of the Treasury Henry Morgenthau Jr., Attorney General Homer Cummings, Secretary of Agriculture (later Vice President) Henry Wallace, and Federal Emergency Relief Administrator Harry Hopkins.

³¹ REPORT OF THE COMMITTEE ON ECONOMIC SECURITY, *supra*, n. 30, at 23.

³² The Works Progress Administration (WPA) was established on May 6, 1935 pursuant to authority granted President Roosevelt under the Emergency Relief Appropriation Act of 1935. For a brief history and description of the WPA and other job creation programs, see ARTHUR E. BURNS AND EDWARD A. WILLIAMS, *FEDERAL WORK, SECURITY, AND RELIEF PROGRAMS* 53-75 (De Capo Press 1971) (1941).

³³ *Id.* at 21-70.

³⁴ The term “full employment” did not make its appearance in the lexicon of ordinary political discourse until the early 1940s., as a result of the popularization of John Maynard Keynes’ influential 1936 treatise, *The General Theory of Employment, Interest and Money*. See Philip Harvey *Combating Joblessness: An Analysis of the Principal Strategies That Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 BERKELEY J. EMP. & LAB. L. 675, 705 n. 97. The Committee’s reference to “maximum employment” was simply one of the formulations in the passage quoted above was a reference to what later came to be known as “full employment.”

³⁵ See HYMAN MINSKY, *STABILIZING AN UNSTABLE ECONOMY* (1986); Wendell Gordon, *Job Assurance – the Job Guarantee Revisited*, 31 J. ECONOMIC ISSUES 826-34 (1997); William F. Mitchell and Martin Watts, *The Path to Full Employment* 31 AUSTRALIAN ECON. REV. 436-444 (1997); Warren Mosler, *Full Employment and Price*

as a possible means of providing employment opportunities to disadvantaged population groups.³⁶ And economic and social human rights advocates have seen it as a means of securing the right to work.³⁷

In Part II of this article I describe the labor market conditions that have undermined the success of both conservative and progressive anti-poverty measures in recent decades, and which have inspired renewed interest in alternative strategies for combating the problem based on employment and/or income guarantees. I point out that the Achilles heel of the existing policy regime – a flaw that affects both its conservative and its progressive elements – is its reliance on the promotion of private-sector employment as a route out of poverty when the economy consistently fails to provide enough jobs to furnish such employment for all job seekers. I argue that the faith both conservative and progressive policy makers have invested in this strategy constitutes a classic example of the fallacy of composition – assuming that a strategy that works for individuals will work for all individuals if everyone pursues the strategy simultaneously.

In Part III of the article I introduce the economic and social provisions of the Universal Declaration of Human Rights³⁸ as a performance standard suitable for use by progressives in judging the relative merits of economic and social welfare proposals – including the BI and JI strategies. By expressly embracing the Universal Declaration as a performance standard for judging public policy proposals, I argue that progressive law and economics scholars can achieve the same analytic rigor as their neo-classical counterparts without sacrificing their commitment to progressive values.

In Part IV of the article I use this methodology to assess the relative merits of comparable versions of the BI and JI strategies – versions capable of eliminating official poverty in the United States. My overall conclusion is that the JI strategy provides both a more effective and a less costly means of eliminating poverty than the BI strategy, and that most of the other policy goals promoted by BI advocates also could be more successfully pursued at lower cost using the JI strategy.

This conclusion should not be interpreted as suggesting that the BI idea lacks merit, only that the JI strategy appears to provide a better alternative to the existing public assistance policy

Stability 20 J. POST-KEYNESIAN ECON. 167-82 (1997); RANDALL WRAY, UNDERSTANDING MODERN MONEY: THE KEY TO FULL EMPLOYMENT AND PRICE STABILITY (1998); Mathew Forstater, *Flexible Full Employment: Structural Implications of Discretionary Public Sector Employment* J. ECON. ISSUES 557-563 (1998).

³⁶ DAVID R. REIMER, THE PRISONERS OF WELFARE: LIBERATING AMERICA'S POOR FROM UNEMPLOYMENT AND LOW WAGES (1988); MICKEY KAUS, THE END OF EQUALITY (1992); Peter Gottschalk, *The Impact of Changes in Public Employment on Low-Wage Labor Markets*, in GENERATING JOBS: HOW TO INCREASE DEMAND FOR LESS-SKILLED WORKERS 72-101 (Richard B. Freeman and Peter Gottschalk, eds., 1998); David T. Ellwood and Elisabeth Welty, *Public Service Employment and Mandatory Work: A Policy Whose Time Has Come and Gone and Come Again?*, in FINDING JOBS (David E. Card and Rebecca M. Blank, eds., 2000); TIMOTHY J. BARTIK, JOBS FOR THE POOR: CAN LABOR DEMAND POLICIES HELP? (2002); WILLIAM P. QUIGLEY, ENDING POVERTY AS WE KNOW IT (2003).

³⁷ HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 6; QUIGLEY, *supra* note 36.

³⁸ G.A. res. 217A (III), U.N. Doc. A/810 at 71 (1948).

regime. Also, since there is no contradiction in guaranteeing people an unconditional basic income in addition to decent paid employment; combinations of the two strategies are worth considering as a means of securing the benefits of both.

The problem with the BI strategy, in my view, is that the additional cost of providing those extra benefits would use resources that probably would be better spent providing more important social welfare benefits. On the other hand, this disadvantage would not apply to less expensive income guarantees, and I describe one such proposal at the end of this article – a means-tested but not work-tested family income guarantee designed to replace existing means-tested income assistance benefits for adults whose capacity to be self-supporting is unclear. “Income, Work and Freedom” rather than “Work vs. Freedom” would be the rallying cry of progressive supporters of an anti-poverty strategy modeled along these lines.³⁹

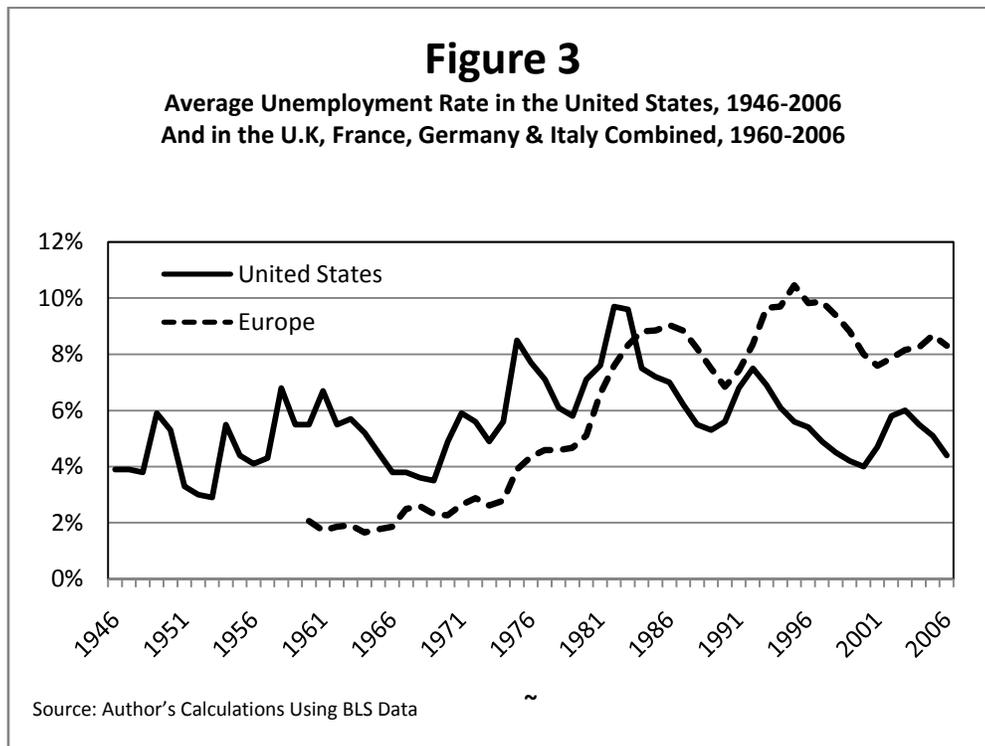
II

The Collapse of the Full-Employment Policy Goal in Market Societies

A. Labor Market Conditions

Ironically, the recent embrace of work requirements in American and European public assistance programs occurred during a period when the capacity of market economies to provide paid employment to everyone who wanted it diminished quite dramatically compared to the preceding period when public assistance eligibility requirements were less demanding. Figure 3 shows the annual average unemployment rate in the United States from 1946 through 2005, and the combined unemployment rate of France, Germany, Italy and the United Kingdom (the four largest economies in Europe) from 1960 through 2004.

³⁹ In an article entitled *Work vs. Freedom*, supra, note 23, Anne Alstott argues that a BI guarantee would better serve liberal values (the same values I term “progressive” in this article) than a program of employment subsidies designed to extend employment opportunities to disadvantaged job seekers. While I agree with Alstott’s criticism of employment subsidies, the shortcomings she attributes to that strategy do not apply to the employment guarantees discussed in this article.



The figure shows that in both the United States and Europe, unemployment rates rose dramatically in the second half of the 1970s compared to the earlier post-World War II period, and they remained very high throughout the subsequent two-decade period of conservative welfare reform. The national unemployment rate in the United States during the two decades leading up to the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), averaged 6.9 percent, compared to 4.9 percent during the three previous decades (1946-1975). In Europe the decline in job availability was even more dramatic. Between 1960 and 1975, the unemployment rate in France, Germany, Italy and the United Kingdom averaged just 2.3 percent. Over the next twenty years it more than tripled to an average of 7.5 percent.

Moreover, even when unemployment rates declined in the United States to levels widely viewed as cause for celebration (4.0 percent in 2000), a sizable gap remained between the number of jobs employers were seeking to fill and the number of people who wanted jobs. The size of this “job gap” from December 2000 (when the national unemployment rate was 3.9 percent) through December 2005 (when the national unemployment rate was 4.9%) is shown in Figure 4. This figure compares the number of job vacancies that employers were seeking to fill in the United States to the number of jobless individuals actively looking for work (official unemployment), the number of persons who were working part-time but wanted full time jobs (involuntary part-time workers), and the number of jobless individuals who said they wanted jobs but were not actively seeking work (discouraged workers). The data series begins in December 2000 because that is when the U.S. Bureau of Labor Statistics first began reporting the results of its new Job Openings and Labor Turnover (JOLTS) survey.

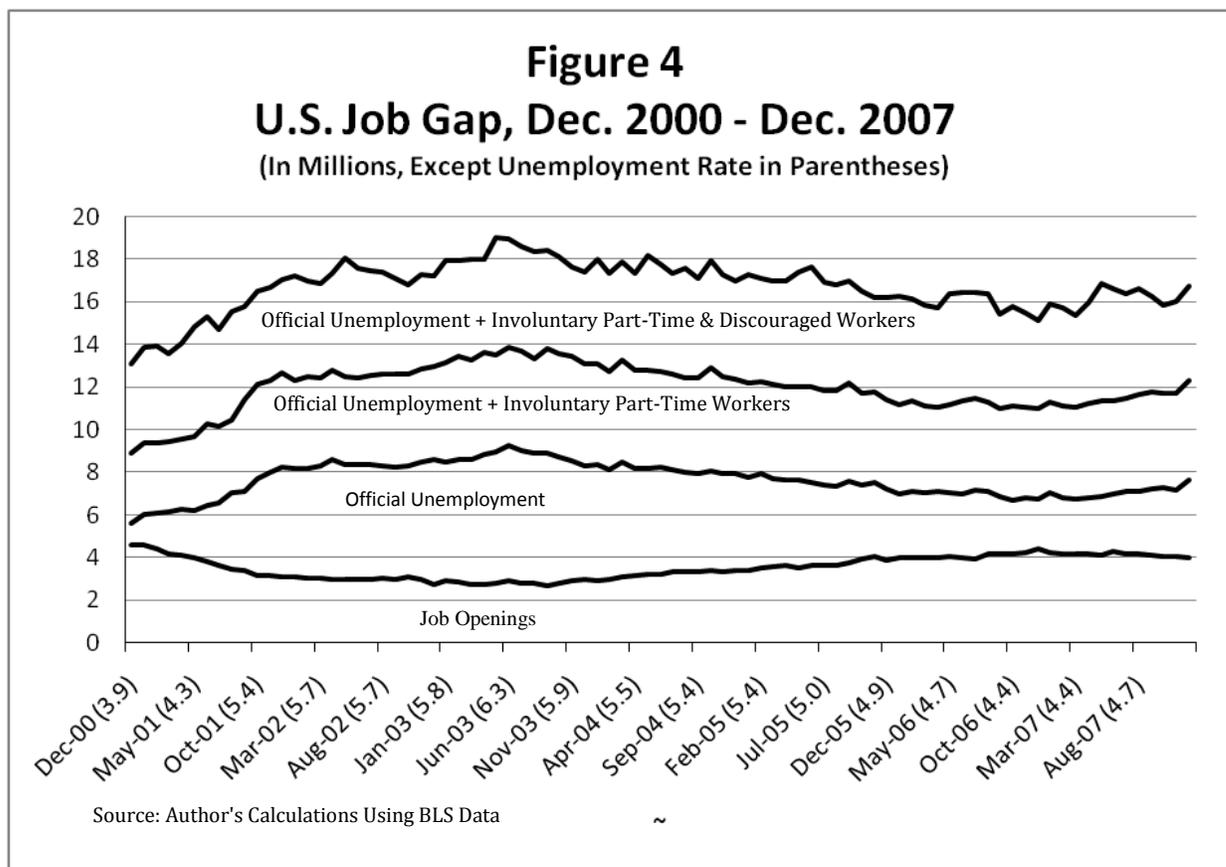


Figure 4 shows that in December 2000, at the very peak of the economic boom of the late 1990s, there still were over a million more officially unemployed workers than there were job openings in the United States; and if we count involuntary part-time workers and discouraged workers, the economy was short almost 8.5 million jobs. In June of 2003, when the national unemployment rate had risen to 6.3 percent, there were 9.2 million officially unemployed workers in the country seeking to fill just 2.9 million vacant jobs; and if we count involuntary part-time workers and discouraged workers, the total number of job-needers totaled 18.9 million. No similar data is available for Europe, but there is no reason to believe that job availability figures there would be any more favorable than the U.S. figures for comparable unemployment rates.⁴⁰ If by full employment we mean the availability of enough jobs to employ everyone who

⁴⁰ The European Union has inaugurated a project to establish a common methodology for the collection of job vacancy data in all member states. The data collected as a result of this initiative will be suitable for comparison with U.S. data. See Kelly A. Clark and Mary Anne Phillips, *A Comparison of Job Openings Surveys: Concepts and Survey Design*, U.S. Bureau of Labor Statistics (2002), available at <http://www.bls.gov/ore/abstract/st/st020100.htm>. Initial results of from this initiative suggest that job vacancy levels are comparable in the United States and Europe. For example, a preliminary job vacancy survey in the U.K. found an average job vacancy rate of 2.5% between April 2001 and August 2002, a period during which the U.K. unemployment rate averaged 5.2%. See, e.g., Andrew Machin and Valerie Christian, *A new survey of job vacancies: the first experimental results*, LABOR MARKET TRENDS (Oct. 2002), pp. 535-48, Table 3, p. 542. During the same period, the U.S. job vacancy rate averaged 2.3% with an average unemployment rate of 5.3%.

wants to work – and that is the operative definition of the term that I shall use throughout this article⁴¹ – it has been a very long time since either the United States or Europe has experienced it.⁴²

The seeming illogic of welfare reforms designed to push the able-bodied poor into a labor market that doesn't provide enough jobs to employ them raises two questions for the inquiry pursued in this article. The first is why conservatives have been able to persuade the public that workfare makes sense in a period of diminished job availability. The second is why progressives have been unable to mount an effective counter campaign based on claims that both poverty amongst the able-bodied poor and their dependence on government “handouts” is caused by a lack of jobs rather than a lack of effort on their part

B. The Rise and Fall of Full Employment as A Public Policy Goal

There is nothing surprising in conservative efforts to blame the jobless poor for their own joblessness. There is a long-standing policy tradition in market societies premised on the assumption that unemployment is caused by the failure of the unemployed to seek work and/or their unwillingness to accept it on reasonable terms.⁴³ The “tough love” arguments advanced by conservatives in support of measures designed to restrict the availability of public assistance to people who lack the capacity to be self-supporting are literally centuries old and continue to resonate with the public.

Because people who seek work with determination and flexibility almost always find jobs, it is relatively easy for conservatives to persuade the public that unemployment is caused by the inadequate job search efforts of jobless individuals. The problem with this line of reasoning is its susceptibility to the fallacy of composition – assuming without proper warrant that what is true for the members of a group is true for the entire group. Basing collective advice on individual experience is not always a mistake. In judging the benefits of exercise, for example, individual experience (or at least the experience of a random sample of the population) provides a perfectly satisfactory guide to the consequences that are likely to flow if the entire population exercises. But where successful outcomes are limited, strategies that prove successful when pursued by a single individual simply cannot work for everyone simultaneously.

The labor market is like a constantly swirling game of musical chairs in which the number of available seats (i.e., jobs) tends to grow and shrink with changing business conditions, but in

⁴¹ For a discussion of the relationship between full employment and job vacancies, see Philip Harvey, *Combating Joblessness: An Analysis of the Principal Strategies That Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 Berkeley J. Emp. & Lab. L. 675, 700-07 (2000).

⁴² I argue elsewhere that official unemployment would have to fall to the 2 percent range to achieve full employment. *Id.* This view was generally accepted by progressive economists in the period immediately following World War II. See, e.g., JOHN MAURICE CLARK, NATIONAL AND INTERNATIONAL MEASURES FOR FULL EMPLOYMENT 14 (1949). By this measure, the last time the United States experienced a period of sustained full employment was during World War II, see HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 6, at 15, Table 1.2, and the last time European countries experienced a period of sustained full employment was in the 1960s. See *supra* Figure 3.

⁴³ See Harvey, *Joblessness and the Law Before the New Deal*, *supra* n. 6.

which the number of players (i.e., labor-force participants) almost always exceeds the number of available seats. Haranguing “seatless” (i.e., jobless) individuals to try harder may help some people improve their performance, but it can’t insure everyone a seat at the end of the game. In a job-short economy such as ours, an increase in job-search efforts by the jobless poor might affect *who* is unemployed at a particular moment in time, but its not going to change the *number* of people who suffer unemployment (and the poverty that attends it) unless more jobs become available.⁴⁴

If both the appeal and flaws in the conservative approach to combating poverty are this easy to understand, why has it been so hard for progressives to counter conservative proposals for the reform of public assistance programs? Why has the progressive response to conservative welfare ending up looking so much like conservative welfare reform – conservative welfare reform lite?

I believe the answer to these questions can be discovered in the fate suffered by full employment as a progressive policy goal. Progressives have always promoted a wide variety of measures designed to equalize employment opportunities and insure that anyone who works will enjoy a decent standard of living. When these measures have been combined with a strong and effective commitment to full employment – a commitment to making sure that jobs are available for everyone who wants to work – the resulting policy combination constitutes a powerful and effective anti-poverty strategy. If the full-employment leg of this strategy is abandoned, however, the measures progressives promote to equalize employment opportunities and improve the quality of available jobs are subject to the same limitations as conservative anti-poverty measures. They may succeed in helping individuals escape poverty, but they can’t make up for a shortage of jobs. In a job short economy, progressive efforts to help the jobless poor find decent work are no more capable of eliminating poverty than are conservative harangues directed at the poor to try harder to find work.⁴⁵

For forty years prior to the mid 1970s a commitment to the achievement of full employment was an article of faith among progressives. New Deal progressives understood that providing “employment assurance” to everyone who was expected to be self-supporting was essential to the success of their overall social welfare strategy; and the only thing that distinguished New Deal progressives from their post World War II counterparts in this regard was that the New Dealers promoted the use of direct job creation by government to provide the needed jobs, whereas their successors relied on the “simple Keynesian strategy” of using generalized deficit spending by government to pursue that goal.⁴⁶

⁴⁴ For a more extended discussion of this issue, see Philip Harvey, *Combating Joblessness: An Analysis of the Principal Strategies That Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 Berkeley J. Emp. & Lab. L. 675, ___-___ (2000).

⁴⁵ The effectiveness of these policies in achieving equal employment opportunity also is likely to be diminished in the absence of full employment. See Harvey, *Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously*, 33 COLUM. HUM. RTS. L. REV. 363, 438-45 (2002) (discussing how the absence of full employment undermines the effectiveness of policies designed to equalize the unemployment rates of different population groups).

⁴⁶ The theoretical underpinnings for the intentional use of deficit spending to achieve full employment were provided by John Maynard Keynes’ paradigm-shifting 1936 book *The General Theory of Employment, Interest and*

The reform agenda pursued by progressives in virtually all market societies in the post-World War II era combined the simple Keynesian strategy for achieving full employment with an expansion in both the generosity and scope of transfer benefit programs to meet the needs of both unemployed workers and persons who were not expected to work.

As long as the Keynesian prong of this strategy was able to deliver conditions approaching full employment, the progressive reform agenda was quite successful. Full employment reduced the need for transfer benefits among the able-bodied working-age population while simultaneously providing the resources necessary to fund benefits for population groups that needed them. The converse of this relationship, though, is that a failure of the Keynesian prong of the strategy would threaten its transfer benefit prong as well -- since transfer benefit expenditures would increase while the resource base from which they were funded would grow less rapidly, or possibly even shrink.

This is exactly what happened in the mid-1970s, when OPEC's 1974 oil embargo triggered the most serious recession in since the 1930s in both the United States and western Europe, while also placing continuing upward pressure on prices. The so-called "stagflation" crises that followed precipitated a collapse in both popular and expert faith in the adequacy of Keynesian economic policies. The simple Keynesian strategy that progressives had been pursuing with substantial success since the end of World War II provided no prescription for battling

Money, but what convinced American progressives of the superiority of the simple Keynesianism strategy was the success of deficit spending in eliminating involuntary unemployment during World War II. After a dozen years of depression, a massive dose of deficit spending eliminated the nation's unemployment problem in less than two years without even focusing on the issue and without any of the political controversy that had surrounded the New Deal's direct job creation initiatives. The completeness of this shift in progressive thinking was amply demonstrated in 1944 when Congressional Democrats launched a major legislative initiative to require the federal government to maintain the national economy in a state of full employment. The proposed legislation would have relied almost exclusively on the simple Keynesian strategy to achieve this goal with an automatic appropriation of sufficient spending authority to do the job. In fact, in a bow to lingering conservative opposition to the New Deal's direct job creation programs, progressives willingly included language in the proposed legislation that would have prohibited the funding of direct job creation programs unless Congress specifically authorized such funding in separate legislation. *See* S. 380, 79th Cong. § 3(a) and (c) (1944) (mandating that the President submit a "National Production and Employment Budget" to Congress "at the beginning of each regular session" that provides for enough government spending to achieve the "full employment volume of production," while at the same time providing that any construction of public works included in the budget "shall provide for the performance of the necessary construction work by private concerns under contracts awarded in accordance with applicable laws, except where the performance of such work by some other method is necessary by reason of special circumstances or is authorized by other provisions of law"). The Employment Act of 1946, Pub. L. No. 79-304, 60 Stat. 23, was the watered down fruit of this initiative. For a detailed account of the legislative history of this initiative, *see* STEPHEN K. BAILEY, CONGRESS MAKES A LAW: THE STORY BEHIND THE EMPLOYMENT ACT OF 1946 (1950). For a discussion of the influence of Keynesian theory on the drafters and supporters of this legislation, *see id.*, at 14-28, 45-48. Another indication of the atrophy of progressive support for direct job creation by the mid 1940s can be seen in the fact that Bailey's legislative history of the Employment Act of 1946 never even mentions the New Deal's direct job creation programs, let alone the full employment strategy they embodied.

unemployment and high rates of inflation at the same time;⁴⁷ and more important, progressives had no Plan B to offer the public.

This left progressives without a coherent response to the worst economic crisis since the Great Depression. At the same time, conservatives stepped forward with a straightforward explanation of the crises that blamed it squarely on the social welfare gains progressives had achieved in the preceding period. According to conservatives, stagflation was caused by unsustainable levels of government spending on social programs that undermined the work ethic, interfered with needed wage adjustments, and robbed entrepreneurs of the incentive to innovate. The conservative prescription for solving the problem was equally straightforward and appealingly simple. Tighten monetary policy and gradually wean the economy from its dependence on cradle-to-the-grave social welfare benefits. The fact that this policy would result in higher rates of unemployment (while reducing public aid to the unemployed) was considered unavoidable. Conservatives argued that there was a “natural” or “non-accelerating-inflation” rate of unemployment that governments could not resist indefinitely, and after three decades of liberal excess, the piper had to be paid.

Dispirited and lacking a credible replacement for the discredited Keynesian strategy on which the post-World War II welfare state had been built, progressives simply stopped talking about full employment.⁴⁸ With no forward-looking strategy to guide them, progressives devoted most of their energies to defending welfare state programs from conservative attack while criticizing conservative economic policies for their harshness. They became advocates of “a little more” and “a little less” – a little more social welfare spending and a little less unemployment.

In their policy battles with conservatives during this period, progressives generally have enjoyed more success defending transfer programs for persons who are not expected to work

⁴⁷ This reason for this is that the standard Keynesian prescription for combating inflation (i.e., reducing aggregate demand and tightening monetary policy) is the opposite of the standard Keynesian prescription for combating unemployment (i.e., increasing aggregate demand and loosening monetary policy).

⁴⁸ This change can be traced in the position occupied by full employment in the platforms on which Democratic presidential candidates have run for office in the United States over the past 60 years. The term first appeared in Franklin D. Roosevelt’s 1944 platform, where it was identified as one of the Democratic Party’s four primary goals (“To speed victory, establish and maintain peace, guarantee full employment and provide prosperity”). In 1948, 1952 and 1956 full employment was similarly cited as one of the Party’s primary goals. In 1960 and 1964 this commitment was ratcheted up a notch, with the goal being identified as “a paramount objective of national policy.” Following a modest reduction in emphasis in 1968, the party’s commitment to the goal peaked in 1972. Full employment – defined as “a guaranteed job for all” – was described as “the primary economic objective of the Democratic Party.” In 1976 this commitment was reiterated in somewhat milder form but with greater frequency and using more rights-based language.

Then the trend was reversed. In 1980 the party’s platform “reaffirmed” the party’s “commitment to achieve all the goals of the Humphrey-Hawkins Full Employment Act,” but this commitment appeared in a laundry list of other economic goals. In 1984 there was no reference to the Humphrey-Hawkins Act and the party’s “commitment to full employment” was treated on a par with its “commitment to housing” and its “commitment to rebuilding the infrastructure of America.” In 1988 the term appeared only once, in a sentence expressing the party’s belief that “as a first-rate world power moving into the 21st century, we can have a first-rate full employment economy.” In the next four Democratic presidential platforms (1992, 1996, 2000 and 2004) the term was not used at all.

(e.g., Social Security and Supplemental Security Income in the United States) than they have transfer programs for persons who are expected to work (e.g., Unemployment Insurance and Aid for Families with Dependent Children). In other words, whether the programs provided means-tested benefits for the poor or non-means-tested benefits for the “middle class” seems to have mattered less than public perceptions that the program was being abused by persons who could be self-supporting if they tried harder to find work. In responding to conservative welfare reform they sought opportunities to minimize the harm they feared the reforms would cause, and when those harms proved less serious than they expected, they settled into their current role as champions of a softer, more sympathetic version of the conservative policy regime.

In conclusion, while it seems anomalous that market societies would reduce transfer benefits for jobless individuals at a time when job shortages were growing; this outcome is understandable in light of the collapse of progressive support for full employment following the failure of the simple Keynesian strategy for achieving that goal. No longer facing the challenge of a credible progressive alternative, conservatives found it easy to dominate public assistance policy debates with their own explanations of and proposed responses to the problem of joblessness among the able-bodied poor.

It also is understandable that progressives found it easier to defend transfer benefit programs that targeted persons who were not expected to work. Those programs were stressed by resource scarcity, but they did not suffer the legitimacy crisis that progressive anti-poverty policies targeting the able-bodied poor endured.

C. The Renewal of Progressive Interest in Income and Employment Guarantee Proposals

One possible progressive response to the collapse of the simple Keynesian strategy for achieving full employment is to propose that the link between employment and the achievement of a decent standard of living be broken. This is the response proposed by BI advocates. Another progressive response is to look for an alternative means of achieving full employment. This is the response proposed by advocates of employment guarantees.

The role played by rising unemployment in a renewal of interest in direct job creation is obvious.⁴⁹ If full employment cannot be achieved reliably by means of the simple Keynesian strategy (because the deficit spending upon which the strategy relies also causes higher and possibly accelerating rates of inflation), it makes sense to ask whether another strategy exists that could better achieve the full-employment goal. Also, if providing income assistance to persons expected to work has become politically problematic, and if job training and other programs designed to help disadvantaged population groups compete more effectively for scarce employment opportunities produce marginal results at best,⁵⁰ it makes sense to ask whether there is a better way to extend a helping hand to these population groups. These are the kind of questions that led some progressives to begin exploring direct job creation as an economic and/or

⁴⁹ See *supra*, notes 35-37.

⁵⁰ See BARTIK, *supra* note 30, at 69-111; Philip Harvey *Human Rights and Economic Policy Discourse*, *supra* note 45, at 438-45.

social welfare strategy in the 1980s.⁵¹

The collapse of full employment policies in market societies played an equally significant role in the development of the contemporary BI advocacy movement. Philippe Van Parijs, the movement's most influential theoretician, has described his own gravitation to the idea in the following terms.

The first point of departure, and the most concrete one, is that it was becoming clear that we in Europe were beginning to experience a kind of mass unemployment which could not be interpreted as conjunctural or cyclical in nature but which rather resulted from central features of our socio-economic system. The preferred remedy for unemployment at the time (and a number of years afterwards) was growth. But, along with a number of other more or less Green-Oriented people on the left, I felt that this could not be the right solution. So the pro-growth consensus or grand coalition of the left and right had to be broken by providing a solution to the unemployment problem that would not rely on a mad dash for growth.⁵²

The BI idea was perceived by Van Parijs and others as providing this solution while also serving a variety of other goals. As the Basic Income Earth Network (BIEN) Web site explains,

Liberty and equality, efficiency and community, common ownership of the Earth and equal sharing in the benefits of technical progress, the flexibility of the labor market and the dignity of the poor, the fight against inhumane working conditions, against the desertification of the countryside and against interregional inequalities, the viability of cooperatives and the promotion of adult education, autonomy from bosses, husbands and bureaucrats, have all been invoked in its favor.

But it is the inability to tackle unemployment with conventional means that has led in the last decade or so to the idea being taken seriously throughout Europe by a growing number of scholars and organizations. Social policy and economic policy can no longer be conceived separately, and Basic Income is increasingly viewed as the only viable way of reconciling two of their respective central objectives: poverty relief and full employment.⁵³

In the remainder of this article I will offer a comparative assessment of the BI and JI strategies as potential replacements for the existing public assistance policy regime in market societies, and for their likely contribution to the achievement of other progressive social welfare goals. In so doing, this inquiry will consider whether either of these proposals has the potential to replace the simple Keynesian full-employment strategy as a foundation for progressive social welfare reform in general. It is my contention that such a foundation is needed to recover the optimism and ambition that characterized progressive reform efforts prior to the stagflation

⁵¹ See *supra*, notes 35-37.

⁵² Philippe Van Parijs, *The Need for a Basic Income: An Interview with Philippe Van Parijs*, IMPRINTS, March 1996, at 5-22.

⁵³ The Basic Income Earth Network, *About Basic Income*, available at http://www.etes.ucl.ac.be/bien/BI/Definition_temp.htm.

debacle of the 1970s. The real promise of the BI and JI, in my view, lies in their potential to fill that roll.

I want to emphasize, though, that the progressive movement as a whole is a long way from embracing either the BI or the JI strategy. Most progressives are still playing defense – resisting conservative reform efforts without a forward-looking, long-term vision of the direction in which they think public assistance policy should move. My claim on behalf of the BI and JI strategies is not that they are representative of current thinking among progressives, only that they provide a reform vision that would permit progressives to regain the footing they lost when the simple Keynesian strategy for achieving full employment collapsed in the 1970s. Unless a credible replacement for that strategy is embraced by progressive reformers, their influence on the trajectory of “welfare reform” in market societies will continue to be limited to advocating a somewhat more generous and forgiving version of conservative measures.

III The Universal Declaration of Human Rights As A Policy Guide

One of the advantages conservatives enjoy in economic and social policy debate is that the utilitarian values that dominate political discourse in the field tend to privilege the policy goals they favor (aggregate income maximization and economic efficiency) over the values favored by progressives (fairness and equality). In an article endorsing the BI idea, Anne Alstott comments on this problem and proposes a solution.

In philosophy and constitutional law, liberalism occupies center stage. In those fields, the great debates ponder the meaning of freedom and equality and the scope of individuals’ rights against the collective. But when it comes to taxes and transfers, liberal principles of distributive justice give way to utilitarian talk of costs and benefits, incentives and disincentives.⁵⁴

The solution she proposes is for progressives to rely on the “core liberal values of individualism, freedom, and equality” to supplement the goal of utility maximization in analyzing social policy issues.⁵⁵ But how does one concretize these values? What do they require, and how does one handle conflicts between those values and the utilitarian calculus of self-interest to which they would be counterposed?

To apply progressive values to the analysis of public policy questions an analytic methodology is needed. As Alstott notes, progressive scholars have developed such a methodology in philosophy and constitutional law, and in her own efforts to apply that methodology to social welfare policy analysis, she relies mainly on the work of liberal

⁵⁴ Anne Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies* 108 YALE L.J. 967-1058, 973 n.29 (1999).

⁵⁵ *Id.*

philosophers and political theorists such as John Rawls, Ronald Dworkin, Bruce Ackerman and Philippe Van Parijs.⁵⁶

I am sympathetic to Alstott's project, but I find it difficult to imagine legal scholars becoming adept at the type of philosophical argument she advocates. The field of constitutional law provides what I think is a more useful methodology for infusing social policy debate with progressive values. Where a set of individual or collective rights have been recognized in texts that are considered authoritative (whether those texts are legally enforceable, as in the case of the U.S. Constitution, or simply hortatory, as in the case of the U.S. Declaration of Independence) it is far easier to ask whether a particular policy is consistent with the rights recognized in the text than to reason directly from the values that underlie the rights. This is the methodology that progressives generally follow in rights-based policy discourse. The reason Alstott does not employ it is probably because the U.S. Constitution offers such thin support for the application of progressive values in the fields of economic and social policy.

To overcome this difficulty, progressive scholars in the United States have proposed more expansive interpretations of the U.S. Constitution,⁵⁷ but I believe there are other, more suitable texts upon which progressives appropriately can rely to translate their core values into policy-relevant norms and mandates. I have in mind the Universal Declaration of Human Rights and other international human rights agreements that recognize economic and social entitlements as human rights.⁵⁸ These documents not only provide a reasonably complete statement of the social welfare goals progressives advocate, they recognize those goals as having the priority that progressives generally believe they should have in public policy debates.⁵⁹

I know that American progressives may be hesitant to rely on the Universal Declaration and its progeny because of their seemingly "foreign" provenance and lack of authority under American law; but nothing could be further from the truth than to think of these documents as alien to American values. The social welfare provisions of the Universal Declaration and its progeny are more properly viewed as an international affirmation of the New Deal's guiding philosophy. This philosophy was first articulated in social welfare planning documents such as the 1935 Report of the Committee on Economic Security⁶⁰ and the 1942 Report of the National Resources Planning Board.⁶¹ It was given forceful expression in President Roosevelt's 1940 and 1944 State of the Union Messages to Congress (his "Four Freedoms" and "Economic Bill of

⁵⁶ *Id.*

⁵⁷ See, e.g., William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1 (1999); William E. Forbath, *Constitutional Welfare Rights: A History, Critique and Reconstruction*, 69 FORDHAM L.R. 1821, 1831-35 (2001); William E. Forbath, *The New Deal Constitution in Exile* 51 DUKE L.J. 165 (2001).

⁵⁸ *Supra* note 3.

⁵⁹ See Harvey, *Human Rights and Economic Policy Discourse*, *supra* note 50.

⁶⁰ *Supra* note 30.

⁶¹ National Resources Planning Board, National Resources Development Report for 1943, H.R. Doc. No. 78-128, pt. 3, Security, Work and Relief Policies.

Rights” speeches)⁶² and was refined in the 1945 Statement of Essential Human Rights authored by a committee of experts working under the auspices of the American Law Institute.⁶³ Finally this vision was given authoritative international expression in the Universal Declaration of Human Rights, a document drafted by a United Nations committee chaired by Eleanor Roosevelt, the President’s widow and tribune of New Deal values within his administration.⁶⁴

The fact that Americans view the Universal Declaration as a “foreign” document (if they have heard of it at all) and that its economic and social provisions are generally not enforced under American Law demonstrates the failure of American Progressives to sustain the rights-based policy discourse they developed to address social welfare issues during the New Deal era; but it doesn’t prevent them from reclaiming that part of their heritage.

In any event, to illustrate the usefulness of the Universal Declaration in assessing the merits of proposed social welfare policies from a progressive perspective, I shall use Articles 22-25 of the Declaration (reproduced in Box 1) as a standard for judging the relative strengths and weaknesses of the BI and JI strategies for combating poverty.

⁶² Franklin D. Roosevelt, Message to Congress on the State of the Union, 11 January 1944, reprinted in *The Public Papers & Addresses of Franklin D. Roosevelt*, 13: 32-42 (Samuel Rosenman, ed., 1950); Message to Congress on the State of the Union, 6 January 1941, reprinted in *The Public Papers & Addresses of Franklin D. Roosevelt*, (Samuel Rosenman, ed., 1950).

⁶³ American Law Institute, *Statement of Essential Rights*, Americans United for World Organization, Inc. (1945).

⁶⁴ Glendon 2001

Box 1
Universal Declaration of Human Rights

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Reviewing these Articles we see that all members of society are recognized as having a right to the material and social supports necessary to maintain a dignified existence. These rights are referenced in Article 22, which declares that “[e]veryone, as a member of society, has a right to social security,”⁶⁵ and Article 25 which declares that “[e]veryone has the right to a standard of living adequate for the health and well being of his family.”⁶⁶ The Universal Declaration

⁶⁵ The term “social security” has a generic meaning in this context. See JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 199-210 (1999).

⁶⁶ The drafters of the Universal Declaration adopted drafting principles that were intended to prevent any suggestion that the rights proclaimed in the document were differentiated based on gender or family structure. The repeated use of the term “everyone” to identify rights holders in the text was a conscious manifestation of this intent. MORSINK, *supra* note 65, at 116-29. Nevertheless, the committee did conform to the then-accepted but now frowned-upon practice of using singular masculine pronouns to designate both genders. As one would expect based on the growing influence of the modern feminist movement in the late 1960s, gendered language disappeared entirely from most human rights documents beginning in the 1970s. Compare International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR Supp. (no. 16) at 49, U.N. doc. A/6316 (1966)

contemplates that this right to a decent standard of living can be secured by guaranteeing decent jobs to all workers (Article 23) and income security to everyone who was not expected to be self-supporting (Article 25).⁶⁷ This policy model naturally favors the JI over the BI strategy for ending poverty, but the language of Article 25 is broad enough to support an interpretation of the right to income support that favors the BI strategy – as BI advocate Guy Standing has suggested.⁶⁸ It also is important to recognize that even if the Declaration is interpreted as not recognizing a right to income support on the part of persons who are capable of supporting themselves but who choose not to, there is nothing in the document to suggest that it would be improper or a violation of anyone’s rights for society to provide such persons an unconditional BI guarantee. To use the Universal Declaration to evaluate fairly the BI and JI strategies, we need only be open to varied interpretations of the rights recognized in the Declaration and the possibility that they can be secured in more than one way.

Consistent with that perspective, we can begin our assessment of the BI and JI strategies by recognizing that the right not to a decent standard of living recognized in the Universal Declaration could be secured with either or both strategies. That being the case, it is reasonable to ask which strategy would achieve that goal at least cost.⁶⁹

(using third person masculine pronouns to designate both genders); *and* Declaration on the Rights of Disabled Persons, G.A. res. 3447 (XXX), December 9, 1975, 30 U.N. GAOR Supp. (No. 34) at 88, U.N. Doc. A/10034 (1975) (using designations such as “him or her” to avoid the practice of using third person masculine pronouns to designate both genders). The substantive point that should be remembered is that the Universal Declaration and its progeny expressly reject any claim that men and women enjoy different human rights. This is made clear in the following language contained in Article 2 of the Universal Declaration. “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Universal Declaration of Human Rights, *supra* n.38, art. 2.

⁶⁷ Morsink argues persuasively that the drafters of the Universal Declaration intended Article 25 to guarantee people the “‘opportunity to obtain’ food and housing,” but that they believed “[t]he state is not required to provide food or housing unless the individual cannot under existing conditions obtain them by his own efforts.” MORSINK, *supra* note 65, at 193-94.

⁶⁸ Guy Standing, *About Time: Basic Income Security as a Right*, in PROMOTING INCOME SECURITY AS A RIGHT: EUROPE AND NORTH AMERICA 1-40 (Guy Standing, ed., 2004).

⁶⁹ This can be conceived as an inquiry into the comparative economic efficiency of each strategy. Efficiency is an engineering concept defined simply as output divided by input. Miles per hour, miles per gallon, dollars per hour and dollars per gallon are all measures of efficiency. Each of these four measures simply define what they are interested in maximizing and/or minimizing (economizing) differently. Neo-classical economists generally assume that public policy should seek to maximize aggregate output, wealth, utility or the satisfaction of revealed preferences, while minimizing costs of production. There is nothing wrong with this definition of economic efficiency, but there is no reason to privilege it over others just because it permits one to draw seemingly powerful normative conclusions from the neo-classical economic model. I have suggested that a definition of economic efficiency that would be more consistent with progressive values is one that sought to maximize the protection afforded the economic and social human rights of all persons while minimizing the opportunity cost of securing those rights measured in terms of foregone utility (or any of the stand-ins for utility commonly used in neo-classical economic analysis). See Philip Harvey, *Aspirational Law*, 52 BUFFALO L. REV. 701, 703-07 (2005).

IV Comparing the Basic Income and Employment Guarantee Strategies

A. The Relative Cost of the Strategies

Basic Income and Employment Guarantee proposals both have reputations for being expensive. This does not mean, of course, that the two policies would be equally expensive to implement. BI advocates have argued that an employment guarantee would be more expensive to implement than an income guarantee because of the high overhead costs of funding jobs compared to writing BI benefit checks.⁷⁰ BI advocates make three mistakes in drawing this conclusion. First, they overestimate the overhead costs of a job guarantee program by failing to note that in an employment guarantee program designed to secure the right to work for *all* job seekers, positions created to perform “overhead” functions within the program or to provide services and materials to the program would not add to its overall size. If 100 jobs were needed to close the economy’s job gap, that’s how many jobs the program would have to create, and it wouldn’t matter how those jobs were distributed between supervisory and non-supervisory positions, between production and support functions (such as the provision of child-care), or between program jobs and private sector jobs created to supply the program with materials.⁷¹

Second, BI advocates also fail to take into account that an employment guarantee program’s net cost would be reduced by the taxes program participants would pay on the wages they earned and by any revenue generated by selling the program’s output – even if that output were sold at prices below its cost of production.⁷² The program’s net cost also would be reduced by savings in public assistance budgets, but BI advocates do count on these savings in estimating the cost of a BI guarantee and presumably recognize that they would reduce the cost of an employment guarantee as well.

The third and easily most important oversight is that BI advocates ignore the difference between the cost of providing either a job or a BI grant to one person and the aggregate cost of providing either jobs or BI grants to everyone who would be eligible to receive the benefit. Even if the net cost of providing a person a job far exceeded the net cost of providing that same person a BI grant, the number of jobs that would have to be created would be limited to the size of the economy’s job gap whereas BI grants, in the form preferred by most BI advocates, would have to be paid to all members of society.⁷³

The arithmetic is simple. Involuntarily unemployed workers comprise a relatively small fraction of a society’s total work force. Even in a deep recession the number of jobs needed to

⁷⁰ See, e.g., Widerquist and Lewis, *supra* at 28; Noguera and Raventos, *supra* at 15; Sheahan, at 15.

⁷¹ See HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 6, at 39-43.

⁷² *Id.* at 21-50; Philip Harvey, *Paying for Full Employment: A Hard-Nosed Look at Finances*, SOC. POL’Y (Spring 1995).

⁷³ See, e.g., Van Parijs, *Basic Income: A Simple and Powerful Idea for the 21st Century*, *supra* note 24, at 3 (defining a “basic income” as “an income paid by a political community to all its members on an individual basis, without means test or work requirement”).

close the economy's job gap in developed market economies is unlikely to exceed 10 percent of the economy's labor force, which likely means less than 5 percent of the society's entire population.⁷⁴ In poorer countries the economy's job gap is often higher, but it usually does not exceed 25% of a labor force that represents a smaller proportion of the society's entire population than in wealthy countries.⁷⁵ Thus, even if jobs paying wages several times as large as a BI guarantee were provided to all unemployed job seekers, the total cost of doing so would be tiny compared to the cost of providing BI grants to all members of society.

To illustrate these points I shall compare equally expansive versions of each strategy – proposals designed to eliminate “official” poverty in the United States. As an example of the BI strategy I shall rely on an estimate developed by Charles Clark for 1999.⁷⁶ As an example of the Jobs and Income (JI) strategy I shall rely on my own previously published estimate of the cost of an employment guarantee program designed to secure the right to work,⁷⁷ supplemented by a rough estimate of the cost of expanding transfer programs in the United States to guarantee at least a poverty-level income to all persons unable to earn a livelihood through wage employment.

The Basic Income Strategy: Clark has estimated the cost of a BI guarantee designed to provide all residents of the United States with an income at least equal to the federal poverty line. The benefit levels and cost of such a program in 1999 are summarized in Table 1.

⁷⁴ The recession of the early 1980s was the second deepest the United States experienced during the 20th century after the Great Depression of the 1930s. I have estimated that a guaranteed employment program would have needed to create an average of 13.6 million jobs to achieve the functional equivalent of full employment at the bottom of that recession. HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 6, at 31, Table 2.2. That would have meant creating jobs for 13.2 percent of the enlarged labor force I assumed the establishment of such a program would have engendered or 5.8 percent of the nation's entire population. Given the counter-cyclical effect of such a program, the number of jobs it would have been necessary to create probably would have been substantially less than this. *See infra*, text accompanying note 86.

⁷⁵ The greater severity of economic downturns in less developed countries is illustrated by the economic crisis that struck Argentina in late 2001 when GDP fell at a rate of over 16% per year, and the nation's unemployment rate jumped from 14 percent to 24 percent – a level equivalent to that experienced in the United States at the bottom of the Great Depression. Still, because of the younger age-profile of the entire population, 24 percent of the nation's labor force constituted only 5.2 percent of the nation's entire population. *See Philip Harvey, Argentina's Jefes De Hogar Program*, in EPWP MID-TERM REVIEW, COMPONENT 2: INTERNATIONAL PWP COMPARATIVE STUDY, Human Sciences Research Council, Pretoria, South Africa (forthcoming).

⁷⁶ Charles Clark, *Promoting Economic Equity in a 21st Century Economy: The Basic Income Solution*, in INSTITUTIONAL ANALYSIS OF ECONOMIC POLICY 133-56 (Paul Dale Bush and Marc Tool, eds., 2003).

⁷⁷ HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 6, at 21-50.

Table 1
Estimated Costs of Basic Income Payments, 1999

Age	Payment	Population (\$ Millions)	Costs (\$ Millions)
Under 18	\$3,500	70.2	245,697
Adult	\$8,667	167.95	1,455,640
Over 65	\$7,990	34.54	275,975
Total			1,977,311

Source: Clark, *supra* note 76, at 150

To pay for this program, Clark assumes that all federal expenditures on income security except for public sector pensions and Social Security benefits would be eliminated,⁷⁸ which would have saved the federal government approximately \$238 billion in 1999,⁷⁹ while all other federal functions and expenditure levels would remain unchanged, resulting in the overall federal budget figures summarized in Table 2.

Table 2
Estimated Federal Budget Including Basic Income Guarantee Payments, 1999 (\$ Millions)

BI Payments	1,977,311
Other Expenditures	1,465,333
Total Federal Expenditures	3,442,644

Source: Clark, *supra* note 76, at 150

Thus, paying for Clark's hypothetical BI grant program would have approximately doubled actual federal expenditures in 1999 from \$1.7 trillion to \$3.4 trillion. To support this increase in

⁷⁸ As an apparent cost-saving measure, Clark proposed in a subsequent paper that the elderly be excluded from the Basic Income grant program and instead receive "top-up" payments designed to raise their income above the poverty line. Charles Clark, *The Economics of Poverty in the United States of America*, OIKONOMIA October 2005, at 6, 16; Cf. Van Parijs, *supra* note 24, at 7 (noting that some Basic Income advocates would restrict the benefit to persons who have not reached retirement age). If this program specification were adopted the total program cost would be reduced from \$2.0 trillion to \$1.7 trillion. For a more extended discussion of Clark's treatment of Social Security benefits in his estimates of Basic Income program cost, see Philip Harvey, *The Cost of A Basic Income Guarantee*, 2 BASIC INCOME STUDIES Article 6, 1-26 (2006).

⁷⁹ This figure seems high to me, but its exact size does not greatly affect Clark's estimate of government expenditures following adoption of a Basic Income program.

spending, Clark proposes that the current federal income tax be replaced with a flat tax on all income, without any deductions except for the BI payments themselves. By equalizing tax rates on all market income, this funding mechanism tends to minimize the maximum tax rate imposed. Other funding schemes are possible, of course, but this one has the virtue of allowing easy comparisons of average tax burdens for different social welfare schemes. Clark estimates that a flat rate of 35.8% would have been needed to produce the revenue required to fund the BI guarantee he describes along with all other federal government functions in 1999.

It should be noted, however, that this figure does not include Social Security (FICA) taxes or state and local income taxes. The FICA contribution rate on covered income in 1999 was 7.65%, and state and local income taxes would have added the equivalent of another 2.7% to the federal flat tax rate.⁸⁰ Thus, under Clark’s proposal, wage earners would have faced an overall flat tax liability of 46.2% on their wage income, starting with their first dollar earned up to the FICA maximum, which was \$72,600 in 1999. This tax burden is summarized in Table 3.

Table 3	
Estimated Flat Tax Rates on Wage Income (up to FICA Maximums)	
with Basic Income Guarantee In Place, 1999	
Federal Income Tax	35.8%
Federal FICA Tax	7.7%
State & Local Income Taxes	2.7%
Total Tax Liability	46.2%

Clark’s funding analysis also fails to take into consideration the program’s possible effects on labor force participation and national income, and hence on the tax base supporting the BI program and other government expenditures. The size of this effect is difficult to predict⁸¹ and

⁸⁰ Clark suggests that state and local governments would enjoy substantial savings as a result of the adoption of a Basic Income guarantee program, but this seems doubtful. Income security expenditures (other than for health care) comprise a very small portion of state and local budgets funded from their own sources of revenue (rather than from federal grants in aid). Expenditures for means-tested cash and food benefits cost state and local governments only about \$23 billion in revenue from their own sources in 1998 and unemployment compensation benefits cost only another \$17.8 billion. Together these expenditures required less than 3% of all revenues generated by state and local sources.

⁸¹ The likely effect of a Basic Income guarantee on labor-force participation is hard to analyze, because the direction, size and intensity of its substitution and income effects would vary for different categories of workers or potential workers. A benefit program’s “substitution effect” is its tendency to influence the number of hours a person wants to work by changing the effective wage rates the person can earn from wage labor. This substitution effect can be produced either by the structure of the benefit or of the tax payments required to fund the benefit, because either can affect the net income (i.e., the effective wage rate) a person receives for additional hours of work.

may not be large,⁸² but if the program did reduce labor force participation and/or national income, the flat tax rate required to fund the program would be higher than Clark's estimate.

The JI Strategy: In a 1989 book I estimated what it would have cost the United States government to secure the right to work recognized in Article 23 of the Universal Declaration by means of direct job creation during the 10-year period between 1977 and 1986.⁸³ The national unemployment rate during that period averaged 7.0 percent, the third highest 10-year average in over a century, so the cost of an EAP program capable of securing the right to work in such a period overstates the likely cost of such an undertaking in better times – such as 1999 when unemployment averaged only 4.2% in the United States.

The hypothetical employment guarantee program whose cost I estimated would have created enough jobs to eliminate involuntary part-time employment while reducing official unemployment to the 2 percent level for an enlarged labor force that I assumed would include all able-bodied public assistance (AFDC) recipients and half of all persons who report themselves as wanting a job but who are not counted as officially unemployed because they are not actively seeking work.⁸⁴ I estimated that such a program would have needed to create an average of 8.2 million jobs per year over the 10-year estimation period, ranging from a low of 7.4 million in 1979 to a high of 13.6 million in 1983. Figure 5 shows the distribution of those jobs among

A benefit program's "income effect" is its tendency to reduce desired hours of labor because receipt of the benefit makes people feel they can "afford" to work less (as happens, for example, when people begin receiving Social Security benefits). As with the substitution effect, tax liabilities attributable to a benefit program must be taken into consideration in assessing its income effect in addition to the structure of the benefit itself.

Further complicating the analysis of work incentives, people may have a tendency to attach greater value to threatened income losses than they do to promised income gains, while a particular transaction may be perceived as either a gain or a loss depending on how it is "framed" (i.e., perceived in context). See Daniel Kahneman and Amos Tversky, *Prospect Theory: An Analysis of Decision Under Risk* 47 *ECONOMETRICA* 263 (1979). Thus, even workers who would gain more from their Basic Income grant than they would lose in taxed wage income might react to the wage loss as though it had reduced their income. In short, even a painstaking analysis of a Basic Income guarantee program's likely effect on wage rates and income levels may not tell us what the program's effect on labor force participation would be.

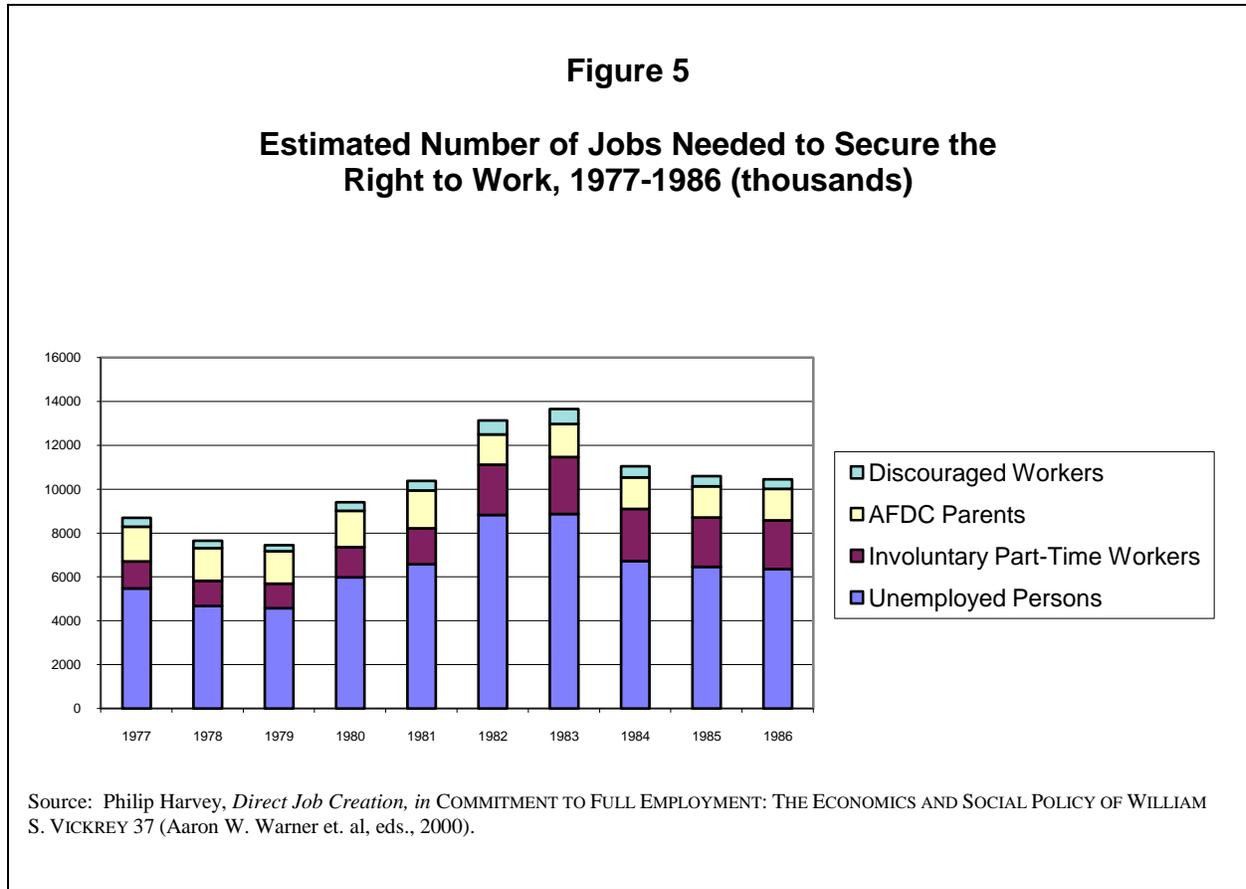
Finally, even if we knew the program's precise effect on labor force participation rates, we still wouldn't know for certain what effect those changes would have on program finances. What we really need to know is the program's likely effect on national income, that is, on the tax base that would support the program under Clark's proposal. Changes in labor force participation could affect national income, but the relationship is not necessarily straightforward and requires analysis.

⁸² See Robert M. Solow, *Forward*, in *WHAT'S WRONG WITH A FREE LUNCH* ix-xvi (Joshua Cohen and Joel Rogers, eds., 2001); and Karl Widerquist, *The Labour Market Findings of the Negative Income Tax Experiments and Their Effects on Policy and Public Opinion*, in *PROMOTING INCOME SECURITY AS A RIGHT: EUROPE AND NORTH AMERICA* 497-537 (Guy Standing, ed. 2004).

⁸³ HARVEY, *SECURING THE RIGHT TO EMPLOYMENT*, *supra* note 6, at 21-50.

⁸⁴ There were two reasons why I did not include all persons who reported themselves as wanting a job in estimating the program's effect on labor force participation. The first is because it would have resulted in double-counting of AFDC recipients who fell into this category. The second is because it is unlikely that all "discouraged" workers would actively seek employment even if jobs were plentiful.

assumed program participants. About three fifths of the jobs would have gone to officially unemployed workers. The rest would have been divided among involuntary part-time workers, AFDC recipients not already counted as unemployed, and discouraged workers.⁸⁵



I assumed the program would have paid market wages, which I defined as the wage unsuccessful job seekers reasonably could expect to receive if enough additional jobs became available at existing wage rates to employ them all. For officially unemployed persons, I assumed this would average 79% of the average hourly wage earned by non-supervisory and production workers in the United States as a whole. This estimate was based on a 1976 survey of unemployed persons that found this to be the average last wage they actually had earned prior to becoming unemployed. For other program participants (involuntary part-time workers, AFDC parents and discouraged workers) I assumed that average program wages would equal the average hourly earnings of part-time workers in the United States as a whole.

Based on these assumptions, program wages expressed in 2007 dollars would have averaged \$ 12.92 per hour for officially unemployed persons and \$ 8.67 per hour for other program

⁸⁵ For a detailed explanation of the basis of these estimates, see HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 6, at 24-30.

participants. Not all program participants would have earned these wages. Based on their experience and skills, many would have qualified only for minimum wage jobs (\$5.85 per hour at the end of 2007). I merely assumed that the cited figures would have been the arithmetic average wages paid by a program that paid market wages as I have defined that standard.

To guarantee an above-poverty wage for all program participants, I assumed that job training followed by a guaranteed job placement would have been offered to all program participants who lacked the skills needed to qualify for a job paying high enough wages to generate an income above the poverty line, but the same objective could be achieved by offering wage supplements such as those provided under the Earned Income Tax Credit program.

Table 4 contains a summary of other assumed program characteristics. I assumed the program would have offered 40-hour-per-week jobs to participants who wanted to work full-time, and jobs averaging 20 hours per week to participants who wanted to work part-time. I assumed that all participants would have been paid for a full 52 weeks per year (therefore allowing for the payment of holiday, vacation, and sick leave at whatever levels were deemed appropriate).

Table 4

**Assumptions Underlying Cost Estimate for Direct Job Creation
Program Capable of Securing the Right to Work**

Wages:	Program participants paid “market wages” averaging \$12.92 per hour in 2007 dollars for officially unemployed persons and \$8.67 per hour in 2007 dollars for other program participants.
Hours:	40 hours per week for persons seeking full-time jobs and 20 hours per week for persons seeking part-time jobs.
Taxes:	Program wages fully taxable. Program employment also covered by social security, with program participants (and the government as employer) liable for FICA taxes at same rates as other covered employees (and employers).
Insurance:	Federal employee health insurance benefits provided on same terms as for regular federal employees.
Paid Leave:	Medical leave, holidays, and vacation time provided to program participants at whatever level is deemed appropriate, with cost of benefit covered by assumption that wages would be paid for a full work year (2080 hours/year for full-time workers and 1040 hours/year for part-time workers).
Child Care:	Free to all program participants (provided in child care centers operated as employment projects by the program).
Services:	Free job training and other support services (e.g. substance abuse counseling or sheltered workshop assignments) provided to all program participants (with services provided through programs operated as employment projects by the program).
Materials:	Spending on non-labor costs (facilities, tools, materials, and supplies) assumed to equal 1/3 of program’s direct wage bill.

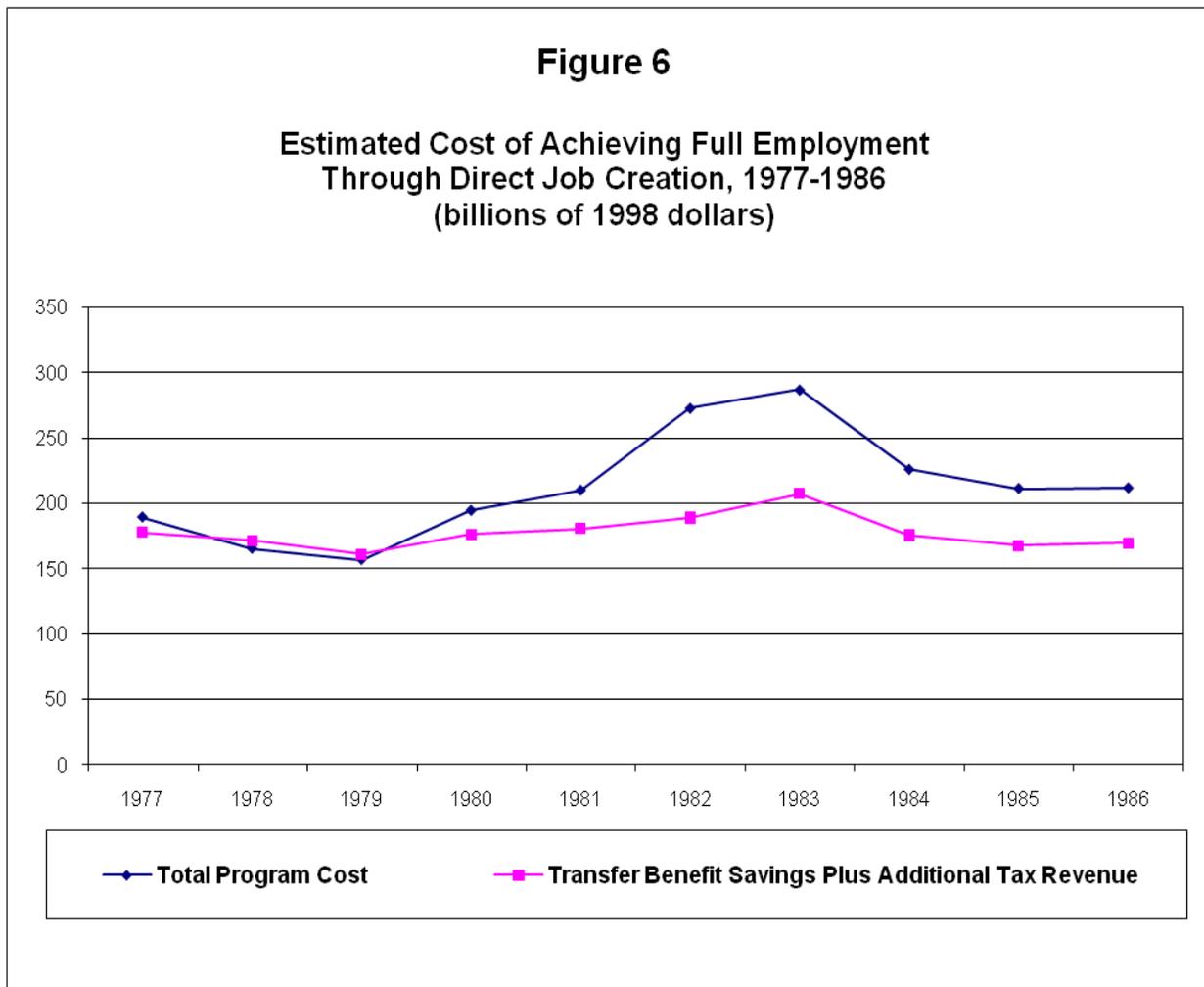
I further assumed that an amount equal to 1/3 of the program's direct wage costs would have been spent on facilities, equipment, materials and supplies required to carry out the program's work projects. This was the approximate ratio of non-labor to labor costs in New Deal direct job creation programs in the United States during the 1930s. It also was the approximate ratio of non-labor to labor costs in child day care programs operated in the United States during the 1980s -- one of the services I assumed the program would produce. Supervisory and administrative costs were assumed to be included in the program's total wage bill.

I assumed that program wages would have been treated like any other wage income for tax purposes (which means the employer share of FICA taxes was counted as an additional program cost) and that program participants would have been provided the same health insurance benefits as regular federal employees and on the same terms.

Finally, I assumed that free childcare would have been provided by the program to all program participants in childcare centers operated by the program as one of its work activities. This means the cost of providing child care to program participants would not have added anything to the program's total cost. The same would have been true of a range of other employee services -- such as paid job training, substance abuse counseling, and sheltered-workshop employment for program participants who needed such services.

The estimated year-to-year cost of the program based on these assumptions is shown in Figure 6. Expressed in 1999 dollars, these costs would have averaged of \$218 billion per year. While large, this level of spending is not unprecedented for a major social insurance benefit. In 1986, for example, the jobs program would have cost \$146 billion in current dollars compared to the \$194 billion spent that year for Social Security pension benefits. It also would have cost far less than the nearly two trillion dollars required to fund Clark's proposed BI grant program.

Figure 6 also includes estimates of certain offsetting savings and revenues that such a program would have generated. The offsetting savings shown in Figure 6 consist of reduced spending on cash and in-kind transfer benefits actually provided to able-bodied persons of working age and their dependents during the 10-year period. I estimated that these savings would have covered about 60% of total program costs over the 10-year period. The offsetting revenue shown in Figure 6 consists of additional income and payroll tax payments by program participants. I estimated that this revenue would have covered another 20% of the program's total costs during the 10-year period.



As Figure 6 illustrates, the program’s remaining funding deficit (about 20% of total program costs) would not have been spread evenly across the 10-year period, but would have been concentrated in 1982 and 1983 when the nation’s unemployment rate was elevated by the worst recession since the Great Depression.

This calls attention to a third source of savings such a program would have generated. A jobs program such as I have described would be a powerful automatic stabilizer -- functioning in that respect like the nation's Unemployment Compensation program but with a much stronger counter-cyclical impact because of its greater size.⁸⁶ If the program I have described had been in place during the 1977-86 period, the deep recession of the early 1980s almost surely would have been less severe. This, in turn, would have resulted in lower program costs and a smaller

⁸⁶ The term “automatic stabilizer” is used to refer to categories of government spending – like state-administered unemployment insurance benefits – that tend to increase during economic downturns and decrease during periods of economic expansion, without legislative or executive action being required to trigger the increase or decrease. These categories of government spending help to counteract fluctuations in aggregate demand and thereby lessen the severity of recessions.

program deficit. It also would have resulted in substantial increases in government tax receipts during the period -- additional revenues that reasonably could have been attributed to the jobs program. I did not try to estimate what the program's likely counter-cyclical effect would have been. Nor did I try to estimate the savings and revenues likely to have resulted from that effect, but they could have been substantial.

It is significant to note in this regard, that prior to the recession of the early 1980s, the program would have had virtually no budget deficit after taking into consideration transfer benefit savings and additional income tax revenues attributable to it. This is attributable to two factors. The first is that unemployment rates were lower during this period, averaging 6.3% between 1977 and 1979 compared to 7.4% during 1980 and 1981, 9.7% during 1982 and 1983, and 7.2% between 1984 and 1986. The other reason is that spending on social welfare benefits for jobless individuals was greater during the late 1970s than following the budget cuts instituted at the beginning of the Reagan administration.

A fourth source of savings attributable to the program would have consisted of reductions in government spending for items other than transfer benefits. Joblessness has been shown to contribute to a range of social and medical problems that impose significant costs on governments other than the payment of transfer benefits. These problems range from increased criminal activity to increased heart disease.⁸⁷ A jobs program that reduced unemployment to genuinely voluntary levels almost surely would have produced savings in budget areas not included in the estimate of transfer program savings shown in Figure 6.

Finally, my cost estimate for the program was based on the assumption that everything the program produced would have been given away for free. Such a policy is certainly not required, and there is no reason to believe it is desirable. If the program sold some of its output, even at deeply discounted prices, the program's funding deficit would have been reduced. In deciding what, if anything, to charge for the goods and services produced by such a program, fiscal policy considerations could play a role. For example, if it were considered desirable that the program be fiscally neutral compared to current levels of taxation and government spending, prices for program outputs could be set at a level calculated to achieve that goal. Given the relatively small size of such a program's likely funding deficit (after taking into account other sources of savings and revenue) that particular goal should be easy to achieve. In fact, my analysis suggests that such a program is more likely to save governments money than to require additional outlays, in which case fiscal neutrality would require either additional government spending for other purposes or a tax cut.

In short, I think it is reasonable to assume that the right to work could be guaranteed without imposing additional fiscal burdens on federal, state or local governments in the United States. In other words, a program securing the right to work like the one I have described probably could have been funded in 1999 without any increase in federal, state or local tax rates compared to their actual level that year.⁸⁸

⁸⁷ See Harvey *Combating Joblessness*, *supra* note 34, at 679-80 nn.4-9.

⁸⁸ For a theoretical exposition of the possibility that an EAP program could be funded without increasing either taxes or deficit spending, see Harvey, *Funding A Job Guarantee*, *supra* note **Error! Bookmark not defined.**

To complete our estimate of the comparative cost of equivalent BI and JI guarantees, however, we also must estimate the cost of guaranteeing an above-poverty-level income for persons who would not have been able to earn an above-poverty level income in 1999 by exercising their right to work. To eliminate all official poverty, this sum would have to be added to the cost of providing an employment guarantee. A rough measure of this sum is the nation's aggregate poverty gap – the total amount of money needed to raise the income of all persons living in poverty to the federal government's applicable poverty thresholds. In 1999 this amount was \$79.5 billion. This figure actually overstates the amount of additional aid that persons not expected to work in 1999 would have needed to increase their income to the poverty threshold, because it includes the income needs of the “working poor” and of other persons who would have earned at least a poverty level income that year if the right to work had been guaranteed. However, if wage supplements had been used to guarantee all workers at least a poverty-line income instead of the training measures I have proposed, this figure would approximate the amount needed to fund the required wage subsidies as well as the additional income assistance benefits needed for non-workers and their dependents.

Funding this level of additional public aid would have required a 1.6 percentage point increase in individual and corporate federal tax rates in 1999. For purposes of comparison, if the tax system proposed by Clark were adopted, a flat tax rate of only 12.7% would have been required to balance the federal budget, compared to the 35.8% rate required to fund a comparable BI guarantee. A BI guarantee would provide other benefits, of course, but so would a strategy founded on an employment guarantee especially if the extra \$1.7 trillion a BI guarantee would have cost in 1999 were allocated instead to expanding other economic and social entitlements. Under Clark's proposal, overall expenditures by all levels of government would have increased from about 30% of gross domestic product in 1999, the lowest level of any industrialized country, to about 49% of gross domestic product, roughly comparable to the level found in the highest spending European welfare states, but without providing the full range or quality of social services enjoyed by the residents of those nations.⁸⁹

A BI guarantee may be desirable, but it isn't the only desirable social welfare benefit governments can provide, and it wouldn't satisfy all of the social welfare obligations that documents like the Universal Declaration ascribe to governments. If there are social welfare benefits other than a BI guarantee that the United States arguably should be providing but currently is not providing (e.g., health insurance for persons who now lack it, a reasonable level of child care benefits for working parents, or enough educational assistance to equalize educational opportunities for children in rich and poor communities) the additional cost of providing those benefits should be considered before concluding that the BI strategy for ending poverty is economically viable or, if viable, preferable to the far less costly strategy of ending poverty using an employment guarantee and conventional transfer programs.

The difference in cost between the two strategies would not be as stark, of course, for other types of BI guarantee. I have estimated that a negative income tax (NIT) providing the same net

⁸⁹ Barbara Bergmann, *A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?*, in *REDESIGNING DISTRIBUTION*, supra note 24, at 130-42.

benefits as Clark's proposed universal grant system would have cost \$1.09 Trillion in 2002 compared to \$1.96 Trillion for a universal grant system like the one proposed by Clark.⁹⁰ After factoring in a high estimate of the savings in existing transfer benefits that would accompany the introduction of a BI guarantee, the increase in federal government expenditures required to fund the NIT option I modeled would have been \$826 billion in 2002, compared to a \$1.69 trillion increase in spending to fund an equivalent universal grant program.

Further reductions in the cost of providing a BI guarantee could be achieved by deviating further from the universal grant model. A key feature of that model, as proposed by Clark and other advocates of the universal grant idea, is that the benefits are calculated and awarded on an individual rather than a household or family basis.⁹¹ To honor this principle, an NIT designed to mimic the net redistributive effect of a universal grant system would have to require all members of society, including children, to report their own individually received income. The result of this feature, though, is that most of the benefits paid by the NIT system would go to children and other non-working members of non-poor households. While such a result may be justified on equitable grounds, it adds greatly to the cost of eliminating poverty using a BI guarantee.

A BI guarantee could be provided to families rather than individuals, of course, but it would be difficult to design and administer such a system so as not to discourage family formation. The cost of an NIT designed to furnish a BI guarantee also could be lowered by increasing the rate at which the BI benefit was reduced as an individual's (or a family's) income from other sources increased, but this would have the undesirable effect of increasing the effective tax rate low-wage workers paid on their earnings, thereby discouraging them from seeking employment. It may be that the reduction in work effort caused by this effect would not be great enough to call the strategy into doubt,⁹² but an income guarantee provided in this manner would look more like an expanded version of the now-defunct Aid for Families with Dependent Children (AFDC) program than the BI guarantee advocated by supporters of the idea. For BI advocates who favor a universal system of unconditional BI grants, or an equivalent negative income tax, the conclusion is inescapable that a BI guarantee would be far more expensive than a JI system that provided the same anti-poverty effects.⁹³

B. Achieving Administrative Simplicity and Protecting the Dignity of the Poor

Is the high cost of the BI strategy compared to the JI strategy justified by the greater benefits it would produce? One advantage commonly claimed for the BI strategy is its ease of administration and its dignified treatment of the poor compared to means-tested income support

⁹⁰ See Harvey, *The Cost of A Basic Income Guarantee*, *supra* note 78, at 13.

⁹¹ See, e.g., Van Parijs, *Basic Income: A Simple and Powerful Idea for the 21st Century*, *supra* note 24.

⁹² See Widerquist, *The Labour Market Findings of the Negative Income Tax Experiments and Their Effects on Policy and Public Opinion*, *supra* note 82.

⁹³ This is the form of income guarantee favored by most BI advocates. The first line of text on the home page of the movement's global advocacy organization – the Basic Income Earth Network (BIEN) – state that “[a] basic income is an income unconditionally granted to all on an individual basis, without means test or work requirement). See <http://www.etes.ucl.ac.be/bien/Index.html>.

programs. Not having to decide who is “deserving” of means-tested public assistance would indeed be a major advantage. The question of who among the poor should receive public aid has been a deeply rancorous and divisive issue in market societies for centuries,⁹⁴ and even if it were possible to decide the question in the abstract, the process of deciding individual cases is inherently difficult and prone to error.⁹⁵

In analyzing the severity of this problem, however, it is important to note that both public policy debate in this area and the administration of public assistance law has always been carried on in an environment in which the right to work has not been secured. In that environment, the issue of who should be provided income assistance has always been dominated by disagreements over the causes and appropriate policy responses to the problem of joblessness. The economy’s failure to provide decent work that pays wages capable of supporting a dignified existence for everyone willing to accept such employment has inspired progressives (in the context of the historical period at issue) to push for public assistance policies that offer support to larger numbers of people with fewer conditions attached. Conservatives, on the other hand, have pushed just as hard for public assistance policies that deny public aid to the “able-bodied poor” because they believe joblessness is caused by the behavioral shortcomings of jobless individuals themselves and/or can only be remedied by inducing behavioral change among the jobless poor.⁹⁶ This has created an unbridgeable divide in market economies both in policy debates over who should receive public assistance and in the ethos of the agencies that administer public assistance law.

In considering whether the possibility of avoiding these conflicts is worth the high cost of a universal BI grant system, we therefore need to consider how the employment guarantee leg of the JI strategy would affect policy debate in this area and the administration of public assistance law. That’s a big topic, deserving more careful treatment than I can give it in this article, but there is reason to believe that the availability of decent work for everyone who wants it would greatly reduce the intensity of progressive/conservative disputes in this area of public policy. The reason is simple. The consequences of policy decisions (and of individual administrative decisions) would no longer be as momentous for either progressives or conservatives. If groups denied income assistance were offered guaranteed access to decent jobs instead,⁹⁷ progressives

⁹⁴ KATZ, *IN THE SHADOW OF THE POORHOUSE*, *supra* note 6; Harvey, *Joblessness and the Law Before the New Deal*, *supra* note 6.

⁹⁵ For an extended discussion of these issues, *see* HANDLER, *SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE*, *supra* note 14 **Error! Bookmark not defined.**

⁹⁶ Harvey, *Joblessness and the Law Before the New Deal*, *supra* note 6; Harvey, *Combating Joblessness*, *supra* note 6, at 686-89.

⁹⁷ It should be emphasized in this context, that the right to work the JI strategy is designed to secure includes an obligation on the part of governments to accommodate job seekers who enter the labor market with disadvantages. Article 23 of the Universal Declaration states that “everyone” has a right to work, and while that language obviously was not chosen with the intent that it be read literally (e.g., as applying to infants) there is no reason to read it as excluding persons with disabilities. In my view, the most reasonable interpretation of the right to work and the right to income recognized in the Universal Declaration is that they create overlapping entitlements for persons whose diminished physical, cognitive or psychological capacities render them unable to function in “ordinary” jobs. Such

would have far less reason to fear the consequences of “losing” a policy debate over the group’s entitlement to income assistance, and conservatives also would view the outcome as less momentous, since government would have to assume fiscal and administrative responsibility for the group’s support whether or not they were deemed entitled to income maintenance benefits. Indeed, conservatives might even prefer to send a particular group checks than to provide them with employment, because the latter would be both more expensive (on a per recipient basis) and involve a larger administrative role for government. In that context, I believe it is reasonable to expect policy formation and administration to become less problematic. The positions of progressives and conservatives might even flip, with progressives advocating more extensive accommodation of persons with disabilities in jobs programs while conservatives argued, on budgetary grounds, that assistance for such persons should be limited to cash grants.⁹⁸

It also is unrealistic to view the BI strategy as providing a complete solution to eligibility determination problems. One of the disadvantages of the BI strategy is that the only way to increase income assistance benefits to persons who need more than the BI guarantee would be either to increase the size of the guarantee or engage in precisely the kind of eligibility screening the BI strategy is designed to avoid. A BI guarantee would not end the relative advantages that some groups enjoy nor the relative disadvantages that other groups suffer. Unless we are persuaded that providing a BI guarantee would suffice to “level the playing field” on which individuals seek opportunities for personal development and economic gain in market societies, we cannot dismiss the possibility that more targeted remedial measures still would be needed to achieve social justice in a world with a BI guarantee in place. Would enactment of a BI guarantee really end policy debate concerning the extent of society’s obligations to provide special assistance to single parents, residents of economically depressed communities, racial minorities, and the relatively impoverished (i.e. people living on nothing but their BI guarantee)? A BI would reduce the administrative problems associated with such decision-making, but it would not eliminate them entirely.

BI advocates may also be unrealistic in assuming that the introduction of a universal BI grant system would eliminate the stigmatization now suffered by public assistance recipients in market societies. Just because everyone would receive the same BI grant does not mean that everyone’s use of the grant would be equally approved. A society which provided a universal BI grant could easily disdain people who chose to live on their grant alone. “Freedloading” might be condemned both on moral grounds and in order to maintain the funding base on which the grant system would depend.

If the general public shared the attitude of progressive BI advocates towards public assistance recipients, we wouldn’t need to institute a BI guarantee to eliminate the stigma and

persons are entitled to income support, but they also are entitled to have their disabilities accommodated if they want to work – even if it would cost society less simply to send them a check.

⁹⁸ This is exactly what happened in the winter of 1933-34 when it became clear that the Roosevelt administration intended to fund genuine jobs for the unemployed rather than simply require them to perform labor as a deterrent to their seeking public aid. Conservatives quickly abandoned their historic preference for work relief and began to express support for “direct relief” (providing cash aid without a work requirement) on the grounds that it was cheaper than the work relief being organized by the Roosevelt administration.

administrative oppression “welfare” programs now generate. Simply imagine what a means-tested public assistance program designed and administered by people who share the attitude of progressive BI advocates towards the poor would look like. The mistake BI advocates make is to assume that their own attitudes towards work and “reciprocity” would necessarily triumph if a universal BI grant system were instituted, and, on the other hand, that it would be impossible for their sympathetic attitude towards the poor to prevail in a society that imposed any conditions on the receipt of public assistance.

Still, the BI idea does have promise as a means of simplifying the administration of public assistance programs and reducing the possibility of erroneous benefit denials. Handler has argued, for example, that a BI guarantee would empower people who are dependent on public support in ways that would improve the administration of public assistance programs. Noting the unequal bargaining power between public assistance recipients and the officials who control their benefits, Handler criticizes as illusory the currently popular notion that social-welfare clients can be empowered by giving them the right to enter “contracts” in which they promise to undertake certain activities in exchange for their benefits. Call them what you will, Handler argues, these “contracts” are inherently coercive (and therefore demeaning) because social-welfare clients lack the real freedom to reject their terms, the essential feature of all true contracts. What social-welfare clients need, he maintains, is an “exit option” permitting them to reject the services and obligations that social service agencies now require their clients to accept in exchange for the income assistance they receive. Handler fully accepts that most public-assistance recipients need social services and not just money. His argument is that they should be afforded the dignity of deciding what social services they need, just as social-welfare clients with money do, and that this will actually enhance the likelihood that the services they receive will be effective.⁹⁹

For Handler, the value of a BI guarantee is that it would provide public-assistance recipients this “exit option.” The JI strategy also would provide an “exit option” to public assistance recipients, but only for those who were able to work, with or without accommodations. For people whose capacity to hold a paying job is uncertain or who have problems to overcome before they will be able to do so, another “exit option” is needed, and a BI guarantee could perform that function.

I find Handler’s argument persuasive, but the kind of BI guarantee required to satisfy his concerns need not be provided in the form of an unconditional grant paid to all members of society. The same “exit option” could be provided with a negative income tax or a means-tested public-assistance benefit that was not made subject to a work requirement. This type of means-tested but not work-tested public assistance benefit is not untested,¹⁰⁰ but it has never been offered in a context where the right to work was secured for all members of society and where adequate provision of social services to help people overcome their disabilities and

⁹⁹ HANDLER, SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE, *supra* note 14, at 272-278.

¹⁰⁰ See Widerquist, *The Labour Market Findings of the Negative Income Tax Experiments and Their Effects on Policy and Public Opinion*, *supra* note 82.

disadvantages also was secured. Claims that unconditional public-assistance benefits discourage work effort and promote dependency have never been put to the test in an environment where it was in fact possible for everyone who wanted paid work to find it and where everyone who needed social services to enhance their employability actually could obtain them. In such an environment, the work disincentive effects of a means-tested but not work-tested public-assistance could be quite small.

Incorporating a limited BI guarantee of this type into the JI strategy also would provide a way of judging the adequacy of the JI strategy's efforts to secure the right to work. Any increase in the take-up rate of the BI benefit on the part of persons who want jobs would suggest a failure in society's job-creation effort, while the experience of persons who elected to receive the benefit because they did not want a paying job would test the effects of providing such an option. Providing a BI guarantee in this form would be relatively inexpensive, and I believe it would achieve most of the benefits uniquely attributable to the BI idea.

C. The Social Insurance Function

So far we have compared the relative ability of the BI and JI strategies to secure the right to an adequate standard of living recognized in Article 25 of the Universal Declaration. A careful reading of Article 25, though, shows that the right to income security recognized in that article involves more than a guarantee against destitution. Article 25 provides that everyone has a right to an adequate standard of living “*and* the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” (See Box 1, emphasis added). The “and” in this sentence suggests that the right to income security has two components. The first is the right to a standard of living sufficient to maintain a dignified existence. The second is a right to economic security in the face of commonly occurring threats to a person's ability to be self-supporting. Using a term that is common now but does not appear in the Universal Declaration, this can be conceived as a right to *social insurance* – a set of social welfare benefits (however they may be provided) designed to protect the ability of both individuals and families to go on with their lives without suffering dramatic economic sacrifices when the individual (in the case of persons living alone) or a family breadwinner suffers a loss of livelihood due to risks we all share – e.g., unemployment, sickness, disability, death, or advancing age.¹⁰¹ The limits of this right to social insurance are subject to debate, of course, since Article 25 speaks of the right only in very general terms, but it has to involve more than a guaranteed minimum income. Otherwise the entire phrase quoted above would add nothing to the guarantee of an adequate standard of living promised in the first part of the article.

How do the BI and JI strategies compare in their ability to secure this right? When discussing the advantages of a BI guarantee as an income support mechanism, BI advocates rarely refer to social insurance programs designed to secure the second component of the right to income security. Instead, they focus on the advantages of a BI guarantee as a substitute for means-tested

¹⁰¹ This reading of Article 25(1) is reinforced by Article 16(3) – which provides that “[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State” – and by Article 25(2) – which provides that “[m]otherhood and childhood are entitled to special care and assistance.”

public assistance programs – that is, on programs designed to secure the minimum standard of living promised in the first component of the right to income security.

Social Insurance programs designed to protect workers from income loss account for the bulk of social welfare spending in most market societies. In the United States, the main programs falling under this heading include Workers Compensation (WC), Unemployment Insurance (UI), and the Social Security Old Age and Survivors and Disability Insurance (OASDI) programs. The United States typically spends about four times as much on these programs as it does on means-tested income assistance.¹⁰² Most European countries provide a more extensive and generous set of social insurance benefits. In 2005, the so-called EU-15 (the 15 countries that comprised the European Union before it was enlarged in 2004) collectively spent almost 12 times as much on non-means-tested cash social-welfare benefits as they did on means-tested programs.¹⁰³

Whether a BI guarantee would serve as a substitute for or supplement to these benefits is an important question of program design, but the views of BI advocates on this question are difficult to surmise. One indicator of their views is their treatment of different categories of current spending in estimates of program cost. For example, Garfinkle, Huang, and Naidich seem to assume that a BI guarantee could effectively replace almost all Social Insurance benefits.¹⁰⁴ Clark agrees that a BI guarantee should replace UI, but his position with respect to OASDI has changed. After initially assuming that OASDI benefits would continue following the establishment of a BI grant system, he subsequently adopted the same position as Garfinkle et al. – but only for persons over the age of 65. Persons under age 65 would continue to be eligible for undiminished OASDI benefits in addition to receiving BI grants.¹⁰⁵

Since BI advocates seem to agree that a BI guarantee would provide a satisfactory substitute for Unemployment Insurance, I will use that example to explore the ability of a BI guarantee to secure the second component of the right to income security recognized in Article 25 of the Universal Declaration, which I have characterized as the right to social insurance.

Consider two workers living in a world with Clark's proposed BI grant system in place. Both are employed. Then one of the two is laid off and suffers involuntarily unemployment. To what extent does the unemployed worker's receipt of a BI guarantee compensate her for what

¹⁰² See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES, 2008 (2008), Tables 523 and 542.

¹⁰³ See Eurostat, *European Social Statistics: Social Protection Expenditures and Receipts, Data 1997-2005*, 2008 Edition, at 24, Table B 3, available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-DC-08-001/EN/KS-DC-08-001-EN.PDF.

¹⁰⁴ Irwin Garfinkle, et al., The Effects of a Basic Income Guarantee on Poverty, in REDESIGNING DISTRIBUTION, *supra* note 24, at 143-174. The authors are silent on the fate of Workers Compensation, expressly assume that UI benefits would be eliminated, and suggest that persons eligible for OASDI benefits would receive either their OASDI benefits or their Basic Income grant, whichever is greater. The latter suggestion is functionally equivalent to eliminating OASDI benefits except to the extent they exceed the size of the individual's Basic Income grant.

¹⁰⁵ See *supra* note 78. Clark's suggestion that eligibility for OASDI benefits depend on the individual's age would create anomalous results that are hard to justify. For example, disabled workers would receive disability benefits in addition to their Basic Income grants until they reached the age of 65, but at that point their disability benefit would be reduced by an amount equal to their Basic Income grant.

she has lost? Her BI grant prevents her from falling into absolute poverty, but it does nothing to replace what her job provided. She has suffered a severe blow to her welfare – losing perhaps half, three quarters or more of her income – a blow that her BI grant does nothing to replace since she received exactly the same grant before she lost her job. She has been left seriously disadvantaged compared to her former co-worker who receives the same BI grant that she does in addition to the income from his job.

The same analysis would apply if social insurance benefits were eliminated for other losses of livelihood that commonly are subject to such protection in market societies. If instead of being laid off, the worker in our example suffered a heart attack or disabling injury, or if she took a leave of absence from her job to have a baby, her continued receipt of a BI grant would do nothing to compensate her for her lost wage income. The same would be true if she retired. A BI grant may appear to provide the same benefit as a Social Security pension of equal size, but if the grant is paid to people before as well as after they retire, it cannot perform the wage-replacement function that retirement pensions are designed to serve. To maintain their standard of living after retirement, workers would have to rely on personal savings or employer-provided pension benefits. Their BI grants would do no more for them than it would for someone who had never received any wage income.

This does not mean that our hypothetical worker's BI grant would be worthless. To the contrary, it would guarantee the first component of the right to income security recognized in Article 25 of the Universal Declaration. That is, it would guarantee her a minimally adequate standard of living. My point is that a BI guarantee provided in the form of a universal grant would do nothing to guarantee the second component of the right to income security recognized in Article 25. What I have termed the right to social insurance would become a private responsibility, no longer protected by society.

It would be possible, of course, to combine a universal BI grant system with a conventional set of social insurance programs. BI advocates do not presume that a BI guarantee would provide an adequate substitute for publicly funded education and health insurance benefits,¹⁰⁶ and there is no reason they should presume that it would provide an adequate substitute for non-means-tested social insurance benefits either. Recognizing the need to continue (and add to) conventional social insurance benefits to fully protect the right to income security recognized in Article 25 of the Universal Declaration would add to the cost of the BI strategy – a potential problem given the strategy's already high price tag – but it would not be inconsistent with the universal BI grant idea.

The JI strategy assumes a full set of social insurance benefits would have to be provided in addition to a job guarantee. These benefits would be easier to provide, however, than they would be in conjunction with the BI strategy. There are two reasons for this. First, the job guarantee component of the JI strategy would reduce the number of people likely to need social insurance because of the elimination of involuntary unemployment.¹⁰⁷ Second, the lower cost of the JI

¹⁰⁶ See, e.g., Philippe Van Parijs, *Basic Income: A Simple and Powerful Idea for the 21st Century*, *supra* note 24.

¹⁰⁷ President Roosevelt's Committee on Economic Security proposed that unemployment insurance be provided in addition to employment assurance so that laid-off workers expecting recall would not have to seek interim

strategy leaves more fiscal room in government budgets to provide social insurance benefits. It is hard to imagine a government that provided a BI guarantee also being able to finance the full range of social insurance programs needed to provide the second type of income security promised in Article 25 of the Universal Declaration.

D. Addressing the Problem of Unemployment

The BI idea is commonly promoted as a solution to the problem of unemployment.¹⁰⁸ But what kind of solution would it provide? While some BI advocates may believe that a BI guarantee would tend to reduce unemployment rates by lowering labor supply relative to labor demand, I do not understand more sophisticated BI advocates as arguing that it would.¹⁰⁹ Their argument is rather that receipt of a guaranteed BI would allow people to pursue meaningful work without requiring them to find a job – thereby satisfying their right to work without having to achieve full employment in the conventional sense.¹¹⁰ As Perez explains:

To conceive of work only as those activities through which a monetary consideration is obtained is to have a very limited idea of what work means, and it is even worse to rely on the market to determine what is and what is not work. . . . It is necessary to distinguish between work and its commercial appraisal. Work can be defined as all those activities that combine creativity, conceptual and analytic thought and manual or physical use of aptitudes. It consists of every activity that human beings carry out in which they combine their intelligence with their force, their creativity with their aptitudes.

The right to work cannot be synonymous with the right to employment or to an occupation with remuneration. In the past they were synonymous because in conditions of full employment, this was the way to achieve social integration. Today conditions have changed and the right should be redefined as the right to engage in a non-alienating activity that allows the person to develop and integrate in society regardless of whether or not the market values the activity.¹¹¹

employment, but they proposed that eligibility be limited to short periods of time (5 weeks). *See* COMMITTEE ON ECONOMIC SECURITY, *supra* note 6, at 80-1.

¹⁰⁸ *See, e.g., supra*, text accompanying notes 52 and 53.

¹⁰⁹ The reason it is naïve to expect a Basic Income guarantee to lower unemployment rates simply by reducing labor supply is that changes in labor force participation tend also to affect labor demand, albeit indirectly. Labor force participation rates can (and frequently do) vary widely both among economies and within an economy over time without having any clearly discernable effect on the economy's unemployment rate.

¹¹⁰ *See, e.g.,* VAN PARIJS, REAL FREEDOM FOR ALL, *supra* note 23, at 126; STANDING, BEYOND THE NEW PATERNALISM, *supra* note 23, at 255-261; José Luis Rey *El Derecho Al Trabajo, ¿Forma De Exclusión Social? Las Rentas Mínimas De Integración Y La Propuesta Del Ingreso Básico*, 62 REVISTA ICADE 239-269 (2004).

¹¹¹ José Luis Rey Perez, *El Derecho Al Trabajo, ¿Forma De Exclusión Social? Las Rentas Mínimas De Integración Y La Propuesta Del Ingreso Básico*, 62 REVISTA ICADE 239, __ (2004).

BI advocates suggest that if the right to work were redefined in keeping with this broadened conception of work, a BI guarantee would be an ideal means of securing it.¹¹²

There is no question that a BI guarantee would significantly enhance the freedom of people to engage in unpaid or low-paid work, but I believe BI advocates have been too quick to assume that this increased freedom would constitute a satisfactory substitute for securing the right to a paying job contemplated in Article 23 of the Universal Declaration. I have discussed this issue in detail elsewhere¹¹³ and will limit my discussion here to commenting on the continuing importance access to a paying job would play for individuals who receive an unconditional BI guarantee.

We already have noted that a universal BI grant would do nothing to compensate laid-off workers for their lost wage income. Viewed from the perspective of the unemployed themselves, a paying job still would be needed in a world with a BI guarantee to obtain more than the close-to-poverty level income provided by the BI guarantee. Nor is an income above the BI level the only benefit paid employment would provide. Karst has asked, “what happens to individuals and families when the formal freedom to work becomes hollow because stable work with a decent wage, decent health and retirement benefits, and access to decent childcare just isn’t available?”¹¹⁴ After noting the obvious – that the family’s income suffers and it may be exposed to material deprivation – he goes on to stress other harms.

- If stable, adequately paid work is a source of independence, its absence means dependence on others.
- If stable, adequately paid work is an avenue to personal achievement, its absence signifies failure.
- If stable, adequately paid work offers advancement up the socio-economic ladder, its absence means that one’s social station is either fixed or in decline.
- If stable, adequately paid work provides family security, its absence means insecurity.
- If stable, adequately paid work elicits the esteem of others, its absence means shame.¹¹⁵

Paid employment (whether that employment takes the form of wage employment or self-employment in either a market or subsistence economy) is not the only source of these benefits of course, but it is an important source, and there is no reason to believe that importance would disappear (or even diminish) with the establishment of a BI guarantee. The unemployed, as a group, have always been both disadvantaged and stigmatized in market societies, and not just

¹¹² See, e.g., VAN PARIJS, *REAL FREEDOM FOR ALL*, *supra* note 23, at 126; STANDING, *BEYOND THE NEW PATERNALISM*, *supra* note 23, at 255-261; José Luis Rey Perez, *El Derecho Al Trabajo, ¿Forma De Exclusión Social? Las Rentas Mínimas De Integración Y La Propuesta Del Ingreso Básico*, 62 *REVISTA ICADE* 239-269 (2004).

¹¹³ Philip Harvey, *The Right to Work and Basic Income Guarantees: Competing or Complementary Goals?* 2 *RUTGERS J.L. URBAN POL’Y* 8, 29-36 (2005).

¹¹⁴ Kenneth Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 *CORNELL L. REV.* 523, 534 (1997).

¹¹⁵ *Id.*

because of the increased poverty they suffer.¹¹⁶ Their material suffering has always been viewed by some people as a consequence of their moral failings. Progressive BI advocates reject this view of the unemployed, but the introduction of a BI guarantee would not necessarily change the generally negative view of the unemployed found in market societies. Since people with jobs would be acutely aware of the high taxes they paid to fund the BI benefit, they might adopt an even more severe attitude towards people they considered “free loaders.” Even if public attitudes towards the unemployed became more sympathetic, involuntary joblessness would continue to disadvantage its victims relative to people who had jobs.

The Universal Declaration assumes that society has an obligation to afford all its members access to the opportunities paid employment provides – not just 90 percent or 95 percent of its members. A BI guarantee would expand individual opportunities to seek personal fulfillment elsewhere, but paying jobs would remain an important source of benefits that a BI guarantee would not replace. To secure those benefits, the right to work conceived by the drafters of the Universal Declaration requires social protection – precisely the goal of the JI strategy.

But what about persons who engage in non-market work, either in their families or their communities? Many BI advocates stress the ability of a BI guarantee to provide income support for people engaged in work that markets do not compensate (e.g., family care work and a wide range of community service activities). It would perform this function, however, with some of the same limitations noted above in describing the compensation a BI guarantee would provide to unemployed individuals. Again consider two individuals living in a world with Clark’s proposed BI grant program in place. The parent, spouse, or child of one of these individuals develops a serious illness, and her average working day lengthens to 18 hours. Does her receipt of a BI grant compensate her for this additional work? No, because she receives exactly the same payment she did before her workload increased (and exactly the same compensation someone who performed no care work at all would receive. Her entitlement to the same BI grant whether or not she kept her job would make it easier for her to reduce her wage employment, because she wouldn’t lose all her income, but her decision to “work less” would hardly be unconstrained, since it would involve a very substantial sacrifice in income. The same analysis would apply to all other forms of unpaid care work or community service activities.

This doesn’t mean a BI guarantee would be worthless to unpaid care and community service workers. A BI guarantee plainly would offer more support for such work than governments currently provide. But it should be clear that a BI guarantee would not give such work the same status as paid employment, and this should concern us because the high cost of providing such a guarantee would use up resources that otherwise could be used to fund other, possibly superior means of compensating non-market work.

The Universal Declaration does not expressly mandate that unpaid family care and community service work be compensated, but it’s conception of the right to work provides strong support for rights-based claims of entitlement to such compensation. Article 23(2), asserts that “[e]veryone, without any discrimination, has the right to equal pay for equal

¹¹⁶ Harvey, *Joblessness and the Law Before the New Deal*, *supra* note 6.

work,”¹¹⁷ and although the drafters of the Declaration were clearly thinking of wage discrimination when they drafted this provision,¹¹⁸ there is no principled reason to view the equal pay mandate as limited to wage employment. Expanding the common understanding of the Declaration’s equal pay provision to include a right to compensation for currently unpaid family care and community service work poses both theoretical and practical challenges (e.g., in deciding what kinds of work should be deemed to deserve compensation and what kind of mechanisms should be used to provide the compensation) but these are challenges human rights advocates should welcome.¹¹⁹

As Standing points out, small steps in this direction already have been taken in some countries – through legislation providing for paid parental leave, publicly-funded child care, and care-giver allowances – but many questions exist as to the best way of securing compensation for family care work without reinforcing traditional gender rolls or the social isolation of family care workers.¹²⁰ Reasonable mechanisms for compensating community service activities are easier to envision, but the task of deciding which activities are deserving of such compensation is probably more challenging than for family care work.¹²¹

The JI strategy is well positioned to support an expansion of the conventionally defined right to work in this direction. First, as we already have noted, the lower cost of the JI strategy makes it easier to contemplate the creation of other forms of social support funded by governments –

¹¹⁷ Universal Declaration of Human Rights, *supra* note 38 and Box 1.

¹¹⁸ Feminists were both active and influential in their lobbying efforts during the drafting process. The “equal pay for equal work” provision in Article 23 was one of the passages on which women’s organizations concentrated during the drafting process. See MORSINK, *supra* note 65, at 116-129.

¹¹⁹ One of the advantages of broadly worded declarations of basic rights is that they are subject to more expansive interpretation than their drafters contemplated. The U.S. Constitution has often been described as a “living document,” despite its relatively fixed language; and the Universal Declaration undoubtedly will be subject to similar reinterpretation as conditions and sensitivities change over time. Some of these interpretations (or reinterpretations) may involve steps backwards, circumscribing rights recognized in the document, but others will just as surely move forward, expanding the Declaration’s scope by enlarging common understandings of the rights it proclaims to more adequately reflect the document’s underlying principles. See Harvey, *Aspirational Law*, *supra* note 69.

¹²⁰ STANDING, BEYOND THE NEW PATERNALISM, *supra* note 23, at 264-70.

¹²¹ Standing emphasizes the difficulty of distinguishing between socially useful and non-socially useful work. See Standing, *About Time: Income Security as a Right*, *supra* note __, at 4-5. He argues that all self-directed activities – including, as he says, “the stillness of contemplation” – should be affirmed and supported. According to this view, a Basic Income guarantee should not be conceived as a form of compensation for non-market work or even as a means of enabling people to engage in non-market activities. Its role should be understood as a support for individual autonomy, no matter how that autonomy is exercised. Everyone receives the same Basic Income grant, on this view, not to compensate them for the different occupations they chose to pursue, but to support that part of their being that they alone control – the part that wage workers owe only to themselves rather than to their bosses, the part that family care workers owe to themselves rather than their families, and the part that people who depend on the work of others – whether paid or unpaid – owe only to themselves despite their dependence. Perhaps an unconditional and universal Basic Income grant could be justified on these grounds, but not as a replacement for securing the conventionally defined right to work, nor as a means of providing compensation to persons who engage in socially useful forms of non-market work.

including an expansion of benefits designed to compensate socially useful non-market work. Second, by creating a category of public sector employment that is justified by human rights considerations (to secure the right to work) rather than utilitarian goals (achieving the optimal level of public goods production) the JI strategy would create both an ideological opening and a practical precedent for recognizing other types of work as deserving compensation.

E. Improving the Quality of Low Wage Work

Standing has argued that efforts to secure the right to work as it is conventionally defined would be freedom-reducing because it would impose an obligation on people to accept bad jobs rather than freeing them from dependence on such employment – as he claims a BI guarantee would.¹²²

In evaluating this criticism it is important to emphasize once again that the BI and JI strategies are not incompatible with one another.¹²³ There is no reason in principle why a society could not provide a BI grant to all persons while also guaranteeing employment at decent wages to everyone who wants it. Moreover, my analysis of the cost of providing such an employment guarantee suggests that it would be possible to add an employment guarantee to the BI strategy without adding significantly to its overall cost. For advocates of the JI strategy the question remains whether the additional benefits a BI guarantee would provide are worth its extra cost, but BI advocates should face no such uncertainty. If the right to a decent job could be secured without adding significantly to the overall cost of a BI grant program, it is hard to understand why a BI advocate would oppose the idea.

This point underscores how dependent Standing's criticism of the right to work is on the assumption that it cannot be secured by reasonable means. If it is possible to secure the right to work by means of direct job creation, while simultaneously guaranteeing everyone an unconditional BI guarantee, Standing's charge that policies designed to secure the right to work would be freedom-reducing obviously is false. Securing the right to work of a person who also receives a BI guarantee would provide the person more life choices than a BI guarantee alone.

Standing does not consider this possibility because he apparently accepts the neo-classical economic assumption that the only way to provide paid employment for everyone who wants it is to lower wages and allow working conditions to deteriorate, a strategy he understandably rejects.¹²⁴ But why assume the only way to expand employment opportunities is by lowering wages?¹²⁵ We don't expect to provide all the education and healthcare people need by relying on the market to provide them. Why should we expect the market to provide all the jobs we need?

If the right to work can be secured along with adequate income support for persons unable to earn their own livelihood, the complaint that policies designed to secure the right to work impose

¹²² STANDING, BEYOND THE NEW PATERNALISM, *supra* note 23, at 247-55.

¹²³ *See supra*, Part III.

¹²⁴ STANDING, BEYOND THE NEW PATERNALISM, *supra* note 23, at 272.

¹²⁵ Standing's assumption that lowering wages actually would lead to reduced unemployment also can be challenged. *See, e.g.,* Harvey, *Combating Joblessness*, *supra* note 34, at 709-23.

an obligation on people to work loses its moral force.¹²⁶ BI advocates accept that anyone who wants more income than a BI guarantee provides should have to work for it, and the fiscal viability of their proposals requires that almost everyone who currently works for wages would continue to do so. Stated differently, most members of a society that provided a BI guarantee would have to enjoy a standard of living well above the BI level. Otherwise the society could not afford to provide a BI guarantee. The only way people could maintain that standard of living would be by working, and with bills to pay and budgets to balance reflecting their income from work, most individuals would feel compelled to continue working even if they had a lousy job which they hated.

This compulsion to work is not what BI advocates criticize. Their moral complaint against “forced work” seems to be based almost entirely on the assumption that in the absence of a BI guarantee, low-wage workers would be forced to accept bad jobs that pay poverty wages. A BI guarantee would solve this problem, in their view, by giving these workers what Standing calls a “drop dead option,”¹²⁷ the ability to refuse sub-standard employment, thereby forcing employers to offer better quality work to attract the labor they need.

Eliminating sub-standard jobs is a laudable goal, but there is little doubt that a program that guaranteed all job seekers decent work would do more to achieve that goal than a BI guarantee. A BI guarantee might remove the whip of absolute necessity that currently forces low-wage workers to accept sub-standard jobs, but like other workers, they still would feel compelled to work in order to earn an above-poverty income. That being the case, a BI guarantee might end up subsidizing bad jobs rather than eliminating them. It would all depend on labor market conditions. If the number of job seekers greatly exceeded the number of available jobs – as usually is the case in low-wage labor markets – a BI guarantee could allow employers to lower their wage offers below the subsistence level without jeopardizing their labor supply. The “exit option” low-wage workers need in order to put pressure on employers to eliminate “bad” jobs isn’t a BI guarantee, but a ready supply of “good” jobs, such as the JI strategy would provide.¹²⁸

F. The Right to Personal Development and Freedom

The most important benefit BI advocates claim for the BI strategy after poverty reduction probably is an expansion of individual freedom and enhanced opportunities for personal

¹²⁶ Lest there be any misunderstanding, the issue is not whether the Universal Declaration imposes an obligation on people to accept wage employment. It emphatically does not. Proposals to link the right to work to such an obligation were made and expressly rejected in the drafting process. See MORSINK, *supra* note 65, at 157-90. The claim I understand Basic Income advocates to be making is that denying income support to individuals who could be self-supporting is equivalent to imposing an obligation to work on them because, without such support, they will feel compelled by material necessity to seek wage employment.

¹²⁷ STANDING, *BEYOND THE NEW PATERNALISM*, *supra* note 23, at 259.

¹²⁸ Indeed, the most significant disadvantage of using direct job creation to secure the right to work is the likelihood that the policy’s positive effect on wage rates would prove inflationary. See Philip Harvey *Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously*, 33 COLUM. HUM. RTS. L. REV. 363, 449-67 (2002).

development. The availability of a BI guarantee would give people more freedom than they now enjoy to pursue their personal goals and dreams. Still, it is easy to overestimate the effectiveness of a BI guarantee in serving these ends. Sensitive to criticism that a BI guarantee would reduce work incentives (thereby wounding the economy while discouraging the poor from taking steps to raise their income) BI supporters have tried to structure their proposals in ways that tend to minimize the likely effect of a BI guarantee on labor force participation. To the extent these efforts succeed, however, they tend to undercut claims that a BI guarantee also would cause people to increase their non-waged personal development activities and enjoy more leisure.

If a BI guarantee would not cause wage employment to decline significantly (as BI advocates tend to argue when discussing program finances and anti-poverty concerns) it is hard to understand how the amount of time people devote to non-wage activities would increase. If, on the other hand, BI advocates believe an income guarantee would cause people to devote more time to leisure and personal development activities, they need to incorporate that expectation into their program financing proposals. In short, BI advocates face a conundrum in reconciling their desire to make it easier for people to drop out of the wage economy while simultaneously maintaining participation levels in that economy.

What is the Universal Declaration's view of leisure time and personal development activities? First, the Universal Declaration emphatically *does* recognize personal development as a right. As Morsink has noted, "the right to 'the full development of the human personality' was seen by most delegates to the committee that drafted the Universal Declaration as a way of summarizing all the social, economic, and cultural rights in the Declaration."¹²⁹ The phrase "full development of the human personality" appears in slightly different form in three of the Declaration's articles (Articles 22, 26 and 29), and its spirit pervades the entire document.¹³⁰

The Universal Declaration's conception of personal development is not limited to activities pursued during non-wage-laboring time. Securing the right to work, for example, is viewed as essential to that goal, as Kenneth Karst's comments quoted above illustrate. On the other hand, the Universal Declaration does recognize that supported (i.e., paid) leisure also is essential to individual well-being and personal development. Article 24 states that "[e]veryone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay."¹³¹ This entitlement to supported leisure is not unlimited. The Universal Declaration does

¹²⁹ MORSINK, *supra* note 61, at 212.

¹³⁰ The broadest statement is contained in Article 22. *See supra*, Box 2.

¹³¹ The "legislative history" of this provision makes it clear that the purpose of the much criticized reference to "periodic holidays with pay" was not to endorse a specific compensation device (as critics have tended to assume) but to underscore that leisure must be supported if it is to be universally enjoyed rather than remain a privilege of wealth. *See* MORSINK, *supra* note 61 at 185-190. It also should be noted that the Declaration recognizes this right as belonging to *everyone*, not just to wage laborers. Consistent with this principal, for example, I would argue that full-time parents are entitled to supported leisure time as well as wage laborers.

not recognize an individual right to as much supported leisure as each person desires; but it does recognize that every member of society has a right to “a fair share” of supported leisure.¹³²

The JI strategy contemplates that this right will be secured by providing benefits and subsidies for leisure and development-enhancing activities. As with the BI strategy, the amount of support provided in this way necessarily is limited by the need to generate the income required to support the subsidies. The BI strategy leaves the allocation of these subsidies entirely to individual choice, but that flexibility does not insure that more leisure and personal-development activities will be supported. As with cash subsidies paid in lieu of employee benefits, there may be a tendency for the recipients of BI payments to use their BI grants to support ordinary living expenses rather than to “purchase” more leisure or to subsidize personal-development activities. Libertarians may prefer this arrangement, but the JI strategy also has advantages. Since benefits could be allocated on a rotating basis to a fraction of the population at a time, the subsidies provided for non-market activities could be more substantial – e.g., fully-paid sabbatical leaves or fully-subsidized cultural activities. This does not mean the JI strategy necessarily would provide more or better support for leisure and personal development activities than a BI guarantee, but it is an open question. BI advocates cannot assume the superiority of their approach.

V

CONCLUSION

Economists and public officials regularly ask how joblessness and the poverty that attends it can be reduced; but the policy goal of ensuring the availability of decent paid employment for everyone who wants it has been abandoned in market societies during the past three decades – even by progressives. Policy makers have lowered their sights, with the U.S. economy’s achievement of 4 percent unemployment in 2000 widely regarded as just about as good a labor market performance as it is possible to achieve – notwithstanding the fact that there were eight and a half million more officially unemployed, involuntary part-time and discouraged workers at the time than there were available jobs.

It is hardly surprising in this environment that many progressives find the BI idea attractive. It promises important benefits that market economies rarely have been able to deliver. But if the right to work and income support proclaimed in the Universal Declaration can be secured at lower cost than a BI guarantee, the BI idea loses much of its luster. A society that used direct job creation to secure the right to work and conventional income transfers to secure the right to income security could eliminate poverty with a much smaller allocation of public resources than a BI guarantee would require. The JI strategy also could secure most of the other benefits

¹³² The first draft of what ultimately became Article 24 stated simply that “[e]veryone has the right to a fair share of rest and leisure.” MORSINK, *supra* note 61, at 186. Although this language did not survive the drafting process, the “fair share” requirement underlay the drafters’ decision to include language making it clear that leisure time had to be supported (i.e., paid) since that is what is required to ensure that everyone will get a “fair share.” *See id.*, at 185-190.

associated with a BI guarantee at lower cost. That being the case, the extra benefits uniquely attributable to a BI guarantee would be hard to justify.

On a more general level, the methodology employed in making this comparative assessment illustrates the potential for analytic rigor of a law and economics scholarship founded on the view that the first obligation of society is to secure the fundamental human rights of all its members, including their economic and social rights. The normative goals embraced by neo-classical welfare economics are perfectly legitimate within this framework, but unless and until the fundamental rights of all members of society are secured, the proper role of neo-classical analysis is to determine the most efficient way of securing those rights. Only then can the goals of utility maximization, wealth maximization, or efficiency be pursued for their own sake.