

# Income, Work and Freedom: Progressive Alternatives to Conservative Welfare Reform

Philip Harvey

## *Abstract*

*Progressive scholars have been strongly critical of conservative trends in the design and administration of public assistance programs in market societies, but it is far from clear what they would propose instead. Believing that it takes something to replace something, this article assess two different progressive strategies for eliminating poverty and promoting individual freedom that could serve as replacements for existing public assistance regimes.*

*The first proposal is that society guarantee all its members an unconditional basic income (BI) without imposing any work requirements in exchange for the benefit. Such a benefit could be provided either in the form of an unconditional grant paid to all members of society (the form preferred by most advocates of the idea) or a negative income tax. Supporters of this strategy have suggested that a BI guarantee set at or above the poverty level could replace not only the means-tested public assistance regime that is the principal target of the proposal, but a wide of other government transfer programs as well. The proposal also is promoted as a solution to the problem of unemployment, a means of compensating the many millions of people (mostly women) who perform unpaid family care and community service work, and as a way of enhancing individual freedom and personal development.*

*The second proposal is an updated version of the social welfare strategy that dominated progressive thinking in market societies from the end of World War II through the mid 1970s. During that period, this strategy combined a strong reliance on Keynesian macroeconomic policy to achieve full employment with a commitment to the use of transfer benefit programs to guarantee income security for individuals or families that were not expected to be self-supporting. The version of this strategy considered in this article would be similar except that it would replace the Keynesian strategy of aggregate demand management with the use of direct job creation by government to achieve full employment – thereby insuring the availability of enough jobs to provide decent paid employment for all job seekers. I refer to this as the New Deal (ND) strategy in deference to New Deal social welfare planners who first proposed it in the United States.*

*The cost of these two strategies of eliminating poverty in the United States is compared along with their relative merits in achieving other progressive social welfare goals. The economic and social human rights recognized in the Universal Declaration of Human Rights are used as an assessment criterion in the latter exercise.*

*The principal conclusions drawn are that the BI strategy would be far more expensive than the EA strategy, that it would not provide an adequate substitute for securing the right to work recognized in the Universal Declaration, and that most of the other benefits the BI strategy would produce could be more fully achieved at lower cost by using the EA strategy combined with conventional social insurance. On the other hand, it is argued that a targeted BI guarantee could make a valuable contribution to the EA strategy, and one version of such a benefit is described.*

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# **Income, Work and Freedom: Progressive Alternatives to Conservative Welfare Reform**

Philip Harvey<sup>1</sup>

## **PART I Introduction: The Political Failure of the Progressive Response to Conservative Welfare Reform**

In 1964 President Lyndon Johnson declared “War on Poverty.”<sup>2</sup> The hope expressed in that declaration seems naïve today, but it nonetheless was grounded on a coherent strategy for achieving the goal he articulated, a strategy that progressives had been pursuing with considerable success for over two decades, not just in the United States in virtually all developed market economies.<sup>3</sup> This strategy combined a determined pursuit of full employment (which was commonly understood to require unemployment rate of about 2%) with the steady expansion of a range of social welfare benefits designed to enhance the income security of persons who were not expected to be self supporting due to such causes as sickness, disability, involuntary unemployment, child birth or advancing age.

Whether governments were nominally controlled by the left or the right, this was the policy they pursued because it worked. Poverty rates in the United States, for example, declined from 42.5% in 1940 to 34.9% in 1950 to 21.3% in 1960.<sup>4</sup> It was the heyday of the so-called “welfare state,” and even conservative governments that were ideologically opposed to the trend did not dare reverse the policies that produced it. The Johnson administration’s so-called “War on Poverty” can be understood as an attempt to apply that strategy to specific population groups who still suffered disadvantage in a generally prosperous economy. Moreover, despite retrospective perceptions that the Johnson Administration’s anti-poverty efforts were a failure, poverty rates continued their decline in the United States until 1973 – when the overall poverty rate stood at 11.1%.

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<sup>2</sup> Lyndon B. Johnson, Message to Congress on the State of the Union, Jan. \_\_, 1964.

<sup>3</sup> I shall use the term “progressive” to refer to the individuals, organizations, and political tendencies generally encompassed by the term “liberal” in the United States or “social democratic” in Europe – with the addition of 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.

<sup>4</sup> Michel B. Katz and Mark J. Stern, *Poverty in Twentieth Century America*, American at the Millennium Project, Working Paper No. 7, November 2001, at 38 Table 7 (available at <http://www.sp2.upenn.edu/america2000/wp7all.pdf#search=%22Michael%20Katz%20Poverty%20in%20the%20th%20Century%22>).

Then the progressive dream turned to dust. Real wage growth stagnated; average unemployment and inflation rates shot upward, progress ended in the fight against poverty; progressives lost the confidence of the public; and conservatives began to dominate both economic and social welfare policy debates. The “conservative revolution” was at hand, and progressives were caught flatfooted.<sup>5</sup>

No change in public policy over the next quarter century symbolized the resurgence of conservative power more than the restructuring of public assistance programs for impoverished adults and their families. Long a target of conservative criticism, the defunding of the Aid for Families with Dependent Children (AFDC) program began in the mid-1970s when state legislatures established a practice of failing to increase AFDC benefits enough to compensate for the effects of inflation.<sup>6</sup> Over the next three decades large reductions were achieved in both the value of individual benefits<sup>7</sup> and overall expenditure levels in the AFDC program and its successor,<sup>8</sup> the addition of substantial work requirements for the receipt of benefits,<sup>9</sup> and a significant devolution of control over the program to the states (whose administration of such programs historically has been both less generous and more punitive).<sup>10</sup> These trends culminated in the 1990s with the replacement of the AFDC program with the Temporary Assistance for Needy Children (TANF) program.<sup>11</sup>

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<sup>5</sup> 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 Lee Edwards, *The Origins of the Modern American Conservative Movement*, HERITAGE LECTURES, No. 811, The Heritage Foundation, Nov. 21, 2003.

<sup>6</sup> 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. **Error! Bookmark not defined.**, at 49-53, 128-201.

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

<sup>8</sup> 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.

<sup>9</sup> 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).

<sup>10</sup> See PRWORA, *supra* n. **Error! Bookmark not defined.** 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., *Development in Policy: Welfare Reform*, 16 Yale L. & Pol’y Rev. 221 (1997).

<sup>11</sup> PRWORA, *supra* n. **Error! Bookmark not defined.**

Conservative reform efforts in this area even managed to attract significant support from leaders of the Democratic Party, which hitherto had resisted the trend. President Clinton's support for "welfare reform" legislation in 1996 famously symbolized this development,<sup>12</sup> but similar trends were at work in Europe. There "welfare reform" was associated with the so-called "Third Way" promoted in the late 1990s by U.K. Prime Minister Tony Blair and German Chancellor Gerhard Schroeder. Blair and Schroeder described their welfare reform proposals as a means of "retain[ing] the social democratic values of 'fairness and social justice, liberty and equality of opportunity' while modernizing the policies and programs . . . designed to achieve those values."<sup>13</sup> In practice, the so-called "Third Way" reforms instituted during this period moved European social welfare policy in the same direction as conservative "welfare reform" efforts in the United States.<sup>14</sup>

This conservative trend in public assistance policy has been strongly criticized by progressive scholars,<sup>15</sup> but the practical effect of their criticism has been mitigated by their failure to speak with a similarly unified voice about what they think should replace the existing policy regime. If the current embrace of "workfare" in market societies is wrong-headed, what should replace it?

Accepting the old political saw that you can't replace something with nothing, the purpose of this article is to encourage discussion of progressive alternatives to the existing public assistance policy regime in the United States and Europe by offering a comparative assessment of two progressive alternatives to it.

The first proposal is that society guarantee all its members an unconditional basic income (BI) 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."

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<sup>12</sup> See Statement by President William J. Clinton Upon Signing H.R. 3734, 1996 U.S.C.C.A.N. 2891 (August 22, 1996) (stating that "this legislation provides an historic opportunity to end welfare as we know it").

<sup>13</sup> 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>.

<sup>14</sup> 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).

<sup>15</sup> 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").

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.<sup>16</sup>

As the reference to Bertrand Russell in this quote illustrates, guaranteed income proposals are not new,<sup>17</sup> but the contemporary BI advocacy movement originated in Western Europe only in the mid-1980s.<sup>18</sup> 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.<sup>19</sup>

A 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.<sup>20</sup> 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.<sup>21</sup>

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<sup>16</sup> U.S. Basic Income Guarantee Network, *What Is the Basic Income Guarantee?*, available at <http://www.widerquist.com/usbig/>.

<sup>17</sup> See Philippe Van Parijs, *A Short History of Basic Income*, available at <http://www.etes.ucl.ac.be/BIEN/BI/HistoryBI.htm>.

<sup>18</sup> Basic Income European Network (BIEN), *A Short History of BIEN*, available at <http://www.etes.ucl.ac.be/BIEN/BIEN/HistoryBIEN.htm>.

<sup>19</sup> Philippe Van Parijs, a philosopher who teaches at the Catholic University of Louvain in Belgium and Harvard, Guy Standing, the 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 BI 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 BI 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, at 272-78; Anne Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies* 108 *YALE L.J.* 967-1058 (1999). Amy Wax, \_\_\_\_\_ . Links to BI advocacy web sites around the world and extensive bibliographies on the subject of BI 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>>.

<sup>20</sup> 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 21<sup>st</sup> 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 19.

<sup>21</sup> 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 BI guarantee, and Alaska actually does provide its residents a modest BI grant funded in this manner. See Scott Goldsmith, *The Alaska Permanent Fund Dividend: An Experiment in Wealth Redistribution*, (paper presented at the 9<sup>th</sup> International Congress of the Basic

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.

The second reform proposal discussed in this article is that society use a combination of work and income guarantees to combat poverty. The first prong of this strategy would use direct job creation by government to guarantee the availability of enough good jobs to provide decent paid employment for everyone who wants it. The second prong would use conventional transfer benefit programs to provide income security to everyone who is unable or not expected to earn their own livelihood.

Like the BI proposal described above, the idea of using a combination of work and income guarantee to combat poverty has a long history.<sup>22</sup> It was expressed quite clearly over two centuries ago in the French Constitution of 1893 which declared that “Public 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.”<sup>23</sup> 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.<sup>24</sup> An early but 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.<sup>25</sup> The Committee explained the job guarantee component of its overall social welfare strategy in the following terms.

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Income European Network, Geneva, Sept. 12-14, 2002), *available at* <http://www.etes.ucl.ac.be/BIEN/Files/Papers/2002Goldsmith.pdf>.

<sup>22</sup> 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>

<sup>23</sup> 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 22, at 31.

<sup>24</sup> Philip Harvey, *Combating Joblessness: An Analysis of the Principal Strategies That Have Influenced the Development of American Employment and Social Welfare Law During the 20<sup>th</sup> Century*, 21 *BERKELEY J. EMP. & LAB. L.* 675, 689-94.

<sup>25</sup> 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 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.

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 safe 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.<sup>26</sup>

In addition to its “employment assurance” proposal – which led to the establishment of the New Deal’s principal direct job creation program – 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.<sup>27</sup>

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.<sup>28</sup> It was not until the mid 1980s that the idea 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.<sup>29</sup> Anti-poverty analysts have viewed it as a possible means of providing employment opportunities to disadvantaged population groups.<sup>30</sup> And economic and social human rights advocates have seen it as a means of securing

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<sup>26</sup> REPORT OF THE COMMITTEE ON ECONOMIC SECURITY, *supra*, n. 25, at \_\_\_.

<sup>27</sup> *Id.* at 21-70.

<sup>28</sup> 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 20<sup>th</sup> 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.”

<sup>29</sup> 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 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).

<sup>30</sup> 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).

the right to work.<sup>31</sup> Out of deference to the New Dealers who pioneered the idea in the twentieth century, I shall refer to employment guarantee schemes that rely on direct job-creation as employment assurance (EA) proposals, and the two-pronged strategy of combining an EA program with conventional income transfers as the “New Deal” (ND) plan for combating poverty.

In Part II of the article I describe the labor market conditions that have inspired both BI and EA proposals. I point out that average unemployment rates rose dramatically in the period immediately preceding the advent of the contemporary BI and EA advocacy movements, and that even when unemployment rates in the U.S. dropped to the 4%-5% in the late 1990s, a large job gap remained in the economy. Rather than creating a political opening for the left, though, I point out that progressives felt stymied by the collapse of the Keynesian policy regime upon which they had relied from the end of World War II through the mid 1970s. It was the realization that a new strategy was needed to confront the interrelated problems of unemployment and poverty that fostered renewed interest in both the BI and EA ideas.

In Part III of the article I introduce the economic and social provisions of the Universal Declaration of Human Rights<sup>32</sup> as a performance standard suitable for use by progressives in judging the relative merits of economic and social welfare proposals – including the BI and EA-based ND strategies. Relying on this performance standard I assess the relative strengths and weaknesses of hypothetical BI and ND programs designed to eliminate official poverty in the United States. My overall conclusion is that the ND strategy provides both a more effective and a less costly means of eliminating poverty than the BI strategy, and that most of the other program goals promoted by BI advocates also could be more successfully pursued at lower cost using the ND strategy.

Nevertheless, I do not reject the BI idea as lacking merit. First, I think it is important to recognize that there is no theoretical or practical contradiction between guaranteeing people an unconditional income and guaranteeing them decent paid employment – despite the tendency for the two proposals to be viewed as competitors. I also think it is important to recognize that a BI guarantee would provide valuable benefits in addition to those provided by the ND strategy. The problem with the BI strategy, as I see it, is that those benefits do not justify its very high cost. There are other, more important social welfare benefits that I believe should be funded before considering an unconditional BI guarantee in the form proposed by most BI advocates. On the other hand, this disadvantage would not apply to less expensive forms of BI guarantee, and I endorse one such proposal – a means-tested but not work-tested family income guarantee designed to replace existing means-tested income assistance benefits for able-bodied adults. “Income, Work and Freedom” rather than “Work vs. Freedom” would be the rallying cry of supporters of this joint ND/BI strategy.<sup>33</sup>

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<sup>31</sup> HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note **Error! Bookmark not defined.**; QUIGLEY, *supra* note 30.

<sup>32</sup> G.A. res. 217A (III), U.N. Doc. A/810 at 71 (1948).

<sup>33</sup> In an article entitled *Work vs. Freedom*, *supra*, note 19, 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

## **Part II**

### **The Collapse of Full-Employment As A Policy Goal in Market Societies**

#### **A. Labor Market Conditions**

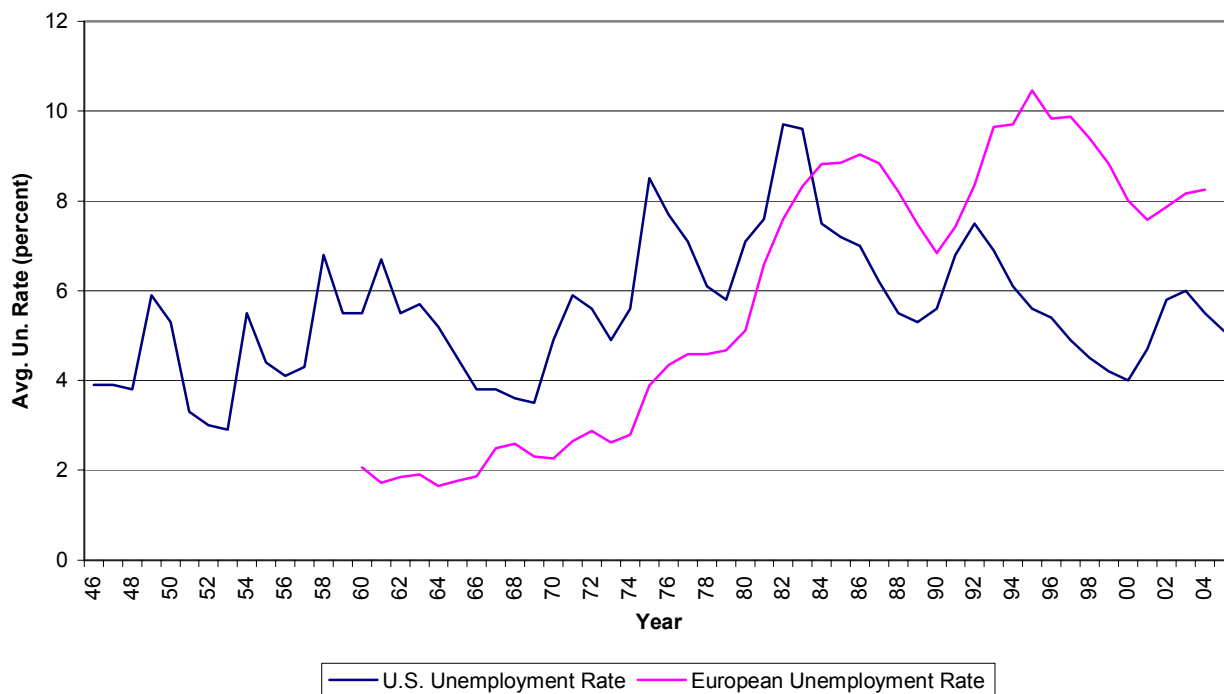
Ironically, the recent embrace of work requirements in American and European public assistance programs occurred during a period when the capacity of market economies to promise paid employment to everyone who wanted it diminished quite dramatically compared to the preceding period when public assistance eligibility requirements were less demanding. Figure 1 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.

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.

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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.

**FIGURE 1**  
**Average Unemployment Rate in the United States, 1946-2005,**  
**and in France, Germany, Italy and the United Kingdom Combined, 1960-2004**



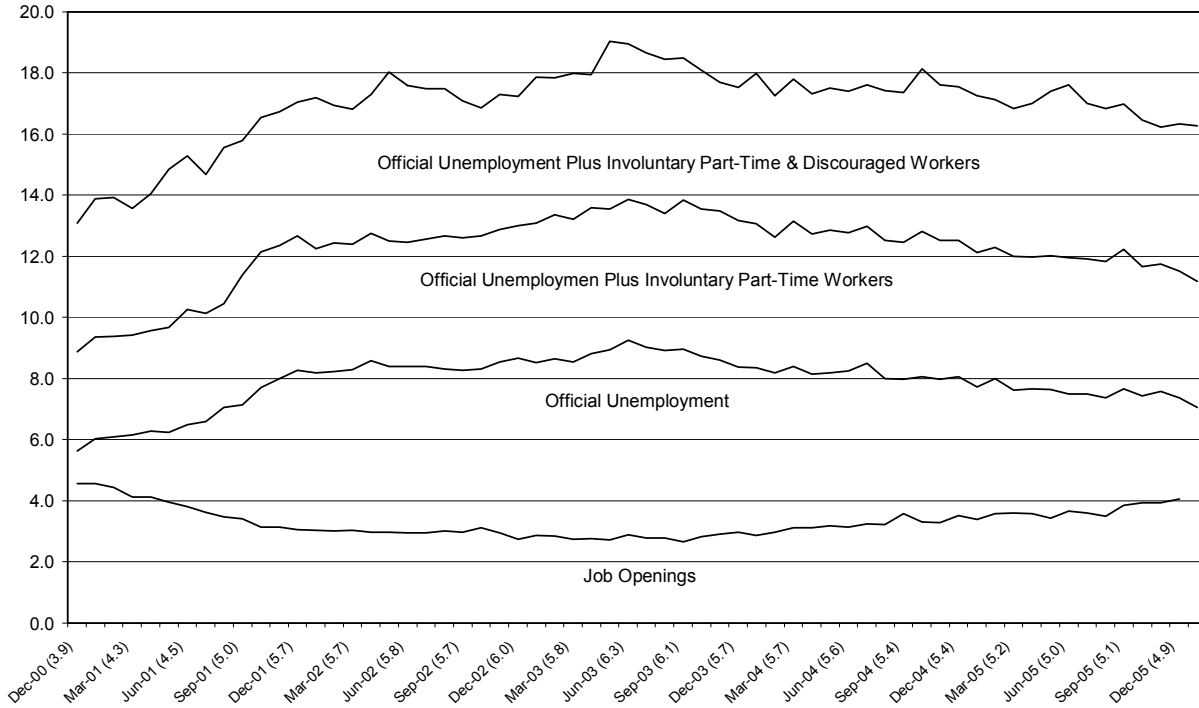
Source: Author's Calculations from BLS Data

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 job gap remained in the economy. 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 2. 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 2 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.

**Figure 2**  
**U.S. Job Gap: Dec. 2000 - Dec. 2005**  
 (in millions, except unemployment rate in parentheses)



Source: Author's Calculations From BLS Data

If by full employment we mean what most people think the term means – the availability of enough jobs to employ everyone who wants to work – it has been a very long time since either the United States or Europe has experienced it.

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 interest in working 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.<sup>34</sup> 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 easy to assume that if everyone followed their example and sought work with the same determination and flexibility, that everyone would find work. Similarly, because people with more education and/or better skills suffer less unemployment than others, it is easy to assume that everyone would experience less unemployment if they acquired more education and/or increased their level of skill.

The problem with this line of reasoning (but also the reason for its popular appeal) is its susceptibility to the fallacy of composition. It is akin to assuming that everyone would see better at a concert if they stood up just because that strategy worked for you. 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 employers create more jobs.<sup>35</sup>

If both the appeal and flaws in the conservative argument in favor of workfare are this easy to understand, why has it been so hard for progressives to counter conservative proposals for the reform of public assistance programs? I believe the answer to that question lies in the collapse of both popular and expert faith in Keynesian economics during the stagflation debacle of the 1970s.<sup>36</sup>

From the beginning of the New Deal era progressives fully understood the importance of what later came to be known as full employment for the success of the social welfare policies they advocated. What distinguished them from progressives just ten years later, in the mid 1940s, is that they embraced direct job creation rather than Keynesian macroeconomic policy as the best means of achieving that goal.<sup>37</sup> This was the purpose of the “employment assurance” (EA) policy advocated by President Roosevelt’s Committee on Economic Security in 1935,<sup>38</sup> and it was a policy that continued to command the support of social welfare planners within the Roosevelt

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<sup>34</sup> See Harvey, *Joblessness and the Law Before the New Deal*, *supra* n. **Error! Bookmark not defined.**

<sup>35</sup> 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 20<sup>th</sup> Century*, 21 Berkeley J. Emp. & Lab. L. 675, \_\_-\_\_ (2000).

<sup>36</sup> For a more extended elaboration of the argument that follows, see Philip Harvey, *Benchmarking the Right to Work*, in ECONOMIC RIGHTS: CONCEPTUAL, MEASUREMENT AND POLICY ISSUES (Alanson Minkler and Shareen Hartel, eds., forthcoming).

<sup>37</sup> See *supra*, text accompanying notes 24-28.

<sup>38</sup> See *supra*, n. 26.

administration at least until the early 1940s.<sup>39</sup> As Keynesian theory gained adherents among progressive economists, though, support for direct job creation as a means of achieving full employment evaporated. The Keynesian strategy faced less political opposition and was easier to administer, so why continue to push for direct job creation?

The full significance of this shift was not fully understood at the time, probably because it was easy to assume that the reason direct job creation worked to reduce unemployment was because it caused an increase in aggregate demand. The possibility that it offered advantages distinct from this effect – in particular, that it provided a less inflationary means of achieving full employment at the top of the business cycle<sup>40</sup> – was understandably overlooked. It was, after all, a period when the nation’s unemployment problem plainly was attributable to a deficit in aggregate demand and inflation was not a major concern.

The embrace of Keynesianism by progressives and their abandonment of direct job creation as a reform strategy was abundantly clear by 1944. That year liberal Democrats in Congress launched an effort to legislate a statutory commitment to the maintenance of full employment that would have relied exclusively on Keynesian demand management techniques instead of the direct job creation programs with which the New Deal had been identified in the 1930s. Indeed, the proposed legislation would have prohibited the funding of direct job creation programs unless Congress specifically authorized such funding in new legislation.<sup>41</sup>

Thus the employment assurance (EA) prong of what I have termed the New Deal (ND) strategy for combating poverty was totally supplanted by a commitment to achieve full employment by Keynesian means. The other prong of the ND strategy – the use of transfer benefits to provide income security for persons who were not expected to work – remained intact through this change in progressive thinking. If anything, the embrace of Keynesianism by progressives in the early 1940s added to the importance of transfer benefits in their overall income security strategy.

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<sup>39</sup> See NATIONAL RESOURCES PLANNING BOARD, SECURITY, WORK AND RELIEF POLICIES, H.R. Doc. No. 78-128, pt. 3 (1943).

<sup>40</sup> See Philip Harvey, *Funding A Job Guarantee*, 2 INT’L J. ENV’T, WORKPLACE & EMP. 114-132 (2006).

<sup>41</sup> See S. 380, 79<sup>th</sup> 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”). STEPHEN K. BAILEY, CONGRESS MAKES A LAW: THE STORY BEHIND THE EMPLOYMENT ACT OF 1946, at (1950)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.

There are two reasons for this. First, the ability of transfer programs to function as automatic stabilizers invests them with a Keynesian function in addition to their social welfare function.<sup>42</sup> Second, progressive conceptions of the scope of transfer benefit programs also tended to expand because, unlike a direct job creation program, the Keynesian strategy does not automatically serve double duty as a transfer benefit program for the unemployed. However successful the management of aggregate demand may be in reducing unemployment, it does not guarantee employment to particular workers, no matter how needy they might be. Accordingly, as a more or less natural concomitant of their embrace of Keynesianism, progressives began to push for changes in the eligibility requirements of transfer programs to allow people who suffered medium- or long-term unemployment to receive transfer benefits (instead of the public service jobs contemplated by what I have termed the ND strategy).

The reform agenda pursued by progressives in virtually all market societies in the post-World War II era accordingly combined an embrace of Keynesian macroeconomics policy 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.

This reform strategy was quite successful as long as its Keynesian prong continued to deliver conditions approaching full employment. The latter achievement was in fact crucial to the sustainability of the strategy. 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 the population groups that needed them. If the Keynesian prong of the strategy failed, its transfer benefit prong would be threatened as well – since transfer benefit expenditures would increase more rapidly than the resource base from which they were funded.

This is exactly what happened in the mid-1970s, when OPEC's 1974 oil embargo triggered the most serious recession in the United States since the 1930s while also placing continuing upward pressure on the price level. 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 unemployment and high rates of inflation at the same time; and more important, progressives had no Plan B to offer the public.

This left progressives without a coherent response to what most people were viewing as the worst economic crisis since the Great Depression. At the same time, conservatives stepped forward with a straightforward explanation of the problem that implicated the progressive welfare state (excessive government spending) and an equally straightforward policy response that would render further expansion of the welfare state virtually impossible (tightening monetary policy to slow the rate of inflation). The fact that this policy resulted in higher rates of unemployment simply had to be accepted, conservatives argued. 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.

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<sup>42</sup> An “automatic stabilizer” is a government spending program that tends to expand when national income falls and shrink when national income grows – thereby helping to dampen business cycle fluctuations in a manner consistent with Keynesian theory.

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.<sup>43</sup> With no forward-looking strategy to guide them, progressives devoted most of their energies to defending welfare state programs from conservative attacks 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 resulting policy battles with conservatives, progressives generally have enjoyed more success defending transfer programs for persons who are not expected to work (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.

As suggested above, it seems anomalous that market societies would cut transfer benefits for jobless individuals at a time when job shortages were growing; but this outcome is understandable in light of the collapse of the Keynesian employment strategy upon which progressive policy responses to the problem of joblessness and the needs of jobless individuals had relied since the end of World War II. No longer facing the challenge of a credible progressive alternative, conservatives found it easy to dominate policy debates with their own explanations of and proposed responses to the problem of joblessness.

It also is understandable why 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 employment policies endured. The progressive defense of these programs still resonated with the public.

### **C. Renewed Interest in Income and Work Guarantee Proposals Among Progressives**

One possible progressive response to the collapse of the 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 route followed by basic income (BI) advocates. Another progressive response is to seek another way of achieving full employment. This is the route followed by employment assurance (EA) advocates.

The role played by these events in a renewal of interest in direct job creation is obvious.<sup>44</sup> If full employment cannot be achieved reliably by means of the simple Keynesian strategy, it makes sense to ask whether another strategy exists that could achieve that goal. 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 for scarce

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<sup>43</sup> See Harvey, *Benchmarking the Right to Work*, *supra* n. 36.

<sup>44</sup> See *supra*, notes 29-31.

employment opportunities produce marginal results at best<sup>45</sup>) 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 social welfare strategy in the 1980s.<sup>46</sup>

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.<sup>47</sup>

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.<sup>48</sup>

In the remainder of this article I will offer a comparative assessment of the BI and EA strategies – both as potential replacements for existing public assistance programs in market

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<sup>45</sup> See BARTIK, *supra* note 30, at 69-111; Philip Harvey *Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously*, 33 COLUM. HUM. RTS. L. REV. 363, 438-45 (2002).

<sup>46</sup> *See supra*, notes 29-31.

<sup>47</sup> Philippe Van Parijs, *The Need for a Basic Income: An Interview with Philippe Van Parijs*, IMPRINTS, March 1996, at 5-22.

<sup>48</sup> The Basic Income Earth Network, *About Basic Income*, available at [http://www.etes.ucl.ac.be/bien/BI/Definition\\_temp.htm](http://www.etes.ucl.ac.be/bien/BI/Definition_temp.htm).

societies, and more broadly for their likely contribution to the achievement of other progressive social welfare goals. The latter inquiry will ask, in effect, whether either of these proposals has the potential to replace the 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 debacle of the 1970s. The real promise of the BI and EA strategies, 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 EA strategy. Most progressives are still functioning in defensive mode – resisting conservative reform efforts without a forward-looking vision of the direction in which they think social welfare policy in general, or public assistance policy in particular should move in long run. My claim on behalf of BI and EA proposals is only that they address a problem that I believe the progressive movement, as a whole, needs to address. That is, how can the void left in the progressive reform agenda by the collapse of the Keynesian full-employment strategy be filled. If the BI and EA ideas are found lacking, so be it, but I hope those who find them lacking will at least follow the example of BI and EA advocates in taking up the challenge of finding a new foundation for progressive reform efforts. Opposition to conservative public policy is not enough. It really does take something to replace something.

### **Part III: Comparing the BI and EA Strategies**

#### **A. Economic and Social Human Rights As Progressive Policy Norms**

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.<sup>49</sup>

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.<sup>50</sup> But how does one concretize these values? What do they

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<sup>49</sup> Anne Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies* 108 YALE L.J. 967-1058, 973 n.29 (1999).

<sup>50</sup> *Id.*

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 philosophers and political theorists such as John Rawls, Ronald Dworkin, Bruce Ackerman and Philippe Van Parijs.<sup>51</sup>

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,<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup>

I know that American progressives in particular 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 the Universal Declaration as alien to American values. It is more properly viewed as an international affirmation of the New Deal's guiding philosophy – first articulated in planning documents such as the 1935 Report of the Committee on Economic Security<sup>55</sup> and the 1943 Report of the

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<sup>51</sup> *Id.* at \_\_\_\_.

<sup>52</sup> 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).

<sup>53</sup> *Supra* note 3.

<sup>54</sup> See Harvey, *Human Rights and Economic Policy Discourse*, *supra* note 45.

<sup>55</sup> *Supra* note 25.

National Resources Planning Board,<sup>56</sup> given forceful expression in President Roosevelt's 1941 and 1944 State of the Union Messages to Congress,<sup>57</sup> refined in the 1945 Statement of Essential Human Rights authored by a committee of experts working under the auspices of the American Law Institute,<sup>58</sup> and finally embodied in language drafted by a United Nations committee chaired by Eleanor Roosevelt, the President's widow and tribune of New Deal values within his administration.<sup>59</sup> The fact that Americans generally 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 economic and social human rights as progressive policy norms, I shall use Articles 22-25 of the Universal Declaration (reproduced in Box 1) as a standard for judging the relative merits of BI and EA proposals.

### **B. The Relative Cost of the BI and New Deal (ND) Strategies for Eliminating Poverty**

The Universal Declaration recognizes that all members of society have 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,"<sup>60</sup> 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."<sup>61</sup>

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<sup>56</sup> National Resources Planning Board, National Resources Development Report for 1943, H.R. Doc. No. 78-128, pt. 3, Security, Work and Relief Policies (1943).

<sup>57</sup> Franklin D. Roosevelt, Message to Congress on the State of the Union (Jan. 6, 1941), in \_\_ The Public Papers & Addresses of Franklin D. Roosevelt ( Samuel Rosenman, ed.) \_\_ - \_\_ (1950) (the "Four Freedoms" speech); Franklin D. Roosevelt, Message to Congress on the State of the Union (Jan. 11, 1944), in 13 The Public Papers & Addresses of Franklin D. Roosevelt ( Samuel Rosenman, ed.) 32-42 (1950) (the "Second Bill of Rights").

<sup>58</sup> American Law Institute, Statement of Essential Human Rights (1945).

<sup>59</sup> MARY ANN GLENDON, A WORLD MADE NEW (2001).

<sup>60</sup> 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).

<sup>61</sup> 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 60 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, it was not until the 1970s that gendered language disappeared entirely from most human rights documents. 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) (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. Coc. 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

**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.

The significance of viewing this entitlement as a human right (rather than simply a desirable public policy goal) is the pre-emptive status such rights are recognized as having in the face of contrary utilitarian preferences. Even if an overwhelming majority of people wanted to enslave a minority living in their midst, and even if such a course of action would be utility maximizing, the conventional view is that such a policy would be objectionable because it violated the human rights of the minority. In other words, legitimate human rights claims are viewed as “trumping” conflicting preferences, even if the preferences are utility-maximizing. There is nothing unusual in the analytic approach I am suggesting other than its application to economic and social

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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.32, art. 2.

rights.<sup>62</sup> That these entitlements are not enforced as rights, despite their recognition as such in documents like the Universal Declaration, shows that progressives have there work cut out for them in advocating their broader recognition. It hardly provides grounds, though, for declining to assert their status as human rights. Just as abolitionists asserted that slavery violated the rights of the slaves long before their position was accorded legal recognition, I believe progressives today should be insisting that the Universal Declaration be taken seriously.

The Universal Declaration does not specify how the right not to be poor should be secured, but it is fairly clear that the drafters of the document contemplated that the goal would be achieved by guaranteeing the availability of decent jobs for all workers (Article 23) and of adequate levels of income support for all members of society who are not expected to be self-supporting (Article 25).<sup>63</sup> This policy model obviously is consistent with the New Deal (ND) strategy (or its Keynesian successor), but the language of Article 25 is broad enough to support an interpretation of the right to income support that is consistent with the BI strategy as well – as Guy Standing has suggested.<sup>64</sup> Moreover, even if the Declaration is interpreted as not vesting individuals who are capable of self-support with an unconditional right to income support, there is nothing in the document to suggest that it would be improper or a violation of anyone else’s rights for society to provide such a guarantee. In other words, the right not to be poor could be secured by using the BI strategy even if that strategy is not mandated. Also, the BI strategy and the employment assurance (EA) component of the ND strategy could be pursued simultaneously. Everyone could be provided an unconditional BI guarantee while also being guaranteed access to decent jobs allowing them to earn more than their guaranteed income. In short, the Universal Declaration does not mandate that we pursue either the BI or ND strategy to the exclusion of the other, and that being the case, it is reasonable to ask which strategy would achieve the goal of eliminating poverty at least cost.<sup>65</sup>

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<sup>62</sup> For more extended discussions of these points, see Harvey, *Human Rights and Economic Policy Discourse*, *supra* note 45; Philip Harvey, *Aspirational Law*, 52 BUFFALO L. REV. 701-\_\_\_ (2005).

<sup>63</sup> 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 60 at 193-94.

<sup>64</sup> 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).

<sup>65</sup> This can be conceived as an inquiry into the comparative economic efficiency of the two strategies, but it is not the kind of efficiency inquiry that typifies neo-classical law and economics scholarship. Efficiency is an engineering concept. It is defined generically as output divided by input. Miles per hour, miles per gallon, dollars per hour and dollars per gallon are all measures of efficiency. None of these measures is inherently better than any other. It all depends on what you are interested in maximizing and/or minimizing (economizing).

Neo-classical economists generally assume that public policy should seek to maximize the satisfaction of revealed preferences (which are assumed generally to correlate positively with monetary income and negatively with monetary cost). There is nothing wrong with this definition of economic efficiency, but there is no reason to privilege it over other definitions that embody other economic goals – such as that of securing the economic and social human rights of all persons. Indeed, one implication of recognizing economic and social entitlements as

BI and EA 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,<sup>66</sup> but this ignores three factors that affect the cost comparison in a contrary fashion.

First, BI advocates tend to overestimate the overhead costs of a job guarantee program by failing to note that in an EA 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.<sup>67</sup>

Second, BI advocates also fail to take into account the revenues an EA program would generate. This would include taxes paid by program participants on their program earnings and any revenue generated by selling the program’s output – even if it were sold at prices below its cost of production. The real per-person cost of creating the jobs needed to secure the right to work does not consist of the average total wages and benefits paid to program participants and to private sector employees hired to provide materials or services to the program. It consists of average after-tax wages minus average per-worker revenue generated by the sale of program output.<sup>68</sup> The program’s cost in comparison to the existing policy regime also would be reduced

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human rights is that the concept of economic efficiency used in comparative policy assessments would have to be modified to accommodate the pre-emptive effect of these entitlements.

I have suggested elsewhere that a definition of economic efficiency suitable for this purpose would be one that sought to protect the economic and social human rights of all persons at least cost measured in terms of foregone preference satisfaction defined in neo-classical terms (which assume that satisfaction correlates positively with monetary income and negatively with monetary costs). See Harvey, *Aspirational Law*, supra note 64 at 703-07. This definition of economic efficiency would focus attention on the importance of the task of fully securing the economic and social rights of all persons, while permitting continued reliance on neo-classical economic analysis to assess the relative cost of different strategies for achieving that goal. It also would permit continued reliance on neo-classical analysis to assess the relative efficiency of policies that did not implicate economic and social human rights.

While this definition of economic efficiency may sound like a major departure from the one that currently dominates law and economics scholarship, the only innovation it would entail would be to grant economic and social human rights the same lexical status that law and economics scholars already grant (by tacit consent) to civil and political human rights. These scholars could, but generally do not, pursue inquiries into the efficiency of policies that would violate recognized civil and political rights. They simply don’t ask, for example, whether slavery or a political dictatorship would provide a more efficient means of achieving otherwise desirable goals. And where policies designed to secure civil and political human rights are expressly considered – as in debates over the efficiency of anti-discrimination law – the question asked is which of two competing policies would achieve the human rights goal more efficiently. See, e.g., [Donoghue/Posner Debate].

<sup>66</sup> See, e.g., Widerquist and Lewis, supra at 28; Noguera and Raventos, supra at 15; Sheahan, at 15.

<sup>67</sup> See HARVEY, SECURING THE RIGHT TO EMPLOYMENT, supra note **Error! Bookmark not defined.**, at 39-43.

<sup>68</sup> Id. at 21-50; Philip Harvey, *Paying for Full Employment: A Hard-Nosed Look at Finances*, SOC. POL’Y (Spring

by savings in public assistance budgets, but BI advocates generally do count these savings in estimating the net cost of a BI guarantee and presumably would recognize that they would similarly reduce the cost of an EA guarantee.

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.

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 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. In poorer countries the economy's job gap is often higher, but it usually does not exceed 25% of a labor force that constitutes a smaller proportion of the society's entire population than in wealthy countries. 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 2002.<sup>69</sup> To estimate the cost of the New Deal (ND) strategy, I will rely on my own previously published analysis of the cost of an EA program designed to secure the right to work in the United States,<sup>70</sup> and will add to it 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 who are not expected to work based on existing cultural and political norms in the country.<sup>71</sup>

*The BI Strategy:* Clark has estimated the cost of a universal BI grant program designed to provide all residents of the United States with an income at least equal to the federal poverty line. Under this program everyone in the United States aged 65 and under would receive a BI grant sufficient to guarantee them at least a poverty level income. The grant for persons aged 18-65

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1995).

<sup>69</sup> Charles M.A. Clark, *The Economics of Poverty in the United States of America*, 4 OIKONOMIA, Oct. 2005, at 6-19. For an earlier estimate for 1999, see Charles M.A. 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).

<sup>70</sup> HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note **Error! Bookmark not defined.**, at 21-50.

<sup>71</sup> This procedure avoids the hotly contested issue of whether impoverished single parents should be expected to work outside the home. In cost terms, though, it would make little difference whether this population was provided transfer payments or guaranteed employment (including the support services necessary to make it possible for them to work outside the home).

would equal the government’s official poverty line for single persons living alone. The grant for persons under the age of 18 would be set at a high enough level (\$3500) to insure them at least a poverty line income as long as they lived with at least one adult who received a BI grant and shared income with them in a single household. Clark proposes that persons over the age of 65 be excluded from the BI program but that they be provided a means-tested “top-up” payment guaranteeing them at least a poverty level income.<sup>72</sup> Clark’s estimate of the cost of such a program in 2002 is summarized in Table 1.

Age	Payment	Population (Millions)	Costs (\$ Millions)
Under 18	\$3,500	72.89	255,129
Adult	\$9,359	179.87	1,683,422
Over 65			34,184
<b>Total</b>			<b>1,972,735</b>

Source: Clark, *supra* note 69, at 16

To pay for the program, Clark assumes that all federal expenditures on income security except for public sector pensions and Social Security benefits would be eliminated, which Clark estimates would have saved the federal government approximately \$267 billion in 2002,<sup>73</sup> while all other federal functions and expenditure levels would remain unchanged, resulting in the overall federal budget figures summarized in Table 2.

Thus, paying for Clark’s hypothetical BI grant program would have increased total federal government expenditures in 2002 from approximately \$2.0 trillion to \$3.7 trillion. To support this increase in spending, Clark proposes that the current federal income tax be replaced with a flat tax on all income (except for corporate income taxes which would remain unchanged). All tax deductions for individuals would be eliminated under this proposal 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

<sup>72</sup> I have criticized Clark’s assumption that persons over the age of 65 could be fairly excluded from his proposed BI grant program. See Philip Harvey, *The Relative Cost of A Basic Income Grant System and A Negative Income Tax*, paper submitted for publication and currently under peer review (copy on deposit with author), at 8-11. I have estimated that including persons over the age of 64 in his proposed program would have increased Clark’s cost estimate for 2002 by approximately \$261 billion from approximately \$1.973 trillion to approximately \$2.234 trillion. *Id.*, at 9 n.13.

<sup>73</sup> I also have criticized Clark’s proposed list of programs to be replaced by a BI guarantee, *id.* at 8-11, but the exact size of this figure does not affect Clark’s cost estimate as much as his exclusion of persons over the age of 65 from the program.

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 35.2% would have been needed to produce the revenue required to fund the BI guarantee he describes along with all other federal government functions in 2002.

BI Payments	1,972,735
Other Expenditures	1,743,653
<b>Total Federal Expenditures</b>	<b>3,716,388</b>

Source: Clark, *supra* note 69, at 17

It should be noted, however, that this figure does not include wage earner liability for mandatory social insurance (FICA) contributions or for state and local income taxes. The FICA contribution rate on covered income in 2002 was 7.65%, and state and local income taxes would have added the equivalent of approximately another 2.7% to the federal flat tax rate.<sup>74</sup> Thus, under Clark’s proposal, wage earners would have faced an overall flat tax liability of 45.6% on their wage income (starting with their first dollar earned) up to the FICA maximum, which was \$84,900 in 2002. This tax burden is summarized in Table 3.

Federal Income Tax	35.2%
Federal FICA Tax	7.7%
State & Local Income Taxes	2.7%
<b>Total Tax Liability</b>	<b>45.6%</b>

<sup>74</sup> Clark suggests that state and local governments would enjoy substantial savings as a result of the adoption of a BI 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.

It also should be noted that Clark's funding analysis assumes that people would report and pay taxes on 100 percent of their income. The underreporting of income under the nation's existing tax regime is estimate at over 15%,<sup>75</sup> and the incentive to under-report income would grow under Clark's proposed system because tax rates would be higher. If Clark's proposed tax base was assumed to be 15 percent smaller due to underreporting of income, the flat tax required to fund his proposed universal grant system would increase from 35.2 percent to approximately 41.4 percent and the overall tax burden up to the FICA income limits would increase from 45.6% to approximately 52.2 percent.

Finally, Clark's funding analysis fails to take into consideration the effect of the high taxes required to fund the program 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 predict<sup>76</sup> and may not be large,<sup>77</sup> but if the program did reduce labor force participation and/or national income, the flat tax rate required to fund the program would be still higher.

*The New Deal (ND) Strategy:* In a 1989 book I estimated what it would have cost the United States government to secure the right to work by means of direct job creation for the 10-year

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<sup>75</sup> Internal Revenue Service. 2005. "Understanding the Tax Gap" FS-2005-14, March 2005.

<sup>76</sup> The likely effect of a BI 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. 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 BI 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 BI 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.

<sup>77</sup> 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, *A Failure to Communicate: 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*, *supra* note 64, at 497-538.

period between 1977 and 1986.<sup>78</sup> 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 EA program capable of securing the right to work in such a period (relative to the size of the nation's tax base) overstates the likely cost of such an undertaking in better times such as 2002 when unemployment averaged only 5.8% in the United States.

The hypothetical EA 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. 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 3 shows the distribution of those jobs among 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.

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 mid 2006 dollars would have averaged \$11.68 per hour. This does not mean all or even most program participants would have earned that wage. Based on their experience and skills, some people would have qualified only for minimum wage jobs and others for jobs paying substantially more than the program average. The \$11.68 per hour figure is simply the estimated arithmetic average of the wage rates paid to all program participants.

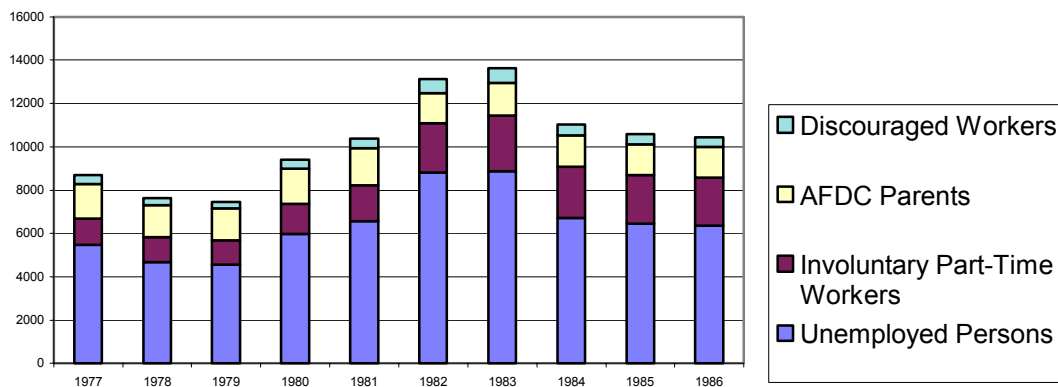
To guarantee an above-poverty wage for all program participants, I assumed that job training followed by a guaranteed job placement would have been offered to all program participants who lacked the skills needed to qualify for a job paying high enough wages to generate an income above the poverty line,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

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<sup>78</sup> HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note **Error! Bookmark not defined.**, at 21-50.

**Figure 3**

**Estimated Number of Jobs Needed to Secure the Right to Work, 1977-1986 (thousands)**



Source: Philip Harvey, *Direct Job Creation*, in COMMITMENT TO FULL EMPLOYMENT: THE ECONOMICS AND SOCIAL POLICY OF WILLIAM S. VICKREY 37 (Aaron W. Warner et. al, eds., 2000).

Box 2 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).

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.

**Box 2**

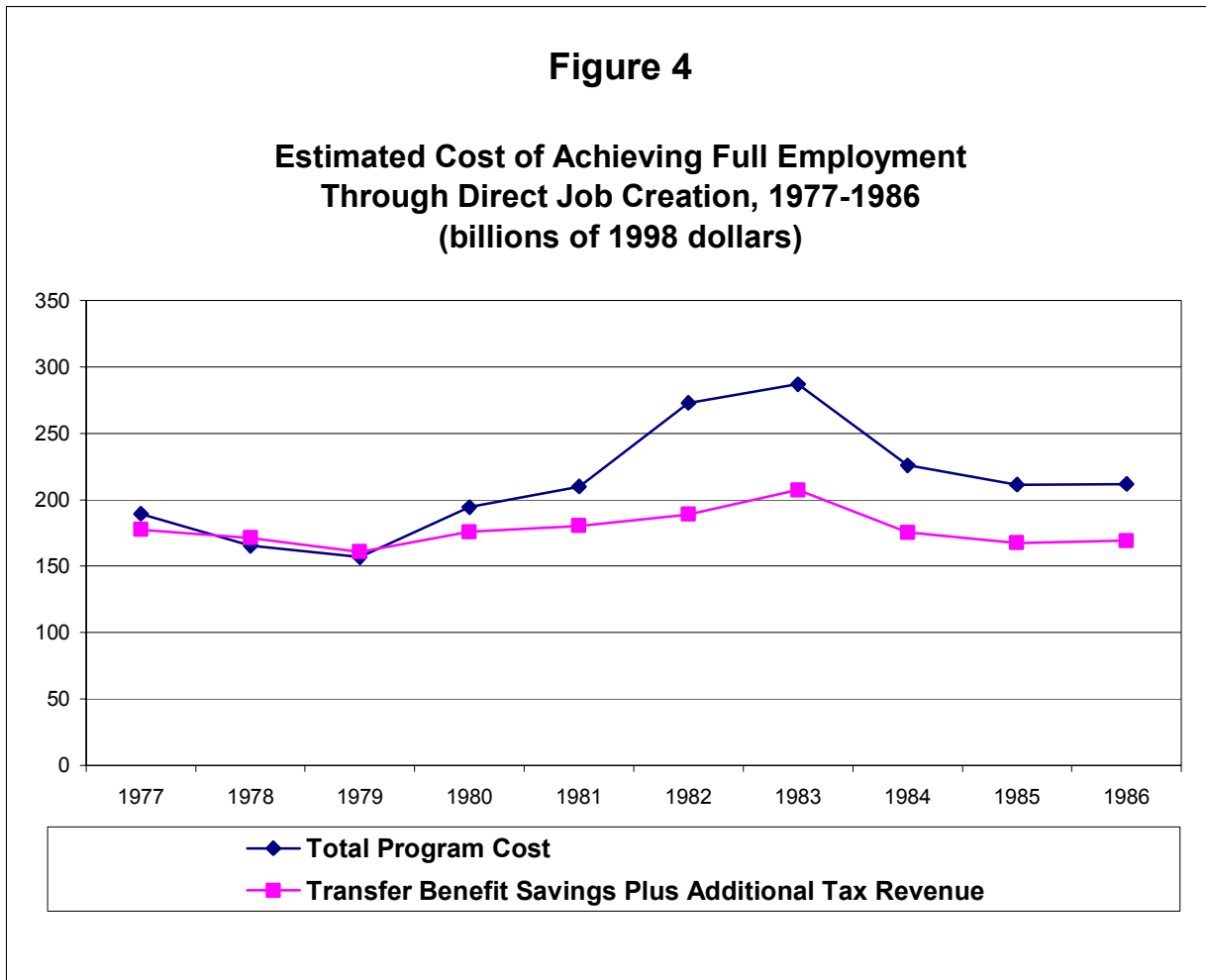
**Assumptions Underlying Cost Estimate for Direct Job Creation  
Program Capable of Securing the Right to Work**

Wages:	Program participants paid “market wages” averaging \$11.21 per hour in 2002 dollars for officially unemployed persons and \$7.52 per hour in 2002 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.

The estimated year-to-year cost of the program based on these assumptions is shown in Figure 4. Expressed in 2002 dollars (for comparison with Clark’s estimate of the cost of a universal BI grant program in 2002) these costs would have averaged of \$235 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 on Social Security pension benefits that year. It also would have cost far less than the nearly two trillion dollars required to fund Clark’s proposed BI grant program.

Figure 4 also includes estimates of certain offsetting savings and revenues that such a program would have generated. The offsetting savings shown in Figure 4 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 4 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 4 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<sup>79</sup> -- functioning in that respect like the nation's Unemployment Compensation program but with a much stronger counter-cyclical impact because of its greater size. 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 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 in addition to the payment of transfer benefits. These problems range from increased criminal activity to increased heart disease.<sup>80</sup> 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 4.

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.

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<sup>79</sup> See *supra*, note 42.

<sup>80</sup> See Harvey *Combating Joblessness*, *supra* note 28, at 679-80 nn.4-9.

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 2002 without any increase in federal, state or local tax rates compared to their actual level that year.<sup>81</sup>

To complete our estimate of the comparative cost of equivalent BI and EA guarantees, however, we also must estimate the cost of guaranteeing an above-poverty-level income for persons who were not expected to work in 2002. This sum would have to be added to the cost of operating an EA program for official poverty to be eliminated. 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 – establishes the potential upper limit of this amount. In 2002 that figure totaled \$98.2 billion.

This figure overstates the amount of additional aid that actually would be needed to raise the incomes of persons not expected to work to the poverty threshold, because it includes the income needs of the “working poor” and of jobless individuals who would earn an income above the poverty line if adequate numbers of decent jobs were available. Approximately half of all poor adults between the ages of 18 and 64 are in the labor force – which means they are either employed or actively seeking work. Another 10 percent are not in the labor force but report that they want a job. Most of these people could and presumably would earn at least a poverty level income for themselves and their children if their right to work were secured. The remaining unfilled poverty gap could amount to less than half the total existing poverty gap. An estimate of \$50 billion for this unfilled poverty gap seems reasonable for 2002.

Funding this level of additional public aid would have required only a 2.7 percent increase in federal tax receipts in 2002. For purposes of comparison, if the tax system proposed by Clark were adopted, a flat tax rate of only 13.9% would have been required to balance the federal budget, compared to the 35.2% rate Clark estimates would be needed to fund his proposed universal BI grant system. Under Clark's proposal, overall expenditures by all levels of government would have increased from 32.4% of gross domestic product in 2002, the lowest level of any industrialized country, to 48.5% of gross domestic product, 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.<sup>82</sup>

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

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<sup>81</sup> For a theoretical exposition of the possibility that an EA program could be funded without increasing either taxes or deficit spending, see Harvey, *Funding A Job Guarantee*, supra note 40.

<sup>82</sup> Barbara Bergmann, A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?, in REDESIGNING DISTRIBUTION, supra note 20, at 130-42.

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 ND strategy.

The difference in cost between the two strategies would not be as stark, of course, for other types of BI guarantee. I have estimated elsewhere that a negative income tax designed to achieve the same redistributive effect and impose the same marginal tax rates as Clark's proposed BI grant system would have cost less than half as much, adding \$826 billion to federal government expenditures instead of \$1.7 trillion.<sup>83</sup> A negative income tax that imposed very high effective marginal tax rates on low income earners might even cost less than a job guarantee. It would depend on how the benefit was calculated and whether it was paid on an individual or household basis. But for BI advocates who favor a system of universal, unconditional BI grants, the conclusion is inescapable that a BI guarantee would be far more expensive than an EA guarantee combined with an income guarantee for persons who are not expected to work.

### C. Administrative Procedures and the Dignity of the Poor

Is the high cost of the BI strategy compared to the New Deal (ND) strategy justified by the greater benefits it would produce? One advantage commonly claimed for the BI strategy is that it would be both easy to administer and treat the poor with dignity, in marked contrast to the administrative complexity of means-tested social welfare benefits and the demeaning treatment traditionally accorded the recipients of such aid.

It undoubtedly would be easier to write a couple of hundred million checks each month than to administer the wide variety of transfer programs needed to prevent poverty among individuals and families that lack an breadwinner's support. 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,<sup>84</sup> and even if it were possible to decide in principle which population groups should be eligible for public assistance, the process of deciding individual cases is both inherently difficult and prone to error.<sup>85</sup>

In analyzing the severity of this problem, however, it is important to note that 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

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<sup>83</sup> For an estimate of the cost of a BI guarantee provided in the form of a negative income tax, see Philip Harvey, *The Relative Cost of A Basic Income Grant System and A Negative Income Tax*, *supra* note 72.

<sup>84</sup> KATZ, *IN THE SHADOW OF THE POORHOUSE*, *supra* note **Error! Bookmark not defined.**; Harvey, *Joblessness and the Law Before the New Deal*, *supra* note **Error! Bookmark not defined.**

<sup>85</sup> For an extended discussion of these issues, see HANDLER, *SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE*, *supra* note 14.

everyone willing to accept such employment has inspired progressives to push consistently 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 consistently for public assistance policies that deny public aid to the “able-bodied poor” because they believe their joblessness is attributable to their own behavioral shortcomings.<sup>86</sup> This has created an unbridgeable divide in policy debates over who should receive public assistance and also 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 need to consider how the ND strategy would affect policy debate concerning eligibility criteria 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 good 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,<sup>87</sup> progressives 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 transfer benefits. Indeed, conservatives might prefer to send a particular group checks rather than 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.

Given these changes in the policy environment, I believe it is reasonable to expect policy formation and administration in this area 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.<sup>88</sup>

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<sup>86</sup> Harvey, *Joblessness and the Law Before the New Deal*, *supra* note **Error! Bookmark not defined.**; Harvey, *Combating Joblessness*, *supra* note **Error! Bookmark not defined.**, at 686-89.

<sup>87</sup> It should be emphasized in this context, that the right to work the EA 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 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.

<sup>88</sup> 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

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 policy debate and eligibility screening the BI strategy is designed to avoid. A BI guarantee would not end the relative advantages that some groups enjoy or the relative disadvantages under which other groups labor. 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 notwithstanding the existence of a BI guarantee. Would enactment of a BI 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 guarantee would reduce the intensity of policy debates and administrative problems in this area, but it would not eliminate them entirely.

BI advocates may also be unrealistic in assuming that the introduction of a universal BI grant would eliminate the stigmatization now suffered by public assistance recipients in market societies. Just because everyone would receive the same BI grant under such a system 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, using shame and stigma to encourage work effort to support the funding base on which the grant system would depend and to discourage “freeloading.”

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 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 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 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.<sup>89</sup> 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

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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. [Cite to Bonnie Fox and Schlesinger]

<sup>89</sup> HANDLER, SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE, *supra* note 14, at 272-278.

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 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.

For Handler, the value of a BI guarantee is that it would provide public-assistance recipients this “exit option.” The EA component of the ND 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. A means-tested public-assistance benefit provided without attaching other conditions to its receipt would also serve this function. This type of public assistance benefit actually has been tested in the United States,<sup>90</sup> 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 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 special 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 benefit could be quite small.

Incorporating a limited BI guarantee of this type into the ND strategy also would provide a way of judging the adequacy of the 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 with respect to the administration of public assistance programs.

#### **D. Social Insurance and the Second Component of the Right to Income Security**

So far we have compared the relative ability of the BI and ND 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, reveals that the right to income security recognized in the article

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<sup>90</sup> See Widerquist, *A Failure to Communicate*, *supra* note 77.

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 provided) that 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 – unemployment, sickness, disability, death, or advancing age.<sup>91</sup> The limits of this right to social insurance are subject to debate, of course, since Article 25 refers to it only in very general terms.

How do the BI and EA 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 identified above. Instead, they focus their attention exclusively on the advantages of a BI guarantee as a substitute for means-tested public assistance programs – that is, on programs designed to secure what I have referred to as 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, for example, the 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. Typically, expenditures on these programs total between four and five times as much as expenditures on means-tested income assistance. Most European countries provide an even more extensive set of social insurance benefits – including paid sickness, maternity and family leave benefits that are provided to only a minority of workers in the United States as employer-funded fringe benefits.

Whether a BI guarantee would serve as an adequate substitute for these benefits is an important question, but the views of BI advocates concerning this issue are difficult to surmise. Since BI advocates seem to agree that a BI guarantee would provide a satisfactory substitute for Unemployment Insurance,<sup>92</sup> I will use that example to explore the ability of such a to secure the second component of the right to income security recognized in Article 25 of the Universal Declaration.

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<sup>91</sup> 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.”

<sup>92</sup> Irwin Garfinkle, et al., *The Effects of a Basic Income Guarantee on Poverty*, in REDESIGNING DISTRIBUTION, *supra* note 20, at 143-174; Clark, *The Economics of Poverty in the United States of America*, *supra* note 69, at 17 n. 8.

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 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 social insurance protection in market societies today. 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 right to 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.

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,<sup>93</sup> 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 BI idea.

The ND strategy assumes a full set of social insurance benefits would have to be provided in addition to a job guarantee. There are two reasons, though, why it would be easier to provide these benefits as part of the ND strategy than the BI strategy. First, as explained earlier in this article, the EA component of the ND strategy would reduce the number of people likely to need social insurance because of the elimination of involuntary unemployment. Second, the lower cost of the ND strategy leaves more fiscal room in government budgets to provide social insurance benefits. In contrast, it is hard to imagine a government that provided a BI guarantee

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<sup>93</sup> See, e.g., Van Parijs, [Redesigning Distribution piece].

also being able to finance the full range of social insurance programs needed to guarantee the second type of income security promised in Article 25.

### E. Solving the Problem of Unemployment

The BI idea also is commonly promoted as a solution to the problem of unemployment.<sup>94</sup> 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, BI advocates who have thought carefully about the issue generally do not advance this argument.<sup>95</sup> Instead, they argue that receipt of a guaranteed basic income 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.<sup>96</sup> 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.<sup>97</sup>

BI advocates who make this argument 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.<sup>98</sup>

There is no question that a BI guarantee would significantly enhance the freedom of people

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<sup>94</sup> See, e.g., *supra*, text accompanying notes 47 and 48.

<sup>95</sup> The reason the argument is flawed is that changes in labor force participation can affect labor demand, albeit indirectly, as well as labor supply. Labor force participation rates can and do vary widely both among economies and within an economy over time without having any lasting effect on the economy's unemployment rate.

<sup>96</sup> See, e.g., VAN PARIJS, REAL FREEDOM FOR ALL, *supra* note 19, at 126; STANDING, BEYOND THE NEW PATERNALISM, *supra* note 19, 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).

<sup>97</sup> 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).

<sup>98</sup> See, e.g., VAN PARIJS, REAL FREEDOM FOR ALL, *supra* note 19, at 126; STANDING, BEYOND THE NEW PATERNALISM, *supra* note 19, 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).

to engage in unpaid or low-paid work, but I believe BI advocates have been too quick to accept 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 elsewhere<sup>99</sup> and will comment here only on the importance that access to a paying job would continue to have for individuals who received 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. As 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?”<sup>100</sup> 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.<sup>101</sup>

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 because of the increased poverty they suffer.<sup>102</sup> There has always been a tendency to view their material suffering 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 attitudes towards 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” on the system. Even if public

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<sup>99</sup> 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).

<sup>100</sup> Kenneth Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 534 (1997).

<sup>101</sup> *Id.*

<sup>102</sup> Harvey, *Joblessness and the Law Before the New Deal*, *supra* note **Error! Bookmark not defined.**

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. 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, as it was conceived by the drafters of the Universal Declaration, requires social protection.

### **F: Non-Market Work**

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 – the family care and community service work that millions of people, and especially women, perform without pay in market societies. A BI guarantee would perform this function, however, with some of the same limitations noted with respect to the ability of such a guarantee to compensate the unemployed.

Consider again 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 family care and community service work.

This doesn’t mean a BI guarantee would be worthless to unpaid family 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, at least in the form favored by most BI advocates, 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 work,”<sup>103</sup> and although the drafters of the Declaration were clearly thinking of wage discrimination when they drafted this provision,<sup>104</sup> there is no principled reason to view the equal

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<sup>103</sup> Universal Declaration of Human Rights, *supra* note 32 and Box 1.

<sup>104</sup> 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

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.<sup>105</sup>

As Standing points out,<sup>106</sup> 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. Reasonable mechanisms for compensating community service activities are easier to envision, but the task of deciding which activities are deserving of such compensation is particularly challenging.<sup>107</sup>

The ND 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 ND strategy compared to the BI strategy makes it easier to contemplate the creation of other forms of social support funded by governments – 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 EA strategy would create both an ideological opening and a practical precedent for recognizing other types of work as deserving compensation. Many difficulties would have to be overcome to achieve the goal of genuinely

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during the drafting process. See MORSINK, *supra* note 60, at 116-129.

<sup>105</sup> 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.

<sup>106</sup> STANDING, *BEYOND THE NEW PATERNALISM*, *supra* note 19, at 264-70.

<sup>107</sup> 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 BI 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 BI 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 BI 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.

providing “equal pay for equal work,” but claims that a BI guarantee would accomplish this purpose are questionable.

### **G: 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 dependency on such employment – as he claims a BI guarantee would.<sup>108</sup>

In evaluating this criticism it is important to emphasize once again that the BI and ND strategies are not incompatible with one another.<sup>109</sup> 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 an EA program suggests that it would be possible to add an employment guarantee to the BI strategy without adding significantly to its overall cost. Adding an EA program like the one described above to Clark’s proposed BI grant program would have added only another \$118 billion to the \$1.7 trillion that Clark’s proposed BI grant program would have added to government spending – even if we don’t count any of the savings and revenue the EA program could generate over and above the taxes paid by program participants on their program wages.

For advocates of the ND 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 the EA strategy, while simultaneously guaranteeing everyone an unconditional BI guarantee, Standing’s charge that policies designed to secure the right to work would be freedom-reducing is patently false. Securing the right to work of a person who also receives a BI guarantee obviously would provide the person more real freedom 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.<sup>110</sup> But why assume the only way to expand employment opportunities is by lowering wages?<sup>111</sup> 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?

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<sup>108</sup> STANDING, BEYOND THE NEW PATERNALISM, *supra* note 19, at 247-55.

<sup>109</sup> *See supra*, Part III.

<sup>110</sup> STANDING, BEYOND THE NEW PATERNALISM, *supra* note 19, at 272.

<sup>111</sup> Standing’s assumption that lowering wages actually would lead to reduced unemployment also can be challenged. *See, e.g.,* Harvey, *Combating Joblessness*, *supra* note 28, at 709-23.

If the right to work can be secured along with adequate income support for persons unable to earn a livelihood, the complaint that policies designed to secure the right to work impose an obligation on people to work loses its moral force.<sup>112</sup> BI advocates do not object to the necessity most people face of having to work to earn their livelihood. They accept that anyone who wants more income than a BI guarantee provides should have to work for it, and, as explained above, the fiscal viability of their proposals require that almost everyone who currently works for wages would continue to do so. Their moral complaint against “forced work” is based entirely on the argument that low-wage workers should not be forced to accept bad jobs that pay below poverty wages. A BI guarantee would solve this problem, in their view, by giving low-wage workers what Standing calls a “drop dead option,”<sup>113</sup> 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 it hardly distinguishes BI proposals from the ND strategy. The difference lies in the means adopted to achieve that goal and in the fact that the ND strategy also proposes to ensure that everyone who wants a “good” job (what the International Labor Organization refers to as “decent work”<sup>114</sup>) is able to find one, a goal BI proposals generally ignore. In fact, there is little doubt that the ND strategy for securing the right to work would be more effective than a BI guarantee in eliminating bad jobs. While a BI guarantee might remove the whip of absolute necessity that currently forces low-wage workers to accept sub-standard jobs, they still would feel a strong compulsion to accept such employment in order to earn an above poverty-line income. Indeed, rather than eliminating “bad” jobs, a BI guarantee might subsidize them, allowing employers to lower wages rather than raise them, since low-wage workers would need less wage income to survive. 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, the immediate goal of the ND strategy.<sup>115</sup>

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<sup>112</sup> 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 60, at 157-90. The claim I understand BI 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.

<sup>113</sup> STANDING, *BEYOND THE NEW PATERNALISM*, *supra* note 19, at 259.

<sup>114</sup> INTERNATIONAL LABOR ORGANIZATION, *A GLOBAL AGENDA FOR EMPLOYMENT* (2001).

<sup>115</sup> 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. Reliance on this strategy requires a willingness to wrestle with the macroeconomic problems that rising wages can cause rather than tolerate continuing violations of the right to work as an acceptable price to pay for price stability. See Harvey, *Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously*, *supra* note 45, at 449-67; Harvey, *Funding A Job Guarantee*, *supra* note 40.

## H. Personal Development and Freedom

The most important benefit BI advocates claim for the BI strategy after poverty reduction is probably an expansion of individual freedom and enhanced opportunities for personal development. Standing expresses this goal quite eloquently.

Assuming a veil of ignorance (not knowing where they would be in the distribution of outcomes), what sort of society would we want to leave for our children? My own gist of the answer is that they should be living in a society celebrating a diversity of lifestyles, constrained only by the need to avoid doing harm to others, and living in circumstances in which a growing majority of people work on their enthusiasms, to pursue their own sense of occupation – combining their competencies, or “functionings,” varying their work status, and possessing the means to be responsible to their family, neighbors and wider community. They are “in control” and able to pursue their “calling,” their portfolio of activities. They live in an environment of co-operative individualism, in which individual freedom of action and reflection is backed by collective agency. This notion of development may be called occupational security – the security in which to develop capabilities and a working life in which one can combine forms of activity, including the stillness of contemplation.<sup>116</sup>

The availability of a BI guarantee undoubtedly would give people more freedom than they now enjoy to pursue the goals Standing describes. 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 economic based needed to support the program while discouraging the poor from taking steps to escape poverty or near poverty – BI advocates have tried to structure their proposals in ways that would 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 would also 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

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<sup>116</sup> Standing, *About Time: Basic Income Security as a Right*, *supra* note 64, at 4-5.

summarizing all the social, economic, and cultural rights in the Declaration.”<sup>117</sup> 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.<sup>118</sup>

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 at the beginning of this article 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.”<sup>119</sup>

This entitlement to supported leisure is not unlimited. The Universal Declaration does 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.<sup>120</sup> A BI guarantee would honor this fair-share principle by providing all persons the same subsidy for engaging in non-market activities, with the entitlement being rationed by the size of the BI guarantee and by whatever structural features were built into the BI delivery mechanism to discourage labor market withdrawal. Because of the constraint imposed by this latter concern, however, a significant portion of the benefits distributed by a BI guarantee would function more as a wage subsidy than a subsidy for personally fulfilling non-market activities.

The ND strategy also would offer support for the kind of activities Standing describes, but the support would be provided in the form of direct subsidies for particular kinds of personal development activities (e.g., educational and cultural activities) and paid leaves of absence from wage employment which may or may not contemplate particular uses of the leisure time being funded. Clearly the BI strategy has some advantages over the ND strategy in this area, since it arguably allows greater freedom of individual choice in deciding how to use the subsidy provided for personal development and leisure activities.

On the other hand, the ND strategy also has advantages the BI strategy does not possess. For one thing, it would make it easier to construct compensation mechanisms that would subsidize

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<sup>117</sup> MORSINK, *supra* note 60, at 212.

<sup>118</sup> The broadest statement is contained in Article 22. *See supra*, Box 1.

<sup>119</sup> 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 60, 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 parents are entitled to supported leisure time as well as wage laborers.

<sup>120</sup> 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 60, 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.

personal development activities at a level and in a form that actually would encourage more people to pursue them. Most people would consume whatever BI grant they received as they received it. If they elected to take time off from work to pursue personal development activities, they would find themselves in exactly the same financial position as the involuntarily unemployed worker described above. Their BI guarantee would not replace any of their foregone wage income, and in that sense it would provide far less of a subsidy for engaging in personally fulfilling non-market activities than would the paid leave benefits provided by the ND strategy. Moreover, given the difference in the cost of the BI and ND strategies, a society that elected to pursue the ND strategy could afford to greatly increase both the number and generosity of the subsidies it provided for personal development activities without coming close to spending as much as would be required to fund a BI guarantee.

Thus, even in this area where the benefits provided by a BI guarantee would seem to be most pronounced, it is far from clear that such a guarantee would actual fulfill the hopes of its supporters as well as the ND strategy would. Progressives with strong libertarian proclivities still might prefer the BI mechanism on the grounds that it would give individuals more freedom to decide whether and how they wanted to use their BI grant, but I don't think they can credibly claim that a BI guarantee would provide greater support than the ND strategy for personal development and leisure activities.

## **PART IV**

### **Conclusion**

The premise of this article is that a credible progressive response to conservative welfare reform must satisfy three conditions. First, it must be positive and forward looking rather than merely expressing a negative response to conservative policies. Second, it must be grounded on a credible replacement for the Keynesian full-employment strategy whose collapse in the 1970s ushered in the conservative reawakening of the last three decades. Third, it must include a methodology and language for use in evaluating and discussing public policy options that is capable of competing with its conservative counterpart in terms of both analytic rigor and ideological appeal.

Both the BI and New Deal (ND) strategies discussed in this article satisfy the first condition. They promise not only to overcome poverty, but to do it in a way that is definitive and sustainable rather than remaining subject to the vagaries of demographic change, technological developments, the restructuring of industries in response to the above, and business cycle fluctuations.

Consideration of the second requirement, though, calls attention to significant shortcomings in the BI strategy. Its inability to perform key social welfare functions that people reasonably expect governments to perform, combined with its high cost, make it a poor candidate to replace the Keynesian full-employment strategy on which the progressive welfare state was built in the decades following the end of World War II. The ND strategy, on the other hand, is ideally suited to replace the Keynesian full-employment strategy. Indeed, what later evolved into the Keynesian strategy was originally based on proposals to use direct job creation to achieve full employment. Replacing the Keynesian component of this strategy with a direct job creation

plank is not so much a new idea as the restoration of the original design for the progressive welfare state (though the latter term, too, was unknown when this strategy was developed by New Deal social welfare planners in the 1930s).

This does not mean, of course, that it would be impossible to conceive of other possible replacements for either the full-employment or transfer benefit legs of the Keynesian strategy. Still, the ND strategy establishes a standard for filling this role that other social welfare strategies should be expected to meet. It also does not mean that the ND strategy is free of problems – such as the inherent difficulty of determining who should be entitled to transfer benefits. Fortunately, it may be possible to address the weaknesses in one strategy by modifying it based on ideas borrowed from another strategy – as exemplified by the suggestion that a limited BI guarantee might address some of the difficulties associated with deciding whether particular individuals should or should not be expected to be self-supporting.

Finally, the usefulness of the Universal Declaration of Human Rights as a statement of progressive policy norms is demonstrated by their ability to illuminate the differences between the BI and ND strategies. The economic and social rights recognized in the Declaration are expressed in broad enough terms to be applied to very different institutions and policies, and they are sufficiently specific to support meaningful, analytically rigorous assessments of the relative merits of different policy proposals.

The Universal Declaration also provides progressives with a way of talking about social welfare policy that matches the power of the language they already use to talk about civil and political rights. The language of rights provides a strong counterweight to the language of utility in public policy discourse. In fact, rights talk is so powerful that utilitarians will go to extraordinary lengths to overcome or deny the existence of contradictions between utility maximization and the protection of recognized human rights. Utilitarians know they will lose any policy argument the public perceives as posing a claim of self-interest against the need to protect human rights. It doesn't mean public policy will always reflect the conceptual dominance of human rights over utility. The public, not to mention their political leaders, are good at self-deception and self-justification, but the defenders of legitimate human rights claims enjoy a powerful advantage in public debate over time. Progressives can own this advantage if they reclaim the language of economic and social human rights that they themselves conceived and promoted in the 1940s.