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FOREWORD

MEETING HUMAN NEEDS: EXAMINING THE SOCIAL SAFETY NET FOR WORKING AMERICA

Stephanie M. Wildman*

Social justice lawyers, working with communities, use law and the legal system in the struggle for social change. Goals for social justice lawyering include promoting individual and collective well-being, enhancing human dignity, eliminating institutionalized discrimination and privilege, and correcting imbalances of power and wealth.¹ This dynamic collaboration of lawyers, law, and communities seeks to meet basic human needs and to enable the practice of democracy.² Thus, meeting human needs, practicing democracy, and working for social justice are interconnected enterprises. Illuminating any one of these inextricably linked endeavors sheds light on each of the others.

This Santa Clara Law Review symposium memorializes a discussion of these issues that took place on January 30, 2004, engaging, in particular, areas of welfare, bankruptcy, and unemployment. These aspects of social policy address human needs at different economic stages for the American workforce. Each area poses unique legal challenges. The articles which follow invite exploration of a series of questions: What are human needs and how does one meet

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1. MARTHA R. MAHONEY, JOHN O. CALMORE, & STEPHANIE M. WILDMAN, *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW* 1 (2003).

2. *Id.*

them? Who is responsible for seeing that human needs are met? What role does combating oppression play in striving to meet human needs? Answers to these questions concern social justice advocates, who recognize connections between racial exclusion and other forms of oppression.

The keynote address by John A. Powell set the stage for this exploration of the notion "Meeting Human Needs." The welfare panel considered whether increasingly limited resources reach those who need them most. Here, articles by Frank Munger and Dorothy Roberts reflect the discussion on welfare reform. The bankruptcy speakers, represented here by Jean Braucher, considered the role of relief from debt as part of the safety net, as well as proposed reforms in that area. The final panel examined issues surrounding unemployment and unemployment insurance reform, asking whether the nation is doing enough for working people. Karen Czapanskiy, David Gregory, Deborah Maranville, and Bill Quigley contribute their analyses of developments and potential changes in this arena.

In his keynote address, John A. Powell reminds us that both membership in democratic society as well as how we think about and assess that membership are crucial antecedents to identifying and meeting human need.³ According to Powell, it is too limiting to think about need as something related only to physical survival. Rather we should consider the link between human need and freedom. Powell urges a capabilities approach that focuses public policy on ensuring equal opportunity for societal participation to all members. Freedom is a process that must be practiced by those who have the capacity to participate in society. Because human nature is not set in stone, it is the very practice of democracy that produces a society that can be constituted by active engagement.

Powell's searching discussion of membership in democratic society and the consequences of non-participation receives support from a prominent, recent report to the Rockefeller Foundation. Examining a wide range of issues, the report sought to identify patterns and themes in the quest

3. John A. Powell, *The Needs of Members in a Legitimate Democratic State*, 44 SANTA CLARA L. REV. 969 (2004).

for social justice.⁴ The report examined the struggle for racial diversity at the University of Texas, garment worker advocacy in Los Angeles, the Mississippi redistricting campaign to ensure democratic voice, efforts to ensure that transit revenue in Los Angeles met community needs, the undertaking to achieve sustainable community in North Carolina through a labor dispute, and decisions about land use in Boston's Chinatown.⁵ The Rockefeller Report observed that the case studies revealed several patterns about social justice lawyering:

Community involvement and engagement with local governing institutions take high priority as a consistently reliable tool for solving pressing community problems and sustaining the struggle for justice;

The attorney/client relationship is fluid, collaborative and multilateral, as the legal arena becomes one among several dynamically interrelated venues in which claims for justice are played out;

Advocates on the national level are cognizant of the need to nurture and sustain local movements for justice, while maintaining and expanding the federal rights infrastructure upon which local work often builds; and

Issues of race are defined and addressed in new ways. Popular discussion frames racial exclusion in terms of individual prejudice that causes whites to treat minorities differently. The cure is to treat everyone the same. By contrast, the racial-innovation approach seeks to reveal the deeper structural causes of racial exclusion and make connections between racial exclusion and broader kinds of institutional and social dysfunction.⁶

Thus social justice lawyering seeking to meet human needs must recognize that oppression, particularly racial exclusion, remains intertwined with other social ills.

The symposium looks at practical obstacles to democratic participation faced by people relying on welfare, declaring bankruptcy, or facing unemployment. These essays share the common thread of recognizing the important relationship

4. PENDA D. HAIR, *LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE* (2001) [hereinafter *ROCKEFELLER REPORT*].

5. MAHONEY, CALMORE, & WILDMAN, *supra* note 1, at 2.

6. *ROCKEFELLER REPORT*, *supra* note 4, at 141.

between economic equality and the ideal of democratic participation highlighted by powell's keynote.

The articles discussing welfare reiterate the important social justice themes about societal participation, coalition work, and the continued salience of race to the welfare reform debate.⁷ Frank Munger comments on the failures of traditional welfare reform and examines alternative reform efforts.⁸ Traditional reform has pressured recipients to leave welfare for work. However, the job market remains insecure, health care is unaffordable, and working requires support for family commitments. Munger observes that a new wave of advocates has focused on utilizing underdeveloped market power, encouraging public-private partnerships, and coalition building as these advocates seek community-based control.

Dorothy Roberts focuses on the shift in welfare policy from encouraging poor mothers to stay at home to pushing them into paid employment.⁹ In an era when more well-educated, financially comfortable women are "opting out" of the workplace in favor of family, poor women do not have that option. Forcing a transition of low-income women from welfare to work devalues these women's caregiving. This coercion also largely ignores the difficulties these women face in earning a liveable income and in finding and paying for child care and other needed resources. Women's economic freedom requires assuring women the ability to make decisions about caregiving and paid employment.

In her article discussing modern problems surrounding bankruptcy law, Jean Braucher notes that as the availability of consumer credit increases, bankruptcy filings similarly escalate.¹⁰ Braucher explains that most bankruptcies involve four economic factors: (1) lack of family financial reserves or

7. The link between welfare reform and race is particularly ironic since early "Mothers' Pensions" legislation was aimed at white women, predominantly widows, to assist them in maintaining their homes. Joel F. Handler, *"Constructing the Political Spectacle": The Interpretation of Entitlements, Legalization, and Obligations in Social Welfare History*, 56 BROOK. L. REV. 899, 909-10 (1990).

8. Frank Munger, *Beyond Welfare Reform: Can We Build a Local Welfare State?*, 44 SANTA CLARA L. REV. 999 (2004).

9. Dorothy E. Roberts, *Welfare Reform and Economic Freedom: Low-Income Mothers' Decisions About Work at Home and in the Market*, 44 SANTA CLARA L. REV. 1029 (2004).

10. Jean Braucher, *Consumer Bankruptcy as Part of the Social Safety Net: Fresh Start or Treadmill?*, 44 SANTA CLARA L. REV. 1065 (2004).

the absence of an at-home adult who could either work or become a caregiver for a sick family member; (2) high debt in relation to income; (3) a “trigger” that radically decreases income or increases expenses; and (4) lack of a safety net to sufficiently cover the “trigger” event. Existing proposals for more debtor education may merely make bankruptcy less accessible as a remedy. Braucher calls for more research seeking a deeper understanding of why so many families carry big debt burdens. Educational programs for everyone, not just debtors, may lessen dependence on credit as a safety net.

National social policy is premised on a certain level of unemployment.¹¹ Unemployed workers create a pool of potential workers as production demands shift. While employers benefit from the availability of flexible labor, those workers are not just statistics in a managed economy but people who need to feed their families. Historically, unemployment insurance, as well as welfare, has provided a limited safety net for workers in the transition between jobs.

Karen Czapanskiy focuses on the increase in mothers entering the workforce.¹² The design of unemployment insurance, created with a vision of an ideal worker who had no childcare responsibility, does not reflect the reality of working mothers' lives. When mothers and other caregivers lose or reduce paid work to meet caretaking responsibilities, they often are found ineligible for unemployment insurance. Employers argue that fully covering caretakers would be too expensive. Czapanskiy urges that imposing the cost on employers is fair; employers have been insulated from the expense of making employment family-friendly in ways that would attract low-income caregivers into jobs. Instead, mothers have been pushed and pulled into paid work by the work-oriented eligibility requirements of government programs such as the Earned Income Tax Credit and welfare reform.

11. Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 524 (1997) (“[O]ur national employment policy is not a full employment policy but a policy to control the demand for labor, keeping unemployment at a level high enough to prevent wages from rising too much.”).

12. Karen Syma Czapanskiy, *Unemployment Insurance Reform for Moms*, 44 SANTA CLARA L. REV. 1093 (2004).

David Gregory echoes the need to reform unemployment insurance.¹³ Gregory uses the example of a telecommuting worker, who lived in Florida but was terminated by a New York based company. Both Florida and New York denied her requests for unemployment insurance benefits. As telecommuting gains popularity in an increasingly globalized world, such workers are vulnerable to the old notions of unemployment insurance as linked to a localized idea of work.

Deborah Maranville builds on this theme of globalization and unemployment insurance.¹⁴ She illustrates the issue with a case study of the state of Washington's changes to its unemployment insurance plan. These changes were driven by the desire to keep Boeing Corporation as a major employer in the state. Globalization, manifested by competing bids from states and countries mandating smaller corporate payments into unemployment insurance funds, increased the incentive for the company to negotiate tax breaks in exchange for keeping jobs within the jurisdiction. The resulting changes in state policy severely restricted the pool of workers eligible for unemployment insurance.

Finally, William Quigley focuses on unemployment in the United States prison population.¹⁵ Currently, most of the two million people in U.S. jails and prisons do not work, and those who do are not paid fairly for their labor. Quigley urges a change in this societal practice, in the interest of justice. Idleness in prisons is unjust, first, because at some point most prisoners will be released from prison and into the productive workforce. Forcing these prisoners to remain idle during incarceration makes their transition upon release difficult. Second, idleness prevents prisoners from supporting their families outside the prison walls. Catholic social thought supports the right of all people to work and earn a just and living wage. Enabling prisoners to work, and to earn a living wage, could help keep their families off welfare roles and provide skills for re-entry into society.

13. David L. Gregory, *19th Century Local Unemployment Compensation Insurance Law in the 21st Century Global Economy*, 44 SANTA CLARA L. REV. 1113 (2004).

14. Deborah Maranville, *Unemployment Insurance Meets Globalization and the Modern Workforce*, 44 SANTA CLARA L. REV. 1129 (2004).

15. William P. Quigley, *Prison Work, Wages, and Catholic Social Thought: Justice Demands Work for Decent Wages, Even for Prisoners*, 44 SANTA CLARA L. REV. 1159 (2004).

This symposium contributes to emerging, cutting-edge legal scholarship linking social justice and democratic participation. The juxtaposition of welfare, bankruptcy, unemployment insurance, globalization, and the economic implications of imprisonment reveals provocative connections that lay a foundation for future exploration.
