

**The Spread of Workfare: Activation, Devolution, Privatization, and the Changing Status of Citizenship<sup>1</sup>**

(draft)

Joel F. Handler, UCLA School of Law

There have been major changes in welfare policies -- "workfare" in the U.S. and Active Labor Market Policies (ALMP), or "activation," in the rest of the developed world; the devolution or delegation to local governments; and privatization, called "marketization" in Europe. In the United States, the factors leading to welfare reform started in the 1980s. A moral crisis was perceived by both conservatives and liberals in the program for poor single mothers, Aid to Families with Dependent Children (AFDC). President Reagan coined the term, "welfare queen" -- the unwed African American woman having children to stay on welfare, generational welfare, substance abuse, crime -- in short, breeding an underclass. In the 1990s, state demonstration projects began to impose strict work requirements and sanctions. The most prominent program was in Wisconsin -- "Wisconsin Works" or "W-2." The W-2 model became influential throughout the developed world.

The state demonstration projects culminated in the 1996 welfare reform. President Clinton promised to "end welfare as we know it." Under The Personal Responsibility and Work Opportunity Responsibility Act (PRWORA), AFDC was replaced by Temporary Assistance for Needy Families (TANF). The states received block grants to administer TANF. Welfare was no longer an entitlement. There were strict work

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requirements and sanctions, enforced by time limits. Welfare rolls declined precipitously (although the decline started before 1996), and everyone has declared "victory." Since 1996, welfare, as well as discussions of poverty and inequality, have dropped off of the political radar screen. The widespread assumption is that if the family is not on welfare, everything is ok.<sup>2</sup>

In Western Europe, there has been a spread of ALMP, primarily for social assistance recipients, in several countries, including Scandinavia, the Netherlands, the United Kingdom, Denmark, France, Germany, Ireland, Austria, and also Australia and New Zealand.<sup>3</sup> Welfare for social assistance recipients is conditioned on participation in work or work-related activities combined with earnings disregards. In many countries, programs have been decentralized to the municipal level and privatized (called "marketization").<sup>4</sup>

ALMPs takes a variety of forms and programs. In the Netherlands, there is the Jobseeker's Employment Act targeting unemployed young people (under the age 23) and the long-term unemployed. Participation is compulsory. The government provides subsidized employment, training opportunities and work experiences. Those who participate remain on assistance. The program is decentralized to municipalities who contract with private for-profit organizations. In the U.K., the New Deal, introduced by the Labour Party, has greatly expanded compulsory workfare activities (i.e., 13 weeks of

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<sup>2</sup> Handler & Hasenfeld (2007) *Blame Welfare, Ignore Poverty and Inequality* (Cambridge U. Press)

<sup>3</sup> OECD, *Employment Outlook 2005*; Van Berkel, Rik & Paul van de Aa (2005) The marketization of activation services: a modern panacea? Some lessons from the Dutch experience. *Journal of European Social Policy*. Vol.15(4): 329-343; Barbier, Jean-Claude (2007) Where does the actual gist of 'activation' lie? *An approach to actual modifications of social citizenship* (Cinefogo conference, Prag, February)

<sup>4</sup> Ludwig-Mayerhofer, Wolfgang (2005) *Activating Germany*. Ch.5. in Bredgaard, Thomas & Larsen, F. (eds.) *Employment Policy From Different Angeles* DJØF Publishing (Copenhagen)

intensive job search to be followed by 13 weeks of mandatory work experience). The main target is the unemployed youth (under the age of 25). Participants are assigned a personal advisor who draws an individualized plan that emphasizes job placement including subsidized employment. Failure to comply results in sanctions. There are also tax credits to working families, similar to the Earned Income Tax Credit in the U.S. In France, the RMI requires “insertion” contracts on the part of the social assistance recipients.<sup>5</sup> In Germany, there are the Hartz reforms, among other things, designed to change the Public Employment Service and implement ALMP.<sup>6</sup>

There are significant differences between the U.S. and the European approaches. In Europe, there still remains a strong commitment to reduce poverty and to support families.<sup>7</sup> Nevertheless, the U.S. model, particularly Wisconsin, has heavily influenced Europe. According to the central banks, the OECD, employers' association, and some think tanks, the existing “passive” welfare state has discouraged job expansion by encouraging people to stay on benefits instead of working. ALMP would not only help the economy but would help the social assistance recipients reenter society as citizens.<sup>8</sup> ALMP, along with efforts to make labor markets more “flexible,” is an outgrowth of the European Employment Strategy (EES), adopted in the late nineties in response to sluggish economies and high unemployment.<sup>9</sup> Although ALMP have been adopted by

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<sup>5</sup> Barbier (2007)

<sup>6</sup> Ludwig-Mayerhofer, Wolfgang (2005), *Activating Germany*, ch.5

<sup>7</sup> A major exception is the UK, which ranked next the U.S. at the bottom of a UN survey of the condition of children among 40 nations. See also Lyall, *How the Young Poor Measure Poverty in Britain: Drink, Drugs, and Their Time in Jail*, N.Y. Times, March 10, 2007, p.5

<sup>8</sup> Handler, J (2004) *Social Citizenship and Workfare in the United States and Western Europe: The Paradox of Inclusion* (Cambridge); Supiot, Alain (2006) *Law and Labour; A World Market of Norms?* *New Left Review* 39 (May June), pp.109-121

<sup>9</sup> Bredgaard, Thomas & Flemming Larsen (eds) (2005) *Employment Policy From Different Angles*. DJØF Publishing Copenhagen

most European countries in response to a perceived welfare crisis, other countries without a welfare crisis, have also implemented the programs, including Denmark and Norway.

In this paper, I argue that based on careful, field-level research that pierces the veil of official reports and statistics, welfare-to-work programs, in daily practice, run serious risks of stigmatizing the poor, making them subject to and dependent upon the discretionary power of over-worked, undertrained welfare caseworkers who are under supervisory pressure to produce positive statistical results. Caseworkers, with the support of managers, rely heavily on sanctions and diversion to reduce case numbers. Large numbers of families have left welfare or have been discouraged from applying for welfare. Many found employment during the economic upsurge in the U.S. in the late 1990s, they have found work, but often subsequently became unemployed, and the vast majority have remained in poverty.<sup>10</sup>

These results also apply to private contractors. Contrary to the privatization ideology (efficiency, accountability), contractors use the asymmetry of information to advance their own interests at the expense of government. Governments, in turn, fail to adequately monitor performance, or display a willingness to change contractors. Reliance is placed on process measures rather than the quality of the services.<sup>11</sup>

My argument is based on the *administrative incapacity* to implement the new work requirements for welfare recipients. TANF changed the assistance program by switching its emphasis from an income support program for poor families to an employment program primarily for poor single mothers. In order to successfully run a work program, workers have to create individualized work contracts with welfare

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<sup>10</sup> Handler & Hasenfeld (2007)

<sup>11</sup> DeParle, Jason (2004) *American Dream*. New York: Viking; Donahue; Sclar, Elliott. (2000). *You don't always get what you pay for: the economics of privatization*. Ithaca. Cornell Press.

recipients, monitor their progress toward reaching their employment and other goals, and penalize recipients for non-compliance with their work contracts. Each of these seemingly simple tasks is fraught with difficulty and problems – especially given the fact that offices must also still administer their primary task -- determining and monitoring financial eligibility among recipients. Many of these same administrative failures have also started to appear in workfare programs in Western Europe.<sup>12</sup>

There are workfare programs that have "worked." They are, for the most part, small, well-financed, well-staffed demonstration projects run by committed people. But these programs are difficult to replicate. Large public programs are run by *ordinary, average* civil servants or employees of large NGOs or for-profit companies. Programs will concentrate on those with the most skills who are the most employable who take the least amount of caseworker time and energy to meet statistical goals and who will look like the ALMP programs are succeeding. Taking a realistic view of administrative capacities, I argue that work programs run serious risks for the most vulnerable of the poor, those who have multiple, significant barriers to employment. I argue this is an *additional* reason for a basic income guarantee.

### **Ending Welfare as We Knew It: Moving “Dependent” Welfare Recipients to Self-Sufficiency**

The 1996 welfare reform changed the income maintenance program for poor families in four ways. First, TANF dramatically expanded the states’ abilities to design their own welfare program for poor families. As long as the states met new work participation and other requirements, they would receive federal funding in the form of a

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<sup>12</sup> Handler, *Social Citizenship and Workfare in the United States and Western Europe: The Paradox of Inclusion* (Cambridge 2004)

block grant calculated on the number of welfare recipients in certain years (the highest number between 1992-95). Starting in 1997, at least 25% of the adults in single parent families had to be in the workforce; by 2002, the proportion increased to 50%.<sup>13</sup> Second, the legislation explicitly stated that income support is no longer an entitlement for poor families. The new emphasis is on “responsibilities” instead of “rights.” Welfare is no longer guaranteed to any family that meets certain federal eligibility criteria. Instead, recipients are expected to work and meet other behavioral requirements (“family values”) in order to receive income support. Third, TANF expanded the ability of states to reduce the cash aid of recipients that do not comply with the new requirements. States could now choose to completely eliminate the entire cash grant of noncompliant families. As discussed below, most states have selected this option. Lastly, for the first time in welfare history, TANF established strict time limits on aid. Cash assistance is now limited to a five-year cumulative lifetime limits (with exceptions for no more than 20 percent of the caseload). One of the most important features of the block grant system is that if states reduce their welfare rolls, they keep the “surplus,” and during this period, the welfare rolls were declining significantly.

All of these changes were based on the assumption that state welfare offices could successfully implement work programs for welfare recipients. Before the passage of TANF, welfare offices were primarily concerned with establishing and monitoring recipients’ eligibility for aid, as well as eliminating “waste, fraud and abuse.” Now, offices are expected to act as employment agencies for recipients, including those who have multiple barriers to work -- e.g., limited educational attainment, physical and mental

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<sup>13</sup> All of the reauthorization bills required at 70% reduction, but they have not been enacted. However, the caseload reduction credit has been recalibrated so that the effective rate is higher than 50%.

health problems, children with special needs, other family members who are ill or need special attention, transportation problems, and limited access to childcare.<sup>14</sup> In essence, under TANF, the “culture” of welfare offices was to be changed from being solely concerned with eligibility and compliance to providing individual, intensive employment services to recipients.

Some welfare offices have attempted to change.<sup>15</sup> Proponents of TANF have taken these examples, as well as the dramatic declines in the welfare rolls,<sup>16</sup> and increased employment among poor single mothers,<sup>17</sup> as proof that the welfare system has successfully changed to promote work. However, there is reason to doubt that offices can perform these tasks.

### **Creating Individualized Work Plans**

The first step in moving welfare recipients into the workforce (after establishing eligibility for the program) is to establish an individualized work plan or contract that outlines the clients’ new responsibilities to the welfare office, including specific work activities and other behavioral requirements (“family values”). This involves assessing a client’s barriers to employment, as well as his/her employment preferences and goals. Based on this assessment, the caseworker and client should draft a work contract that

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<sup>14</sup> Danziger, S., Corcoran, M., Danziger, S., Heflin, C, Kalil, A., Levine, J. et al. (2000, February). *Barriers to employment of welfare recipients*. Retrieved September 15, 2005 from the University of Michigan Gerald R. Ford School of Public Policy Web site: <http://www.fordschool.umich.edu/poverty/pdf/wesappam.pdf>.  
Zedlewski S. & Loprest, P. (2001). Will TANF work for the most disadvantaged families? In R. Blank & R. Haskins (Eds.), *The new world of welfare* (pp. 311-334). Washington, DC: The Brookings Institution Press.

<sup>15</sup> Mead, Lawrence, *Government Matters: Welfare Reform in Wisconsin* (Princeton 2004)

<sup>16</sup> Pear, R. (2002, January 24). House Democrats propose making the '96 welfare law an antipoverty weapon. *New York Times*, pp. A24.

<sup>17</sup> Healy, M. (2000, August 23). Welfare rolls fall to half of '96 numbers. *Los Angeles Times*: pp. A12.

includes reasonable employment goals and provides the client with the support needed to find and maintain employment.

For some clients, this may only involve providing financial assistance for a limited period of time while they conduct a job search. However, for clients with multiple employment barriers, the process may involve combining work, training or education, and social services, while still meeting the performance goals set by the agency. A client suffering from depression, without a high school degree and responsible for a young child or other family members may need access to a variety of services including finding childcare that will accept low-income children. The caseworker must not only coordinate a variety of services for the client, but must also tailor their employment contract to build in time for each of these activity. If a client is mandated to fulfill 32 hours of work-related activities per month, how much of this time should be spent in education, or devoted to job search? Should therapy be included as a work-related activity, or as an additional requirement? For this client to successfully transition into the paid workforce, the caseworker must work in concert with several other agencies in the community.

Several studies of administrative practices in welfare offices have found that work plans are rarely tailored to meet client needs and goals. Instead, in order to fulfill both their eligibility determination and case management functions, many workers create work plans based on quick assessments of clients. For example, in their examination of the implementation of Wisconsin's TANF program, called Wisconsin Works or W-2, Gooden, Doolittle, and Glispie found that case managers mainly used their informal impressions of clients to make important decisions about services for clients.<sup>18</sup>

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<sup>18</sup> Gooden, Susan, Fred Doolittle & Ben Glispie (2001) Matching Applications with Services: Initial Assessments in the Milwaukee County W-2 Program

In Wisconsin, clients are placed into one of four tiers: 1) unsubsidized employment in which clients only received case management; 2) subsidized employment in which clients work at state-subsidized jobs; 3) community service jobs (CSJ) in which clients receive a welfare check for working at a community service job; and, 4) W-2 transitions in which clients can combine scheduled activities (mental health, substance abuse, education) with work. The tier system was created to allow case managers to give clients only the assistance they need. It was assumed that only the most disadvantaged clients would be assigned to the community service job and W-2 transitions tiers. As clients gain work experience, they should move up the tiers until they are off of assistance.

Although the tier system was created to give caseworkers increased flexibility, Robles et al.'s evaluation found that caseworkers usually only assigned clients to the CSJ or W-2 transition tiers. Specifically, from 1997 to 1999, 60 to 80 percent of the W-2 entrants were assigned to the CSJ tier.<sup>19</sup> In the initial meeting, caseworkers are expected to complete up to 480 screens in a computerized client system to establish eligibility and determine a client's initial tier placement. Given the limited amount of time, most caseworkers relied on their informal impressions of the applicant and used the CSJ tier as a catch-all because of its less-demanding documentation requirements. Tier placement in W-2 was based more on standard agency procedures than on a client's individual needs and goals. Eligibility determination took precedence.

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<sup>19</sup> Robles, Andrea, Fred Doolittle, & Susan Gooden. (2003) *Community Service Jobs in Wisconsin Works: The Milwaukee County Experience*

In her study of the implementation of a work program in Chicago that was the precursor to TANF, Evelyn Brodtkin found that eligibility determination and meeting caseload quota requirements, not individualized case management services, were driving the relationship between clients and workers.<sup>20</sup> Under the work program in Chicago, caseworkers were required to meet caseload participation quotas that would maximize federal payments to the state. They also had to cope with limited resources to meet client needs. Workers had little incentive to understand and address the employment needs and barriers of clients. And so, “rather than discovering and responding to client needs, caseworkers tended to define client needs to fit the available slots [and] avoid eliciting service claims.” Furthermore, they avoided eliciting or ignored information about drug use or mental illness since these cases would require more administrative effort. In this way, *clients with problems became viewed as the problems*. Caseworkers learned to ration resources based on their perceptions of clients. The rare education slots were only given to clients who seemed “serious about getting an education.”

In their study of eleven sites implementing TANF, Irene Lurie and Norma Riccucci found that creating job contracts were rarely based on client needs and goals.<sup>21</sup> Instead, they found that although workers stated they supported the goals of employment and self-sufficiency, case workers continued to be driven by accurately determining eligibility and getting the work done on time. Although the job titles given to workers changed, the only additional training they received was on new rules on time limits. The

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<sup>20</sup> Brodtkin, E. (1997). Inside the welfare contract: Discretion and accountability in state welfare administration. *Social Service Review*, 71(1), 1-33.

<sup>21</sup> Lurie, I. & Riccucci, N. (2003). Changing the ‘culture’ of welfare offices: From vision to the front lines. *Administration & Society*, 34, 653-677.

only difference the workers reported was the addition of “all these new forms and screens.” The interactions between workers and clients were focused on determining eligibility. Lurie and Riccuccio state, “The eligibility interviews we observed usually mentioned the need to work and always referred applicants to the work agency. However, very little time was spent discussing work or coaching the clients about employment. Discussion of work generally was crowded out by the enormous amounts of paperwork that the worker must collect to complete the application for assistance.”<sup>22</sup>

These studies, as well as others, show that workers in welfare offices are struggling to balance the need for the individualized attention and the need to establish program eligibility. Workers receive little training. They create their own methods of quickly assessing clients, including placing them in community service jobs and sending them on job searches even when clients do not meet the skill and educational requirements. The caseworkers learn how to ignore or not ask about issues that will complicate the case planning, such as domestic violence, substance abuse, and mental health history. Making these adjustments allows workers to meet performance goals without ever addressing the needs of clients.

### **Monitoring Clients’ Compliance with Work Requirements**

The second factor needed to successfully run a work program is the ability to monitor clients’ compliance with work requirements. This involves a variety of activities, from making sure clients show up to assigned work activities to following clients that have moved to another location or have obtained employment. If clients do not comply, caseworkers are supposed to notify the client. Monitoring clients should

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<sup>22</sup> Lurie, I. & Riccucci, N. (2003).

help caseworkers assess a client's barriers to employment. For example, if the client repeatedly misses assigned activities, there may be transportation problems, mental or physical problems, a breakdown in childcare, etc.

Despite the importance of monitoring client compliance, welfare offices are struggling with this new duty. During their evaluation of community service jobs in Milwaukee, Wisconsin, when the researchers tried to interview recipients at their assigned CSJ, they only found one participant out of the 80 selected for the study at their assigned worksites.<sup>23</sup> Employers stated that the primary problem they face employing recipients is poor attendance. The authors posit that there are multiple reasons for the poor monitoring of clients, including “the complexity of the program, the multiple layers of administration at the work-sites, the turnover among W-2 agency staff, and the constant development of new worksites.”<sup>24</sup> There were multiple communication problems between the CSJ employer and the caseworkers. Employers submitted timesheets and tracking forms late. They had difficulty reaching a recipient's caseworker if there were problems on the job. And caseworkers did not always keep employers notified about changes in recipients assigned to their site. In fact, the most common reason that participants did not attend their CSJ was their tier placement had changed. Thus, the employer did not know when to tell the caseworker that the recipient did not attend work that day.

Robles et al.'s study only examines one possible work assignment to which recipients are assigned. Monitoring compliance is even more complex when recipients are assigned to multiple activities – such as education classes, substance abuse treatment,

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<sup>23</sup> Robles, Doolittle, & Gooden (2003)

<sup>24</sup> ES-5

or other medical/psychological services. A caseworker would need to establish attendance at each of these activities. This requires collaborating and forming close relationships with staff at each of these agencies.<sup>25</sup>

### **Penalizing Clients for Non-Compliance**

A requirement in implementing work programs for welfare recipients is the ability to penalize clients if they do not fulfill the obligations of their work plans. The most used penalty under TANF is sanctioning – sometimes reducing the cash aid or dropping the family from the rolls. Although sanctions have always been a feature of welfare, their importance has increased with the passage of TANF. The range of behaviors for which clients can be sanctioned has increased. For example, clients can be sanctioned for not turning in required paperwork, not attending a required activity, or not submitting proof that their children have been vaccinated. States can choose to only eliminate the adult's portion of the check (called a partial sanction) or to eliminate the entire check (called a full-family sanction). Thirty-seven states have chosen to implement full-family sanctions if clients are non-compliant; in fifteen of these states, families lose their entire check immediately.<sup>26</sup> States may also impose a lifetime ban on welfare receipt for repeated acts of non-compliance. Multiple studies have shown that sanctioning has become quite pervasive under TANF. MDRC studies in Cleveland, Philadelphia, Miami, and Los

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<sup>25</sup> The following e-mail was sent by the Legal Aid Society of New York (Jan.12, 2007): "Here in NYC, the local welfare agency has computerized its process for issuing sanctions when someone misses an appointment. Basically the computer system is set up with a default so that if a worker does not affirmatively enter the correct computer code to indicate the client appeared for the appointment, the system generates a notice to start the sanctioning process.

We are wondering whether any of you have confronted similar systems? We are challenging the process in the context of an ADA [American Disability Act] case, because it has a particularly pernicious effect on clients w/disabilities, who are more likely to miss appointments in the first place, and more difficulty in correcting errors when, for instance, they make the appointment but the worker failed to make the proper computer entry."

<sup>26</sup> Pavetti & Bloom, 2001

Angeles show that, based on recipient surveys, sanction rates vary from 20% percent in Los Angeles to 50% in Miami.<sup>27</sup> Studies following welfare recipients over time show even higher estimates, ranging from 45% to 60% percent of recipients being sanctioned.<sup>28</sup>

There are both moral and utilitarian justifications given for sanctioning recipients.<sup>29</sup> According to Lawrence Mead's moral justification, the government should not only provide cash aid to poor recipients, but should also give them direction in how to "live constructively."<sup>30</sup> Thus, the government has a right to expect recipients to comply with certain behavioral requirements and to enforce these new behavioral requirements through financial penalties. The utilitarian justification for sanctions assumes that recipients make a rational choice between complying with welfare requirements and losing part of their cash aid. Thus, recipients who are truly needy will comply with requirements in order to keep their aid. If recipients do not comply, even after receiving a sanction, that is an indication that they are not truly needy.<sup>31</sup> Both of these justifications make at least two assumptions about the welfare system: 1) recipients and caseworkers understand the sanction process; and, 2) recipients are able to change their behavior to fulfill program requirements if they choose to do so. Recent research has shown that neither of these assumptions is being met.

Although recipients and applicants are told about sanction policies repeatedly, studies have shown that recipients fail to understand them. In a study in Iowa, one-quarter of recipients who were sanctioned did not understand the program rules.<sup>32</sup> Another report

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<sup>27</sup> Brock et al, 2004; Polit, Nelson, Richburg-Hayes, & Seith, 2005.

<sup>28</sup> Pavetti, Derr, & Hesketh, 2003.

<sup>29</sup> Hasenfeld, Ghose, & Larson, 2004; Pavetti et al., 2003

<sup>30</sup> Mead, Lawrence, The rise of paternalism. In Mead ((ed.) The new paternalism: supervisory approaches to poverty (Brookings Institution 1997)

<sup>31</sup> Kalil, Seefeldt, & Wang, 2002.

<sup>32</sup> Kalil, Seefeldt, & Wang, 2002.

found that although recipients understood that they might lose their benefits if they do not comply with program requirements, they rarely knew what benefits they would lose and for how long.<sup>33</sup> In a study of sanctioning in four counties in California, only 63% of recipients were aware that failure to attend an assigned activity would lead to a reduction in their cash aid.<sup>34</sup> Even caseworkers do not fully understand the sanction policies that they implement. In interviews with caseworkers in California, only 14 out of the 25 case managers interviewed were able to accurately describe the sanction and compliance processes.<sup>35</sup> If recipients do not understand the program requirements, they will not be able to change their behavior; instead they will view the sanctioning process as arbitrary and unjust.<sup>36</sup>

Multiple studies have revealed that the recipients who are most likely to be sanctioned are also the recipients with the most barriers to employment.<sup>37</sup> The lack of access to childcare, reliable transportation, and the need to care for disabled family members increases the risk of being sanctioned.<sup>38</sup> One study that assessed the views of caseworkers about sanctions found that caseworkers believe that most of those who are sanctioned have barriers that prevent them from complying with work requirements, but

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<sup>33</sup> Pavetti & Bloom, 2001.

<sup>34</sup> Hasenfeld et al., 2004.

<sup>35</sup> Bagdasaryan, S., Matthias, R., Ong, P., & Houston, D. (2005, May). CalWORKs sanction policies in four counties: Practices, attitudes, and knowledge. *California Policy Research Center Brief, Welfare Policy Research Project*, 17(1), Retrieved September 15, 2005, from <http://lewis.spsr.ucla.edu/publications/projectreports.cfm>.

<sup>36</sup> Rainford, W. (2004). Paternalistic regulation of women: Exploring punitive sanctions in Temporary Assistance to Needy Families. *Affilia*, 19(3), 289-304;

Tickamyer, A., Henderson, D., White, J., and Tadlock, B. (2000). Voices of welfare reform: Bureaucratic rationality versus the perceptions of welfare participants. *Affilia*, 15(2), 173-192.

<sup>37</sup> Pavetti et al., 2003; Piliavin, Dworsky, & Courtney, 2003.

<sup>38</sup> Cherlin, Bogen, Quane, & Burton, 2002; Fein & Lee, 1999; Hasenfeld et al., 2004; Kalil, Seefeldt, & Wang, 2002.

that they do not have the resources to help recipients overcome these barriers.<sup>39</sup> Overall, using sanctions is a way to typify the clients' problems as their own failure to comply with requirements and justifies a fairly standard response – reducing their cash aid.

### **Privatization: Contracting welfare services with private agencies**

Welfare reform was part of the dominant neoliberal ideology to reduce the role of government in favor of the private sector. As President Reagan said, "government is the problem, not the solution." Given the serious negative view of welfare and welfare administration, there was a strong move to contract with private for profit and not-for-profit agencies. This would increase efficiency, save money, and better serve the clients. Contracting for services is extremely common in the U.S. The theory is that the same or similar services or goods can be provided by the private sector at less cost than government. Contracting, it is claimed, increases client autonomy.<sup>40</sup> Large bureaucracies are unresponsive to clients, consumers, and workers. The private sector, in contrast, has to compete for consumers. Therefore, contracting, by breaking the public monopoly and increasing private sector competition, should enhance consumer autonomy.

John Donahue examined contracting in a variety of organizations.<sup>41</sup> He evaluated the effects of contracting in terms of efficiency and accountability. Reviewing the evidence from a variety of sources – military support services; office cleaning firms; fire-fighting organizations; the transportation industry; water and power utilities – he concluded that profit-seeking firms are potentially more efficient under certain circumstances. The determining factor is the presence of competition in the market. Without a credible prospect of replacement, it is difficult to control private firms.

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<sup>39</sup> Bagdasaryan et al. (2005)

<sup>40</sup> Gormley, William (ed.) (1991) Privatization and its alternatives. (U. Wisconsin Press)

<sup>41</sup> Donahue, J. (1989) The privatization decision: Public ends, private means. (New York: Basic Books)

However, it is hard to maintain competition. Contracting firms develop inside information, expertise, and special relationships with government officials (the revolving door).

In the human services sector, both the availability and continuity of contractors are problematic. In many instances, government will have to, in effect, create suppliers. In other instances, there will be an irresistible need to favor those suppliers who can best meet the demand for an acceptable level of continuous service, thus avoiding repeated bidding as well as the bureaucratic red tape that accompanies the dispersal of public funds. This means favoring a large entrepreneurial firm, whether it is for-profit or nonprofit. Thus, it is claimed that both for-profits and nonprofits will come to resemble government itself—large, bureaucratic, concerned with organizational maintenance, with process and paperwork, stability of funding, and not necessarily with service. The result will be goal-displacement, a focus on funding strategies that will be decoupled from service. For clients, it will just be the replacement of one large bureaucratic structure with another.

In a study of private agencies administering work programs in Chicago, Evelyn Brodtkin found that these agencies suffer from many of the same faults as public agencies, such as creaming and goal displacement.<sup>42</sup> Brodtkin found that caseworkers would use informal strategies to encourage enrollment among recipients who were most likely to meet agency goals, while discouraging enrollment among applicants with multiple employment barriers. She also found that Chicago's performance-based contracts "set

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<sup>42</sup> Brodtkin (2004)

the stage for a numbers game in which intermediaries are rewarded for obtaining placement targets at the lowest marginal cost.”<sup>43</sup>

As stated, one of the most famous welfare-to-work programs is "Wisconsin Works" or W-2. The publicly stated results were impressive -- the rolls plummeted, recipients went to work, etc. Lawrence Mead, in his recent book, *Government Matters: Welfare Reform in Wisconsin*, says, "It is an inspiring story of politicians who faced up to difficult challenges . . . . Together, leaders and officials rebuilt the welfare state around work. . . . Today, welfare officials from New Zealand and Europe travel to [sites in Wisconsin] to learn how they too might get a handle on their welfare problem"<sup>44</sup> In a recent book, looking at welfare reform in Milwaukee, the New York Times reporter, Jason DeParle found a very different story -- a story of corruption and mismanagement on the part of the private contractors and willful ignorance or concealment on the part of the state and local officials.<sup>45</sup> The private agencies were evaluated (and paid) on the number of clients with employability contracts and whether recipients were assigned to "a full slate" of activities. To meet these goals, caseworkers employed a variety of methods from creating and mailing employability contracts to clients without consulting them to simply putting the information in the computer. A subsequent state evaluation demonstrated dismal results. Although all clients were supposed to be involved in some sort of work activity, paid or community service, 67% of clients at Maximus, Inc., one of the principal for-profit contractors, did not have a work assignment. At one point an

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<sup>43</sup> Brodtkin, Evelyn (2004) *Welfare reform has not helped the poor in William, Mary* (ed.) *Poverty and the Homeless* (Greenhaven Press. San Diego)

<sup>44</sup> Mead (2004), pp.ix,xi

<sup>45</sup> DeParle, *American Dream*

internal report showed that although Maximus advertised 100% of the caseload in paid work, in fact only 8% percent were employed.<sup>46</sup>

However, instead of taking away their contracts, the state ignored the results of agency failure. As Donahue predicted, state officials had developed close relationships with the private agencies. The success of the private agencies was viewed as a reflection of the success of the politicians at reforming welfare. Even though state officials knew the program was performing dismally, it pushed for its welfare-to-work program to win the prestigious Innovations in American Government Award. The purported success of the W-2 program was highlighted on several prominent news shows. Throughout the country, and in Western Europe, W-2 was considered to be the “showpiece” of welfare reform’s success. The Governor of Wisconsin wanted to use the program as a means to gain support for a possible presidential campaign.<sup>47</sup>

Competition is rare. Government oversight has not been strong, due to the mutual need for a successful program. Vigorous oversight would mean political controversy and lobbying activities, and finding another contractor. Private contractors need to make profits and expand business. In many contracts, the agency receives a fixed sum to serve the needs of a geographic area. This arrangement is supposed to encourage private agencies to make successful job placements, which would keep recipients off welfare. The more an agency reduced its caseload, the more profits it would make.<sup>48</sup> When welfare reform was passed, a significant number of recipients dropped off the rolls before states fully-implemented their welfare-to-work programs. The result was that private agencies had large amounts of money to spend on fewer clients than the state had

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<sup>46</sup> DeParle (2004)

<sup>47</sup> DeParle (2004)

<sup>48</sup> DeParle, 2004.

originally anticipated. For example, in Wisconsin, the state had budgeted to provide services to fifty thousand cases, but when W-2 began, only twenty-three thousand people were left on the rolls.<sup>49</sup> Instead of investing these profits to improve services, some private agencies used the money to win contracts in other states or to advertise. In Milwaukee, DeParle found that Maximus, Inc. spent \$1.1 million of welfare money on billboards, television advertisements, backpacks, coffee mugs, and golf balls to improve the company's image despite the fact its program was showing dismal results. Another private agency, OIC, spent \$67,000 to sponsor a sports show watched by politicians. A Goodwill subsidiary, Employment Solutions, Inc., spent more than \$270,000 of welfare-to-work program funds to win a welfare contract in Arizona. Although Maximus, Inc. is a for-profit agency, Goodwill is a nonprofit agency.<sup>50</sup> In short, private agencies not only suffer from many of the same problems as public agencies, but are driven by pressures to increase profits and expand business at the expense of serving clients.

### **Barriers that Welfare Leavers Face**

Although "welfare" has dropped off of the political radar screen, basic attitudes towards the poor have remained stable. Americans still distinguish between the "deserving" and "undeserving" poor, those on welfare (or who are likely to be on welfare) are still viewed in morally negative terms even though there are stiff work requirements; the negative attitudes towards blacks remained unchanged.<sup>51</sup>

Riverside County was considered the great success. It emphasized quick job entry combined with job development and post-employment support by the agency. Despite the

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<sup>49</sup> DeParle, 2004.

<sup>50</sup> DeParle 2004

<sup>51</sup> Soss, Joe & Sanford Schram, Welfare reform as a failed political strategy: Evidence and explanations for the stability of public opinion. *Focus* Vol.4, No.3, Fall-Winter (2006), pp.17-23

publicity, the Riverside results were quite modest. The difference in earnings between the controls and the experimentals was less than 10%. Perhaps most important, at the end of the three-year experiment, about two-thirds of the experimentals were no longer working and almost half never worked at all during the entire experiment. But the program saved welfare costs, and became the model for the proposed changes throughout the country.<sup>52</sup> The Riverside results are not unique. In a survey of 20 welfare-to-work programs, the Manpower Demonstration Research Corporation found that earnings increased only about \$500 per year more than the controls. Welfare payments were reduced by nearly \$400 and food stamps by \$100, thus resulting in welfare savings for the government. While earnings for most disadvantaged groups (long-term recipients, lacking a high-school diploma, three or more children, no recent work experience) increased, they still remained far below the more advantage workers. Thus, despite the political claims for success, the gains for welfare-to-work recipients are very modest and often fail to account for the costs of working – transportation, reciprocity in child care, missed days, and so forth. In a recent study of welfare leavers, a quarter lost their jobs within three months, and less than half after one year.

Wages in the low-wage labor market have stagnated, and jobs are increasingly contingent or short-term and without benefits. Very few of the poor work full time, at least at one job. Low wages and unemployment are most severe for young worker, minorities, single parent families, and those who lack a high-school diploma.<sup>53</sup> Most welfare leavers earn between \$5.67 to \$8.42 per hour, with an annual average income between \$8,000 and \$16,000, thus leaving most in poverty.

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<sup>52</sup> Riccio, Friedlander & Freedman (1994); Handler & Hasenfeld (2007), p.197

<sup>53</sup> Handler & Hasenfeld (2007)

Although private contractors favor placing clients in temporary jobs on the theory that temp work experience is more likely to lead to permanent jobs with good employments, recent research disproves this.<sup>54</sup> Temp jobs are more plentiful than direct-hire jobs, but they are generally for people with weak work skills and do not lead to permanent hires. In examining the Michigan “Work First” program, the contractors’ performance was evaluated on the proportion of participants who got jobs and the percentage who held the jobs for 90 days. (p.2) Despite the fact that participants had “very low skills,’ contractors were under “considerable pressure to increase their job placement rates.” (p.3) Although initially participants earned above the welfare and poverty threshold, these effects quickly dissipated. In fact, “participants placed in temporary help jobs during the first Work First spell were significantly more likely to be back on welfare within two years than were participants placed in direct-hire jobs.” (p.6)

In a panel study of single mothers who received welfare in an urban county in Michigan, approximately 9% became “‘chronically disconnected’ from both employment and cash welfare . . . . “ for at least a quarter of the period studied (1997-2003). These women suffered a variety of disabilities – physical, learning, substance abuse, no car or driver license. Most were employed but lost a job rather welfare benefits.<sup>55</sup>

Welfare leavers, as well as other low-wage working mothers, employ a variety of strategies to cope with unsatisfactory child care. Lisa Dodson, reporting on a study of the

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<sup>54</sup> Does temporary agency employment offer a way out of poverty? Focus, vol.24, no.3 (Fall-Winter 2006), pp.1-6, summarizing Autor, David & Susan Houseman, “Temporary Agency Employment as a Way out of Poverty?” in Blank, R, S. Danziger & R. Schoeni (eds), Working and Poor: How Economic Policy Changes Are Affecting Low-Income Workers (Russell Sage Foundation, 2006) The research is based on the “Work First’ program in Michigan.

<sup>55</sup> Turner, Lesley, Sheldon Danziger & Kristin Seefeldt, Failing the Transition from Welfare to Work: Women Chronically Disconnected from Employment and Cash Welfare. Social Science Quarterly, vol.87, nu.2, June 2006, pp.227-249

daily lives of low-wage parents, described the views of the mothers.<sup>56</sup> Basically, the mothers said that the “culture of the low-wage labor market as anti-child.” And despite being stigmatized as not have a proper work ethic, the mothers “all relied on an underlying belief in the right of mothers to reject work rules that kept them from protecting their children.” The practices varied – calling while on work, taking children with them, trying (often unsuccessfully) to manage their work schedule to be home when the children were there, working multiple shifts, working nights to be able to take their children to school even though the children would be alone at night. They would use excuses – “the bus was late.” Sometimes employers cooperated, but often refused – e.g., mother could not work overtime. Often mothers were suspended or fired. One of the quotes that sums up the study: ““You have to choose and what mother’s choosing this job over her child?”” “I think that they made it just about impossible to be a good mom.””

### **Those Left Out: Immigrants**

Low-skill immigrants occupy a large and growing share of the U.S. labor force – 14% of all workers and 20% of low-wage workers.<sup>57</sup> Unemployment and underemployment are common, and children of immigrant families are more likely to be poor, have poor and crowded housing, lack health insurance, and experience food insecurity. However, despite the need for public benefits, there are restrictions in major

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<sup>56</sup> Dodson, After welfare reform: You choose your child over the job. *Focus* Vol.24, No.3 (Fall-Winter), pp.25-28. Qualitative data based on three studies between 1998-2003, with mixed quantitative and qualitative methods, included open-ended interviews. The same size was over 300. The author acknowledges collaboration with Ellen Bravo and the 9to5 National Organization for Working Women and the former Radcliffe Public Policy Center.

<sup>57</sup> Capps, Randy, Michael Fix, Everett Henderson & Jande Reardon-Anderson, A Profile of Low-Income Working Immigrant Families. The Urban Institute. New Federalism. National Survey of America’s Families. Series B, No.b-67 (June 2005)

federal and state programs, except for emergency health care.<sup>58</sup> Since 1996, most legal immigrants who have been in this country for less than five years are ineligible for cash assistance, food stamps, housing benefits, public health insurance, and other federal benefits. Immigrant children born in the U.S. are citizens and are entitled to these benefit programs, but enrollment is low – language barriers, lack of information, and fear of dealing with government agencies.<sup>59</sup>

Working immigrant families were more likely to be low-income (under 200% of the poverty line) or below the poverty line than non-immigrant families, but less likely to receive public benefits – housing, income support, food assistance, or tax credits.<sup>60</sup> They were less likely to know about the EITC or receive it (and more likely to rely on tax preparers) and undocumented immigrant workers (29%) are not eligible. Low-income families are also less likely to receive TANF or food stamps than low income native families. Public housing authorities are required to report undocumented residents.<sup>61</sup> Low-income immigrant adults are less likely to be covered by employer health insurance, but their children are more likely to be covered by public health insurance (State Children’s Health Insurance Program - SCHIP). More than half of low-income adults also lacked Medicaid (undocumented are ineligible as well as legal immigrants for five years). Many states still deny eligibility for Medicaid and SCHIP.<sup>62</sup> There have been some changes. Food stamp eligibility has been restored to all legal immigrant children (2003 Farm Bill). There are efforts to establish Medicaid and SCHIP eligibility for all

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<sup>58</sup> There are exceptions to the restrictions, e.g., immigrants who become citizens, lawful permanent residents (green card holders), refugees, asylees. See Los Angeles Coalition to End Hunger & Homelessness, *The People’s Guide to Welfare, Health & Other Services* 31<sup>st</sup> Edition 2005. Los Angeles Country

<sup>59</sup> Capps et al. (2005), p.1

<sup>60</sup> Capps et al. (2005), p.2

<sup>61</sup> Capps et al. (2005), pp.3-4

<sup>62</sup> Capps et al. (2005), pp.4-5

legal immigrant children, as well as debates about amnesty and a guest worker program. Still, even with eligibility restored, there remain barriers to access (e.g., language, fear of jeopardizing citizen applications, etc.).<sup>63</sup> Some programs do not have immigration requirements – e.g., prenatal care, immunizations for children, WIC, School Breakfast & Lunch, etc.<sup>64</sup>

### **Activation Policies in Western Europe**

In Western Europe, new work programs (called “activation”) have been directed at the “socially-excluded” – the long-term unemployed, unemployed youth, some groups of immigrants, lone mothers, and other social service recipients who cannot make a stable connection to the labor market. This is a significant change in the Western European welfare states. Starting with the last two decades of the Twentieth Century, most of the European economies slowed, and unemployment rose significantly. Many reasons were given for the failure to decrease unemployment. In addition to the catch-all “globalization”, two prominent reasons were rigid, “inflexible,” expensive labor standards, making it too costly for employers to hire workers, especially in the service sector.<sup>65</sup> The call was for “flexicurity.” The other, and related reason, was the “passive” welfare state. The unemployed lacked incentives to move into the paid labor force; welfare benefits (early retirement and pensions, unemployment, and social assistance) were too generous. One of the first responses in some countries was to lower the retirement age, but this added to the already burdened pension system, and did not increase employment. Subsequently, there was some effort to raise the retirement age.

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<sup>63</sup> Capps et al. (2005), p.6

<sup>64</sup> Los Angeles Coalition to End Hunger & Homelessness (2005), p.58

<sup>65</sup> The international monetary rules and standards have a significant impact on wage competition. According to Barbier, the Stability and Growth Pact requires members to limit public deficits and moderate wages. Barbier (2005), p.3

But the principal tools that emerged were combinations of making assistance more *conditional*. Work requirements were increased for those on unemployment insurance (which was shortened, and replacement rates were lowered), and imposed for those receiving social assistance – called “activation” or Active Labor Market Policies (ALMP). Previously, social assistance recipients received benefits by virtue of the *status* as citizens; now, they would receive benefits only if they fulfilled *contracts*. That is, social citizenship – for this group – was made *conditional*.<sup>66</sup> As in the U.S., there were now “responsibilities”. Paralleling the developments in the U.S., the social assistance programs were delegated to the state and local levels and there was a growing contracting with profit and NGOs to administer the activation programs (called “marketization”).<sup>67</sup> The spread of ALMP was not solely dependent on sluggish economies; Norway and Denmark, with no welfare state crisis, adopted these programs. As will be discussed in the next section dealing with ALMP at the European level, the changes in the welfare state, especially for those at the bottom, are a general phenomenon in the developed countries.<sup>68</sup>

As in the United States, one of the assumptions of activation policies is that welfare offices will be able to implement work programs for these groups. However, studies suggest that the new work programs are also suffering from many of the same administrative failures as programs in the United States. Although the reasons for work programs are somewhat different in the United States and Western Europe, both require

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<sup>66</sup> Handler (2004)

<sup>67</sup> Ludwig-Mayerhofer (2005)

<sup>68</sup> “Activation” is often used in a very broad sense – incentivizing or compelling recipients in a variety of programs, in addition to social assistance, and through a variety of mechanisms, e.g., making work “employment friendly,” education and training, support services, tax and benefit systems, etc. Barbier (2005), p.5

individually-based services. To run a successful work program in Western Europe, an applicant for assistance must be accurately assessed, offered relevant training, education, and/or work opportunities, and sanctions must be imposed, based on an individual and accurate assessment, if the applicant does not comply with program requirements. Thus, the expectations on caseworkers are high. They need training and time to deal with clients who are affected by broader issues over which they have little control – the local labor market, housing, transportation, health, taxes and benefits, and disability.

Research conducted in the United Kingdom and Sweden find that contracts are not based on client needs. Instead, agencies offer brief introductory interviews in which the workers restrict the options they offer and the beneficiaries agree to the contract in order to obtain the benefits.<sup>69</sup> In her assessment of offices in the United Kingdom, Sharon Wright observed that interviews usually lasted only two to three minutes.<sup>70</sup> “[T]he main purpose [of the interview] was to complete forms and windows in the computer screen . . . The part of the work that was most likely to be neglected was the part that was not form-based.” It appears that, as in the United States, the tasks of eligibility determination and monitoring are monopolizing most of the workers’ time with clients.

France, in a series of employment reforms (or attempts at reform) established a new program for social assistance recipients – a re-insertion policy (RMI) – a means test,

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<sup>69</sup>Roche, M. (2000). *Comparative social inclusion policies and citizenship in Europe: Towards a new European social model, final report*. Retrieved September 15, 2005, from the Political Economy Research Centre Web site: <http://www.shef.ac.uk/~perc/sedec/>

<sup>70</sup>Wright, Sharon. (2001). Activating the unemployed: The street-level implementation of UK policy. In J. Clasen (Ed.), *What future for social security? Debates and reforms in national and cross-national perspective* (pp. 235-249). Bristol: The Policy Press.

a new social tax, and, at least for France, some degree of devolution to local authorities.<sup>71</sup> RMI recipients are to agree to “re-insertion contracts” (activation). Thus far, the various employment programs have had mixed results. Clients rotate through subsidized placements; RMI recipients are put in “bad” jobs (poor pay, poor prospects).<sup>72</sup> RMI is conditioned on reciprocal obligations. The Fafo Institute survey reports considerable variation; many respondents (one-third) were unaware of the contracts, they are rarely, if ever, sanctioned for breaches; their main concern is “good” jobs, not “bad” jobs. Barbier reports that a high proportion of “hard-to-place” recipients experience a succession of low quality jobs and “for them, quality *insertion* has remained a failure.” The same is true for older workers. In short, RMI is a very loose form of constraint.<sup>73</sup> Insertion contracts and social worker selectivity concentrates on the most employable.<sup>74</sup> Many RMI recipients leave the program via a job, but without signing an insertion contract, and the jobs are very insecure.<sup>75</sup> In any event, RMI is “woefully underdeveloped.”<sup>76</sup> Jean-Claude Barbier says “Yet, for all their ‘solardaistic’ promises, French activation reforms in the 80s and 90s have obviously not delivered their promise of integrating all in the labour market, the growing polarization of statuses had not been countered by the activation trend. Behind the comprehensive ‘solidarity’ logic, the inequality of access to social and

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<sup>71</sup> RMI was established in 1988. France has other activation programs, e.g., unemployment, disability. Barbier (2005), p.10. Handler, *Social Citizenship* (2004); see Smith, Timothy (2004) *France in Crisis. Welfare, Inequality, and Globalization since 1980* (Cambridge)

<sup>72</sup> Daguette, Anne & Palier, Bruno (2002) *Welfare Systems and the Management of the Economic Risk of Unemployment*, in Maurizio Ferrera and Martin Rhodes (eds.) *Welfare System and the Management of Economic Risk of Unemployment: Experiences and Prospects for Reform in the European Union*, Rome; Fafo Institute for Applied Social Science (2001) *Workfare in Six European Nations: Findings and Evaluations and Recommendations for Future Development*. Oslo.

<sup>73</sup> Handler (2004)

<sup>74</sup> Barbier (2007)

<sup>75</sup> Fafo (2001); Handler (2004)

<sup>76</sup> Levy (1999). The Jospin government, 1997, introduced a program of 5-year work contracts for people under 25 in the public sector. However, this was cancelled by the Raffarin government, in 2003. Barbier (2005), p.12, n.21.

to wage-earner citizenship has come to represent a more and more blatant failure in 2005-2006.”<sup>77</sup>

All of the activation programs in Western Europe have sanctions. However, their use varies depending on worker discretion, staff attitudes towards clients, whether workers believe that sanctions will improve client behavior or simply make matters worse, how much paperwork would be increased and so forth. Initial research reveals that workers are unlikely to sanction clients. In the United Kingdom, workers reported that sanctions were a hassle to implement since they required substantial paperwork.<sup>78</sup> Workers believed that clients were “working the system” by working in the informal economy and doubted whether sanctions would change the behavior of this group.<sup>79</sup> In Norway, workers reported using sanctions after multiple attempts to get the client to cooperate.<sup>80</sup> In Germany, until 1993, it seemed that workers used their discretion not to sanction clients. However, since 1993, federal law requires workers to sanction recipients after a threat by a social worker. Still, it is clear that a majority of local authorities still do not sanction clients.<sup>81</sup> Similarly in France, there is limited pressure on recipients to engage in job search and, according to Barbier, “the absence of a consistent *punitive* orientation.”<sup>82</sup> Contrary to results in the United States, workers in Western Europe have not fully implemented sanctions as a means to encourage participation among clients. It seems that workers do not have the time or capability to do so.

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<sup>77</sup> Babier, Jean-Claude (2007), p.27

<sup>78</sup> Finn, 2003

<sup>79</sup> Finn, 2003.

<sup>80</sup> Lødemel, 2001.

<sup>81</sup> Voges, Jacobs, & Trickey, 2001.

<sup>82</sup> Barbier (2005), p.15

However, sanctioning is starting to increase in some countries, including the United Kingdom. “[T]he most socially excluded are more likely to experience sanctions”<sup>83</sup>

Immigration has become a major social and political issue in Europe. The expansion of the European Union – the “free movement of labor” -- has facilitated the migration of lower skilled Eastern European citizens to the more developed countries (e.g., “The Polish plumber”). Contrary to political promises, this was especially true with the unification of Germany. The other main source of immigration is from North Africa, the Middle East, and the Balkans. In addition to “economic” immigrants, there are asylum seekers, family reunification, illegal immigrants. Immigrants, including children born in Europe, suffer serious discrimination – housing, employment, education. The situation is especially dire for illegal immigrants.<sup>84</sup>

Starting in the mid-1950s, Germany began to actively recruit “guest workers” primarily from Southern Europe and the Mediterranean basin (e.g., Turkey, Italy, the former Yugoslavia).<sup>85</sup> The idea was a rotation strategy -- workers would be granted only temporary visas and short-term work of one to two years. However, businesses successfully fought for the extension of the contracts, and guest workers continued to arrive in large numbers throughout the 1980s. Many guest workers retain a short-term outlook, never felt rooted in Germany, live in their communities, retained their local customs, language, never learn to speak or write German. They rely on their local

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<sup>83</sup> Training and Employment Network, 1999, p. 2.

<sup>84</sup> Sainsbury, Diane, “Immigrants’ social rights in comparative perspective: welfare regimes, forms of immigration and immigration policy regimes.” *Journal of European Social Policy*, vol.16, 229-44 (2006); Edgar, Bill, Joe Doherty & Henk Meert (2004) *Immigration and Homelessness in Europe*. The Policy Press. (A report of FEANTSA – European Federation of National Organisation Working with the Homeless); Ait-Hamadouche (2002); Smith, Timothy (2004). *France in Crisis: Welfare, Inequality, and Globalization since 1980* (Cambridge)

<sup>85</sup> Doerschler, Peter (2006) *Push-Pull Factors and Immigrant Political Integration in Germany*. *Social Science Quarterly*, vol.87, December, pp.1100-16

communities for opportunities and social support.<sup>86</sup> After the fall of the Berlin Wall and the outbreak of ethnic violence in Yugoslavia, Germany's liberal asylum policies made it the destination for large numbers of asylum seekers. Asylum seekers are more inclined to integrate than guest workers.<sup>87</sup> Countries that were formerly exporting immigrants ("countries of origin") are now countries of destination, or "host countries."<sup>88</sup>

Several countries have experienced political, cultural, and social conflicts between Muslims and native (Christian) populations. In part, the conflict may be viewed as generational. That is, whereas parents and grandparents, Arab, Turkish, or African were viewed more as traditional immigrants, and made efforts to integrate and assimilate,<sup>89</sup> the young "now vociferously identify[y] both with the land of their birth – Belgium or France or Britain – *and* with the religion and region of their family's roots. Girls, especially, took to wearing traditional clothing and religious symbols – sometimes under family pressure, but often in rebellion against the compromises of an older generation."<sup>90</sup> Political reactions have varied. In France, xenophobia was seized by the right wing (Le Pen) but has spread to other political parties. The National Assembly voted to ban all religions symbols in state schools but was clearly directed at observant Muslim girls. The U.K. has ruled that the abaya, covering the whole body except the eyes, cannot be worn in school or when dealing with government officials. There have been protests and confrontations in several countries (the murder of van Gogh in Denmark, and the protests and violence over the publication of a cartoon considered

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<sup>86</sup> Doerschler (2006), p.1103

<sup>87</sup> Doerschler (2006), p.1104

<sup>88</sup> Calavita, Kitty (2005) *Immigrants at the Margins: Law, Race, and Exclusion in Southern Europe* (Cambridge U. Press)

<sup>89</sup> Judt, Tony (2005) *Postwar: A History of Europe Since 1945* (New York: Penguin Press), p.774; Klausen, Jytte (2005) *The Islamic Challenge: Politics and Religion in Western Europe* (Oxford)

<sup>90</sup> Judt (2005), p.774-5

offensive), but probably none as severe as the car-burnings and riots in the suburbs of Paris and other French cities.<sup>91</sup> According to Timothy Smith, many French believe that “the social order is falling apart” and that violence in the “working-class suburbs is at an all-time high.”<sup>92</sup> The rejection of the proposed European Constitution in France and the Netherlands has been interpreted, at least in part, as a reaction to the possible admission of Turkey into the European Union.<sup>93</sup>

The European Union has recognized the importance of cross-national immigration, and has tried to develop common policies, which are described in the next section.

### **Activation at the European Level; The Open Method of Coordination (OMC)**

The sluggish economies, persistent high unemployment, the socially excluded – the “crisis” of the welfare state – has been a major concern at the European level. Starting in the late 1990s, improving employment moved to center stage at the EU. The European Employment Strategy (EES) developed four themes: (1) an employment strategy and activation; (2) contracting out public employment services; (3) “flexicurity”; (4) and life-long learning.<sup>94</sup> The EES was influenced by the Danish experience, where unemployment dropped from 12% in 1993 to 4% in 2002, through a balance between a flexible labor market and a generous welfare state, with the engagement of social partners, with high taxes. However, there was serious xenophobia towards Eastern Europeans but especially

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<sup>91</sup> See Timothy Smith (2004) *France in Crisis: Welfare, Inequality, and Globalization since 1980* (Cambridge) for a detailed discussion of the dire condition young people of North African descent who are trapped in poverty, unemployment, and derelict public housing.

<sup>92</sup> Smith (2004), p.177-78

<sup>93</sup> For a discussion of the fears of admitting Turkey to the European Union, see Judt (2005), pp.766-68

<sup>94</sup> Bredgaard & Larsen (2005), *Employment Policy From Different Angles*. Introduction. Ch.1.

Muslims. It was recognized that “positive” integration (“hard” law) would not progress very far, so the Europeans developed a system of “soft” law – called the Open Method of Coordination (OMC).<sup>95</sup> The idea is that through an exchange of information and the expansion of consultation (social partners) and the development of guidelines to improve employment, occupational health and safety, pension reform, combat discrimination,<sup>96</sup> reform labor markets, reduce poverty, and combat social exclusion, the various nations would learn from each other and would adopt “best practices.” Countries would file reports – National Action Plans (NAPs) – there would be “benchmarking” and the engagement of a wide variety of actors – not only elite policymakers, but also unions, social partners, NGOs, and other social movement organizations. There would be reflective deliberation.<sup>97</sup> Positive changes, it was hoped, would be the result of both the learning of “best practices” and “shaming” and the input of a wide variety of actors.

“Soft” law and OMC can be considered as part of a wider development in the multi-disciplinary expansion of traditional “hard law.” This has been extensively written about by Charles Sabel, the Trubeks, Jerry Kang, Timothy Jost, Gary Blasi, and others. Prominent examples include behavioral economics, Social Justification Theory, and New Legal Realism.<sup>98</sup>

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<sup>95</sup> See, e.g., Scott & Trubek 2002); Sabel & Zeitlin, “Learning from Difference: The New Architecture of Experimentalist Governance in the European Union.” (unpublished draft, June 20, 2006); Scharpf, Fritz (1999) *Governing in Europe: Effective and Democratic?* (Oxford U. Press); Offe, Claus (2003) *The European Model of “Social” Capitalism: Can It Survive European Integration?* *Journal of Political Philosophy*, vol.11(4): 437-469; Trubek & Mosher (2001) *New Governance, EU Employment Policy, and the European Social Model*.

<sup>96</sup> The Race Discrimination Directive addresses discrimination in the workplace, employment relations, sexual orientation, age, disability, ethnicity, and religious belief. Sable & Zeitlin (2006), p.40

<sup>97</sup> Sabel & Zeitlin (2006); Zeitlin & Pochet (eds.), *The Open of Coordination in Action – The European Employment and Social Inclusion Strategies*. Peter Lang, Brussel, 2005

<sup>98</sup> Sabel; Trubek & Trubek; Blasi, Gary & John Jost (2006) *System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice*, 94 *Calif. L.Rev.* 1136; Kang, Jerry & Banaji, Mahzatin (2006) *Fair Measures: A Behavioral Realist Revision of “Affirmative Action”* 94 *Cal.L.Rev.* 1063.

It's hard to evaluate the impact of the EES and OMC, whether the policies are effective or merely cosmetic.<sup>99</sup> There have been a large number of policy and administrative activities – as stated, ALMP has spread throughout Western Europe, even in countries without a welfare state crisis (e.g., Norway, Denmark). As Jørgensen observes, 10 years ago there was “no employment intention or strong will to intervene in market processes, no policy discourse on active labour and employment policies.”<sup>100</sup> He points out that the traditional method of directives and regulation has been replaced by a more “discursive, intergovernmental approach.” However, in his view, the effectiveness of the new approach is much contested. Is the EES, as well as the OMC, a “new and promising” policy “or merely a formal exercise, governments repackaging existing national policies in accordance with EU jargon”? He points to other policy processes at the European level but thinks that they are largely uncoordinated and, contrary to publicity, the “social partners’ have little role to play.” Some commentators have said that the dialogue is “merely symbolic.” Fritz Scharpf and Claus Offe think that the “OMC may be accused of ‘unlearning’ the European model of socially embedded capitalism.”

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OMC is non-binding. Annual reports go to the European Council, followed by EC guidelines, based on benchmarks and the involvement of a permanent committee of senior civil servants. The process of policy learning is through information, exchange, peer review, benchmarking, and “blaming and shaming” – but this has not been easy. Government and non-state actors are often not willing to accept European

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<sup>99</sup> Bredaard & Larsen (2005); Barbier (2005), p.16

<sup>100</sup> Jørgensen, Henning, in Bredaard & Larsen (2005), ch.2, p.23

<sup>101</sup> Scharpf (2003); Offe (2003)

coordination.<sup>102</sup> At the Brussels level, key players are the Commission, the Council of Ministers, and social partners, especially trade unions, the European Parliament, but at the national level, trade unions oppose the European influence. Generally, the trade unions feel that they are not sufficiently involved.<sup>103</sup> Still, EES employment policy is “high politics”; it developed at a time when many countries were moving toward neo-liberal policies of cutting back on the welfare state and introducing flexibility in the labor market. The neo-liberal policies are considered primarily responsible for the lack of more positive employment results.

Although the Commission thinks that the EES is a success, the period is still short, there is a lack of data and transparency, and changing economic conditions. According to Jørgensen, some academics, observers, and evaluators are optimistic. He thinks that “soft” law has brought pressure on some national governments and has developed in other areas as well – e.g., social inclusion, pensions. The NAPs have involved a range of ministries and there has been an improvement in the exchange of information and statistical tools. Still, despite the effort of more actors to become involved, according to Jørgensen, most of the work is done by a small, narrow technocratic process. The media seems uninterested in the EES, and the NAPs seem to be just another government document sent to the EU. In general, the social partners complain of a lack of influence even though formally involved.<sup>104</sup> On the other hand, in the Social Inclusion Process, there is genuine participation by social NGOs and some advocacy networks – e.g., the European Anti-poverty Network (EAPN)<sup>105</sup> and the

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<sup>102</sup> Jørgensen, p.29

<sup>103</sup> Jørgensen, p.29

<sup>104</sup> Sabel & Zeitlin (2006), p.49 claims that non-state social actors are influential.

<sup>105</sup> Sabel & Zeitlin (2006), p.62. The EAPN has a semi-official place in the Social Inclusion process, p.64.

European Federation of National Organizations with the Homeless (FEANTSA). This is primarily at the national level in several countries. There have been seven rounds of NAPs, two on the Social Inclusion Process, but policy changes slowly. Probably the major development has been with gender equality of opportunity. Nevertheless, occupational segregation remains a serious problem, even in Scandinavia with high female employment.

In practice, it is very difficult to assess the effect of “naming, shaming and blaming.” There has been resistance to using the EU indicators in the NAPs, what Jørgensen calls a “perverse feedback.” “Sermons are not very effective – and that is still the case with the EES.” There is an “absence of clear learning from each other.”<sup>106</sup> For example, Denmark’s apparently successful activation policies were only “very partially used elsewhere.” He notes that national practices have different actors, different traditions when they search for “best practices.” Countries that have been successful (e.g., Denmark, Sweden) are not likely to look to the practices of other countries. “There are limits to collective learning. National governments and actors often simply do not want to learn.” Jørgensen says that the EES and NAPs are not really open to all the stakeholders. “The result has been an ‘expertocracy’ and to some extent a depolitisation of the unemployment question.” On the other hand, governments do argue “European” when they want to change employment policy. Governments make “selective” choices to fit national traditions, but still focus on the supply side.<sup>107</sup>

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<sup>106</sup> On the other hand, Sabel & Zietlin (2006), p.43, argue that peer review can give “rise to binding obligations that go far beyond the monitory exhortations of ‘soft law’ without depending on the hierarchical capacities of the traditional centralized state.” See also p.45 where they argue that accountability results when agents have to explain and justify their actions.

<sup>107</sup> Barbier (2005), p.16: [T]EES can certainly not be dismissed as useless or without consequences . . . various French actors have used it as levers to increase and wield their powers; these actors tend to adopt the common discourse . . . .”

Claus Offe is skeptical about the EES and OMC.<sup>108</sup> Under the European economies and welfare states, worker benefits were based on an embedded status, called “decommodification” by Esping-Andersen and others. The status protection of workers depended on the “Keynesian welfare state” model of full employment; otherwise, unemployed workers flood the labor market looking for work.<sup>109</sup> This model was challenged by European integration starting with the successful Europeanization of the political economy – the Single Market, EMU, and currently Eastern Enlargement. Offe says that “market liberals” reject Keynesian policies; in their view, full (or more) employment depends on requiring workers to adjust to new market conditions. Another voice, he says, is that national borders must be sealed against the influx of immigrants; there has been a spectacular rise in right-wing, xenophobic political parties.

European market negative integration – the abolition of tariffs and other barriers to trade and competition – is vastly different than the more challenging positive integration of a “social Europe”.<sup>110</sup> The scope and character of national welfare states differ markedly among the European nations. The Scandinavian countries (generous welfare states) would protest against a European average; but so would the less generous states (e.g., Portugal) whose competitive advantage would be threatened. Countries vary in terms of employment – e.g., 3% in the Netherlands (2001) and between 10-13% in Greece and Spain. At the same time, says Offe, the EMU and Single Market constrain countries from implementing autonomous systems of social protection. With these differences, countries are unlikely to agree on common strategies for “Social Europe.”

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<sup>108</sup> Offe, Claus (2003) The European Model of “Social Capitalism: Can It Survive European Integration? The Journal of Political Philosophy: Vol.11, Number 4, pp.437-469

<sup>109</sup> Offe (2003), p.453

<sup>110</sup> Offe (2003)

As noted, under OMC, countries file periodic reports (NAPs) which are then reviewed by other ministries and at the EU level and disseminated. The theory (hope) of the EES and OMC is that countries will change and adopt better practices through knowledge of “benchmarking” and “best practices.” However, as Offe argues, given the very diverse national systems and traditions, it is far from clear as to what is a “best practice.” He asks, does “learning” also involve “unlearning” – e.g., limiting the influence of trade unions, recalibration of industrial relations?<sup>111</sup> He says that with European integration, it is the market that decides which options are affordable and which would be a competitive liability.<sup>112</sup>

Offe believes that “collective actors are being disorganized or weakened through *decentralization*.” National labor policies have devolved from the central governments to the regional, local, “civil society” under the “innocent label of ‘devolution.’” In Germany, this has resulted in a more “competitive” form of federalism.”<sup>113</sup> Offe doubts whether “soft” law can overcome national differences and argues that there has to be hard law in social policy “to establish constitutional parity with the rules of European economic integration.” He doubts that policy learning and “shaming” will have much of an influence on the behavior of national governments. Why, he asks, should national constituencies hold their governments “accountable” through the “ceremonial exhortations of remote Eurocrats?”<sup>114</sup> Instead, he finds increasing divergence among countries. While Europe has been successful in

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<sup>111</sup> There is also “an understandable reluctance of countries to provide information on bad implementation . . . “[T]hey are afraid that the Commission may use this information against them in court proceedings.” Sable & Zeitlin (2006), p.23

<sup>112</sup> Offe (2003), p.463

<sup>113</sup> See also Ludwig-Mayerhofer, “Activating Germany” in Bregaard & Larsen (eds.), Chapter 5

<sup>114</sup> Sable & Zeitlin (2006), p.7, take a different view. They argue that the new processes of “soft” law and OMV will have a democratizing and destabilizing effect on domestic politics.

supranational monetary and fiscal conditions, they have been decidedly less so in employment and social protection. In fact, there are growing differences. Redistribution will require “hard” law.<sup>115</sup>

A recent study of ALMP expenditures (worker training programs in particular) finds that European governments free ride off the efforts of their neighbors and that stronger enforcement procedures are necessary to meet the EES objectives.<sup>116</sup> “Outside of Scandinavia perhaps, the consensus seems to be that EU member governments are behind in designing and implementing policies to upgrade the skills of their workers.” Suboptimal expenditures, the authors say, is due to “*race-to-the-bottom dynamics and policy free-riding.*” “The 2004 Joint Economic Report asked 6 of the original 15 members to strengthen their ALM policies. Five of the six later received a C grade for their response (partial and limited). . . . The Council asked every member country to improve its investment in human capital in one or more ways. The modal response of member government to these recommendations was ‘partial and limited.’”<sup>117</sup> ALMP has increased employment but this provides incentives for governments to free ride. One of the examples they give is Belgian workers obtaining training in France and then returning more employable in Belgium. They argue that the EU should play a more active role in enforcing national policy commitments.<sup>118</sup>

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<sup>115</sup> Offe (2003), p.467

<sup>116</sup> Franzese, Jr., Robert & Jude Hays (2006) Strategic Interaction among EU Governments in Active Labor Market Policy-making. *European Union Politics*, vol.7 (2): 167-189

<sup>117</sup> Franzese et al (2006), p.186, n.2. European Commission Communication, 2005.

<sup>118</sup> According to Sabel & Zeitin (2006), p.20, there are a number of practical and institutional barriers to the harmonization of OH&S; there are differences in national inspection systems and the non-dissemination of information.

There are some EU reports that are beginning to address some of these problems. E.g., European Commission Annual report, 2006, in discussing social inclusion, focuses on migrants and ethnic communities living in deprived urban areas, “high risk” groups living in poverty. In *Social Platform*,

Perhaps there is a change in the air. The Platform of European Social NGOs issued a report, “Achieving effective Minimum Income and Active Inclusion policies in the EU: What the European Union can contribute.”<sup>119</sup> The Platform specifically addressed what could be done “to promote the active inclusion of the people furthest from the labour market.” “EU action is long overdue.” The report had a number of specific recommendations, including EU action on committing members to implement a minimum income to genuinely reduce poverty and inequality, raise standards of living, increase social cohesion, and combat exclusion. Other recommendations included support measures for active inclusion policies, access to high quality services, and improving the quality and quantity of jobs. “Access for all to high quality services, such as social, health, educational and transport services, must be guaranteed as a core pillar of active inclusion policies.”<sup>120</sup> The recommendations should be included in the framework of the OMC on Social Protection and Social Inclusion (SPSI) and the European Employment Strategy (EES). The report noted that the Commission will organize an “extraordinary” summit to report on the balance between flexibility and employment security. Flexicurity must not increase the insecurity of the most vulnerable. The report called for the implementation of the European Youth Pact, the Pact for Gender Equality, and for Social and Labour Market Integration of Ethnic Minorities.

### **A Basic Income Guarantee as an Exit Option**

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August 2006, “Achieving effective Minimum Income and Active Inclusion policies in the EU: What the European Union can contribute.”

<sup>119</sup> Social Platform (8.02.2006) Platform of European Social NGOs.

<sup>120</sup> Social Platform, p.4

This paper has argued that both in the United States and Western Europe, administering work programs for disadvantaged groups is problematic. It is an administratively complex and time-consuming process. Most offices are simply incapable of administering both benefits and work programs. Workers concentrate on establishing and monitoring eligibility for benefits. Workers are held accountable for their speed and accuracy. They are ill-prepared and lack the time to prepare people for jobs. The tasks required to help recipients find jobs requires professional, individualized, service decisions that are not easily monitored. In all, the compliance culture of offices simply crowds out the professional structure needed to administer work programs.

So, what should be done? Is it possible to help members of disadvantaged or socially-excluded groups re-enter society and the labor market? Instituting a basic income guarantee is one way to meet this goal. A basic income guarantee would not only provide a means of subsistence to poor individuals, restore social citizenship as a status since it will be universal, but it will also give clients *an exit option*.<sup>121</sup> A basic income guarantee is an income paid to all on an individual basis, without means tests or work requirements.<sup>122</sup> Thus, with a basic income guarantee, workers would no longer need to establish and monitor eligibility for benefits; instead, they could concentrate on helping people re-integrate into the labor market.

Another important reason for a basic income guarantee is that it would redistribute power in the client-worker relationship. As seen in both the United States and Western Europe, workers often control the terms of individualized work plans. If clients disagree with the activities they are given, they may lose all benefits. However,

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<sup>121</sup> Standing, Guy (2002) *Beyond the new paternalism: Basic Security As Equality* (Verso)

<sup>122</sup> Van Parijs, Phillippe (1992) *Arguing for basic income. Ethical Foundations for a radical reform* (Verso)

the worker is not under any obligation to create a contract that meets the needs of clients. As stated by Brodtkin (1997), “welfare clients have little capacity to hold the state accountable for providing any specific quality or content of services. Consequently, for welfare recipients, the so-called ‘welfare contract’ between client and state is virtually unenforceable.” If workers no longer had to administer benefits, they could focus on truly creating contracts that met client needs. More importantly, clients would no longer be obligated to take whatever assignments they were given. In this way, a basic income guarantee would redistribute the power in the client-worker relationship. Recipients are no longer subject to the whims of an overtaxed welfare system trying to decide whether recipients have fulfilled the conditions for benefits. Social services, education, training, and employment will still be offered by the state; but now, the workers will have to listen to the clients, assess their individual needs, and make offers that are attractive enough to encourage clients who have the “real freedom” to decide whether to participate. In other words, workers could concentrate on the functions needed to successfully run a work program and clients could hold them accountable for fulfilling these functions.<sup>123</sup>

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<sup>123</sup> See Handler & Hasenfeld (2007) ch.8 for a discussion of a basic income proposal that would apply to single mothers and children in the U.S. context. This would be a universal children’s allowance that would at least move families to the poverty line (higher would be too expensive and threaten too many other needed public programs). See Duncan, G. & K. Magnuson (2003) “Promoting the Healthy Development of Children” in I.V. Sawhill (ed.) *One Percent for the Kids: New Policies, Brighter Futures for America’s Children* (Brookings Institution Press). Most single mothers would work

to increase family income. There would be separate social service and employment agencies to offer services to those parents who face barriers and need help, but the basic income would be unconditional.

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