

Income, Work and Freedom

Philip Harvey

Abstract

The ability of public policies to secure the economic and social rights recognized in the Universal Declaration of Human Rights is proposed as a trumping supplement to the utility-maximization criterion of neo-classical welfare economics. Two progressive proposals for ending poverty and promoting personal development and freedom are then compared using this assessment criterion. The first proposal is that society guarantee everyone an unconditional basic income (BI) without imposing work requirements in exchange for the guarantee. The second proposal is that society use direct job creation to provide employment assurance (EA) for anyone who is unable to find decent work in the economy's regular labor market. The cost of equally expansive versions of the two strategies is compared along with their ability to achieve other policy goals. It is argued that a BI guarantee would be far more expensive than the EA strategy as a means of securing the right to income recognized in the Universal Declaration, that a BI guarantee would not provide an adequate substitute for securing the right to work, and that most of the other benefits a BI guarantee would produce could be better achieved at less cost by using the EA strategy supplemented by conventional income transfer programs. Based on this analysis it is argued that efforts to promote the BI idea as a solution to the problems of unemployment and poverty in market societies should be rejected. On the other hand, less expensive versions of the BI idea could make a valuable contribution to the design of income transfer measures as long as they were not treated as a substitute for policies designed to secure the right to work and income support recognized in the Universal Declaration.

Philip Harvey
Rutgers School of Law
217 N. Fifth Street
Camden NJ 08102-1203
U.S.A.

Phone: (856) 225-6386

Fax: (856) 969-7908

Email: pharvey@crab.rutgers.edu

Web Page: <http://www.philipharvey.info> (Includes PDF files of selected articles)

Income, Work and Freedom

Philip Harvey¹

Introduction

There has been a marked trend towards the promotion of work as an anti-poverty strategy in market economies over the past several decades. One of the manifestations of this trend has been the tendency for governments increasingly to condition the receipt of public assistance on work effort – a policy commonly referred to as “workfare.”²

Ironically, this trend has occurred during a period when the capacity of market economies to provide work for everyone who wants it has diminished rather than increased. In the United States, for example, the national unemployment rate – which averaged just over 5 percent from 1946 through 1979 – rose to average just under 7 percent during the next 16 years, the period during which the workfare revolution swept the country.³ The linkage between workfare reforms and rising unemployment is even stronger in other countries.⁴ Moreover, even when unemployment rates decline to levels widely viewed as cause for celebration, a sizable job gap is likely to remain in market economies. The size of this job gap in the United States is shown in Figure 1 which compares the number of job vacancies in the nation to the number of jobless individuals actively looking for work (official unemployment), the number of persons who are working part-time but want full time jobs (involuntary part-time workers), and the number of discouraged workers (persons who want a job but are not actively looking for one). The data series begins in December 2000 when the U.S. Bureau of Labor Statistics first began reporting the results of its new Job Openings and Labor Turnover (JOLTS) survey. Figure 1 shows that even then, when the nation’s unemployment rate was below 4 percent, there were over a million

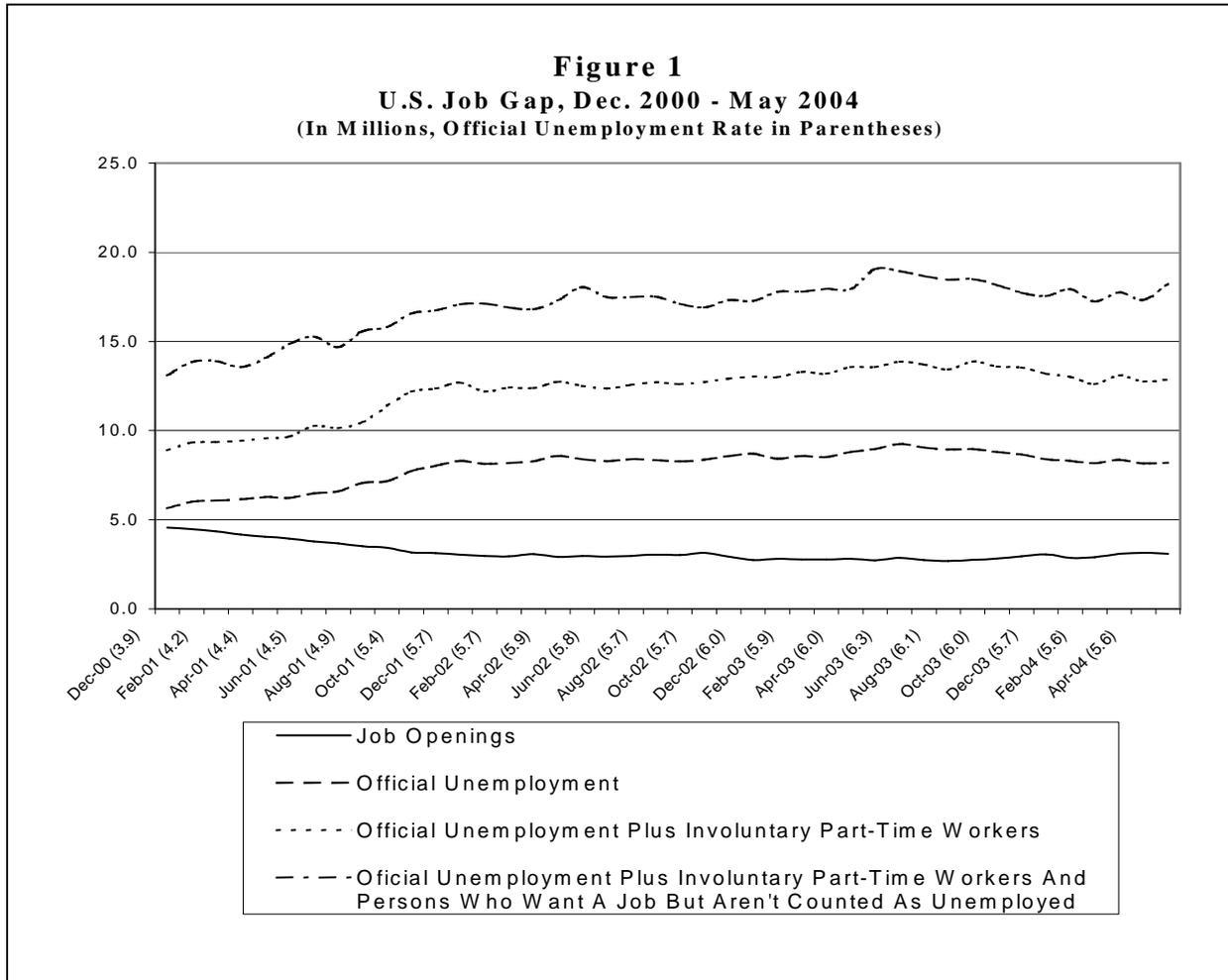
¹ Associate Professor of Law and Economics, Rutgers School of Law - Camden.

² For a detailed account of this trend in the United States and Western Europe, see JOEL F. HANDLER, *SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE* (2004).

³ This shift in public policy was heavily promoted by conservatives during the 1980s in books such as GEORGE GILDER, *WEALTH AND POVERTY* (1981), which President Recommended that his Cabinet read, CHARLES A. MURRAY, *LOSING GROUND, AMERICAN SOCIAL POLICY, 1950-1980* (1984), and LAWRENCE M. MEADE, *BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP* (1986). It led in 1988 to the addition of work requirements to the Aid for Families with Dependent Children (AFDC), see Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988), and reached its culmination with a major overhaul of U.S. public assistance law in 1996, the centerpiece of which was the replacement AFDC with the Temporary Assistance for Needy Family (TANF) program. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

⁴ See, e.g., HANDLER, *supra* note 2, at 95-208.

more officially unemployed workers than there were job openings, and if we count involuntary part-time workers and discouraged workers, the economy was short almost 8.5 million jobs.



Source: Author's calculations from U.S. Department of Labor, Bureau of Labor Statistics data available at <http://bls.gov/>.

Policy analysts and policy advocates on the left (a group I shall refer to as “progressives”) have been strongly critical of the workfare trend, viewing it as illogical and immoral to impose work requirements on the poor when the economy is unable to provide work for everyone who wants it and fails to offer decent work to millions of employed low wage workers.⁵

⁵ Handler's book, *id.*, exemplifies this literature. For links to progressive policy research and advocacy organizations that have addressed this issue, see Moving Ideas, The Electronic Policy Network, Liberal Links, Poverty and Wealth, available at <http://www.movingideas.org/links/welfarelinks.html>.

In this article, I compare two of the more expansive strategies proposed by progressives in recent years as an alternative strategy for responding to the linked problems of poverty and unemployment in market societies. The first proposal is that society guarantee all its members an unconditional basic income (BI) without imposing any work requirements in exchange for the guarantee. As explained on the web site of the U.S. Basic Income Guarantee Network,

[A] Basic Income Guarantee (BIG) is a government ensured guarantee that no one's income will fall below the level necessary to meet their most basic needs for any reason. As Bertrand Russell put it in 1918, "A certain small income, sufficient for necessities, should be secured for all, whether they work or not, and that a larger income ... should be given to those who are willing to engage in some work which the community recognizes as useful. On this basis we may build further." Thus, with BIG no one is destitute but everyone has the positive incentive to work. BIG is an efficient, effective, and equitable solution to poverty that promotes individual freedom and leaves the beneficial aspects of a market economy in place.⁶

As the reference to Bertrand Russell in this quote illustrates, guaranteed income proposals have a long history,⁷ but the contemporary BI advocacy movement originated in Western Europe only in the mid-1980s.⁸ Despite its relatively recent origins, however, the movement has grown rapidly during the past two decades and now commands support from a wide array of left libertarians, anti-poverty advocates, feminists, and greens around the world.⁹

⁶ U.S. Basic Income Guarantee Network, *What Is the Basic Income Guarantee?*, available at <http://www.widerquist.com/usbig/>.

⁷ See Philippe Van Parijs, *A Short History of Basic Income*, available at <http://www.etes.ucl.ac.be/BIEN/BI/HistoryBI.htm>.

⁸ Basic Income European Network (BIEN), *A Short History of BIEN*, available at <http://www.etes.ucl.ac.be/BIEN/BIEN/HistoryBIEN.htm>.

⁹ Philippe Van Parijs, a philosopher who teaches at the Catholic University of Louvain in Belgium, and Guy Standing, the Director of the Socio-Economic Security Program of the International Labor Organization are widely regarded as the leading contemporary exponents of the BI idea. See PHILIPPE VAN PARIJS, *REAL FREEDOM FOR ALL: WHAT (IF ANYTHING) CAN JUSTIFY CAPITALISM?* (1995); PHILIPPE VAN PARIJS, *WHAT'S WRONG WITH A FREE LUNCH* (2000); GUY STANDING, *BEYOND THE NEW PATERNALISM: BASIC SECURITY AS EQUALITY* (2002). American legal scholars who have endorsed BI proposals include Joel Handler and Anne Alstott. See JOEL F. HANDLER, *SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE: THE PARADOX OF INCLUSION* 272-78 (2004); Anne Alstott, *Work vs. Freedom: A Liberal Challenge to Employment Subsidies* 108 *YALE L.J.* 967-1058 (1999). Links to BI advocacy web sites around the world and extensive bibliographies on the subject of BI guarantees can be found at the websites of both the Basic Income European Network (BIEN) <<http://www.basicincome.org>> and the U.S. Basic Income Guarantee Network (USBIG) <<http://www.usbig.net>>.

A BI guarantee could be provided in various ways, but the two most frequently proposed mechanisms are a negative income tax and a universal grant system.¹⁰ A negative income tax would pay benefits only to persons whose income fell below a specified level. The size of the BI grant therefore would vary depending on the recipient's income from other sources. With a universal grant system, the same BI benefit would be paid to all persons regardless of their income, though assuming the benefit was funded with income tax receipts, persons in higher tax brackets would pay more to fund the system than the BI grant they received from it.¹¹

The second progressive reform proposal discussed in this article is that society guarantee jobs to everyone who is unable to find work in the regular labor market. Like guaranteed income proposals, guaranteed work proposals have a long history.¹² It was, for example, a key component of what William Forbath has called the "New Deal Constitution of Social Citizenship."¹³ President Roosevelt's Committee on Economic Security explained the proposal in the following terms in 1935.¹⁴

¹⁰ For discussions of the similarities and differences between a negative income tax and universal grant system, see Philippe Van Parijs, *Basic Income: A Simple and Powerful Idea for the 21st Century*, in REDESIGNING DISTRIBUTION: BASIC INCOME AND STAKEHOLDER GRANTS AS DESIGNS FOR A MORE EGALITARIAN CAPITALISM 4-39 (Erik Olin Wright, ed., forthcoming), available at <http://www.ssc.wisc.edu/~wright/RUP-vol-V.pdf>; and Alstott, supra note 9.

¹¹ Royalty payments or other acquisition fees paid to government for the exploitation of publicly owned natural resources have been proposed as an alternative source of funding for a BI guarantee, and Alaska actually does provide its residents a modest BI grant funded in this manner. See Scott Goldsmith, *The Alaska Permanent Fund Dividend: An Experiment in Wealth Redistribution*, (paper presented at the 9th International Congress of the Basic Income European Network, Geneva, Sept. 12-14, 2002), available at <http://www.etes.ucl.ac.be/BIEN/Files/Papers/2002Goldsmith.pdf>.

¹² See RICHARD LEWIS SIEGEL, EMPLOYMENT AND HUMAN RIGHTS: THE INTERNATIONAL DIMENSION 23-71 (1994); Philip Harvey, *The History of Right to Work Claims* (Rutgers-Camden Series of Occasional Papers No. 1, 1998), available at <http://www-camlaw.rutgers.edu/faculty/occasional/1-harvey.html>

¹³ William E. Forbath, *Constitutional Welfare Rights: A History, Critique and Reconstruction*, 69 FORDHAM L.R. 1821, 1831-35 (2001).

¹⁴ This committee was appointed in 1935 to recommend legislation that would provide the American people a "safeguard against misfortunes which cannot be wholly eliminated in this man-made world of ours." Committee on Economic Security, Letter of Transmittal, January 15, 1935, reprinted in NATIONAL CONFERENCE ON SOCIAL WELFARE, THE REPORT OF THE COMMITTEE ON ECONOMIC SECURITY OF 1935 AND OTHER BASIC DOCUMENTS RELATING TO THE DEVELOPMENT OF THE SOCIAL SECURITY ACT 17-18 (1985). The Committee was chaired by Secretary of Labor Frances Perkins and, in addition, consisted of Secretary of the Treasury Henry Morgenthau Jr., Attorney General Homer Cummings, Secretary of Agriculture Henry Wallace, and Federal Emergency Relief Administrator Harry Hopkins. In addition to its employment assurance proposal, the Committee proposed the establishment of the nation's Social Security and Unemployment Insurance (UI) Programs, the means-tested Old Age Assistance program that now forms a part of the Supplemental Security Income (SSI) program, the Aid for Dependent Children program which was later renamed Aid to Families with Dependent Children (AFDC), and the U.S. Public Health Service. The Committee also supported the establishment of a national health insurance program that would provide both wage replacement and medical insurance benefits, though it did not propose a specific program for achieving that goal. See *id.* at 21-27.

Since most people must live by work, the first objective in a program of economic security must be maximum employment.¹⁵ As the major contribution of the Federal Government to providing a safe guard against unemployment we suggest employment assurance – the stimulation of private employment and the provision of public employment for those able-bodied workers whom industry cannot employ at a given time.

In recent years guaranteed employment proposals have been promoted by anti-poverty analysts as a means of providing employment opportunities for disadvantaged population groups,¹⁶ by post-Keynesian economists as a means of achieving full employment with price stability,¹⁷ and by human rights advocates as a means of securing the right to work.¹⁸ Out of deference to the New Deal tradition that preceded them, and because no common term has gained wide acceptance in describing these proposals, I shall refer to them as employment assurance (EA) measures.

In keeping with the structure of ordinary political debate, most scholarly assessments of public policy reform proposals involve comparisons of proposals that reflect opposing ideological perspectives. The proposals being assessed are compared either to a conflicting status quo or to competing reform proposals drawn from the other end of the political spectrum. Comparisons of this type are important because they highlight the conflicts that drive the political process out of which public policy emerges. But comparative assessments of reform proposals that draw their support from the same end of the political spectrum also are important for the development and refinement of those proposals.

¹⁵ By “maximum employment” the Committee meant what latter came to be termed “full employment.” The latter term, although occasionally used by professional economists, had not yet entered popular currency in 1935. See Philip Harvey *Combating Joblessness: An Analysis of the Principal Strategies That Have Influenced the Development of American Employment and Social Welfare Law During the 20th Century*, 21 BERKELEY J. EMP. & LAB. L. 675, 705 n. 97.

¹⁶ DAVID R. REIMER, *THE PRISONERS OF WELFARE: LIBERATING AMERICA’S POOR FROM UNEMPLOYMENT AND LOW WAGES* (1988); MICKEY KAUS, *THE END OF EQUALITY* (1992); David T. Ellwood and Elisabeth Welty, *Public Service Employment and Mandatory Work: A Policy Whose Time Has Come and Gone and Come Again?*, in *FINDING JOBS* (David E. Card and Rebecca M. Blank, eds., 2000); TIMOTHY J. BARTIK, *JOBS FOR THE POOR: CAN LABOR DEMAND POLICIES HELP?* (2002).

¹⁷ HYMAN MINSKY, *STABILIZING AN UNSTABLE ECONOMY* (1986); William F. Mitchell and Martin Watts, *The Path to Full Employment* 31 AUSTRALIAN ECON. REV. 436-444 (1997); Warren Mosler, *Full Employment and Price Stability* 20 J. POST-KEYNESIAN ECON. 167-82 (1997); RANDALL WRAY, *UNDERSTANDING MODERN MONEY: THE KEY TO FULL EMPLOYMENT AND PRICE STABILITY* (1998); Mathew Forstater, *Flexible Full Employment: Structural Implications of Discretionary Public Sector Employment* J. ECON. ISSUES 557-563 (1998).

¹⁸ PHILIP HARVEY, *SECURING THE RIGHT TO EMPLOYMENT: SOCIAL WELFARE POLICY AND THE UNEMPLOYED IN THE UNITED STATES* (1989); Wendell Gordon, *Job Assurance – the Job Guarantee Revisited* 31 J. ECON. ISSUES 826-34 (1997); WILLIAM P. QUIGLEY, *ENDING POVERTY AS WE KNOW IT* (2003).

Why is debate among “friends” needed to achieve this goal? Why not test policy proposals exclusively against the policies they are designed to counter or replace? First, it’s not an either or choice. The issue is not whether debate across the ideological divides that shape political conflicts in the real world is important. It obviously is. The issue is whether debate among ideological colleagues is likely to be helpful in different ways. I believe it is.

Ideological colleagues share values and are likely to share methodological understandings as well. For that reason they are more likely to find one another’s contributions to a particular policy debate persuasive, or at least helpful, than they are the contributions of their ideological opponents. People who speak the same language not only communicate more easily with one another but also with greater subtlety. They literally can say things to one another that they cannot communicate to people who do not speak the same language. The social sciences rarely produce paradigms that command enough support to permit what Thomas Kuhn famously characterized as “normal science” within an entire discipline,¹ but discussion and debate among scholars and policy advocates who share a common perspective perform a similar function in facilitating research that expands particular areas of knowledge and supports the development of more sophisticated policy proposals addressing problems in those areas.

My allusion to Kuhn in the preceding paragraph suggests, the importance I attach to the development of a distinctively progressive methodological approach for analyzing economic and social policy issues. As Anne Alstott has noted,

In philosophy and constitutional law, liberalism occupies center state. In those fields, the great debates ponder the meaning of freedom and equality and the scope of individuals’ rights against the collective. But when it come to taxes and transfers, liberal principles of distributive justice give way to utilitarian talk of costs and benefits, incentives and disincentives.¹⁹

She proposes to infuse economic and social policy debate with the progressive values that dominate discussions of moral philosophy and constitutional law by using the “core liberal values of individualism, freedom, and equality” to supplement the goal of utility maximization and, in the case of conflicts, to trump the utility maximization goal.²⁰ But how does one concretize the values of individualism, freedom and equality? Neo-classical economics has devoted well over a century to the methodological development of the utility maximization criterion precisely because it cannot be directly applied to policy questions.

To apply liberal or other progressive values to the analysis of public policy questions an analytic methodology is needed. As Alstott notes, progressive scholars have developed such a

¹⁹ Alstott, *supra*, note 9 at 973.

²⁰ *Id.*

methodology in philosophy and constitutional law, and in her own comparison of wage subsidy and BI proposals, she relies mainly on the former tradition. She applies the arguments of liberal philosophers and political theorists such as John Rawls, Ronald Dworkin, Bruce Ackerman and especially Philippe Van Parijs to assess the relative ability of the two policies she discusses. I am sympathetic to this undertaking, but I also find it awkward. It is difficult to imagine lawyers and legal scholars becoming adept at this form of argument. I think it more likely that they will get bogged down in philosophical debates that are peripheral to their main concerns

The field of constitutional law demonstrates that where an authoritative legal text exists that is presumed to embody widely-accepted values and whose provisions are expected to be interpreted in accord with those values, it generally is easier and more persuasive to ask whether a particular policy is consistent with the text than to reason directly from the philosophical principles that underlie the text. The reason Alstott does not employ this methodology is probably because the U.S. Constitution is notoriously obscure (and arguably thin) in the support it provides for the application of progressive values in the fields of economic and social policy.

William Forbath has labored mightily to resurrect a more progressive understanding of the U.S. Constitution,²¹ and Cass Sunstein, has recently lent his support to that effort.²² This work is useful, but it labors under the necessity of transforming current understandings of the Constitution's limitations before it can even begin the task of articulating what a progressive reading of the Constitution would tell us.

I believe there is a more suitable text, indeed a series of texts, upon which progressives can rely in translating their core values into economic and social policy norms and mandates. I have in mind the Universal Declaration of Human Rights and other international human rights agreements and declarations which, like the Universal Declaration, expressly recognize the existence of economic and social human rights.²³ Indeed, American progressives have more reason than most to lay claim to the values embodied in the Universal Declaration, since its economic and social provisions owe a great deal to the influence of the U.S. progressive tradition.

²¹ See William E. Forbath, *Caste, Class, and Equal Citizenship*, 98 MICH. L. REV. 1 (1999); William E. Forbath, *Civil Rights and Economic Citizenship: Notes on the Past and Future of the Civil Rights and Labor Movements* 2 U. PA. J. LAB. & EMP. L. 967 (2000); Forbath, *Constitutional Welfare Rights*, *supra* note 13; William E. Forbath, *The New Deal Constitution in Exile* 51 DUKE L.J. 165 (2001); William E. Forbath, *The Politics of Constitutional Design: Obduracy and Amendability – A Comment on Ferejohn and Sager* 81 TEX. L. REV. 1965 (2003); William E. Forbath, *Not So Simple Justice: Frank Michelman on Social Rights, 1969 – Present*, 39 TULSA L. REV. 597 (2004).

²² See CASS SUNSTEIN, *THE SECOND BILL OF RIGHTS: FDR'S UNFINISHED REVOLUTION AND WHY WE NEED IT MORE THAN EVER* (2004).

²³ Universal Declaration of Human Rights, G.A. Res. 217A, 3 U.N. GAOR, U.N. Doc. A/810 (1948). Other international human rights agreements and declarations with strong socio-economic provisions include [***]

Forbath has traced the development of “social citizenship” rights in embodied in what he refers to as the “New Deal Constitution.” “Social Constitution” developed by American progressives during the New Deal era,²⁴ explained why they sought to implement its provisions politically rather than by Constitutional amendment,²⁵ and also explained why the New Dealer’s political strategy failed because of the entrenched opposition of southern Democrats intent on preserving Jim Crow.²⁶ Forbath describes the New Deal Constitution as having gone into “exile” following this defeat, where it remains today awaiting restoration by a new generation of progressives.²⁷

A carefully elaborated description of the institutional structure and functions of government mandated by the New Dealer’s Social Constitution can be found in the plans for post-war reconstruction contained in the 1942 report of the National Resources Planning Board.²⁸ It’s most eloquent expression can be found in President Roosevelt’s 1944 State of the Union Message. In that speech the President invoked the natural rights language of the Declaration of Independence to argue that the nation’s original Bill of Rights was no longer adequate to protect the American People’s right to “equality in the pursuit of happiness.” He called on Congress to give effect to a “second Bill of Rights under which a new basis of security and prosperity can be established for all – regardless of station, race or creed.”²⁹ The President’s appeal is reproduced in Box 1.

Responding to the President’s appeal, progressives in Congress introduced legislation that would have committed the federal government to secure the first of the eight rights enumerated in FDR’s proposed “Second Bill of Rights.” This legislation would have committed the federal government to achieve and maintain a permanent state of “full employment,” automatically authorizing the expenditure of sufficient funds to attain that goal.³⁰ It was the

²⁴ Forbath, *Caste, Class and Equal Citizenship*, *supra* note 21, at 23-75.

²⁵ Forbath, *The New Deal Constitution in Exile*, *supra* note 21 166 -203.

²⁶ Forbath, *Caste, Class and Equal Citizenship*, *supra* 21, at 76-85; Forbath, *The New Deal Constitution in Exile*, *supra* note 21, at 202-09.

²⁷ *Id.*, at 220-22.

²⁸ See NATIONAL RESOURCES PLANING BOARD, SECURITY, WORK AND RELIEF POLICIES, H.R. Doc. No. 78-128, pt. 3 (1943).

²⁹ Franklin D. Roosevelt, *Message to the Congress on the State of the Union (Jan. 11 1944)*, reprinted in 13 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 40-1 (Samuel I. Rosenman ed., 1950).

³⁰ See STEPHEN K. BAILEY, CONGRESS MAKES A LAW: THE STORY BEHIND THE EMPLOYMENT ACT OF 1946, at 37-60 (1950); HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 18, at 106-10.

BOX 1

FDR's Proposed Second Bill of Rights

State of the Union Message to Congress, Jan. 11, 1944

We cannot be content, no matter how high [the American] standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—is ill-fed, ill-clothed, ill-housed, and insecure.

This Republic had its beginning, and grew to its present strength, under the protection of certain inalienable political rights—among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures. They were our rights to life and liberty.

As our nation has grown in size and stature, however—as our industrial economy expanded—these political rights proved inadequate to assure us equality in the pursuit of happiness.

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. “Necessitous men are not free men.” People who are hungry and out of a job are the stuff of which dictatorships are made.

In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all—regardless of station, race, or creed.

Among these are:

- The right to a useful and remunerative job in the industries or shops or farms or mines of the nation;
- The right to earn enough to provide adequate food and clothing and recreation;
- The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;
- The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;
- The right of every family to a decent home;
- The right to adequate medical care and the opportunity to achieve and enjoy good health;
- The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;
- The right to a good education.

All of these rights spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.

America's own rightful place in the world depends in large part upon how fully these and similar rights have been carried into practice for our citizens.

failure of that legislative initiative which signaled the “exile” of the New Deal Constitution to which Forbath refers.

What Forbath failed to note is that the New Deal Constitution went into exile in a more literal sense, finding the home in international human rights law that it was denied in the United States. Drafted by a Committee chaired by the U.S. Delegate to the United Nations – none other than FDR’s widow and progressive tribune, Eleanor Roosevelt – the Universal Declaration fully embodies, indeed substantially improves upon FDR’s proposed “Second Bill of Rights” while also fully incorporating the progressive civil and political rights found in the U.S. Constitution’s original Bill of Rights and Civil War amendments.³¹ The economic and social provisions of the Universal Declaration are reproduced in Box 2.

While fully supporting the efforts of progressive scholars to resurrect the New Deal Constitution in American political discourse, I think the Universal Declaration provides a more complete and authoritative embodiment of that tradition. The best way for American progressives to “repatriate” their own exiled Constitution would be to begin to use the Universal Declaration as a standard for judging the adequacy of progressive policy proposals. Indeed, this is exactly what the Universal Declaration (and arguably the 9th Amendment of the U.S. Constitution) instructs us to do.

THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.³²

Accepting this charge, I use the Universal Declaration in this article as a standard for judging the relative merits of BI and EA proposals. I begin by explaining each proposal’s contribution to securing the rights recognized in the Universal Declaration. I then explore the relative cost of equally generous versions of the two strategies – initiatives capable of eliminating official poverty in the United States.

This cost comparison is important for two reasons. The first is because public resources are needed not only to secure the rights addressed by BI and EA proposals, but other rights as

³¹ For an account of Eleanor Roosevelt’s role in the drafting and enactment of the Universal Declaration, see MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (2001). For a detailed legislative history of the Declaration’s specific provisions, see JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* (1999).

³² Universal Declaration of Human Rights, *supra* note 23, preamble.

BOX 2

Universal Declaration of Human Rights

Adopted by the General Assembly of the U.N. by a vote of 48 to 0 with 8 abstentions on Dec. 10, 1948

Article 22

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

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

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

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

well. The second reason is because securing human rights is not the only public policy goal societies legitimately can pursue. Stated differently, efficiency considerations are important to the human rights assessment I undertake, but not the form of efficiency employed as a social choice criterion in neo-classical welfare economics. Instead of seeking to maximize aggregate utility or one of its stand-ins given society's available resource base (or, alternatively, to minimize the opportunity cost of achieving a given quantum of utility) I apply a different efficiency criterion – the minimization of the opportunity cost of securing the economic and social rights recognized in the Universal Declaration. In this way the trumping effect of fundamental rights is honored while also seeking to maximize the resources available for the pursuit of other goals.

After analyzing the relative cost of BI and EA strategies for eliminating poverty, I consider a variety of other social welfare goals that BI advocates claim their proposals would advance – compensating unemployed individuals for their lack of paid employment, reducing both the administrative burden of providing and the stigma of receiving public assistance benefits, compensating people who engage in non-market work for their socially useful labor, and promoting personal development and freedom. After noting that these goals also implicate rights recognized in the Universal Declaration, I assess the relative ability of BI and EA strategies to produce the desired effects.

My general conclusion is that the EA strategy supplemented by conventional transfer programs would be far less expensive than the BI strategy as a means of eliminating poverty and that almost all of the other goals BI advocates promote also could be better achieved at lower cost employing the EA strategy. Nevertheless, I do not reject BI proposals as totally lacking merit. First, I emphasize that there is no theoretical or practical contradiction between BI and EA proposals. Indeed BI, EA, and conventional income transfer programs would complement one another. That said, given the efficiency concerns explained above, I argue that it is doubtful the “value added” by a BI guarantee would justify the high cost of the benefit if it were provided in the form preferred by most BI advocates. On the other hand, this disadvantage would not apply to less expensive forms of BI guarantee. I endorse one such proposal – a means-tested but not work-tested family income guarantee offered in conjunction with an EA guarantee and conventional income transfers. I believe less expensive BI proposals of this sort deserve a closer look by BI advocates and EA advocates alike. “Work and Freedom” rather than “Work vs. Freedom” would be the rallying cry of supporters of this joint strategy.³³

³³ In an article bearing the title “Work vs. Freedom,” Alstott argues for the adoption of a BI strategy and the rejection of employment subsidies. See Alstott, *supra* note 9. My own choice of title is meant to emphasize the compatibility of BI and EA policies.

The Right to Work and the Right to Income Support

The claim that society has an obligation to guarantee all its members access to the material and social supports necessary to maintain a dignified existence is articulated in Articles 22 and 25 of the Universal Declaration (*see* Box 2). The operational content of this broad right is specified in these and other articles.³⁴ Two of the entitlements recognized in these articles – the right to work and the right to income support – comprise the core of the Universal Declaration’s guarantee of freedom from poverty.

Article 23 (*see* Box 2) defines the right to work as a right of access to a freely chosen job that provides favorable working conditions and pays wages capable of supporting a dignified existence for the worker and the worker’s family,³⁵ including supplementation if needed from “other means of social protection.”³⁶ Ensuring that everyone has access to work on these terms can be conceived as fulfilling society’s obligation to provide income security for anyone who is capable of working and for their dependents. This is the goal of EA proposals.

Securing the right to work also can be viewed as important for the achievement of dignity and the free development of an individual’s personhood. Kenneth Karst has made this point in the following terms.³⁷ “What happens,” he asks, “to individuals and families when the formal freedom to work becomes hollow because stable work with a decent wage, decent health and retirement benefits, and access to decent childcare just isn’t available?” He notes the obvious— that the family’s income suffers and it may be exposed to material deprivation – but he also stresses other harms.

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

³⁴ For guidance concerning the intended meaning of the text’s broad language, see MORSINK, *supra* note 31.

³⁵ The gendered language of the Universal Declaration is not intended to limit the rights it recognizes based either on gender or family structure. Article 2 makes clear that “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Universal Declaration of Human Rights, *supra* note 23, art. 2.

³⁶ *Id.*, art. 23, par. 3.

³⁷ Kenneth Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 534 (1997).

Paid employment (whether that employment takes the form of wage employment or self-employment in either a market or subsistence economy) is not the only source of these benefits. But it is an important source, and the Universal Declaration clearly embodies the view that society must afford all its members access to the opportunities for self-support and personal development that paid employment provides.

For persons who cannot secure an adequate standard of living from paid employment, the Universal Declaration recognizes a right to societal support through transfer programs, social insurance, or other institutional arrangements that serve the same function. This entitlement is recognized in the 3rd paragraph of Article 23 and the 1st paragraph of Article 25 (*see* Box 2). First, Article 23 unambiguously recognizes that society has a duty to supplement the wages of any person whose wages from work are insufficient to support a dignified existence for the worker and her family. Second, Article 25 recognizes that everyone, without qualification, has a right to an adequate standard of living “security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond [their] control.”³⁸

Thus, the right of all persons to societal support recognized in the Universal Declaration is based on two unambiguous operational entitlements. One is a right to work that guarantees all persons who want paid employment the opportunity to earn enough (including social supplementation if needed) to support themselves and their families. The other is a right to income security for persons who cannot earn a livelihood due to circumstances beyond their control. Article 25 also guarantees all persons an unconditional right to an adequate standard of living, but this entitlement is ambiguous with respect to the question that is of most interest to BI advocates – whether it includes an obligation on the part of governments to provide income support to persons who could be self-supporting through work but choose not to. Morsink argues that the drafters of the Declaration assumed the article would guarantee people the “‘opportunity to obtain’ food and housing,” but that “[t]he state is not required to provide food or housing unless the individual cannot under existing conditions obtain them by his own efforts.”³⁹ Still, the language of Article 25 could support a broader interpretation of the right, as Guy Standing has suggested.⁴⁰

It also is important to note that while the Universal Declaration does not unambiguously recognize a right to income support for persons who are capable of supporting themselves but would prefer to engage in other activities, there is nothing in the Declaration suggesting that it would be improper for a society to provide its members an unconditional BI guarantee without

³⁸ Universal Declaration of Human Rights, *supra* note 23, art. 25.

³⁹ *See* MORSINK, *supra* note 31, at 193-94.

⁴⁰ Guy Standing, *About Time: Basic Income Security as a Right*, Paper presented at the 9th International Congress of the Basic Income European Network, September 12-14, 2002, Geneva, at 24-25, *available at* <http://www.etes.ucl.ac.be/BIEN/Files/Papers/2002Standing2.pdf>.

regard to either their ability or inclination to seek available wage employment. In other words, the Universal Declaration provides no support for claims that it would violate the rights of wage earners to tax wage income in order to fund a BI guarantee. Moreover, there is no theoretical incompatibility between providing an unconditional BI guarantee in conjunction with an EA guarantee and programs guaranteeing the right to income security recognized in the Universal Declaration.⁴¹

Nevertheless, there are practical reasons why BI proposals and EA proposals are likely to compete with one another, and BI advocates have tended to be quite critical of proposals to secure the right to work.⁴² A Herculean effort would be required to move society to adopt either an unconditional BI guarantee or an effective EA guarantee, so it is only natural for supporters of each strategy to ask whether it makes sense to pursue both simultaneously. If either a BI or an EA guarantee were secured, how much additional benefit would the other entitlement provide? To the extent they pursue common goals, which policy is likely to be more effective? These are the questions addressed in this article.

Program Cost

BI proposals and EA proposals both have reputations for being expensive. This does not mean, of course, that the two policies would be equally expensive to implement. BI advocates have argued that an employment guarantee would be more expensive to implement than an income guarantee because of the high overhead costs of funding jobs compared to writing BI benefit checks.⁴³ BI advocates make three mistakes in drawing this conclusion. First, they overestimate the overhead costs of a job guarantee program by failing to appreciate that in an EA program designed to secure the right to work for all job seekers, positions created to perform “overhead” functions within the program or to provide services and materials to the program would not add significantly to its overall size. If 100 jobs are needed to close the economy’s job gap, that’s how many jobs the program would have to create, and within broad bounds it

⁴¹ The latter still would be needed even if an unconditional BI guarantee were provided, for reasons discussed below. *See infra*, at 28-31.

⁴² *See* VAN PARIJS, *REAL FREEDOM FOR ALL*, *supra* note 9, at 125-126; Karl Widerquist and Michael A. Lewis, *An Efficiency Argument for the Guaranteed Income*, The Jerome Levy Economics Institute of Bard College, Working Paper No. 212 (1997); Nanna Kildal, Nanna, *The Social Basis of Self-Respect: A Normative Discussion of Policies Against Unemployment*, 54 *THESIS ELEVEN* 63-77 (August 1998); Alstott, *Work vs. Freedom*, *supra* note 9; STANDING, *BEYOND THE NEW PATERNALISM*, *supra* note 9; Jose A. Noguera and Daniel Raventos, *Basic Income, Social Polarization and the Right to Work*, Paper presented at the 9th International Congress of the Basic Income European Network, Geneva, Switzerland, Sept. 12-14, 2002; Allan Sheahen *Does Everyone Have the Right to a Basic Income Guarantee?* U.S. Basic Income Guarantee Network Discussion Paper No. 68 (January 2004) at <http://www.usbig.net/>; Jose Luis Rey Perez, *El Derecho Al Trabajo, ¿Forma De Exclusión Social? Las Rentas Mínimas De Integración Y La Propuesta Del Ingreso Básico*, *REVISTA ICADE* (forthcoming).

⁴³ *See, e.g.*, Widerquist and Lewis, *supra* note 42 at 28; Noguera and Raventos, *supra* note 42 at 15; Sheahen, *supra* note 42 at 15.

wouldn't matter how those jobs were distributed between supervisory and non-supervisory positions, between production and support functions (such as the provision of child-care), or between program jobs and private sector jobs created to supply the program with materials.⁴⁴

Second, BI advocates also fail to take into account that an EA program's net cost would be reduced by the taxes program participants would pay on the wages they earned and by any revenue generated by selling the program's output – even if that output were sold at prices below its cost of production. The real per-person cost of creating the jobs needed to secure the right to work does not consist of the average total wages and benefits paid to program participants and to private sector employees hired to provide materials or services to the program. It consists of average after-tax wages minus average per-worker revenue generated by the sale of program output.⁴⁵ The program's net cost also would be reduced by savings in public assistance budgets, but BI advocates do count on these savings in estimating the cost of a BI guarantee and presumably recognize that they would reduce the cost of an EA guarantee as well.

Third, and most importantly, BI advocates ignore the difference between the individual cost of providing either a job or BI grant to one person and the aggregate cost of providing either jobs or BI grants to everyone who would be eligible to receive the benefit. Even if the net cost of providing a person a job far exceeded the net cost of providing that same person a BI grant, , the number of jobs that would have to be created would be limited to the size of the economy's job gap whereas BI grants, in the form preferred by most BI advocates, would have to be paid to all members of society. The arithmetic is simple. Involuntarily unemployed workers comprise a relatively small fraction of a society's total work force. Even in a deep recession the number of jobs needed to close the economy's job gap in developed market economies is unlikely to exceed 10% of the economy's labor force. In poorer countries the gap is often higher, but it usually does not exceed 25% of the labor force. If unemployment were measured as a percentage of total population rather than as a percentage of the active labor force, these percentages would be far smaller. Even if jobs paying wages several times as large as a BI guarantee were provided to all unemployed job seekers, the total cost of doing so would be tiny compared to the cost of providing BI grants to all members of society.

To illustrate the relative cost of the two strategies I shall compare equally expansive versions of each – proposals designed to eliminate “official” poverty in the United States. As an example of the BI strategy I shall rely on an estimate developed by Charles Clark.⁴⁶ As an example of the EA strategy I shall rely on my own previously published estimate of the cost of

⁴⁴ See HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 18, at 39-43.

⁴⁵ *Id.* at 21-50; Philip Harvey, *Paying for Full Employment: A Hard-Nosed Look at Finances*, SOC. POL'Y (Spring 1995).

⁴⁶ Charles M.A. Clark, *Promoting Economic Equity: The Basic Income Approach*, in INSTITUTIONAL ANALYSIS AND ECONOMIC POLICY 133, 149-52 (Marc R. Tool and Paul Dale Bush, eds., 2003).

an EA program designed to secure the right to work,⁴⁷ supplemented by a rough estimate of the cost of expanding transfer programs in the United States to guarantee at least a poverty-level income to all persons unable to earn a livelihood through wage employment.

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

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

Source: Clark, *supra* note 46, at 150

To pay for the program, Clark assumes that all federal expenditures on income security except for pensions and Social Security benefits⁴⁸ would be eliminated, which would have saved the federal government approximately \$238 billion in 1999,⁴⁹ while all other federal functions and expenditure levels would remain unchanged, resulting in the overall federal budget figures summarized in Table 2.

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

Source: Clark, *supra* note 46, at 150

⁴⁷ HARVEY, SECURING THE RIGHT TO EMPLOYMENT, *supra* note 44, at 21-50.

⁴⁸ These include old age, survivors and disability benefits and health insurance for the elderly and disabled.

⁴⁹ This figure seems high to me, but its exact size does not greatly affect Clark's estimate of government expenditures following adoption of a BI program.

Thus, paying for Clark’s hypothetical BI grant program would have approximately doubled actual federal expenditures in 1999 from \$1.7 trillion to \$3.4 trillion. To support this increase in spending, he proposes that the current federal income tax be replaced with a flat tax on all income, without any deductions except for the BI payments themselves. By equalizing tax rates on all market income, this funding mechanism tends to minimize the maximum tax rate imposed. Other funding schemes are possible, of course, but this one has the virtue of allowing easy comparisons of average tax burdens for different social welfare schemes. Clark estimates that a flat rate of 35.8% would have been needed to produce the revenue required to fund the BI guarantee he describes along with all other federal government functions in 1999.

It should be noted, however, that this figure does not include wage earner liability for mandatory social insurance (FICA) contributions or for state and local income taxes. The FICA contribution rate on covered income in 1999 was 7.65%, and state and local income taxes would have added the equivalent of another 2.7% to the federal flat rate.⁵⁰ Thus, under Clark’s proposal, wage earners would have faced an overall flat tax liability of 46.2% on their wage income (starting with their first dollar earned) up to the FICA maximum, which was \$72,600 in 1999.

Federal Income Tax	35.8%
Federal FICA Tax	7.7%
State & Local Income Taxes	2.7%
Total Tax Liability	46.2%

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

⁵⁰ Clark suggests that state and local governments would enjoy substantial savings as a result of the adoption of a BI guarantee program, but this seems doubtful. Income security expenditures (other than for health care) comprise a very small portion of state and local budgets funded from their own sources of revenue (rather than from federal grants in aid). Expenditures for means-tested cash and food benefits cost state and local governments only about \$23 billion in revenue from their own sources in 1998 and unemployment compensation benefits cost only another \$17.8 billion. Together these expenditures required less than 3% of all revenues generated by state and local sources.

may not be large,⁵¹ but if the program did reduce labor force participation and/or national income, the flat tax rate required to fund the program would be higher than Clark's estimate.⁵²

The Universal Declaration Strategy: In a 1989 book I estimated what it would have cost the United States government to secure the right to work by means of direct job creation for the 10-year period between 1977 and 1986.⁵³ The national unemployment rate during that period averaged 7.0 percent, the third highest 10-year average in over a century, so the cost of an EA program capable of securing the right to work in such a period overstates the likely cost of such an undertaking in better times such as 1999 when unemployment averaged only 4.2% in the United States.

The hypothetical EA program whose cost I estimated would have created enough jobs to eliminate involuntary part-time employment while reducing official unemployment to the 2% level for an enlarged labor force that I assumed would include able-bodied public assistance (AFDC) recipients and discouraged workers as well as officially unemployed workers. I estimated that such a program would have needed to create an average of 8.2 million jobs per year over the 10-year estimation period, ranging from a low of 7.4 million in 1979 to a high of

⁵¹ Robert M. Solow, Forward to Joshua Cohen and Joel Rogers (Eds.), *WHAT'S WRONG WITH A FREE LUNCH* ix-xvi (2001); Karl Widerquist, *A Failure to Communicate: The Labour Market Findings of the Negative Income Tax Experiments and Their Effects on Policy and Public Opinion*, Paper presented at the 9th International Congress of the Basic Income European Network, Geneva, Switzerland, September 2002.

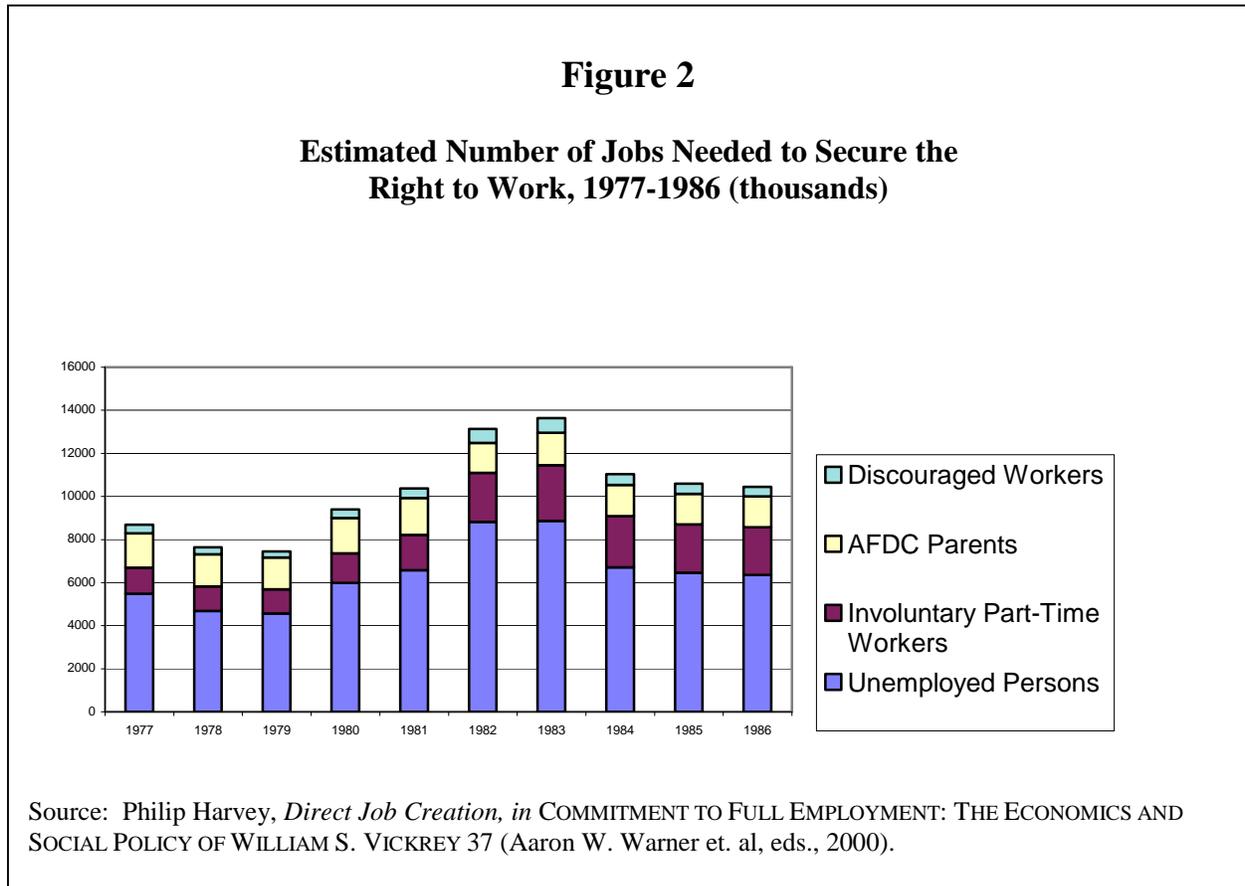
⁵² The likely effect of a BI guarantee on labor-force participation is hard to analyze, because the direction, size and intensity of its substitution and income effects would vary for different categories of workers or potential workers. A benefit program's "substitution effect" is its tendency to influence the number of hours a person wants to work by changing the effective wage rates the person can earn from wage labor. This substitution effect can be produced either by the structure of the benefit or of the tax payments required to fund the benefit, because either can affect the net income (i.e., the effective wage rate) a person receives for additional hours of work. A benefit program's "income effect" is its tendency to reduce desired hours of labor because receipt of the benefit makes people feel they can "afford" to work less (as happens, for example, when people begin receiving Social Security benefits). As with the substitution effect, tax liabilities attributable to a benefit program must be taken into consideration in assessing its income effect in addition to the structure of the benefit itself.

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

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

⁵³ HARVEY, *SECURING THE RIGHT TO EMPLOYMENT*, *supra* note 18.

13.6 million in 1983. Figure 2 shows the distribution of those jobs among assumed program participants. About three fifths of the jobs would have gone to officially unemployed workers. The rest would have been divided among involuntary part-time workers, AFDC recipients not already counted as unemployed, and discouraged workers.



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

Based on these assumptions, program wages expressed in mid 2004 dollars would have averaged \$11.82 per hour for officially unemployed persons and \$7.93 per hour for other program participants. Not all program participants would have earned these wages. Based on

their experience and skills, many would have qualified only for minimum wage jobs (\$5.15 per hour in 2004). I merely assumed that the cited figures would have been the arithmetic average wages paid by a program that paid market wages as I have defined that standard.

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

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

Table 4

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

Wages:	Program participants paid “market wages” averaging \$11.21 per hour in 2002 dollars for officially unemployed persons and \$7.52 per hour in 2002 dollars for other program participants.
Hours:	40 hours per week for persons seeking full-time jobs and 20 hours per week for persons seeking part-time jobs.
Taxes:	Program wages fully taxable. Program employment also covered by social security, with program participants (and the government as employer) liable for FICA taxes at same rates as other covered employees (and employers).
Insurance:	Federal employee health insurance benefits provided on same terms as for regular federal employees.
Paid Leave:	Medical leave, holidays, and vacation time provided to program participants at whatever level is deemed appropriate, with cost of benefit covered by assumption that wages would be paid for a full work year (2080 hours/year for full-time workers and 1040 hours/year for part-time workers).
Child Care:	Free to all program participants (provided in child care centers operated as employment projects by the program).
Services:	Free job training and other support services (e.g. substance abuse counseling or sheltered workshop assignments) provided to all program participants (with services provided through programs operated as employment projects by the program).
Materials:	Spending on non-labor costs (facilities, tools, materials, and supplies) assumed to equal 1/3 of program’s direct wage bill.

Source: (Harvey 2000a)

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

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

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

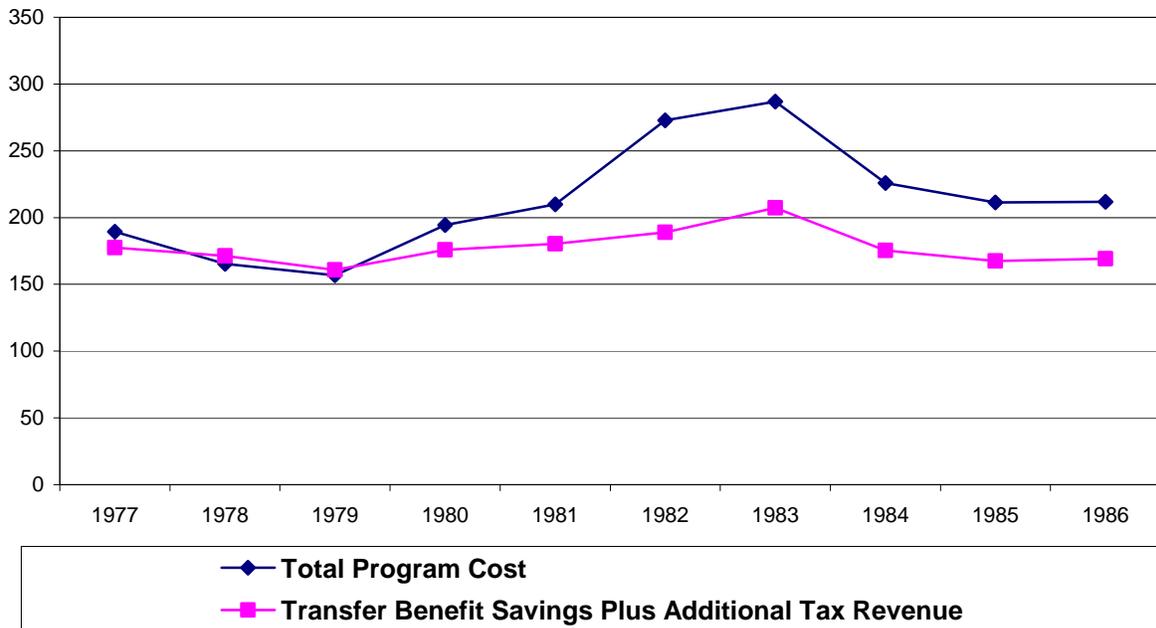
The estimated year-to-year cost of the program based on these assumptions is shown in Figure 3. Expressed in 1999 dollars, these costs would have averaged of \$218 billion per year. While large, this level of spending is not unprecedented for a major social insurance benefit. In 1986, for example, the jobs program would have cost \$146 billion in current dollars compared to \$194 billion actually spent for Social Security pension benefits. It also would have cost far less than the nearly two trillion dollars required to fund Clark's proposed BI grant program.

Figure 3 also includes estimates of certain offsetting savings and revenues that such a program would have generated. The offsetting savings shown in Figure 3 consist of reduced spending on cash and in-kind transfer benefits actually provided to able-bodied persons of working age and their dependents during the 10-year period. I estimated that these savings would have covered about 60% of total program costs over the 10-year period. The offsetting revenue shown in Figure 3 consists of additional income and payroll tax payments by program participants. I estimated that this revenue would have covered another 20% of the program's total costs during the 10-year period.

As Figure 3 illustrates, the program's remaining funding deficit (about 20% of total program costs) would not have been spread evenly across the 10-year period, but would have been concentrated in 1982 and 1983 when the nation's unemployment rate was elevated by the worst recession since the Great Depression.

Figure 3

**Estimated Cost of Achieving Full Employment
Through Direct Job Creation, 1977-1986
(billions of 1998 dollars)**



This calls attention to a third source of savings such a program would have generated. A jobs program such as I have described would be a powerful automatic stabilizer -- functioning in that respect like the nation's Unemployment Compensation program but with a much stronger counter-cyclical impact because of its greater size. If the program I have described had been in place during the 1977-86 period, the deep recession of the early 1980s almost surely would have been less severe. This, in turn, would have resulted in lower program costs and a smaller program deficit. It also would have resulted in substantial increases in government tax receipts during the period -- additional revenues that reasonably could have been attributed to the jobs program. I did not try to estimate what the program's likely counter-cyclical effect would have been. Nor did I try to estimate the savings and revenues likely to have resulted from that effect, but they could have been substantial.

It is significant to note in this regard, that prior to the recession of the early 1980s, the program would have had virtually no budget deficit after taking into consideration transfer benefit savings and additional income tax revenues attributable to it. This is attributable to two

factors. The first is that unemployment rates were lower during this period, averaging 6.3% between 1977 and 1979 compared to 7.4% during 1980 and 1981, 9.7% during 1982 and 1983, and 7.2% between 1984 and 1986. The other reason is that spending on social welfare benefits for jobless individuals was greater during the late 1970s than following the budget cuts instituted at the beginning of the Reagan administration.

A fourth source of savings attributable to the program would have consisted of reductions in government spending for items other than transfer benefits. Joblessness has been shown to contribute to a range of social and medical problems that impose significant costs on governments other than the payment of transfer benefits. These problems range from increased criminal activity to increased heart disease.⁵⁴ A jobs program that reduced unemployment to genuinely voluntary levels almost surely would have produced savings in budget areas not included in the estimate of transfer program savings shown in Figure 3.

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

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

To complete our estimate of the comparative cost of equivalent BI and EA guarantees, however, we also must estimate the cost of guaranteeing an above-poverty-level income for persons who would not have been able to earn an above-poverty level income in 1999 by exercising their right to work. This sum would have to be added to the cost of operating an EA program for official poverty to be eliminated. A rough measure of this sum is the nation's aggregate poverty gap – the total amount of money needed to raise the income of all persons

54 For citations to some of the literature describing the negative effects of unemployment, see Harvey *Combating Joblessness*, *supra* note 15, at 679-80 nn.4-9.

living in poverty to the federal government's applicable poverty thresholds. In 1999 this amount was \$79.5 billion. This figure actually overstates the amount of additional aid that persons not expected to work in 1999 would have needed to increase their income to the poverty threshold, because it includes the income needs of the "working poor" and of other persons who would have earned at least a poverty level income that year if the right to work had been guaranteed. However, if wage supplements had been used to guarantee all workers at least a poverty-line income instead of the training measures I have proposed, this figure would approximate the amount needed to fund the required wage subsidies as well as the additional income assistance benefits needed for non-workers and their dependents.

Funding this level of additional public aid would have required a 1.6 percentage point increase in individual and corporate federal tax rates in 1999. For purposes of comparison, if the tax system proposed by Clark were adopted, a flat tax rate of only 12.7% would have been required to balance the federal budget, compared to the 35.8% rate required to fund a comparable BI guarantee. A BI guarantee would provide other benefits, of course, but so would a strategy founded on an EA guarantee, especially if the extra \$1.7 trillion a BI guarantee would have cost in 1999 were allocated instead to expanding other economic and social entitlements. Under Clark's proposal, overall expenditures by all levels of government would have increased from about 30% of gross domestic product in 1999, the lowest level of any industrialized country, to about 49% of gross domestic product, roughly comparable to the level found in the highest spending European welfare states, but without providing the full range or quality of social services enjoyed by the residents of those nations.⁵⁵

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

The difference in cost between the two strategies would not be as stark, of course, for other types of BI guarantee. A negative income tax with very high effective marginal tax rates on other income might even cost less than a job guarantee. It would depend on whether the benefit was calculated and paid on an individual or household basis. But for BI advocates who

⁵⁵ Barbara Bergmann, *A Swedish-Style Welfare State or Basic Income: Which Should Have Priority?*, in *REDESIGNING DISTRIBUTION: BASIC INCOME AND STAKEHOLDER GRANTS AS DESIGNS FOR A MORE EGALITARIAN CAPITALISM* 107-16 (Erik Olin Wright, ed., forthcoming), available at <http://www.ssc.wisc.edu/~wright/RUP-vol-V.pdf>.

favor a system of universal, unconditional BI grants, the conclusion is inescapable that a BI guarantee would be far more expensive than an EA guarantee combined with an income guarantee for persons who are unable to work.

Compensating the Unemployed

The likely effect of a BI guarantee on unemployment rates, like its effect on labor force participation rates, is hard to predict, but there is no reason to expect such a program to eliminate involuntary unemployment or even reduce unemployment rates, and I do not understand BI advocates as arguing that it would. Their argument is that receipt of a guaranteed basic income would provide the unemployed with a close or possibly even superior equivalent of wage employment, thereby compensating them for their unemployment.⁵⁶

I believe BI advocates have been too quick to accept this argument. Consider two workers living in a world with Clark's proposed BI grant system in place. Both are employed; then one of them is laid off and suffers involuntarily unemployment. Does the unemployed worker's receipt of a BI guarantee compensate her for what she has lost? I don't think so. To be sure, the BI grant she receives prevents her from falling into absolute poverty, but she has suffered a severe blow to her welfare, losing perhaps half, three quarters or more of her income. She is now seriously disadvantaged compared to her former co-worker. In truth, the BI grant she receives gives her nothing to compensate her for her loss, because she already received the full grant before she was laid off. Her former co-worker, on the other hand, receives the same BI grant that she does, plus the income from his job, any non-pecuniary benefits his job may provide, and the option to voluntarily quit if he wants to live on his BI grant alone. He has choices. She does not. If the laid-off worker's right to work had been secured by an EA guarantee, she still might be laid-off, but another job providing approximately equivalent opportunities would be available to her. Her deprivation would be minimized and quickly repaired.

Now consider a second pair of workers. Actually they're aspiring workers. Both are new entrants to the labor force, but only one finds a job. Fill in the blanks. The story is the same. The fact that the youth who fails to find a job continues to receive a BI grant prevents her from falling into absolute poverty, but it hardly compensates her for the deprivation of her right to work. Securing the right to work would prevent this harm entirely by ensuring that both youths could find work. My point is simple. Providing everyone in society a BI grant is a poor substitute for securing their right to work.

⁵⁶ See, e.g., VAN PARIJS, REAL FREEDOM FOR ALL, *supra* note 9, at 126; STANDING, BEYOND THE NEW PATERNALISM, *supra* note 9, at 255-261; Perez, *supra* note 42

Other Perceived Benefits of A BI Guarantee

So far I have discussed the effectiveness of an expansive BI guarantee as an anti-poverty measure and as an alternative to an EA guarantee. In this section of the article I shall consider four other benefits BI advocates commonly claim for the strategy -- its superiority to conditional transfer payments, its ability to compensate non-market work such as family care activities or community service, the support it would provide for individual freedom and personal development, and its ability to allow workers to refuse sub-standard jobs, thereby pressuring low-wage employers to improve the quality of the jobs they offer.

BI Guarantees and Conditional Transfer Payments: It undoubtedly would be easier to write a couple of hundred million checks each month than to administer both a jobs program designed to secure the right to work and a screening process capable of determining fairly and accurately who is entitled to income support without working. If, however, the establishment of a BI guarantee program would not relieve society of its obligation to secure the right to work – as I have argued it would not – this advantage would be reduced to avoiding the difficulty of having to decide who is entitled to income support without having to work.

In discussing the superiority of a BI guarantee in this regard, BI advocates limit their discussion almost entirely to means-tested public assistance programs. Not having to decide who is “deserving” of such aid would indeed be a major advantage. The question of who among the poor should receive public aid has been a deeply rancorous and divisive issue in market societies for centuries,⁵⁷ and even after policy decisions have been made concerning eligibility requirements, the agencies assigned the task of implementing those policies may lack the administrative capacity to make the necessary determinations. They may even actively subvert the policies they are supposed to implement.⁵⁸

In analyzing the severity of this problem, however, it is important to note that both public policy debate in this area and the administration of public assistance law has always been carried on in an environment in which the right to work has not been secured. In that environment, the issue of who should be provided income assistance has always been dominated by disagreements over the causes and appropriate policy responses to the problem of joblessness. The economy’s failure to provide decent work paying wages capable of supporting a dignified existence for everyone willing to accept such employment has inspired “liberals” (in the current American sense of the term) to push for public assistance policies that offer support to larger numbers of people with fewer conditions attached. Conservatives, on the other hand, have pushed just as hard for public assistance policies that deny public aid to the “able-bodied poor” because they believe joblessness is caused by the behavioral shortcomings of jobless individuals themselves

⁵⁷ MICHAEL KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA (1986); Philip Harvey, *Joblessness and the Law Before the New Deal*, 6 GEO. J. ON POVERTY L. & POL’Y 1 (1999).

⁵⁸ For an extended discussion of these issues, see JOEL F. HANDLER, SOCIAL CITIZENSHIP AND WORKFARE IN THE UNITED STATES AND WESTERN EUROPE: THE PARADOX OF INCLUSION (2004).

and/or can only be remedied by inducing behavioral change among the jobless poor.⁵⁹ This has created an unbridgeable divide in market economies both in policy debates over who should receive public assistance and in the ethos of the agencies that administer public assistance law.

In considering whether the possibility of avoiding these conflicts is worth the high cost of a universal BI grant system, we therefore need to consider how guaranteeing the right to work would affect policy debates and policy administration in public assistance law. That's a big topic, deserving more careful treatment than I can give it in this article, but my guess is that the availability of decent work for everyone who wants it would greatly reduce the intensity of liberal/conservative disputes in this area of public policy. The reason is simple. The consequences of policy decisions (and of individual administrative decisions) would no longer be as momentous for either liberals or conservatives. If groups denied income assistance were offered guaranteed access to decent jobs instead,⁶⁰ liberals would have far less reason to fear the consequences of "losing" a policy debate over the group's entitlement to income assistance, and conservatives also would view the outcome as less momentous, since government would have to assume fiscal and administrative responsibility for the group's support whether or not they were deemed entitled to income maintenance benefits. Indeed, conservatives might even prefer to send a particular group checks than to provide them with employment, because the latter would be both more expensive (on a per recipient basis) and involve a larger administrative role for government. In that context, I believe it is reasonable to expect policy formation and administration to become less problematic. The positions of liberals and conservatives might even flip, with liberals advocating more extensive accommodation of persons with disabilities in jobs programs while conservatives argued, on budgetary grounds, that assistance for such persons should be limited to cash grants.

It also is unrealistic to view the BI strategy as providing a complete solution to eligibility determination problems. One of the disadvantages of the BI strategy is that the only way to increase income assistance benefits to persons who need more than the BI guarantee would be either to increase the size of the guarantee or engage in precisely the kind of eligibility screening the BI strategy is designed to avoid. A BI guarantee would not end the relative advantages that some groups enjoy nor the relative disadvantages that other groups suffer. Unless we are persuaded that providing a BI guarantee would suffice to "level the playing field" on which individuals seek opportunities for personal development and economic gain, we cannot dismiss

⁵⁹ Harvey, *Joblessness and the Law Before the New Deal*, *supra* note 57; Philip Harvey, *Combating Joblessness*, *supra* note 15, at 686-89.

⁶⁰ It should be emphasized in this context, that the right to work recognized in the Universal Declaration implies an obligation on the part of governments to accommodate job seekers who enter the labor market with disadvantages. Article 23 states that "everyone" has a right to work, and while that language obviously was not chosen with the intent that it be read literally (e.g., as applying to infants) there is no reason to read it as excluding persons with disabilities. In my view, the most reasonable interpretation of the right to work and the right to income recognized in the Universal Declaration is that they create overlapping entitlements for persons whose diminished physical, cognitive or psychological capacities render them unable to function in "ordinary" jobs. Such persons are entitled to income support, but they also are entitled to have their disabilities accommodated if they want to work – even if it would cost society less simply to send them a check.

the possibility that more targeted remedial measures still would be needed to achieve social justice in a world with a BI guarantee in place. Would enactment of a BI really end policy debate concerning the extent and nature of society's obligations to provide special assistance to single parents, residents of economically depressed communities, racial minorities, and the relatively impoverished (i.e. people living on nothing but their BI guarantee)? A BI would reduce the administrative problems associated with such decision-making, but it would not eliminate them entirely.

Finally, the right to "security" recognized in Article 25 of the Universal Declaration arguably imposes an obligation on society not just to prevent people from falling into poverty but to ensure the availability of pension and insurance benefits that protect their standard of living when a "breadwinner's" support is lost due to involuntary unemployment, sickness, disability, death, pregnancy, family care duties or old age. I already have noted the limited ability of a universal BI grant system to compensate involuntarily unemployed individuals for their lack of work, but the same analysis would apply with equal force to losses of income due to pregnancy, disability, old age or other causes beyond individual control. To secure all aspects of the right to income support recognized in the Universal Declaration, conditional transfer programs still would be needed irrespective of the existence or generosity of a universal BI grant system; and that means eligibility criteria for such support still would have to be developed and administered. A BI grant system would provide an additional layer of income support, but it would not provide an adequate substitute for securing the right to income support and income security recognized in the Universal Declaration.

Still, aren't BI advocates right to point out that a BI guarantee would eliminate the stigmatization and administrative "hassles" commonly associated with the receipt of means-tested public assistance today? Since "welfare" benefits traditionally are kept at or below the subsistence level, a generous BI guarantee could eliminate the need for this type of aid entirely. Former public assistance recipients would receive a BI check like everyone else, thereby ending the indignities to which they are now subject because of their special status as supplicants for public charity.

This is not a crazy argument, but it ignores the possibility that a universal BI grant system might be accompanied by strong social sanctions against "freeloading." BI advocates assume that a society which instituted a universal BI grant system would not impose social penalties on people who chose to live on their BI grant alone – but that's not necessarily so. It is just as possible that a society which provided a universal BI grant would disdain people who chose to live on their grant, using shame and stigma to encourage work effort and discourage "freeloading" in the same way it is used today. If the general public shared the attitude of BI advocates towards public assistance recipients, we wouldn't need to institute a BI guarantee to eliminate the stigma and administrative oppression "welfare" programs now generate. Simply imagine what a means-tested public assistance program designed and administered by people who share the attitude of BI advocates towards work would look like. The mistake BI advocates make is to assume that their attitude towards work necessarily would triumph if a universal BI grant system were instituted, and, on the other hand, that it would be impossible for their attitude

towards work to prevail in a society that imposed any conditions on the receipt of public assistance.

This does not mean that the idea of providing all members of society an unconditional BI guarantee lacks merit. It only means that the idea of providing such a guarantee need not be viewed as an attribute only of universal BI grant and negative income tax proposals. Traditional public assistance programs also could be redesigned to provide benefits that were means-tested but not work-tested. Joel Handler has argued, for example, that the key benefit a BI guarantee would provide to public assistance recipients is an “exit option” empowering them to reject social services that do not meet their needs or aspirations. He recognizes that people who need public income support also are likely to need a range of social services to achieve their own goals for themselves, but that forcing people to accept these services as a condition of their receipt of public aid is counterproductive. It denies independence to people whose capacity for independent living is presumed to need development. It gives too much power to social service agencies and too often results in the deterioration of social service delivery into a form of social control.⁶¹

I find Handler’s argument persuasive, but the kind of BI guarantee required to satisfy his concerns need not be provided in the form of either an unconditional grant paid to all members of society or a negative income tax. All that would be required would be for means-tested public assistance benefits to be made available without a showing of disability or the imposition of work requirements. This type of public assistance benefit is, in fact, quite common for population groups that are not regarded as having a duty to work such as the elderly. There is no reason this list could not be expanded or universalized. The argument against doing so has always been that it would discourage work effort, but the effect of such a benefit has never been tested in a context where the right to work was secured for all members of society and where social services were made readily available to help people overcome the disabilities and disadvantages that limit their opportunities.

Providing a BI guarantee in this form would be relatively inexpensive, and it would achieve most of the benefits properly attributable to the BI idea without conflicting with efforts to expand other income assistance benefits that would help secure economic and social rights recognized in the Universal Declaration – benefits such as paid family leave, genuinely adequate disability insurance, sabbatical grants, and community service allowances. Indeed, more expansive forms of some of these benefits might be integrated with the kind of reformed public assistance program I have described. The long-term goal of BI advocates in this context still could be to universalize eligibility for public assistance benefits over time. The difference would be that they would be advocating reforms in and building upon existing social welfare arrangements rather than proposing a wholesale replacement of existing programs with an entirely new social welfare system that might or might not secure all of the economic and social human rights recognized in the Universal Declaration.

⁶¹ HANDLER, *supra* note 2, at

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

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

The Universal Declaration does not expressly mandate that unpaid care work and community service work be compensated, but it’s conception of the right to work provides strong support for rights-based claims of entitlement to such compensation. Paragraph 2 of Article 23, asserts that “[e]veryone, without any discrimination, has the right to equal pay for equal work.”⁶² Although the drafters of the Declaration were clearly thinking of wage discrimination when they drafted this provision,⁶³ there is no principled reason to view the equal pay mandate as limited to wage employment. Expanding the common understanding of the Declaration’s equal pay provision to include a right to compensation for currently unpaid care work and community service activities poses both theoretical and practical challenges. What kinds of work should be deemed to deserve compensation, and what kinds of mechanisms can be devised to provide the compensation? But these are challenges that human rights advocates

⁶² Universal Declaration of Human Rights, *supra* note 23, art. 23.

⁶³ Feminists were both active and influential in their lobbying efforts during the drafting process, succeeding, for the most part, in keeping sexist language and sexist distinctions out of the document (the most obvious exception being references to “himself and his family” in Articles 23 and 25). The “equal pay for equal work” provision in Article 23 was one of the passages on which women’s organizations concentrated during the drafting process. *See* MORSINK, *supra* note 31, at 116-129.

should welcome.⁶⁴

As Standing points out, small steps in this direction already have been taken in some countries – through legislation providing for paid parental leave, publicly-funded child care, and care-giver allowances – but many questions exist as to the best way of securing compensation for care work without reinforcing traditional gender rolls or the social isolation of care workers.⁶⁵ Reasonable mechanisms for compensating community service activities are easier to envision, but the task of deciding which activities are deserving of such compensation is probably more challenging than for care work.

A universal and unconditional BI grant would be a mixed blessing in the pursuit of these goals. It would provide income support to persons performing currently uncompensated care and community service work, but its universal and unconditional character would make it a particularly ill-suited vehicle to achieve equal pay for this work. Moreover, since achieving the equal pay goal undoubtedly would require expanded public funding (over and above what the BI grant system would cost) the fiscal demands of a BI guarantee may mean that pursuing the BI strategy could make it more difficult rather than easier to address this problem.

The alternative arguably mandated by the Universal Declaration is to provide public funding for programs designed specifically to compensate currently unpaid care and community service workers. This strategy is hardly perfect, but it would allow not only for this work to be compensated, but for it to be done in a way that conformed better to the equal pay for equal work principle – and since securing the right to work would not drain the public fisc as a BI guarantee would, it may be a more affordable goal. Consider, for example, what 1.5 trillion dollars could have funded in the way of caregiver and community service subsidies in 1999. That would have been the approximate additional cost of funding Clark’s proposed BI grant system compared to the strategy I have proposed for securing the right to work and income.

Personal Development and Freedom: The most important benefit BI advocates seek to secure after poverty reduction is probably an expansion of individual freedom and enhanced opportunities for personal development. A BI guarantee would secure this right, they claim, by permitting individuals to refuse wage employment that is not personally satisfying, by providing support for unpaid work opportunities that may be more fulfilling than wage employment, by subsidizing educational and learning activities, and by allowing increased leisure. Standing

⁶⁴ One of the advantages of broadly worded declarations of basic rights is that they are subject to more expansive interpretation than their drafters contemplated. The U.S. Constitution has often been described as a “living document,” despite its relatively fixed language; and the Universal Declaration undoubtedly will be subject to similar reinterpretation as conditions and sensitivities change over time. Some of these interpretations (or reinterpretations) may involve steps backwards, circumscribing rights recognized in the document, but others will just as surely move forward, expanding the Declaration’s scope by enlarging common understandings of the rights it proclaims to more adequately reflect the document’s underlying principles.

⁶⁵ STANDING, BEYOND THE NEW PATERNALISM, *supra* note 9, at 264-70.

describes this constellation of opportunities as a “right to occupation” which he distinguishes from the entitlement to a “job” promoted by right-to-work advocates.⁶⁶

Standing’s conception of “occupation” is attractive, and the availability of a BI guarantee certainly would give people more freedom than they now enjoy to pursue the goals he describes. Still, it is easy to overestimate the effectiveness of a BI guarantee in serving these ends. Sensitive to criticism that a BI guarantee would reduce work incentives – thereby wounding the economy while discouraging the poor from taking steps to escape poverty or near poverty – BI supporters have tried to structure their proposals in ways that tend to minimize the likely effect of a BI guarantee on labor force participation. To the extent these efforts succeed, however, they tend to undercut claims that a BI guarantee would also cause people to increase their non-waged personal development activities and enjoy more leisure.

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

What is the Universal Declaration’s view of leisure time and personal development activities? First, the Universal Declaration emphatically *does* recognize personal development as a right. As Morsink has noted, “the right to ‘the full development of the human personality’ was seen by most delegates to the committee that drafted the Universal Declaration as a way of summarizing all the social, economic, and cultural rights in the Declaration.”⁶⁷ The phrase “full development of the human personality” appears in slightly different form in three of the Declaration’s articles (Articles 22, 26 and 29), and its spirit pervades the entire document.⁶⁸

The Universal Declaration’s conception of personal development is not limited to activities pursued during non-wage-laboring time. Securing the right to work, for example, is viewed as essential to that goal, as Kenneth Karst’s comments quoted at the beginning of this article illustrate. On the other hand, the Universal Declaration does recognize that supported (i.e., paid) leisure also is essential to individual well-being and personal development. Article 24

⁶⁶ *Id.*, at 255-61.

⁶⁷ MORSINK, *supra* note 31, at 212.

31

⁶⁸ The broadest statement is contained in Article 22. *See supra*, Box 2.

states that “[e]veryone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”⁶⁹

This entitlement to supported leisure is not unlimited. The Universal Declaration does not recognize an individual right to as much supported leisure as each person desires; but it does recognize that every member of society has a right to “a fair share” of supported leisure.⁷⁰ In deciding how much supported leisure must or should be guaranteed, the Universal Declaration strategy, like the BI strategy, requires that a balance be struck between non-income-generating activities and income-generating activities. The difference is that the “fair share” principle underlying the Universal Declaration approach makes it easier to construct compensation mechanisms that strongly subsidize non-market activities – e.g., fully paid leaves of absence or full tuition-assistance benefits. Since the Universal Declaration strategy assumes these benefits will be rationed, there is no reason to design the benefits in a way that will ensure that most people will pass up the opportunity, as the BI strategy must do to avoid program-jeopardizing declines in labor force participation. Also, since the benefits are provided to only a fraction of the labor force at any one time, they can be far more generous than a BI guarantee could be. This does not mean the Universal Declaration strategy would necessarily provide more or better support for leisure and personal development activities than a BI guarantee, but it is an open question. BI advocates cannot assume the superiority of their approach.

Low Wage Work: As noted above, BI advocates have tended to be critical of right to work claims and of proposals to secure the right. Standing provides the most extended and forceful of these critiques, his principle objection being that the right to work is freedom-reducing because it imposes an obligation on people to accept bad jobs rather than freeing them from dependency on such employment (as he claims a BI guarantee would).⁷¹

In evaluating this criticism it is important to reiterate a point made earlier – namely, that right to work and BI proposals are not theoretically incompatible with one another. There is no reason in principle why a society could not provide a BI grant to all persons while also guaranteeing employment at decent wages to everyone who wants it. Moreover, my analysis of the cost of securing the right to work suggests that it should be possible to achieve this goal

⁶⁹ The “legislative history” of this provision makes it clear that the purpose of the much criticized reference to “periodic holidays with pay” was not to endorse a specific compensation device (as critics have tended to assume) but to underscore that leisure must be supported if it is to be universally enjoyed rather than remain a privilege of wealth. See MORSINK, *supra* note 31, at 185-190. It also should be noted that the Declaration recognizes this right as belonging to *everyone*, not just to wage laborers. Consistent with this principal, for example, I would argue that parents are entitled to supported leisure time as well as wage laborers.

⁷⁰ The first draft of what ultimately became Article 24 stated simply that “[e]veryone has the right to a fair share of rest and leisure.” MORSINK, *supra* note 31, at 186. Although this language did not survive the drafting process, the “fair share” requirement underlay the drafters’ decision to include language making it clear that leisure time had to be supported (i.e., paid) since that is what is required to ensure that everyone will get a “fair share.” See *id.*, at 185-190.

⁷¹ STANDING, BEYOND THE NEW PATERNALISM, *supra* note 9, at 247-55.

without adding to the cost of a BI grant program alone. For right to work advocates the question remains whether the additional benefits a BI guarantee would provide are worth its extra cost, but if my analysis of the cost of securing the right to work is correct, BI advocates should face no such uncertainty. If the right to work could be secured without adding significantly to the overall cost of a hypothetical BI grant program, it is hard to understand why a BI advocate would oppose the idea.

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

Standing does not consider this possibility because he assumes the only means available to provide paid employment for everyone who wants it is to lower wages and allow working conditions to deteriorate, a strategy he rejects because it sacrifices "more valuable forms of security" for employed workers.⁷² But why assume the only way to expand employment opportunities is by lowering wages?⁷³ We don't expect to secure all the education or healthcare society needs by allowing its price to fall and its quality to decline to the point that everyone can afford it. Why should we expect the market to provide all the jobs we need? Standing fails to consider the possibility that, just like education and health care (or a BI guarantee), the right to work can be secured only if government itself is willing to fund the jobs that markets fail to provide? Why should it be acceptable, indeed obligatory, for governments to fund education, health care (and a BI guarantee), yet unacceptable or impossible for governments to fund the additional jobs needed to secure the right to work?

If the right to work can be secured along with adequate income support for persons unable to earn a livelihood, the complaint that policies designed to secure the right to work impose an obligation on people to work loses its moral force.⁷⁴ BI advocates do not object to the necessity most people face of having to work to earn their livelihood. They accept that anyone who wants more income than a BI guarantee provides should have to work for it, and, as explained above, the fiscal viability of their proposals require that almost everyone who currently works for wages would continue to do so. Their moral complaint against "forced work" is based

⁷² *Id.*, at 272.

⁷³ Standing's assumption that lowering wages would lead to reduced unemployment also can be challenged. *See, e.g., Harvey, Combatting Joblessness, supra* note 15, at 709-23.

⁷⁴ Lest there be any misunderstanding, the issue is not whether the Universal Declaration imposes an obligation on people to accept wage employment. It emphatically does not. Proposals to link the right to work to such an obligation were made and expressly rejected in the drafting process. *See MORSINK, supra* note 31, at 157-90. The claim I understand BI advocates to be making is that denying income support to individuals who could be self-supporting is equivalent to imposing an obligation to work on them because, without such support, they will feel compelled by material necessity to seek wage employment.

entirely on the argument that low-wage workers should not be forced to accept bad jobs that pay below poverty wages. A BI guarantee would solve this problem, in their view, by giving low-wage workers what Standing calls a “drop dead option,”⁷⁵ the ability to refuse sub-standard employment, thereby forcing employers to offer better quality work to attract the labor they need.

Eliminating sub-standard jobs is a laudable goal, but it hardly distinguishes BI proposals from the Universal Declaration strategy. The difference lies in the means adopted to achieve that goal and in the fact that the Universal Declaration also proposes to ensure that everyone who wants a “good” job (what the International Labor Organization refers to as “decent work”⁷⁶) is able to find one, a goal BI proposals generally ignore. In fact, there is little doubt that the strategy for securing the right to work I described earlier in this article would be more effective than a BI guarantee in eliminating bad jobs. While a BI guarantee might remove the whip of absolute necessity that currently forces low-wage workers to accept sub-standard jobs, they still might feel a strong compulsion to accept such employment in order to earn an above poverty-line income. Indeed, rather than eliminating “bad” jobs, a BI guarantee might subsidize them, allowing employers to lower wages rather than raise them, since low-wage workers would need less wage income to survive. The “exit option” low-wage workers need in order to put pressure on employers to eliminate “bad” jobs isn’t a BI guarantee, but a ready supply of “good” jobs, the strategy proposed by the Universal Declaration.⁷⁷

Conclusion

Economists and public officials regularly ask how unemployment can be reduced, how employment levels can be raised, and how the employability of disadvantaged workers can be enhanced; but the policy goal of securing the right to work for everyone who wants to work has been virtually abandoned, even by progressives. Almost no one asks what steps governments can or should take to ensure that decent jobs are available for all job seekers. This goal is assumed to be beyond the reach of public policy, with “full employment” reconceived as the minimum level of unemployment consistent with price stability (rather than the level required to secure the right to work). Policy makers have lowered their sights, with the U.S. economy’s achievement of 4 percent unemployment in 2000 widely regarded as just about as good a labor market performance as it is possible to achieve – notwithstanding the fact that even then the

⁷⁵ STANDING, BEYOND THE NEW PATERNALISM, *supra* note 9, at 259.

⁷⁶ INTERNATIONAL LABOR ORGANIZATION, A GLOBAL AGENDA FOR EMPLOYMENT (2001).

⁷⁷ Indeed, the most significant disadvantage of using direct job creation to secure the right to work is the likelihood that the policy’s positive effect on wage rates would prove inflationary. Reliance on this strategy requires a willingness to wrestle with the macroeconomic problems that rising wages can cause rather than tolerate continuing violations of the right to work as an acceptable price to pay for price stability. See Philip Harvey *Human Rights and Economic Policy Discourse: Taking Economic and Social Rights Seriously*, 33 COLUM. HUM. RTS. L. REV. 363, 449-67 (2002).

number of officially unemployed workers and involuntary part-time workers exceeded the number of job vacancies by about 4.5 million.⁷⁸

It is hardly surprising in this environment that many progressives find the BI idea attractive. It promises important benefits that market economies have rarely been able to deliver. But if the right to work and income support proclaimed in the Universal Declaration can be secured at lower cost than a BI guarantee, the BI idea loses much of its luster. A society that secured the right to work and also provided a BI guarantee still might appeal to many people; but there is little doubt that a fair assessment of the comparative advantages of the BI and EA strategies in securing the rights recognized in the Universal Declaration favors the latter.

The harder question to answer is why progressives manifest so little interest in proposals actually to secure the right to work. The attention given to BI proposals in progressive policy debates demonstrates that dramatic departures from existing policies can receive a hearing. Why then do policy proposals for securing the right to work attract so little attention? Explaining this conundrum is beyond the scope of this article, but the analysis offered here provides strong support for progressives to take EA proposals seriously.

⁷⁸ The United States Bureau of Labor Statistics (BLS) has begun once again to collect and report job vacancy data for the U.S. economy after a two decade hiatus. This data can be accessed at <<http://www.bls.gov/jlt/home.htm>>. Data on unemployment and involuntary part-time employment is reported monthly in Tables A-1 and A-25 of the BLS periodical, *Employment and Earnings*.