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A Reciprocal Welfare Program

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What do people owe one another? The difficulties inherent in answering this question reveal that reciprocity is a problematic concept with an uneasy place in political theory and social practice¹. Developing a normative theory of reciprocal social relations is one part of the larger project of describing a just society. Like that project, it is rife with problems of definition and justification. These puzzles find reflection in the practical uncertainties that arise in designing and maintaining the kinds of cooperative social systems in which reciprocal relationships hold a central place.

The purpose of this essay is to explore in a preliminary way what it would mean to adopt reciprocity as the central, unifying principle behind the design of social welfare policy in a liberal democratic society. The theory and practice of reciprocity are potentially important to the design and political stability of centrally orchestrated, bureaucratic systems of redistribution that have been adopted in Western capitalist societies over the past 100 years or so. The welfare state serves to protect against misfortune, mitigate predictable disability, and smooth out the effects of free markets. The redistribution of resources through governmentally mandated tax and benefits programs can be viewed as a dynamic process of collecting resources from some members of a group to create a common pool of assets. Resources from that pool are dispensed to other

¹ See Rawls, *A Theory of Justice*; Allan Gibbard, *Apt Choices, Wise Feelings*; Andrew Levine, *Rethinking Liberal Theory*.

members of the group for particular purposes under defined conditions. In modern societies, these resources need not be generated, collected, and reallocated through spontaneous, voluntary mechanisms of private association. Rather, that process can be accomplished through the offices of a centralized authority that is established through democratic assent.

There is evidence that a powerful set of psychological responses governs people's attitudes towards the sharing of resources with others, including those less well off than themselves. Specifically, it appears that in this context people are not always motivated by straightforwardly selfish motives as the conventional rational actor model would predict. They do not always act exclusively from self-interest. In some settings, however, their willingness to behave unselfishly appears contingent on similar generosity from others, and they are willing to punish those who seek to exploit or take advantage of them, even at some cost to themselves.² Some commentators have suggested that these behaviors are consistent with norms of reciprocity. Those norms may be mediated by powerful and elemental emotions or "moral sentiments" that are widespread and deeply ingrained features of human psychology.³

Although there is reason to believe that a concern with reciprocal obligations is widespread in human societies, there may well be a disparity between social arrangements that command popular assent and those that can be ethically justified on first principles. Some liberal

² See Wax, *Rethinking Welfare Rights*, 63 *Law & Contemporary Problems* (Winter/Spring 2000). The best exposition of the empirical psychology of reciprocal relations is recent work by Ernst Fehr and Simon Gächter. See *Fairness and Retaliation: The Economics of Reciprocity*, 14 *J. Of Economic Perspectives* 159; *Cooperation and Punishment in Public Goods Experiments*, 90 *AER* 980. See also

³ See Bowles and Gintis papers (cited in Wax, *supra*). See also Stuart White, *Social Rights and Social Contract -- Political Theory and the New Welfare Politics*, 30 *British J. Of Political Science* 507, 514 (July 2000); Rober Frank, *Passions Within Reason*.

theorists who seek to formulate basic rules for the composition of just societies do make some use of the concept of reciprocity, although too often at a frustratingly high level of abstraction. John Rawls, for example, describes the just society as one of reciprocal cooperation among equals. He acknowledges citizens' obligations to "contribute to joint enterprises from which they are benefited and in which they are in some sense participants."⁴ David Gauthier is more explicit in refusing to recognize collective obligations towards social actors who cannot participate in voluntary exchange relationships. Rawls' and Gauthier's contractarian approaches to justice have been criticized for failing to find a place for those incapable of making the kinds of positive contribution to the collective enterprise that might elicit a corresponding sense of obligation from others. How do those who are less than fully capable of participating in a joint productive enterprise fit into a "just" scheme of reciprocal cooperation and exchange?⁵ An alternative line of attack on reciprocity as a governing principle for social organization is grounded in an egalitarian critique of the concept of deservingness and desert-based allocations generally.⁶ Any

⁴ Lawrence Becker, *Reciprocity* 361. See also HLA Hart, *Are There Any Natural Rights*, 64 *Phil. Rev.* 64 (1955); John Simmons, *Moral Principles and Political Obligation* (1979); John Rawls, *Legal Obligation and the Duty of Fair Play*, *Law and Philosophy* (1964). See more recently Arneson, essay on free riding; Van der Veen essay.

⁵ See, e.g., Allan Buchanan essay in *Philosophy and Public Affairs* (criticizing Gauthier's treatment of dependency); Eva Kittay, *Love's Labor* (commenting on Rawls's treatment of dependency); But cf. Brian Barry, *Theories of Justice* (suggesting that Rawls's just society does recognize obligations to the dependent and disabled); Martha Nussbaum in *New York Review of Books*, January 11, 20001, at 36 (noting Kittay's assertion that Rawls "explicitly omits from the situation of basic political choice the more extreme forms of need and dependency that human beings may experience," which relies on Rawls's assertion that although caring for the dependent is a "pressing practical question," it is a derivative and secondary one that a just society may address in a variety of possible ways.)

⁶ See Van der Veen, Arneson, Levine.

demand that individuals make some sacrifice or positive contribution before resources will be forthcoming from others or from the group necessarily generates a distinction between those who “deserve” public assistance and those who do not. Yet, according to some theorists, the concept of “desert” is itself suspect, because the ability and willingness to contribute to the social product, and the degree to which an individual is capable of contributing, stem overwhelmingly from arbitrary factors -- such as individual endowments, patterns of consumer demand, and natural scarcities -- for which individuals cannot justly be held responsible.⁷ In addition, it has been maintained that there is no consistent and universal yardstick for determining just terms of exchange and no obviously correct rule for fixing the amount and nature of contributions that warrant particular rewards from others within a cooperative framework.⁸ In the absence of centralized directions, allocations of joint product are determined by spontaneous bargaining within the group. But the outcome of real life bargaining cannot provide the basis for answering the normative question of which allocations are fair or comport with defensible ethical principles. In the face of such wide variation in terms of exchange and measures of social value, how can we know what recompense for a particular effort or contribution is just?

The struggle to answer these questions is central to liberal political theory. John Rawls, for example, devotes a good deal of attention to them, but provides ambiguous answers.⁹ On the

⁷ See, e.g., Scheffler (discussing Rawls’s “hard determinism.”); Elizabeth Anderson, Elizabeth Anderson, What is the Point of Equality, 109 *Ethics* Jan 1999 287 (discussing the range of views among “luck egalitarians” about the actions and consequences for which persons can fairly be held responsible).

⁸ See, e.g., Andrew Levine, Rewarding Effort, 7 *J. Of Political Phil.* 404 (1999); Andrew Levine, Rethinking Liberal Equality; Boston review issue on Reciprocity.

⁹ See *cites supra*.

one hand he speaks of reciprocity as the bedrock of a just system. On the other, he attacks the notion that people “deserve” the economic rewards they can earn within a free market, even when those rewards are the outgrowth of considerable effort. He never expressly demands that social participants expend any kind of effort as a condition of eligibility for social assistance, and does not explicitly restrict the “least well off” class that is entitled to resources under his proposed minimax or “difference principle” scheme only to those who have at some time contributed, or attempted to contribute, to the social surplus. And, contrary to some critiques, he never expressly excludes from help those who are wholly incapable of contributing¹⁰. Indeed, the requirements of effort expended or positive contribution -- in the form of past or present work, for example -- play very little role in Rawls’s exposition of the principles of justice, except perhaps in his concern with equal opportunity.¹¹

Interestingly, ordinary people appear much more concerned with the concrete questions that Rawls finesses. What is the nature of the contribution expected from each member of a just society, and under what conditions is it expected? To whom is help owed from collective resources, and under what circumstances? Public opinion appears to have anticipated many of

¹⁰ Cf. Kittay, *Love’s Labr*. See Brian Barry, *Theories of Justice* (suggesting that the disabled and the dependent would certainly be included in the class of the “least well off”)

¹¹ See, e.g., Edmund Phelps in *25 Boston Review*, *Delivering a Basic Income* (October/November 2000). Rawls derives the minimax principle, which is concerned primarily with the redistribution of “primary resources” after he establishes a set of fundamental principles of individual rights, which include the right to seek to attain gainful positions “open to all.” But he says little about what happens to those who neither seek nor obtain employment at all. However, in later work he implies that, because leisure is a primary good, those who are voluntarily idle would probably not qualify as among the least well off, because they would be endowed with an ample measure of society’s resources by virtue of their plethora of free time. See Van Parijs, *Should Surfers Be Fed*, *Phil. And Public Affairs* (has cite).

these conceptual difficulties.¹²

Popular attitudes have at least something to say on the problem of defining the precise nature and magnitude of the contribution that would entitle social actors to assistance from others, whether through private channels or collectively through government. There is robust support for fundamental norms of self-reliance that oblige able bodied persons to work to support themselves, and that charge those who receive public assistance with the duty to respond in kind by making (or by having at some point made) contributions. That principle is grounded in an abhorrence of free-riding, which is defined as receiving benefits without contributing something in return. But popular opinion does not view unvarnished reciprocity as a complete theory of social relations. Rather, the duty to contribute accrues only to those who are capable of contributing. Most people thus reject a narrow view of reciprocity that demands actual contribution as the price for cooperation and assistance in favor of a code of economic redistribution that embraces a broader notion of *conditional* reciprocity.

The principle of conditional reciprocity addresses head on the problem of individuals who, by virtue of their meager abilities or incapacities, are not invited to participate in voluntary economic exchanges and can make no net contribution to the social surplus. It also has something to say about the vexed question of the terms of exchange by suggesting what might count as a sufficient contribution to warrant an entitlement to public resources and collective support. The short answer on both counts -- albeit one requiring further elaboration for real

¹² For more details see discussion of voter surveys and other data on popular views of welfare and redistributive programs, in Wax, *Rethinking Welfare Rights* and sources cited therein.

world application in myriad circumstances¹³ -- is that the duty to contribute attaches only to those who are able to expend productive effort, and only to a degree that is reasonable in light of the person's abilities and endowments as well as social practices and conventions relating to work. There is a general consensus that the disabled, the young, and many of old are entitled to at least partial support from the public because they are dependent through no fault of their own.¹⁴ Individuals not falling into these categories must abide by the conventional expectation of full-time effort in the labor market. In other words, everyone else is expected to work for a living unless they have a special reason to be exempted. This expectation is consonant with widespread popular support for the moralistic distinction between deserving and undeserving recipients of public aid, with desert determined by whether someone contributes as much to his own economic support *as he reasonably can*. Voluntary noncompliance with these expectations defeats entitlement to public help. Involuntary noncompliance preserves it.

I have speculated elsewhere that the widespread unwillingness to assist individuals viewed as depending unnecessarily on public resources represents a modern expression of innate or learned psychological attitudes with widespread currency across human societies.¹⁵ Those attitudes evolved to help facilitate the development of systems of reciprocal aid during remote periods of human history. I speculate that evolution favored individuals able to form stable

¹³ See discussion *infra*.

¹⁴ For data supporting this picture of popular attitudes, see Wax, *Rethinking Welfare Rights*, 63 *Law & Contemporary Problems* Spring 2000/Winter 2001. The case of the elderly is more complex. Despite the ability of some elderly people to support themselves through work, they are generally viewed as entitled to a period rest after a prolonged lifetime of labor.

¹⁵ *Rethinking Welfare Rights*, *supra*.

“insurance” collectives designed to assist community members in times of emergency or distress. In the absence of a centralized authority to collect resources from the group by force, the stability and cohesion of such arrangements would depend on a strong norm of reciprocity that demanded contributions from able-bodied citizens, reserved aid only to victims of bad luck, and punished opportunism. This account rests on the assumption that participating in successful collectives of this type, although ultimately more beneficial to some members than others, actuarially enhanced the “fitness” of all members of the group.¹⁶ On this assumption, the model predicts that evolutionary pressures would favor the development and retention of the moral sentiments needed to sustain the cohesive norms upon which these arrangements depend, including a strong antipathy to “freeloaders.” The theory is that the desirability of erecting systems for mutual support against misfortune, and the need to guard against freeloaders that threaten to undermine the stability of such ventures, has led to the development of an ethos of conditional reciprocity that incorporates a strong antipathy to those who depend unnecessarily on public support and that sharply distinguished between those who can pay their own way and those who cannot, and are permitted to depend on others for sustenance.

This distinction, although fairly precise in the abstract, leaves many issues unresolved in practice. As noted, conditional reciprocity does dictate a fairly definite stance towards the profoundly disabled and the abjectly dependent by recognizing clear collective obligations to those who, through no fault of their own, will never will be able to generate any significant resources

¹⁶ Although I attempt to show that this assumption probably holds on a straightforward individual fitness paradigm, it might also be possible to analyze these arrangements using more sophisticated models of group fitness, or group-enhancing altruistic behavior. See, e.g., Sober and Wilson, *Unto Others*.

for themselves. By attaching the condition of involuntariness, an ethos built on the distinction between the deserving and undeserving finds a place for those who would appear to be outside the circle of cooperation and exchange *without* giving up on the core universal obligation to contribute to others' well-being or to joint social product, which lies at the heart of the concept of reciprocity. But establishing the understanding that conditional reciprocity does not require a positive contribution from everyone -- and accepting that certain persons will be dependent on the rest of us at the extremes -- does not come close to resolving many key questions that might arise about what a system built on conditional reciprocity *does* affirmatively require. The terms in which a principle of conditional reciprocity is expressed, both by ordinary people and by more sophisticated theorists, are inherently ambiguous.¹⁷ The precepts that people should work if they are able, or that people who receive benefits should make contributions if they can, beg many questions about how to define "work" and about what qualifies as "making a contribution." Specifically, do we adopt a notion of work that looks to the effort the worker expends, the "disutility" or unpleasantness he suffers, the sacrifice he makes, or the value or benefit he produces for others?¹⁸ Or should we focus on whether the work or contribution produces some kind of value desirable or beneficial to others? The answers are complicated by the fact that the ability to work or work productively is not a matter of all or nothing. There is also the question of how much weight to place on non-market measures of value in preference to market-based criteria. A person might be able to engage in effortful or productive activity, but be unable to

¹⁷ See, e.g., William Galston, "What About Reciprocity," in *Boston Review* Dec. 2000/Jan. 2001 page 9 (response to Phillippe Van Parijs, "A Basic Income for All.")

¹⁸ See, e.g., Joel Feinberg, *Doing and Deserving*.

perform a job available in the paid economy. He may not be able to command a sufficient rewards on the paid labor market to support himself and his dependents, or he may labor at activities that are normally performed outside the market (such as family care and domestic work).

Alternatively, a person may elect to “work” (in the sense of expending positive effort), but not in a way that appears to benefit others or that produces what others value. Consider, for example, the third rate artist who chooses to spend all day in his garage laboring mightily over paintings that no one wants. How does conditional reciprocity deal with these situations?¹⁹

Addressing these situations is essential to putting reciprocal insights to work in designing programs for the real world. The remainder of this essay will be devoted to such real world programs. It will critically examine features of the American social welfare system, and especially recent reforms introduced by the enactment of the 1996 Personal Responsibility and Work Opportunity Act, in light of the principles of conditional reciprocity articulated above. The essay will argue that, although the policies in place go some distance towards vindicating reciprocity principles, more could be done to square the system with these ideals. The government should provide more generous work subsidies for low-wage workers and better care for children of the working poor. While retaining work requirements, it should deliberately modify those requirements to accommodate the demands of parenthood. It should extend the five-year lifetime limit on welfare payments for selected recipients while continuing to make public support conditional on performing work of some kind, including, as a last resort, publicly created “workfare” type jobs. It should modify pre-existing in-kind benefits programs that provide

¹⁹ For more on these issues, see Wax, *Something for Nothing: the Liberal Case Against Welfare Work Requirements*, work in progress (on file with author).

housing and food assistance more explicitly to favor workers over non-workers. It should stress and expand funding for flexible and creative programs, like transportation loans and assistance, that help workers obtain and keep their jobs. Finally, it should establish minimally adequate health benefits for employees and their families.

The fundamental idea behind a reciprocity-based welfare system is that assistance is owed to those who contribute if they are able and to those who fail to contribute if they are not. Because people differ widely in their capacity for self-sufficiency -- and because many low-wage workers earn too little to support themselves -- this principle amounts to recognizing the community's duty to make up any shortfall between what persons can command on their own in the market or through private arrangements and an amount sufficient to support a minimally decent standard of living. In effect the government undertakes to act as surety for a basic standard of living on condition that the "insured" make a reasonable effort to contribute to their own self-support through some kind of work or ally himself with someone who agrees to support him.

As noted, the rule as stated tracks the traditional distinction between the deserving and undeserving poor without resolving all questions about who deserves assistance and how much. The centerpiece of such a system must be welfare work requirements for the "able-bodied" -- that is, for those who are capable of performing tasks in the paid economy. But this definition suggests an immediate line of attack: If there is significant structural unemployment -- that is, if there are just not enough jobs to go around²⁰ -- then is it not unfair to throw everyone who is not working off the roles or to hold everyone to the demand for work as a condition of receiving

²⁰ Phillip Harvey, Responses to Unemployment paper

benefits? And even if there are jobs available, what if many do not qualify for those jobs due to inadequate training and education or lack of talent? Finally, what about mothers of small children? Do they belong in the category of the “able-bodied?” Are they not “working” enough to discharge their obligations to the collective? Decisions about how to structure actual benefits programs requires some resolution of these questions is required.

The first objection based on structural unemployment is indeed weighty even within the terms of the reciprocity paradigm itself. But it does not follow from the existence of some residual unemployment in the economy that work requirements should be abolished. As long as there is reason to believe that many persons on welfare really could do more to support themselves, work requirements can work to vindicate reciprocity principles. The job market under welfare reform functions like a game of musical chairs: as recipients scramble to comply with new demands by seeking employment, more and more obtain jobs and more jobs are filled. By hypothesis, some few persons will eventually end up without jobs, but it is impossible to know who those people will be at the outset of the game. Imposing meaningful work requirements after decades of failure to do so starts the music. Only after a many rounds are played and all seats are filled will it become clear which players are left standing. The problem is that the reformist pressures that cause the game to be played in earnest seem essential to sorting this out. The “undeserving” cannot be effectively wrung from the system without playing a game that can only end with some unfortunate stragglers left seatless. Those stragglers cannot be regarded as “undeserving” in the sense that *someone* must be left behind. The paradox is that, as the process accomplishes its purpose, the system becomes less and less fair to the “hard core” of those remaining. This suggests that, depending on economic background conditions, welfare work

requirements, although consistent with reciprocity norms up to a point, may stand in tension with them over time. When we arrive at the point that the only people left on the rolls are those who, despite repeated threats of loss of benefits and apparent good faith efforts, are still not complying with work requirements, it will become increasingly difficult to maintain those requirements for all seemingly “able-bodied” individuals. To be sure, the poor relief provisions of the welfare reform statute, Temporary Assistance for Needy Families (TANF), do permit states to exempt up to 1/5 of its caseload from work requirements and from the 5-year life-time limit on federally funded benefits,²¹ but only in cases of “hardship” or domestic violence. States are not required to make use of these safety-valve exemptions, and only some invoked them for work requirements. Because lifetime limits on benefits are yet to kick in for most States, it remains to be seen whether and how States will elect to take advantage of the 20% rule for time limits by exempting their most recalcitrant, resistant, or unfortunate cases. If some core of the welfare caseload, despite reasonable efforts, seems unable to obtain and hold a job for any sustained period, it can be argued that the conditional reciprocity norm requires that some provision be made for those individuals by exempting them from strict time limits. Maintaining the integrity of the reciprocity ideal requires that the exempt population consist only of those who are truly unable to work despite best efforts. The task of insuring that the exempt “deserve” their exemption will always be difficult and prone to error. Thus, although such exemptions may be necessary, their existence will always threaten to undermine the credibility any work-based scheme, both for taxpayers who fund welfare and for recipients who must decide how seriously to take its requirements.

One possible solution to the time-limits problem would be to permit States to “stop the

²¹ See Wax, Rethinking Welfare Rights. On 5-year limit, see 42 U.S.C. 608(a)(7).

clock” on the five-year federal lifetime limit while individuals are working and receiving benefits simultaneously, as often occurs under generous state earnings disregard rules.²² This suggestion is appealing from the point of view of reciprocity: individuals who exert a reasonable effort within the workplace are by definition fulfilling the requirements of a conditionally reciprocal scheme. The quid pro quo for that effort is enough support from the government to bring the person up to a minimally decent standard of living. The support could take the form of a cash welfare check or “subsidy”, suitably scaled down to reflect the person’s own work contribution. The payment would continue indefinitely as long as the person was in need despite putting in a substantial work effort. In effect, the five-year lifetime limit on “welfare” would only apply to money received while the beneficiary was *not* complying adequately with some kind of welfare work requirement. Compliance would establish a reciprocal basis for some kind of welfare assistance.²³

One problem with this proposal is that it effectively seeks to establish a permanent subsidized or supported work regime for former welfare beneficiaries. But people who are trying to satisfy welfare work requirements or leave welfare altogether are not the only ones in need of income supports. Some persons who have never been on welfare earn just as little as those who are making the transition from welfare to work, and it is unfair to subsidize the latter indefinitely by tolling the clock on welfare time limits, while ignoring those who cannot take advantage of welfare-based work subsidies because they have never been on welfare. The solution to this is to establish a unified scheme that draws in everyone who makes an inadequate income despite

²² See New World of Welfare Conference, Washington DC Feb. 1,2 2001.

²³ Alternatively, states could effectively stop the federal clock during periods of subsidized work by using state funds to support welfare-to-work transitions. (Does Indiana do this?)

something like full-time work effort. Either we should expand welfare to allow everyone with a substandard wage to join the welfare-as-perpetual-work-subsidy bandwagon, or we should continue to view welfare plus work as a limited, transitional stopgap and create a non-welfare based, comprehensive, supported work scheme or set of program, such as a negative income tax or wage subsidies, which are designed to boost the earnings of the lowest wage workers over the long haul.

The discussion so far prompts a closer examination of the question of what it means to be “unable” to work. Does it mean that one cannot get hired in the current environment, or that one lacks and is unable to obtain the skills necessary to get hired? A related objection to work requirements and time-limits -- that many of the nonworking poor, although seemingly capable of performing productive tasks, just won’t be hired into the jobs employers need doing -- requires a more complex analysis within the reciprocity framework. One way of looking at this problem is as a variation on the theme of structural unemployment, but with an emphasis on worker-job mismatch rather than just the sheer lack of enough jobs to put everyone to work. But this raises the question of why this mismatch exists. Why do some jobs go begging when there is a residual army of unemployed? Can individuals be held responsible for this, or is it a fact beyond their control? Much depends on how we define “able-bodied.” Persons without obvious physical or mental disabilities seem capable of engaging in *some kind* productive activity -- that is, they would appear to be able to create economic value by dint of efforts they exert. Although persons may seem perfectly able to exert effort to perform productive tasks, that does not mean that they are equipped to “produce” on the job market as it actually exists. This discussion shows that terms like “productivity” and “able-bodied” are ambiguous. These terms can be use to refer to the

capacity to generate gross output without regard to the costs of producing that output, or to net output of work taking into account the cost of making that work possible. Alternatively, they can refer to output and effort without regard to whether the products benefit anyone else. Some people's efforts don't yield much of value or don't yield enough to make it economically feasible to employ them in actual jobs at mandated levels of compensation or even regardless of level of compensation.²⁴ This may be due to lack of ability, intellectual or otherwise, or for reasons related to workers' character, habits, demeanor, or behavior. Intellectual and other forms of raw ability can be regarded as fixed endowments for which individuals are not responsible, but can also be viewed as attributes that are developed, up to a point, through effort and wise choices. On the former view, persons who cannot fill available jobs because of deficiencies in these endowments should arguably be treated the same way as those who are "disabled" in more familiar ways. In other words, low ability should be assimilated to "disability." Our resistance to such an equation may relate to the difficulty of distinguishing low ability from the consequences of the individuals' past or present failure to develop whatever potential abilities they possess. It is always possible to ask whether someone is "unable" to do a particular job -- or any available job -- because of raw deficiencies in talent or intellect, or because of the unwillingness to develop potential in ways that would enhance employability. The response to this difficulty, and the moral hazard it creates, is to refuse, at least formally, to excuse those with "mere" incompetence from

²⁴ Under ideal neoclassical theory, the wages offered to low-productivity workers should sink to reflect their value to the employer. There are many reasons, however, why this might not happen, or why low-productivity workers might not enter the labor market even if wages were lowered -- reasons that stem from labor market deviations from the ideal and from the distortions introduced by government regulation. On the problems of low wage labor markets generally, see Edmund Phelps, Rewarding Work.

contributing through work unless their deficits are extreme to the point of representing a well-defined and medically recognized deficit, such as mental retardation or a psychiatric disease.

A second difficulty concerns expectations for those who exert their efforts outside the paid economy -- especially mothers of minor children and single mothers with no reliable source of private support. The treatment of mothers under a system governed by principles of conditional reciprocity is extremely complex. There are several issues that need to be resolved in deciding whether or to what extent reciprocity principles demand that mothers work in the paid economy, that they provide all or most of the support for themselves and their children, or that they be viewed as entitled to substantial or complete assistance from society as a whole. The first issue is the extent to which women's effort as mothers, albeit exerted outside the paid labor market, should be regarded as discharging reasonable work requirements that trigger reciprocal obligations on the part of society as a whole. Much has been written, especially by feminist scholars, about society's obligation to support women's caretaking function,²⁵ but the precise basis of this obligation is unclear. To be sure, childrearing is "work" in the sense that it requires the exertion of effort on the part of the caretaker and confers some benefit on the child. But that does not answer the question of whether society is obligated to pay full freight for motherhood, or whether mothers' obligations to exert reasonable efforts towards self-support have been discharged.

Support for single mothers is often justified by the assertion that all of society benefits when women devote themselves to the caretaking function. In effect, society is only paying for

²⁵ See, e.g., Eva Kittay, Love's Labor; Martha Fineman, The Neutered Mother; Shirley Burggraf, The Feminine Economy and Economic Man; Dorothy Roberts; Martha Minow; Joan Williams.

what it gets. But, as I have argued elsewhere,²⁶ that rationale is not sufficient to justify an obligation of complete support for caretakers and their children, because most of the benefits of the effort expended by parents and caretakers redound to the benefit of private individuals -- that is, the parents themselves and the children. The collective enjoys only a small part of the payoff from reproductive and caretaking work in the form of the public good of well-behaved, law abiding, productive citizens. These positive externalities, which are not captured exclusively by the individual parents and children in the form of consumption value and human capital but are enjoyed by all, should by rights be compensated by the collective.²⁷ But that reasoning justifies, at most, a modest and partial subsidy for child-rearing. Considerations tied to the true “exchange value” of the benefit received cannot justify society paying the full freight for single mothers and their children.²⁸

But conditional reciprocity does not demand that the person who is receiving help from the group actually return something in kind that is equal to the value of collective support. On the contrary, it is assumed that some will contribute more to the common pool of resources than they receive and vice versa. The whole point of the welfare system is to smooth out such differences by insuring that those who are unable to provide enough for their own needs are brought up to the baseline by the group, so long as they comply with the requirement to make reasonable efforts to contribute to the social product. But on that view, how should the issue of single motherhood be

²⁶ Wax, *Rethinking Welfare Rights*; Villanova piece; Yale J. On Regulation piece.

²⁷ But see Rakowski, *Equal Justice* (suggesting that society owes no compensation to parents for producing the next generation, because these benefits are thrust on society rather than requested).

²⁸ Wax, *Villanova L. Rev.*; Wax, Yale J. On Regulation pieces.

approached? Any attempt to answer this question must be made in light of the understanding that the standard societies set for a sufficient contribution to satisfy the requirements of conditional reciprocity is not completely arbitrary. Rather, the duty imposed upon the “able-bodied” is to strive for self-sufficiency. But if a person chooses an activity that causes her to fall shorter of that goal than if she applied her efforts in a different direction, then society would do well to judge that effort insufficient. Surely a society is under no obligation to support a third-rate artist who chooses to spend his days churning out paintings in his garage if those paintings are of little value to anyone but the artist himself, as evidenced by the fact that no one wants to buy them. Perhaps the artist might be regarded as discharging his duty if the stream of third rate paintings is the best the artist could do, since conditional reciprocity demands only that someone contribute as much as he is reasonably able. But most artists can do more to support themselves either by dividing their efforts between art and paid employment or by abandoning art altogether. In general, conditional reciprocity does not recognize a collective obligation to support members’ decisions to engage in any work of their choosing if that choice will make them dependent on group support and another position available to them would not. To be sure, almost everyone could work harder and generate more income than they already do. And there is no generally held expectation that people make as much money as they can regardless of the effort or exertion involved. But there is no inconsistency in the demand that people do more for themselves only up to a point, because the group is naturally more concerned with those who seek public subsidization than with those who do not. The rule appears to be roughly that persons should strive for self-sufficiency if the effort required is within the realm of reason, with the standard for reasonable exertion informed by conventional expectations and by what most people do. And the

customary expectation is to make the most palatable of available choices that permit the attainment of economic independence even if that course otherwise would not be the most desirable, so long as it is not overly demanding.

Why might societies tend to adopt self-sufficiency as a strong baseline norm? To apply a more lenient rule would invite everyone to choose the most desirable and pleasant form of employment regardless of compensation on the expectation that the group would make up the difference. But if everyone accepted that invitation, the difference could not be make up. Since insurance collectives must be at pains to avoid this destabilizing moral hazard, it comes as no surprise that societies will regard with suspicion or even hostility anyone who seeks voluntarily to exempt himself from the baseline expectation of economic self-support.

To summarize, although a strong dose of convention governs the determination of what counts as enough exertion or contribution to give rise to a reciprocal obligation for assistance, the level that is set is not completely arbitrary. The previous analysis suggests why self-sufficiency (that is, the generation of enough resources to obviate the need for help from the group) will always serve as a powerful normative baseline from which deviations will be viewed with disfavor and will invite scrutiny. Nonetheless, economic conditions and social custom will always color the determination whether sufficient efforts towards the goal of self-sufficiency have been exerted in any given case. It will matter how hard most people actually work within a given society at a particular time, which will in turn depend on how hard most people *have* to work to attain independence. Thus, the willingness to help people in different populations and with different characteristics may vary with time and circumstances.

The forgoing analysis sheds important light the question of public support for single

mothers. Although the expectation of self-sufficiency has always been the starting point, there was a time when motherhood alone exempted a woman from that expectation. The reasons for that exemption were rooted in custom, law, practice, and social organization. Women were viewed as inherently dependent and therefore no women were expected to be self-supporting; all were the charge of some man. If private dependency failed, the state took over. But that set of attitudes has changed radically, and so have the conditions that went with them. The opportunities for women to generate significant resources in the labor market have greatly expanded, and with them the practice of self-support among mothers and non-mothers alike. Indeed, today many single and married mothers in all social classes either support themselves or make significant efforts in the paid labor market to contribute to their family's support. Those facts will inevitably affect society's attitudes towards assisting single mothers with children. But that shift is not a mere arbitrary contingency. Under a reciprocity paradigm, the change in expectations for women and mothers in response to social practice is essential to the maintenance of horizontal equity and the discouragement of free riding, which are both central elements of a reciprocity-based structure. Within a cooperative group that has pledged mutual support for all members on condition that each person exert a reasonable effort on his own behalf, the fact that people routinely attain a higher degree of self-sufficiency and request less assistance will necessarily give rise to the expectation that other similarly situated persons do the same. To permit those with similar capacities to make very different contributions to self-support is to license the kind of mutual exploitation that violates the fundamental reciprocity paradigm. That paradigm goes a long way towards explaining the present uneasiness with allowing some mothers to depend almost entirely on public support while others with similar attributes succeed in

maintaining greater independence.

But the explanation for the present unwillingness to offer comprehensive support for single mothers and families lies rests not just on popular expectations about work and self-sufficiency. It also stems from understandings about parenthood and reproduction in our society. The key distinction here is between choice and chance: conditional reciprocity recognizes an entitlement to group assistance if the need for help stems from events or forces beyond the individuals' effective control. But that principle gives rise to a series of questions. Is it fair to assume in most cases that becoming a mother is a matter of choice rather than luck? If parenthood should be viewed as a choice, and if having children makes it difficult to earn a living by interfering with work or by impeding educational training for work, is that something for which society may fairly hold a person responsible? And if so, does the attachment of responsibility entail a denial of public assistance to single mothers in need? Questions of timing are often critical here. To put it more precisely: recognizing that past choices to have children can defeat present efforts at self-support, does the assignment of responsibility for those past choices require the denial of present public assistance, despite the potential recipients' present reasonable efforts?

The long turning of the tide away against willingness to support single parents goes hand in hand with a growing consensus that the decision whether or not to become a mother is increasingly under the individuals' control. Birth control and abortion have become safer, increasingly available, and more reliable. And more and more women are actually exerting such control, as evidenced by their decisions to delay or limit motherhood or to forgo motherhood entirely. Moreover, not only is there reason to believe that choices in this area are often motivated by pragmatic concerns such as lack of financial resources, the inability to provide proper care due

to competing obligations, or the paucity of familial supports, but taking these considerations into account is considered in many quarters to be the socially responsible thing to do. Against a set of background conventions and practices that recognize the need for “hard choices” based on the ability to provide well for children and that locate responsibility for reproductive decisions increasingly with the individual, the request for public support as a standing entitlement for parents becomes more and more difficult to square with the idea of public assistance as insurance against bad luck. It generates too much cognitive dissonance for society, in allocating resources through redistributive social policy, to suspend the conventional understandings of responsibility for parenthood by attributing to chance what is viewed for most people as a matter of choice.

It is interesting, however, that although single mothers may be viewed as largely “responsible” for their predicament, this has not resulted in the denial of all help to single mothers. As noted the constraints imposed by parental responsibilities may undermine the ability to achieve self-support through paid work, despite reasonable efforts. Parents will find it difficult to work long and irregular hours or to engage in protracted periods of training. On a strict view of the boundaries between individual and collective responsibility, the public would have no duty to mitigate present disabilities or inequalities -- including parental disadvantages on the labor market -- that are traceable to *past* choices with present uncorrectable consequences.²⁹ In allocating responsibility, why should timing matter?

Nonetheless, the political consensus today would appear to be that this position regarding the present consequences of past choices is unduly harsh. As a practical matter, we seem willing

²⁹ See, e.g., Elizabeth Anderson, Ethics essay on “Luck Egalitarianism”; Ronald Dworkin, Sovereign Virtue, pp. 287-291; Eric Rakowski, Equal Justice.

to assist single mothers even if the amount of help they need, or the fact that they need any help at all, is a function of unwise past choices. And that willingness to disregard the past, and to look exclusively at present self-help efforts, extends beyond the case of single mothers to others who have made earlier “mistakes” or imprudent decisions that have added to their present needs or to their lesser currency on the job market. But a focus on the present and future conduct of beneficiaries of assistance is not necessarily inconsistent with principles of conditional reciprocity. Indeed, that stance may in some cases be more consonant with the paradigms of group cooperation.

Although reciprocal systems employ notions of responsibility, luck, and agency, the goal is not to enshrine the distinction between choice and chance for their own sake or to invest that distinction with talismanic significance divorced from real-world consequences. Rather, those concepts should be seen as operating instrumentally to cement cooperative arrangements for protecting group members from misfortune and temporary hard times. The pertinent question to ask in trying to understand how reciprocal norms operate is: how did these collective arrangements arise and maintain themselves over time. The quest is for rules that will appeal to people as conditional cooperators -- that is, as persons who are willing to do their part so long as they are assured that others will too. But, as game theorists who have attempted to model reciprocal systems have suggested,³⁰ stability does not necessarily require the adoption of a timeless rule that shuts out persons forever after some temporary failure to conform to cooperative expectations. The practical requirements of a workable system of conditional reciprocity can sometimes be satisfied without taking such an inflexible view of responsibility.

³⁰ See, e.g., Robert Sugden, The Economics of Rights, Cooperation, and Welfare;

Models of reciprocal cooperation recognize that these arrangements play themselves out on repeat rounds, in which the willingness of group members to cooperate with others often depends on an opposing player's most immediate moves rather than actions remote in time. Someone who defects or acts irresponsibly at one point may change course and decide to cooperate in the present or future. Players reserve the right to change their strategies, or players make mistakes. If the goal is the widest possible productive participation in a cooperative venture, it may sometimes be wiser to incorporate opportunities for "second chances," "fresh starts," forgiveness, or redemption into the game than to adopt a rule of permanent ejection for past sins. Forgiveness may make sense, for example, if past infractions do not doom everyone to dependency forever. If past norm violaters retain the capacity to make positive contributions, it may benefit the group to permit them some opportunity to demonstrate their willingness to do so. If everyone will sometimes benefit on average or in the long run from a rule that selectively ignores past missteps in favor of attention to present and future willingness to cooperate, then reciprocal systems may sometimes allow more flexibility than a strict adherence to the logic of choice and chance would require.

How might "second chances" and "fresh starts" work within a system of conditional reciprocity? Such a system will largely be largely forward-looking.³¹ It will take each person as it finds them -- which will mean, at times, as diminished in their capacity for self-support by irresponsible past choices. It will recognize an obligation to help each person achieve a decent standard of living, but only if the individual shows a willingness to discharge her duties on an

³¹ A purely forward-looking system also has the distinct advantage of relieving those in charge of administration of the cumbersome and inherently error-ridden task of determining the precise nature of past circumstances leading to present predicaments.

ongoing basis. So, if a person finds herself unemployed because out-of-wedlock motherhood has led her to drop out of school, society will not wash its hands of her. But neither will the duty to help be absolute. Rather, it will be made to depend on a willingness to behave in a responsible manner from here on in. This includes, at a minimum, the willingness to undertake substantial self-help efforts while assistance is provided. It may even include a willingness to refrain from bearing more children while receiving public assistance, although this demand might be problematic if the consensus is that parents who work are entitled to social resources to make up the difference between what they can earn and what they need. The scenario of repeated childbearing out of wedlock raises the question, under a forgiveness rule, of how many past mistakes, resulting in diminished capacity, societies are bound to overlook. There is probably no definitive answer to that question: different societies must decide that case by case, with the determination once again informed by conventional understandings and dominant practices. In general, however, the least problematic claims will be advanced by those with inabilities and disabilities for which they are entirely blameless. The strict rule that need must be due to bad luck may at times be suspended, because a society may choose to overlook past irresponsibility in favor of encouraging ongoing cooperative conduct in the future. And societies may forgive repeated misfeasance up to a point, with the tendency to run out of patience as infractions accumulate.

To sum up: any political collective committed to redistributing resources according to reciprocal ideals must strive to accept a number of basic understandings about how such a system will function. First, the government cannot run welfare programs without making numerous convention-based judgments and without setting benchmarks that are inevitably grounded in how

most ordinary people are expected to behave and how they do behave. Among the conventions that should be honored is the expectation of economic self-sufficiency. In other words, self-sufficiency should be publicly recognized and embraced as a normative ideal from which adult individuals are allowed to deviate only for good cause. Second, although some degree of moral hazard is inevitable, the system should be designed to minimize it. The rules should be directed at reducing the temptation to exert less than reasonable efforts to contribute to the social product. Third, although some initially disadvantaged persons will exceed reasonable expectations by dint of exceedingly hard work, that standard should not govern for all. The temptation to require heroic efforts should be resisted as an unrealistic counsel of perfection, especially in light of the trend towards greater family fragmentation in society overall.³² Fourth, it must be assumed that the paid economy fails to provide “living wage” for some number of those who work reasonably hard. Fifth, full-time year-round work should be regarded as a “reasonable effort” for most, but something short of that should be the standard, at least initially, for those who are so unskilled or inexperienced that they have chronic difficulties obtaining and holding a job. Sixth, parenthood (especially when children are young) should warrant some reduction in the amount of labor market effort that suffices to establish an entitlement to assistance, and account should be taken of parents’ special difficulty in holding jobs that require long and irregular hours and sudden changes

³² Lawrence Mead celebrates the successes of some recent immigrant groups, whose family members work long hours, and engage in prolonged self-sacrifice, and achieve a high degree of family cooperation and stability. This model of hard work and family cohesion is very appealing, and it can be argued that failing to accept this model as the norm encourages the family breakdown and dissension that plagues less successful groups. Nonetheless, the fact remains that this is not currently a realistic model for many of the non-immigrant disadvantaged. Welfare programs need to take some realistic account the needs of fragile families and single parent families, since these now predominate among the poor, while finding other ways to encourage greater family stability and loyalty.

in schedule. Seventh, workers should never receive less help and fewer privileges than non-workers and should sometimes receive more, unless the non-workers in question are so disabled for recognizable reasons that the expectation of employment of any kind is simply unrealistic. Finally, the government must recognize that the need for help will not be all or nothing. *Partial* public support may often be appropriate. Indeed, partial supplementation and assistance will more often be the rule than the exception. A paradigm committed to providing a social minimum conditioned on an obligation to contribute productively must necessarily recognize quite diverse differences in individual ability to generate adequate income through reasonable efforts under existing economic conditions. Not only will capacities and circumstances vary widely, but fluctuations in labor market opportunities will continually determine how much individuals can contribute to their own sustenance. This implies that policies should be directed at creating programs that are flexible in allowing the government to make up the shortfall between what people can do for themselves and what they need to survive in reasonable dignity.

Given these basic understandings, the challenge is create programs that permit the government to fill the gap between what people in different circumstances can reasonably do for themselves and what they need to live decently. Work expectations and work requirements are the obvious centerpiece. But a wide variety of “work supports” should surround these. Work supports can include in-kind assistance or benefits, tax relief, wage subsidies, and programs to help recipients obtain, retain, and cope with employment.

Perhaps the two most important forms of in-kind assistance are medical care and child care. For decades, efforts to move significant numbers of people from welfare to work were hobbled by disincentives created by the loss of medical and child care assistance, which were

sometimes made available on more generous terms to wholly dependent welfare recipients than to the working poor. The inversion of that order of support -- as it would operate in conjunction with strictly enforced work requirements -- should be made a feature of any welfare system grounded in reciprocal ideals. Although eligibility for Medicaid has been expanded recently to cover some of the working poor, many workers on the lower rungs of the employment ladder lack adequate medical benefits. The solution to this problem is not obvious, because private medical insurance is tied to employment. Employers are not required to cover many low wage or part-time workers, and some who are offered insurance cannot afford it. Creating a smooth interface between government-mandated insurance schemes for low-wage workers and existing private insurance for better-off workers is often difficult because “notch” effects and phase-outs create perverse incentives. A comprehensive recasting of the medical care system as a whole may be necessary in the long run. But the economics of health insurance suggests that subsidized medical benefits will be a key part of any effective scheme of “supported work.”

Another important aspect of supported work is child care for the working poor. Because most low-skilled mothers of young children can't keep jobs without some kind of childcare assistance, welfare reform inevitably pushes government into the childcare business. The welfare reform statute makes some provision, through a patchwork of programs and funding methods, for the care of the children of workers who might otherwise be on welfare. But implementation has been halting and many of the funds go unused for lack of initiative, know-how, or adequate supply.

The idea of a greatly expanded, comprehensive national program directed at upgrading care for the children of low-wage workers fits well with the goals of a welfare system grounded in

a robust notion of reciprocal obligation. Specifically a commitment to improving the quality of care that poor children receive comports with popular attitudes about the deserving and undeserving poor. Although assisting the able-bodied offends our sense of justice, so does indifference to those who suffer through no fault of their own. Children of the poor are not responsible for their dilemma: although adults can be undeserving, children inherently cannot be. By insisting that most mothers work, we honor the conviction that persons should try to support themselves before calling upon public help. But by devoting resources to the children of the poor, we recognize our duty to those who cannot be expected to come to their own aid. Indeed, welfare reform offers a golden opportunity for our society to advance two worthy goals simultaneously: encouraging poor mothers to work, and dramatically improving the quality of the care that blamelessly poor children receive.

A recent study by researchers at Yale and Berkeley³³ reveals that thousands of poor toddlers are being placed in daycare in the wake of welfare reform as single mothers move off welfare and into the workforce. Unfortunately, the quality of the childcare these children receive is abysmal. Many small children spend countless hours in front of the TV or wandering aimlessly with little adult contact or supervision. Although these daycare experiences may not differ much from life at home with mom -- and thus may not exacerbate well-documented deficits in school readiness that plague this unprivileged population -- they certainly do little to improve the situation. Because, as noted, children can never be “undeserving,” efforts to improve the care they might otherwise get as an adjunct to enabling parents to satisfy their debt to the collective need not fly in the face of fairness concerns or principles of equity. For this reason, a massive

³³ See New York Times, Feb. 4, 2000.

national commitment to better childcare for children of workers with modest earning power is not an illogical next step in the progress of welfare reform.

To be sure, the issue of public help for poor children has never been free of complications. Because generosity to disadvantaged children inevitably benefits parents -- and sometimes parents whose choices have contributed to the disadvantage -- generous assistance for poor children will never square perfectly with holding parents to responsible standards of conduct. In particular, free childcare for the poorest workers has often been regarded as unfair to working parents who are not much better off. Unless a program is made universal up and down the income scale, "phase-outs" that create disincentives and unfairness as between persons very similarly situated will never completely disappear. But providing better childcare services in conjunction with enforcing work requirements under welfare reform mitigates potential inequities. Everyone who receives assistance is, by definition, a wage-earner who cannot otherwise make ends meet. And programs would ideally be expanded to assist as many wage-earners as possible, regardless of welfare history.

To be sure, any massive new public childcare effort must confront the many practical obstacles that stand in the way of delivering high quality childcare to poor children. The initiative would require States to enter a new and unfamiliar policy arena. Existing private and public services are inadequate, and governments have little experience with funding, supervising or running daycare programs on a widespread scale. State welfare bureaucracies must effectively manage federal funds and Congress must continue to appropriate enough money to do the job. Officials must make hard tradeoffs between enforcing high standards and maintaining a diverse and broad supply of care. Some effort should probably be made to wean poor parents from their

attachment to “family” daycare -- that is, childcare provided by untrained family or friends -- which studies have shown to be inferior to care in well-run group centers. Alternatively, officials should explore ways to upgrade the most popular family care settings without being overly intrusive. Finally, the public must not expect too much. Rather, it must recognize that better non-parental care for young children is not a panacea and that even an expensive initiative may not give poor children the start their middle and upper class confreres receive. All these are formidable challenges, but they can be met if there is a will.

One common objection to a generous expansion of childcare programs for workers is that, by effectively subsidizing paid but not domestic unpaid employment, it encourages both parents in two parent families to enter the workforce and favors working parents over traditional breadwinner-homemaker families. Also, it encourages single-parenthood by pledging the government to make that model economically viable. The first objection suffer from apparent tension between the background assumption that single mothers will enter the workforce and the desire to encourage married mothers to stay home. But even if those stances are not as irreconcilable as they seem,³⁴ these grounds for objecting to generous daycare funding are disingenuous in light of the inadequacy of wages for many male workers without a college education. Because it is almost impossible for families in this category to achieve self-sufficiency with one earner, the goals of family self-sufficiency and the encouragement of traditional family

³⁴ It might make sense to favor single mothers working full time and married mothers working only part-time or staying home on the theory that the latter will ordinarily have husbands who can supply income which, even if not completely adequate, will significantly mitigate the family’s dependence on the government. Single mothers will have no other source of income. On this view, parental time with children, although highly desirable, is not the first priority: economic self-sufficiency for the family unit is. Once that goal is satisfied, then the argument is that families should treat personal care for children as more desirable than the pursuit of additional income.

roles often cannot be reconciled in practice. To be sure, this assumes that the public cost of providing child care subsidies to two-worker families will be less than the public cost of supporting single-breadwinner families, which may not always be the case where the wife's earning power is low. But it is reasonable to expect that overall costs to the government will be minimized by providing childcare assistance to working families, since most families with more workers will need less public support than those with only one earner even when the cost of childcare subsidies are taken into account. As to the charge of encouraging single-motherhood, it is important to recall that the commitment to supporting single-parent families under the welfare reform model comes with significant strings attached in the form of a substantial paid work requirement. As any parent knows, that is a tough road to hoe, and one that is significantly less attractive than the option many pre-reform recipients expected, which was to function as a full-time mother at public expense. The notion that the government firmly committed to a reciprocal welfare system is making things "easy" for single mothers is strained at best, since those mothers must now confront the formidable logistics of holding down a job while arranging for childcare and transportation and enduring the anxiety of separation from their children for many hours each day. The challenges single mothers face in discharging their obligations place a built-in limit on the moral hazard traditionally associated with governmental support for single parents under the now defunct AFDC program. These requirements cannot be said to offer much encouragement to would-be single-parents. In any event, future demographic trends in out-of-wedlock childbearing may prove the best test of this proposition.

Other programs that fit in with a reciprocal paradigm for welfare policy include work-related income supports and tax breaks. Edmund Phelps, for example, has recently put forward a

proposal for subsidizing wages of full-time workers whose income falls below a generous subsistence minimum.³⁵ He proposes this program as an alternative to the minimum wage, which he believes harms the least skilled workers by pricing them out of the labor market. He believes the government should commit itself to making up the difference between the market wage unskilled workers can command and some reasonable “living wage,” with a sliding scale of supplements to minimize the perverse effect on wage levels that such a subsidy would be expected to create. Although wage subsidy programs like these are difficult to administer and are plagued with formidable practical difficulties,³⁶ they might nonetheless have some positive effect of signalling a willingness to make good on the promise that lies at the heart of a commitment to reciprocity in social welfare: that of guaranteeing a reasonable share of resources in exchange for a substantial work effort.³⁷

Likewise, the recent expansion of the Earned Income Tax Credit (EITC) is also in keeping with this commitment. The EITC program provides graduated refundable tax credits to workers. Benefits increase as earnings climb up to a level of income that is roughly \$13 - 15, 000 yearly, depending on family composition, and then gradually phase out. Although the EITC program is not without problems -- the phase-out discourages work and the marriage penalty is severe -- the

³⁵ Phelps, *Rewarding Work*

³⁶ For a detailed critique, see Anne Alstott, *Work vs. Freedom*, *Yale Law J.* (1998).

³⁷ Phelps proposes extending the supplement only to full-time workers, mainly to minimize the expected income effect of the supplement, which may cause some persons to work fewer hours. Arguably, however, this restriction is hard on those who choose to or are only able to work part-time, especially single mothers and women who function as second-earners. But it might be possible to modify the proposal to include more part-time workers under selected circumstances -- for example, for second-income part-time work.

offer of refundable tax credits (which effectively operate as an income supplement for many families) only to those who participate in the paid workforce once again represents a practical commitment to ensuring a minimally decent standard of living for those making a positive effort towards self-sufficiency.

Finally, welfare reform has made possible the creation of “work-enabling” programs that are designed to aid former welfare recipients in their efforts to find and hold jobs. For example, under the flexible block grant structure of the Personal Responsibility and Work Opportunity Act, some states have used federal funds for short-term emergency loans and for assistance in purchasing and maintaining commuter automobiles.³⁸ Because many jobs are not located close to poor neighborhoods, and because public transportation is often sporadic and unreliable, a private car can make the differences between success and failure on the job market. For those who have demonstrated willingness to help themselves by seeking and performing work, providing money to purchase transportation fits well with reciprocal ideals.

Although a full discussion cannot be undertaken here, other approaches that would square with an emphasis on reciprocal obligations might include: giving low income workers priority in qualifying for public housing aid, daycare slots, and enrichment programs for children; increasing the size of dependent or child-care credits for working families; creating public “last-resort” jobs for those who repeatedly fail to obtain or hold onto jobs available in the private market; providing subsidies for job training; and continuing to provide public support to those pursuing education beyond high school. Some of these programs are controversial, are difficult to implement fairly

³⁸ See, e.g., Alice Reid, *On the Road from Welfare to Work*, Washington Post, Feb. 2, 1999

and effectively,³⁹ or have been de-emphasized under the current federal scheme.⁴⁰ But the broad-based political support that reciprocally responsible structures often generate may provide the momentum for “selling” some of these programs to the public in future rounds of welfare reform. Moreover, the devolved structure of welfare reform offers the possibility of experimenting with new and creative approaches on a limited scale at the local level. Localism and devolution fits well with the understanding of social welfare as a reciprocal project that joins government and the disadvantaged in a productive partnership, since that project may best be realized through a flexible patchwork of programs that responds to varying individual circumstances. The period leading up to welfare reform has helped both recipients and governments understand that a rigid, one-size-fits-all approach to poor relief may not work as well as a system that can take into account market vicissitudes and individual needs. Those insights should continued to be extended by ongoing experimentation under the flexible mandate that welfare reform makes possible.

Finally, it is important to step back from specific proposals to consider some broader

³⁹ On public works programs and “workfare” type jobs, see, e.g., Matt Diller, *Working without a Job: The Social Messages of the New Workfare*, 9 *Stanford Law & Policy Review*, Winter 1998, 23-43 (equity issues); Richard Arneson article (emphasizing “displacement” effects); Ellwood, Kaus (stressing difficulties of dealing with poorly prepared workers); Stuart White.

⁴⁰ Under welfare reform, states are not allowed to consider university attendance as fulfilling work requirements, although they are not barred from assisting university students with their own funds. See Bloom, *After AFDC: Welfare-to-Work Choices and Challenges for States* (1997), 91-99; 113-116. Permitting persons to remain on welfare while attending university seems unfair to individuals who work to pay their own way through school.

Although the justice of government provision or funding of training for poorly skilled workers is often urged, see, e.g., Ronald Dworkin, *Sovereign Virtue* (chapter on welfare policy), previous efforts to provide training have not borne much fruit. For a critique of the effectiveness of governmental training program, see James Heckman, *The Public Interest* (suggesting that it would be either impossible or prohibitively expensive for the government to provide sufficient training to pull most people out of poverty). See also literature on success of “work first” rather than “training first” approaches.

questions that naturally arise from an emphasis on reciprocity as a principle that should guide redistribution. Should not the design of all redistributive programs, and not just those targeted to the poor, be scrutinized in light of this idea? Specifically, the logic of reciprocal obligation may force a rethinking of how our society responds to the problem of disability and how our approach to disability might be made more consistent with our approach to the non-disabled poor.

As already noted, central to the concept of reciprocation is the idea that society should commit to bringing all individuals up to a baseline level of well-being, provided they work reasonably hard. But in light the differences in skills and circumstances and the variation in ability to meet labor market demand, the degree of help needed to achieve minimum well-being will vary from person to person. Once again, the population will not neatly divide into those who should get global support and those who should get none. Rather, we would expect to see a sliding scale of assistance, tailored to each person's capacity to generate resources through reasonable exertions.

But on this view, there appears to be no reason to adopt radically different policies towards those who meet the conventional medical criteria of "disability" and those who do poorly in the labor market for other reasons. What both groups have in common is some degree of deficit in the skills or abilities that employers value and the market rewards. More specifically, there is no principled basis for distinguishing sharply between medical disability on the one hand, and inability or low ability on the other, as the source of the failure of a person's reasonable efforts to yield enough to attain economic self-sufficiency. To be sure, the common sense intuition is that conventional disabilities result principally from bad luck. In most (although not all) cases, affliction with a disabling condition is not something a person has brought upon himself.

Moreover, to the extent that medical disability is within a person's control, the moral hazard that attends disability is assumed to be less than for the kind of "inability" or "low ability" that make it hard to find and hold jobs. Most people will not inflict an unpleasant physical or mental limitation on themselves as the price for public support. Poor skills, on the other hand, seem more amenable to correction through self-development. This applies not just to the skills that depend most directly on intellectual firepower (the "hard skills" of technical expertise and job-related know-how) but even more so to the "soft skills" that seem to matter most to employers (such as punctuality, reliability, deportment, good manners and "good attitude").⁴¹

Yet leaving aside past failures of self-development, the fact remains that some workers are presently unable to meet employers' expectations for available jobs despite a strong desire to work and what appear to be good faith efforts to secure and retain employment. And many of the jobs that the least skilled workers can hold down do not pay enough to maintain self-sufficiency or support a family. Although persons who work at such jobs are in some sense employable and employed, they are not economically independent. They need public help to keep body and soul together. Given the background economic conditions that all workers face, it is not inaccurate to say that these workers, although seemingly "able-bodied," are the victims of an involuntary or unlucky inability or lack of ability to perform well enough to obviate the need for public assistance.

But this analysis begs the question of how this group is different from the category of persons classified as "medically disabled"-- a category that is excused from working altogether.

⁴¹ See, e.g., Philip Moss and Chris Tilly, *Stories Employers Tell: Race, Skill, and Hiring in America* (2000)

To be sure, the technical definition of an excusable disability in federal law today requires that a person be afflicted with a medical condition that prevents him from performing *any* job that exists in the economy.⁴² But in practice disability programs sometimes award benefits to persons who could hold down some kind of job.⁴³ Moreover, our system avoids administrative complexity by failing to recognize the category of partial disability,⁴⁴ which leads to some overinclusiveness. But perhaps the important point about policies towards the disabled is that disability benefits programs as currently structured are oblivious to the possibilities suggested by a different federal enactment that deals with disabled workers: the Americans with Disabilities Act (ADA). That statute requires employers to refrain from discriminating against disabled persons by offering them reasonable accommodations on the job -- which means accommodations that do not place an undue financial burden on employers. But that requirement contemplates that many disabled persons *can* work productively . Although they cannot perform the precise jobs offered in the labor market without some modification or restructuring, they can produce *net* economic value if employers make changes to meet their special needs. But that insight just raises the issue of why many of the disabled should not just be entitled to, but also should be *expected* to, work under those conditions. Which in turn gives rise to the question of which alternative comports best with reciprocity principles: excusing persons with physical impairments from working altogether because they cannot perform existing jobs as well as other people; or striving to engage as many

⁴² See SSI and OASDI statute.

⁴³ For example, the regulations under the SSI and OASDI programs contain listings of conditions for which persons are considered disabled per se.

⁴⁴ CITE -- see congressional etc. report.

people as reasonably possible in productive activities regardless of degree of ability or disability by making some changes to the work that they do. The latter would appear to comport better with the baseline expectation that everyone exert reasonable efforts towards self-sufficiency by striving to contribute *something* to his own support. The ADA seems to embody the assumption that under the right circumstances most people -- except the most severely afflicted -- can exert such an effort to good effect.

The centrality of reciprocity suggests the following principle: that society ought to expect virtually every mature adult, regardless of ability, to contribute productively to their his own upkeep and to the social product, but that this obligation carries the corresponding duty on the part of society both to undertake to secure for most people the opportunity to make that contribution, however modest, and to make up for any shortfall in self-sufficiency. The great majority of people with “disabilities” and low ability are capable of making some productive contribution. We ought to expect and facilitate those efforts. Perhaps we should move towards a scheme in which “supported work” is the rule rather than the exception for *all* persons who, despite reasonable efforts, are unable to support themselves regardless of the reason for that shortfall. In all cases, the need for assistance stems from essentially the same cause: a mismatch of the attributes of persons and the demands of the economy. Yet such conditions do not relieve the able-bodied poor of the obligation to make reasonable efforts. Why should they relieve the conventionally disabled? As the political scientist Stuart White has suggested, the reciprocity norm would appear to dictate “universal enforcement of a minimum standard of productive

participation.”⁴⁵ According to White, this means that “if we are going to insist that any one citizen satisfies reciprocity-based obligations in return for assurance of a minimum standard of living, than fairness requires that we apply the same logic to all citizens (or all productively capable citizens). It is patently unfair if I have to contribute for my living while you, no less productively capable than I, do not.”⁴⁶

A reciprocal social welfare policy would thus seem to dictate not only that all persons regardless of productive capacity exert some effort towards their own support, but also that all failures to achieve self-sufficiency despite reasonable good faith efforts should be treated alike. A unified approach provides no obvious basis for distinguishing between those with medically recognized physical and mental impairments and those who, through lack of intelligence of other types of “ability,” are unable to obtain or perform jobs that provide economic independence. On this view, a wide range of disabilities and inabilities would trigger supplementation of some kind, provided that the beneficiary “does his part” as best he can. Once again, this approach is most consistent with the recognition that the population does not divide neatly into those who need no assistance (because they are “able-bodied” enough to earn their own way) and those who need comprehensive support (because they are “disabled” and thus wholly relieved of any obligation.) Rather, the population exemplifies a continuum of greater or lesser abilities, inabilities, and disabilities. Although those deficits may prevent some from performing or competing for jobs that are actually on offer and others from earning enough to support themselves and their

⁴⁵ Stuart White, *Social Rights and the Social Contract*, 30 *British J. Of Political Science* 507, 516 (2000).

⁴⁶ *Ibid.*

dependents, they will rarely foreclose constructive or productive activity of some kind. Reciprocity norms may well entail some obligation on society's part to meet these individuals part way by insuring that they are offered a reasonable chance to contribute -- a chance that the unregulated labor market may not always provide. The Americans With Disabilities Act (ADA) can be viewed as embodying some acknowledgment of a public obligation to give disabled persons the opportunity to work, with the caveat of not placing too great a burden on employers who bear the brunt of the costs of accommodation. The suggestion here, however, is that we ought to go beyond this to acknowledge additional obligations on both sides. This would entail recognizing that the quid pro quo for reasonable accommodation is not just the right to work if one wants to, but also a responsibility to work if one can do so productively. This would extend reciprocal obligations not just to the "able-bodied" poor but to many who have conventionally been regarded as less than able-bodied.

This plea for a unified approach to different sources of disadvantage in competitive labor markets also gives rise to the question of why the duty of "reasonable accommodation" should extend only to the medically disabled. Does society have a duty to provide extra work opportunities to those who do poorly in labor markets for other reasons? Because the work requirements in the Welfare Reform Act are still phasing in, the welfare system does currently continue to assist many of the least skilled who manage to obtain only intermittent employment -- a feature that can perhaps be viewed as one form of "reasonable accommodation." But a more direct accommodation to those who fail to fit into the paid labor market is the provision in some states of workfare jobs and government "last resort" employment programs. Like the ADA's requirement that employers offer a reasonable accommodation to disabled persons who are able

to perform most essentials of a job, these workfare programs are based on the tacit understanding that the economy may not offer everyone an adequate opportunity to discharge reciprocal obligation to contribute something to the social product without some special measures to keep those persons productively at work. In the case of workfare, the “special measures” are the actual creation of positions that are tailored to the lesser capacities of those who repeatedly fail on the job market.

The discussion also gives rise to the issue of how society should deal with persons at the very bottom of the ladder -- persons for whom the social costs of providing a chance to engage in effortful activity threatens to exceed *any* net benefit. There may well be people who are more expensive to keep at work than to maintain in idleness. It is one thing for the group to *supplement* the earnings of a worker who, although not productive enough to support himself, is able to help defray the costs of his own survival. It is quite another for society to expend extra resources so that a worker can be seen to “contribute” to his own support by performing some job, even if making that job available to him results in a net loss overall. How does the duty of reciprocity play out in that situation? Certainly the ADA seems to have resolved that question in favor of idleness for the disabled with room to spare: employers are not required to spend so much to employ a disabled person that their business suffers a net loss, even if the job might generate savings for the taxpaying public (and thus net savings overall). As a general matter, however, there is no definitive answer to this question for the general run of cases. Rather, the answer is “It depends.” On the one hand, the intuitions behind reciprocity would point to the arbitrariness of relieving persons of any responsibility to expend “reasonable efforts” based simply on the bad -- or good -- luck in being someone who is profoundly unproductive. On the other

hand, our decisions may in part depend on why someone's efforts yield so little. Pity or sympathy may impel us to excuse those with a hideous physical or mental disabilities on the theory that they have already "suffered enough." But those whose problem is general incompetence or intransigent bad habits may excite less sympathy -- perhaps because they incite the residual suspicion that they are not entirely "blameless" for their own plight or because they lack the obvious deformities that elicit sympathetic emotions. In any case, societies must make some decision about how to deal with this category of persons by determining whether considerations of cost and efficiency outweigh the values of consistency and equity or vice versa.

The purpose of this essay has been to show that a welfare system motivated by overarching principles of social reciprocity would share some of the features that have already been incorporated into our system through recent reform and through longstanding practice, but would also add or expand some programs and introduce additional elements into the scheme. A system that assists and gives special privileges to worker but that takes steps to ensure that the maximum number of willing persons can claim a place among the ranks of workers, best accords with that reciprocal ideal. There is no one set of measures that perfectly realizes this concept; many options are available, and some may work better than others depending on the circumstances. Ultimately experience must be the guide to the most effective implementation of reciprocal ideals.