

Review Essay

To Conceptualize, To Criticize, To Defend, To Improve: Understanding America's Welfare State

America's Misunderstood Welfare State. By Theodore R. Marmor,* Jerry L. Mashaw** & Philip L. Harvey.*** *Basic Books*, 1990. Pp. vii, 258. \$22.95.

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“America’s welfare state” is a foreign notion. A European visitor might use it in casual speech, hoping that an idea that fits so comfortably throughout the rest of the industrialized world would find a cognate here. Yet if she were to do so on Main Street, or in Peoria, or anywhere else that “real Americans” are reputed to loiter, she would evoke a slight wince from her listeners. Having been reared to order their lives through the rhetoric of liberty and productive individualism, they would resist language that connotes comprehensive government involvement in people’s private lives.

So it was shrewdly provocative of Theodore Marmor, Jerry Mashaw, and Philip Harvey to entitle their new book *America's Misunderstood Welfare State*. The title hints that, like the Jets in *West Side Story*, our welfare state is not

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The title hints that, like the Jets in *West Side Story*, our welfare state is not truly bad—just misunderstood. A modern-day Officer Krupke, once he got to know our welfare state, would be able to understand. Oh, sure, it's got a few problems, but deep down inside it is good.

The book's opening chapter makes explicit what is implicit in the title. Our welfare state is "under siege" by a "chorus of critics" who launched a "conservative broadside" in the 1970's and 1980's.¹ Even liberals have joined the "new consensus" of "persistent pessimism" and failure.² And yet the critics' picture of social welfare policy is "misleading and misdirected, indeed, riddled with myths."³ The book takes up the mantle of "confronting the massive misunderstanding and the relentlessly negative coloration of American social policy discourse," of "setting the record straight," of showing that our government programs do a pretty good job of advancing goals "that are widely shared among nearly every group in the American polity."⁴

The authors attribute much of the discontent to widespread misunderstanding of how public programs work and how they should be evaluated. Citizens have been repeatedly led astray by critics who attribute a unitary "purpose" to a given program, observe that the program does not promote that purpose very effectively, and then brand the program a "failure." Those critics frequently misunderstand the multiple purposes the programs serve, or else they misunderstand how to determine the true effects of those programs. Intelligent, measured discourse about the ends of government, and about the best means to achieve those ends, has given way to a confused sense of panic about what our legislators have wrought.

The first step toward intelligent discourse is, the authors emphasize, to appreciate the fact that different segments of the American polity hold different aspirations for our welfare state. They want it to accomplish different "purposes." Indeed, even a single citizen is likely to want public programs to achieve multiple, conflicting objectives.⁵ Moreover, multiple objectives will necessarily imply tension, conflict, and compromise. "To aspire to a welfare state that is

1. THEODORE R. MARMOR ET AL., *AMERICA'S MISUNDERSTOOD WELFARE STATE* 1, 13 (1990) [hereinafter cited by page number only].

2. Pp. 1, 2.

3. P. 2.

4. Pp. 19, 20.

5. Marmor, Mashaw, and Harvey identify four archetypal "purposes," each embodying a distinct "ideological" vision:

(1) The behaviorist vision wants public programs to lead citizens to behave in more socially responsible ways. Pp. 23-25.

(2) The residualist vision wants public programs to "rescue" the deserving victims of capitalism who, through no fault of their own, find themselves destitute. Pp. 25-26.

(3) The social insurance vision wants public programs to make individuals and families "buy" protection against a fall into destitution when times get rough, through programs of universal contribution and universal benefit. Pp. 26-28.

(4) The egalitarian populist vision wants public programs to redistribute income and power to the less privileged and wants those programs to be run not merely for them, but also by them. Pp. 28-29.

free of . . . inconsistencies is to reject political and social complexity.”⁶ “[T]he programmatic articulation of these goals reflects ideological compromise, not transcendence of our differences.”⁷

Marmor, Mashaw, and Harvey stress the value of paying conscious attention to the role of ideology in public policy discussions. Critics who accuse programs of “failing” are often evaluating the programs by reference to a single policy objective, such as the view that “private market institutions and activities [are] the norm against which a program or policy is to be judged.”⁸ If a program was not in fact designed to promote such a unidimensional ideology, then the charge is unfounded—any program may “fail” if measured against something other than its real purposes. The critic should complain about the legislature’s failure to share that ideological vision, not about any particular feature of the program.

The authors suggest that an appropriate ideological stance for evaluating our welfare programs must be derived “from the ground up.” Since “[o]ur ideology is embedded at least as deeply in what we do as in what we say,” it can and should be inferred by “looking at what we do.”⁹ Such a process of inference is worthwhile because it enables us to “understand our acts in appropriate symbolic terms”—terms that will permit sensible discussion of specific program criticisms.¹⁰

Chapter two of the book, “The American Opportunity-Insurance State,” pursues this ideological inquiry in depth and yields the book’s central thesis. Out of the morass of conflicting “purposes,” two “enduring commitments” have emerged to lend “coherence” to the American welfare state: “The income transfer programs we actually have created tend to fall into one of two categories. They either insure broad strata of the nation’s population against impoverishment from the loss of a breadwinner’s income, or they assist those whom opportunity has passed by.”¹¹

Marmor, Mashaw, and Harvey link these twin commitments to images from the dominant collective self-understanding.¹² They assert that if one understands the American welfare state in terms of this “opportunity-insurance” dyad, one can see its “political coherence.”¹³ Notwithstanding the never-ending

6. P. 23.

7. P. 43. For a rigorous and stimulating argument that seeming “inconsistencies” in political outcomes are necessary byproducts of a constitutive, deliberative, “rational” democracy, see Richard H. Pildes & Elizabeth S. Anderson, *Slingshot Arrows at Democracy: Social Choice Theory, Value Pluralism, and Democratic Politics*, 90 COLUM. L. REV. 2121 (1990).

8. P. 238.

9. P. 19.

10. P. 19.

11. P. 31.

12. “The combination of economic opportunity and social insurance captures precisely the American political spirit. It harmonizes the Marlboro man with neighborly barn raising, rugged individualism with mutual support.” P. 43.

13. P. 47.

sniping of critics, “[t]he design of American social welfare programs is neither accidental nor incoherent.”¹⁴

The book then devotes four chapters to four specific facets of the welfare state. “Crisis and the Welfare State” confronts claims that the American welfare state is, by its sheer bulk, depressing economic growth and personal savings. “Welfare, Poverty, and the Welfare State” confronts claims that the means-tested programs known as “welfare” have become an ever-increasing financial burden on taxpayers while increasing the number of dependent poor. “The Attack on Social Security” confronts claims that the Social Security retirement program is undermining national savings, is distorting public understanding of the budget deficit, and has made excessive and untenable promises to support the baby boom generation in its retirement. “Misunderstanding Medical Care” argues that the United States should expand its social insurance structure to incorporate a health care distribution scheme like that of Canada. The final chapter, “How Not to Think about the American Welfare State,” then spells out some of the logical flaws that often corrupt popular discussion of public policy.¹⁵

It is fair to say that the primary mission of *America's Misunderstood Welfare State* is defensive. During the 1980's, American social welfare programs sustained an all-out attack from a small but significant group of conservative commentators. With this book, Marmor, Mashaw, and Harvey repel that attack. The authors execute their defensive mission with style and skill. They expose profound flaws in the thinking of certain highly visible critics, and they beat back the threat posed by those critics' extreme negativism. In large part, they succeed simply because they are much more careful thinkers than their wild-eyed adversaries.

In this Review, however, I attempt to slide the book off its defensive moorings. Rather than viewing it as the last word in a discussion about whether the American welfare state should be ground up and turned to mulch, I consider its effect on a less grandiose discussion about how the welfare state might be improved at the margins. Rather than concentrating on how well the authors fulfill their own agenda, I (perhaps unfairly) ask how well the book serves a somewhat different agenda. My main question is, “What does this book give to a reader who is already sympathetic to the authors' perspective and shares their desire to make public programs even more effective?”

I take up that question from three distinct angles. Part I looks at the authors' theoretical account of our collective ideology. I elaborate on their argument that insurance and opportunity can be usefully described as ideological “commitments” that lend “coherence” to our welfare state. I then consider

14. P. 49.

15. The authors distill their reactions to those flaws into four aphorisms: (1) Projections Are Not Forecasts; (2) Incentives Are Not Behaviors; (3) Purposes Are Never Unitary; and (4) Comprehensive Reform Is Usually Not on the Agenda. Pp. 216, 219, 222, 228.

whether other values, relegated to subsidiary roles to further the authors' defensive project, should be given more prominence by readers who share the authors' interest in constructive incremental reform.

Part II looks at the authors' more concrete reactions to two specific criticisms of public programs. During the 1980's, Charles Murray attracted substantial attention with his grand claims that our welfare programs are wholly ineffective. I consider what the book's refutation of Murray tells us about a more limited "ineffectiveness" concern—the possibility that our welfare programs are ineffective for certain segments of our citizenry. Like Murray, other commentators have made similarly grand claims that Social Security is so costly that it should be scrapped. I consider what the book's response to those claims tells us about a more limited "too costly" concern—the possibility that poor contemporary management might force future legislators to reduce the size of the baby boomers' pensions.

Part III tentatively stakes out a positive approach to framing more constructive criticisms of public programs. I suggest that *America's Misunderstood Welfare State* is responding to a polarized form of policy debate, in which all participants are willing to define their arguments by reference to a single, extreme, all-or-nothing baseline for comparison. Drawing on examples from the book that deal with regressive taxation and target efficiency, I suggest that readers who are sympathetic to the authors' project must be willing to challenge arguments that presume we have only two policy options to choose from. As Marmor, Mashaw, and Harvey astutely recognize, even the overblown critiques they refute sometimes embody partial truths. A critical optimism about the ability of political processes to generate new forms and combinations of policies makes it easier to spot the partial truth hiding out in a piece of destructive bombast, and to incorporate that truth in a less sensational, more constructive form of criticism.

I. TO CONCEPTUALIZE

America's Misunderstood Welfare State effectively demonstrates the tight link between the way programs are evaluated and the way their purposes are conceptualized. In this part, I consider the conceptual framework that the authors use to describe our social welfare programs. After elaborating on the authors' "core commitments" of insurance and opportunity, I will discuss their treatment of alternative commitments that might be incorporated in a more comprehensive conceptual framework.

A. Coherent Conceptualization

The authors conceptualize America's welfare state in unabashedly idealist terms. They do not assert that structural forces of individual or collective

self-interest mechanistically gave us the particular form of welfare state we now have. Instead, they emphasize the power of ideology as reflected in collective commitments—ideas with the power to stimulate action. Nor do they believe these commitments should be limited to individuals who work within a restricted critical culture. Rather, they link these commitments to an expansive “we” that implicitly embraces all Americans.¹⁶

Marmor, Mashaw, and Harvey describe their immediate goal as identifying commitments that lend “coherence” to our welfare state, a goal they label “modest.”¹⁷ They may have chosen that label because, in actual debate, people rarely are persuaded that a program or set of programs is truly incoherent. Rather, the claim of incoherence is merely the first move in a debate, a challenge to put forward principles that may then be attacked or debated on their own terms.¹⁸

Alternatively, the authors may have thought their task modest because many sets of idealist commitments offer plausibly coherent accounts of the programs that compose the American welfare state. If all that is required is a sort of connecting of the dots, the range of possibilities is large indeed. But then, if that is all that is required, it is difficult to see what value there is to the effort.

Marmor, Mashaw, and Harvey do not specify precisely what they mean by “coherent”—what attributes make one idealist account coherent or more coherent than any other. Since their immediate aim is to refute the proposition that the structure of American social programs is radically incoherent, I will begin with the following minimal standard: A coherent idealist account should be relatively simple, should use concepts having relatively concrete meanings, should be relatively attractive on an intuitive level, and should fit our observations relatively well.

In the next two sections, I elaborate on the authors’ argument that a coherent account can be constructed from Americans’ collective commitments to “insurance” and “opportunity.”

B. *A Commitment to Insurance*

Marmor, Mashaw, and Harvey offer the following table to illustrate the programs that reflect an “insurance” theme:¹⁹

16. I share the authors’ view that over the course of the past six decades the United States has developed a mature welfare state worthy of the term, since “Americans now seem to embrace the basic welfare-state premise that political means can and should be used to shape the distribution of well-being in society.” Hugh Heclo, *Generational Politics*, in *THE VULNERABLE* 381, 390 (John L. Palmer et al. eds., 1988).

17. P. 49.

18. To be sure, this move has rhetorical power of its own, at least momentarily imposing a burden of persuasion upon those who advocate change over stasis or government action over government inaction.

19. P. 32 tbl. 2.1.

Social Insurance Expenditures, 1986

	<i>Beneficiaries</i> (thousands)	<i>Benefits</i> (Millions of Dollars)
TOTAL	(NA)	\$360,073
Federal	(NA)	307,361
State	(NA)	52,712
Social Security Benefits	37,703	269,724
Retirement	26,541	140,418
Disability	3,995	19,524
Survivors	7,166	33,785
Medicare	31,750	75,997
Public Employee Retirement	7,098	37,431
Railroad Retirement	960	6,418
Unemployment Insurance	2,415	18,678
Workers' Compensation	(NA)	24,382
Other Programs	(NA)	3,440

This table and the discussion following it confirm that when Marmor, Mashaw, and Harvey speak of a commitment to “insurance,” they are invoking the traditional “social insurance” category. In the United States, programs are placed in that category (rather than in “public assistance”) if they base eligibility not on impoverishment, but on a prior link between the beneficiary and an activity recognized as “work.” Such programs provide insurance, not against impoverishment generally, but against particularized risks that may or may not be impoverishing. Indeed, the presence of a means test (which might suggest a form of insurance against impoverishment) automatically disqualifies a program from consideration as social insurance.²⁰

20. This portrait of social insurance reflects the way the term has come to be understood in the United States, an understanding that has been placed at the conservative end of the spectrum. *See, e.g.,* JERRY R. CATES, *INSURING INEQUALITY* 13-15 (1983). Two examples might suggest reasons to wonder why we understand social insurance in this way. First, observe that veterans’ “pensions” for disabled veterans with non-service-connected disabilities are not considered social insurance, while veterans’ “compensation” for disabled veterans with service-connected disabilities is considered social insurance. Both veterans’ programs serve a population of individuals who “contributed” by working in the military employment sector and by taking the physical risks associated with military service. Indeed, there is a sense in which the “contribution” of participants in the (not social insurance) veterans’ pension program was even greater than that of participants in the (social insurance) veterans’ compensation program—the former, but not the latter, must have served during time of war. While the timing of the disabling injury may be of some small significance, the dominant reason why veterans’ pensions are perceived as “public assistance” is undoubtedly the means test.

Second, consider Aid to Families With Dependent Children (AFDC). The program’s primary beneficiaries are children whose mothers are raising them without significant help from their fathers. It is certainly true that it is not a prerequisite for benefits that the mother have worked in the wage-paying sector of the economy. Yet, a very large proportion of AFDC mothers have in fact done so before receiving benefits, and an even larger proportion do so after they receive benefits. Why should the timing of a mother’s paid work be determinative of whether the program reflects a commitment to economic security through “insurance,” especially when, by design, she must perform socially valuable unpaid work in the form of child rearing? Were it not for the means test, AFDC might well be plausibly thought of as social insurance against the risk of being born into a single-parent family. *Cf.* p. 116 (“[I]t may be that we should think of birth in disadvantaged circumstances as one of the risks against which the welfare state should provide insurance.”).

While impoverishment has a less direct connection with social insurance than it does with public assistance, the authors identify an important indirect link: "The basic purpose [of social insurance] is to provide economic security, to *prevent* people from falling into destitution rather than *rescuing* them after they have already fallen."²¹ This allusion to a distinction between "preventing" and "rescuing" is sometimes underemphasized in public policy discussions about social insurance. Indeed, it is quite common to note the effectiveness of social insurance transfers in "removing" pretransfer poor persons "from poverty."²² Yet, I believe the distinction captures a sense of what it can mean to fill out an application for means-tested benefits, a sense that is significant in contemporary American culture. Social insurance recipients never have to make a public declaration of poverty; they never "become" poor, not even for an instant.

In thinking about public programs, it certainly matters how significant this prevent/rescue dichotomy is to the lives of program beneficiaries. The more significant it is, the more it can be said that reducing poverty through social insurance is a unique attainment, one that cannot be obtained through the more target-efficient alternative of means-tested programs.²³ The reduction of poverty in *nonstigmatizing ways* becomes a freestanding justification for social insurance programs.²⁴

To be sure, the distinction in stigmatizing effect between social insurance programs and means-tested programs should not be overstated. Whether one perceives a particular experience as stigmatizing depends significantly upon one's reference group, and so it is at least conceivable that some poor people, or even poor people as a group, might find means tests to be less stigmatizing than do more prosperous people.²⁵ Regardless of a client's social reference

21. Pp. 26-27 (emphasis added).

22. See, e.g., STAFF OF HOUSE COMM. ON WAYS AND MEANS, 102D CONG., 1ST SESS., BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS—OVERVIEW OF ENTITLEMENT PROGRAMS 1037-50 (Comm. Print 1991) [hereinafter 1991 GREEN BOOK]; Sheldon Danziger, *Fighting Poverty and Reducing Welfare Dependency*, in WELFARE POLICY FOR THE 1990s 41, 48-49 (Phoebe H. Cottingham & David T. Ellwood eds., 1989). Even Marmor, Mashaw, and Harvey slip occasionally into that style of exposition. See, e.g., p. 101 ("[T]he difference between the effectiveness of social insurance and means-tested cash transfers in *lifting people out of poverty* is quite staggering . . ." (emphasis added)); p. 102 ("[T]he power of social insurance to *lift the non-aged poor out of poverty* declined . . ." (emphasis added)).

23. See also *infra* text accompanying note 57.

24. Cf. pp. 157, 161, 166-67 (suggesting links between social insurance, social solidarity, and avoidance of means tests); Theodore R. Marmor, *Income Maintenance Alternatives: Concepts, Criteria, and Program Comparisons*, in POVERTY POLICY 28, 37-38 (Theodore R. Marmor ed., 1971); Lee Rainwater, *Stigma in Income-Tested Programs*, in INCOME-TESTED TRANSFER PROGRAMS 19 (Irwin Garfinkel ed., 1982).

25. See Joel F. Handler & Ellen J. Hollingsworth, *How Obnoxious Is the "Obnoxious Means Test"?* *The Views of AFDC Recipients*, 1970 WIS. L. REV. 114, 129-30. The subjective perceptions of program participants need not, however, mark the end of our concern, since we may be independently concerned about the way the outside world treats and views them. Cf. NEIL GILBERT, CAPITALISM AND THE WELFARE STATE 70-71 (1983) (observing that poor clients may experience nominally universal programs quite differently from richer clients, due to inclinations of social service providers and to systematic differences in abilities of different classes of clients to "work the system").

group, differences in the way programs are administered may be more important to how they are experienced than is the presence or absence of a means test.²⁶ Finally, the criteria used to establish eligibility for some social insurance programs might be felt to be just as stigmatizing as income eligibility tests.²⁷

Even if one does not find the prevent/rescue dichotomy significant, other rationales might lead one to endorse social insurance. Social insurance programs may provide practical solutions to problems that preclude the issuance of private insurance.²⁸ They may build solidarity by establishing institutional mechanisms that enable fortunate citizens to share their wealth with others who find themselves in disfavored circumstances.²⁹ They may strengthen the power of state officials by expanding the universe of people with an interest in government stability. They may stimulate a less grudging attitude towards taxes by encouraging citizens to think of them as “premiums” needed to create entitlements to future benefits.³⁰ They may provide compensation for economic

26. See William H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431, 1507-09 (1986). For a moving account of one man's experience of trying to apply for general relief benefits, see Joel F. Handler, *The Transformation of Aid to Families With Dependent Children: The Family Support Act in Historical Context*, 16 N.Y.U. REV. L. & SOC. CHANGE 457, 529-33 (1988).

27. For example, the experience of unemployment—or even of work at a low-wage job—may be perceived as demeaning or stigmatizing by someone who previously worked as an executive. See David Behrens, *The Downside of the Dream*, NEWSDAY, Apr. 1, 1991, at 44 (sales and advertising executive says working as part-time waiter and busboy was “a very demeaning experience”); Elizabeth Venant, *Still Looking*, L.A. TIMES, Jan. 24, 1991, at E10 (former hotel executive has not told neighbors he is unemployed because “[t]here's still a stigma about being out of work”); cf. *MacNeill/Lehrer NewsHour* (PBS television broadcast, transcript #3940, Jan. 4, 1991) (recently unemployed middle manager says, “We all feel bad, but we're not embarrassed by it, because everyone understands the restructurings which have caused this dislocation that so many of our peers are going through.”).

28. For example, the power of government to require all citizens to participate in a social insurance program allows it to circumvent the problem of adverse selection. Cf. p. 34 (“Social insurance is designed to help families maintain the security they have achieved through productive work.”); p. 86 (“Our welfare state[s] . . . principal purpose is to insure workers and their families against common risks.”).

29. Thus, the book on two separate occasions invokes “[t]he barn raising metaphor for good neighborliness” Pp. 4, 43. Of course, a wide variety of programs other than social insurance can also build community-wide solidarity. See, e.g., Mickey Kaus, *For a New Equality*, THE NEW REPUBLIC, May 7, 1990, at 18. Indeed, Bill Simon suggests that in the absence of social insurance, *means-tested programs* could induce a form of cross-class solidarity. See Simon, *supra* note 26, at 1509 (contending that if social insurance did not exist, middle-class voters would be more economically vulnerable and would be more likely to join together with poor to support generous and redistributive means-tested programs).

30. See, e.g., p. 27 (noting that “benefits for which all similarly situated persons are eligible by virtue of their financial contributions to the system or the taxes they pay” and that “the idea is to contribute *while* working to protection when out of work” (emphasis added)); p. 99 (“Social insurance payments are based . . . on prior contributions . . .”).

I would place less weight than the authors do on the notion that social insurance requires one to have paid “premiums” through earmarked special “taxes” used for Social Security, Medicare, and the Railroad Retirement programs. A number of social insurance programs (such as workers' compensation, unemployment insurance, and veterans' compensation) offer benefits to individuals who worked in a particular sector or who had employers pay taxes on account of their work. If I were to stress any link between benefits and past contributions, I would prefer to define the relevant “contribution” not as one of money, but rather as one of productive labor. Such a definition allows one to interpret social insurance program coverage as a sign of what activities are thought to qualify as “work” in different societies. Thus, in American society, raising others' children for pay is “work,” but raising one's own children does not qualify as “work.” (If one has a spouse earning wages in the marketplace, being a partner makes one eligible for Social Security retirement benefits vicariously, regardless of whether one has children). *But cf. supra* note 20 (noting that

losses that flow from sources too diverse and diffuse to be reached under a fault-based system of tort law. They may reinforce the work ethic by channeling public rewards to those who work for wages in the marketplace.³¹

Marmor, Mashaw, and Harvey do not speculate as to which rationale figures most prominently in Americans' commitment to social insurance, no doubt because different rationales may be important to different citizens.³² Instead, the authors emphasize that about seventy percent of our transfer payments take the form of social insurance, with the percentage rising each year.³³ Moreover, the authors include survey findings showing enormous popular support for the social insurance programs in place.³⁴ Social insurance, a notion that has been central to discussion of social welfare programs since Otto von Bismarck's "Speech from the Throne" in 1881, remains a reasonably concrete idea that is attractive for a variety of reasons and fits well with much of what America now has in place.

C. *A Commitment to Opportunity*

The authors use the single term "opportunity" to embrace two distinct forms of social programs—programs that "have . . . to do with [either] creating economic opportunity, or developing the capacities necessary to seize it" ³⁵ The term is expansive enough to include, on the one hand, programs that alter the structural conditions affecting individuals' life chances (programs "to manage the background conditions of opportunity"³⁶), and, on

even "work" is not an absolute prerequisite to receipt of benefits).

31. The notion of social insurance as a prop for the work ethic should be invoked judiciously. However strong the link between social insurance and "work" may be in the United States, it is clearly weaker in European welfare states, many of which base entitlement to social insurance benefits upon more general notions of citizenship or solidarity. See GOSTA ESPING-ANDERSON, *POLITICS AGAINST MARKETS* 30-36, 145-65 (1985). The United States is unusual in not providing a universal children's allowance to all families with children. See generally Sheila B. Kammerman & Alfred J. Kahn, *Social Policy and Children in the United States and Europe*, in *THE VULNERABLE*, *supra* note 16, at 351. Even in the United States, any simple link between social insurance and "work" is mediated by a more complicated conception of family rights and obligations. Thus, the beneficiary group may extend beyond the qualifying individual to include close relatives who may or may not have worked for wages themselves, may or may not have done productive work outside the market, may or may not have been dependent on the qualifying individual, and indeed, may or may not have been someone the qualifying individual would have wanted to receive benefits.

32. For many citizens, the rationale may not reflect any public value at all, but merely a private calculus that leads them to favor programs that they believe may someday help themselves or their loved ones. See Robert E. Goodin & Julian LeGrand, *Introduction to NOT ONLY THE POOR 1* (Robert E. Goodin & Julian LeGrand eds., 1987) (noting most common pattern is for nonpoor to play variety of roles in affairs of welfare state with eye to their own direct benefit); see also PETER BALDWIN, *THE POLITICS OF SOCIAL SOLIDARITY* (1990); NICHOLAS BARR, *THE ECONOMICS OF THE WELFARE STATE* (1987). To the extent that social welfare programs depend for their political acceptability upon the ability of taxpayers to identify with potential beneficiaries and come to think of them as "loved ones," the racial and ethnic heterogeneity of the American population may be an important limiting factor on the growth of American social welfare programs.

33. P. 35.

34. Pp. 47-48.

35. P. 42.

36. P. 43.

the other hand, programs that equip individuals with the traits they need to fit into a preexisting economic structure (“programs of human capital investment”³⁷).

This theme of opportunity, understood in the authors’ bivalent sense, has an important place in an ideological account of America’s social welfare programs.³⁸ For one thing, it can serve as a partial explanation of the American preference for social insurance programs.³⁹ Moreover, as the authors emphasize, the early centerpieces of Lyndon Johnson’s War on Poverty and Great Society were programs such as Community Action, the Job Corps, Head Start, Upward Bound, and the Model Cities program. All of these programs were intended to correct a mismatch between the economic demands of the private market and the talents and capacities that poorer citizens had to offer.⁴⁰

Yet, as one’s vision expands to the more general domain of means-tested transfer programs, the opportunity theme seems to explain somewhat less. Table 2.2 of the book lists approximately \$148 billion in total expenditures on means-tested programs in 1986.⁴¹ Of that total, approximately \$19 billion went to programs such as Head Start, work training programs, and social service delivery programs.⁴² The remaining \$129 billion broke down as follows:

37. P. 39.

38. Other authors have also noted its significance. *See, e.g.*, ROBERT J. LAMPMAN, *SOCIAL WELFARE SPENDING* (1984); Hecló, *supra* note 16.

39. *See* Hecló, *supra* note 16, at 386 (arguing that American preference for programs that enhance individual opportunity and self-sufficiency causes political processes to favor for those who can claim benefits earned through contributions and other personal efforts).

40. For an engrossing account of the Great Society period, see NICHOLAS LEMANN, *THE PROMISED LAND* 111-221 (1991); *see also* DANIEL P. MOYNIHAN, *MAXIMUM FEASIBLE MISUNDERSTANDING* (1969).

41. Pp. 36-37.

42. Education and training programs are, at best, on the fringes of the “welfare state” the authors have set about defending. The book’s first footnote reads:

In Europe, the welfare state is commonly viewed as encompassing not only income-transfer programs but also the production of public goods like education and the regulation of working conditions and employment relations. This book focuses more narrowly on transfer programs alone— . . . like Social Security, and . . . like Aid to Families with Dependent Children (AFDC), Medicaid, and Food Stamps . . . We have limited our discussion of American social welfare policy to these programs because they are the focus of the myths, misunderstanding, and misinformation to which this book is a response.

P. 242 n.1.

Means-Tested Expenditures, 1986, in billions of dollars

Medicaid	44
AFDC (cash for certain families)	18
All housing programs, including energy	15
Food Stamps	13
SSI (cash for aged, blind, and disabled)	13
Cash and health care for veterans	7
Other food programs	7
Other medical programs	5
EITC (cash for working poor families)	2
Miscellaneous cases	5

The authors describe all of these programs as “motivated by a desire to create opportunities for all Americans to become productive citizens” and as “programs of human capital investment.”⁴³ They describe AFDC and other programs that help children as “meant to promote the development of economically independent adults”⁴⁴ They describe programs that help able-bodied adults without children as “a modicum of largely in-kind support while they prepare themselves for productive work.”⁴⁵ They describe means-tested programs for the elderly and the disabled as “extremely small in relation to overall social welfare expenditures and [as] hav[ing] declined steadily in importance.”⁴⁶

This opportunity-based account fits well with many of our public programs. Yet something nags in the back of the mind. It does not fully match the contours of these programs.⁴⁷ More significantly, it does not quite capture their spirit. It seems overly grandiose to characterize any program that helps children to survive as a “human capital investment.”⁴⁸ And at the same time it seems insufficiently practical, stressing a collective concern with individuals’ potential future self-sufficiency to the complete exclusion of any concern with their immediate material needs. Robert Haveman’s appraisal seems closer to the mark: “[T]he rationale of equalizing opportunities that motivated the early War

43. P. 39.

44. Pp. 39-40.

45. P. 40.

46. P. 40.

47. The link between in-kind benefits for able-bodied adults and preparation for future work is not ironclad. Housing benefits do not require beneficiaries to make any particular commitment to job training, and Food Stamps did not do so until 1985. Similarly, the means-tested cash programs for the elderly and the disabled—Supplemental Security Income (SSI) and veterans’ pensions—may be small in relation to overall social welfare expenditures, but they are quite large in relation to the more obvious human capital investment programs such as Head Start, the Job Corps, and education benefits. Moreover, while SSI may be shrinking in comparison with the Social Security retirement program, it is not shrinking in comparison with the overall federal budget.

48. Others have offered the same characterization. *See, e.g.*, Richard Moles, *Social Security and Economic Planning*, in *International Social Security Association, The Planning of Social Security* 61, 65 (1970) (proceedings of meeting on the Sociology of Social Security, Seventh World Congress on Sociology) (“To the extent that measures designed to insure against risk, provide medical care, and assure rehabilitation of the disabled concentrate on the physical aspects of preservation of human resources, they facilitate the development of economic activities and the improvement of rates of productivity.”).

on Poverty-Great Society planners was not sustained by the policies that evolved. Much of the increased spending went for a quite different purpose—to relieve income poverty.”⁴⁹

On balance, the authors’ emphasis on commitments to social insurance and opportunity shows many of the traits one would expect from a coherent ideological account of our social welfare programs. The ideas are simple, concrete, and attractive. They fit well with a number of American social welfare programs. But might one do better? The insurance/opportunity model does not account very well for our largest means-tested programs. And it requires substantial qualification to explain why our welfare state is not much bigger than it is. Would a larger set of “commitments” offer an even more useful ideological account than that offered by Marmor, Mashaw, and Harvey?

D. *Beyond Insurance and Opportunity*

The idea of a “commitment” is central to the rhetorical structure of *America’s Misunderstood Welfare State*. The authors do not argue that insurance and opportunity are the *only* important features in the ideological landscape. They do, however, grant those two commitments a privileged status. All other ideas are relegated to subordinate positions.

Why did the authors limit their list of commitments to two items? Why those two in particular? If, as I have suggested, a commitment is an idea with the power to stimulate action, does it matter whether the idea *in fact* stimulated the creation of a particular program? I shall answer those questions indirectly, by first considering two other values that might have shaped America’s social welfare programs.

1. *A Commitment To Reducing Poverty*

The most obvious candidate for addition to the ranks of “core commitments” is a commitment to reducing poverty. At the level of political rhetoric, such a commitment has known moments of unmistakable prominence.⁵⁰ At the level of public opinion, the abstract commitment to help the needy has remained remarkably constant over the past forty years.⁵¹ Among academic policy analysts, the question of what public policy does for the poor was

49. ROBERT HAVEMAN, *STARTING EVEN* 22 (1988).

50. The most obvious example is Lyndon Johnson’s 1964 State of the Union Address, declaring war on poverty and kicking off his campaign for the Great Society programs. OFFICE OF THE FEDERAL REGISTER, GENERAL SERVICES ADMINISTRATION, *PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON* 112 (1965).

51. See Hugh Heclo, *The Political Foundations of Antipoverty Policy*, in *FIGHTING POVERTY* 312, 328 (Sheldon H. Danziger & Daniel H. Weinberg eds., 1986) (showing poll data from 1948, 1961, and 1984).

characterized as a “new test for national policy” as recently as 1974.⁵² Among political philosophers, government transfers from rich to poor have been defended in a variety of ways, from a variety of starting points.⁵³

Moreover, when one looks at how specific programs have been designed, it becomes apparent that most means-tested programs are “specifically aimed at raising money incomes or consumption levels of poor families and individuals.”⁵⁴ Food Stamps offer a guaranteed minimum income to every household, regardless of family situation or disability. Supplemental Security Income (SSI) (like its predecessor programs Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled) gives cash assistance to people whom we never expect to be self-sufficient in the future, as well as enabling its recipients to receive health care through medicaid. And while it is certainly possible to conceive of the Earned Income Tax Credit in “opportunity terms,” it is more accurately justified as improving the well-being of participating families without undermining their incentive to work.⁵⁵

52. Robert J. Lampman, *What Does It Do for the Poor?—A New Test for National Policy*, 34 PUB. INTEREST 66 (1974); see also Edwin E. Witte, *Social Security: A Wild Dream or Practical Plan?*, Address to Wisconsin Alumni Institute (1938), in SOCIAL SECURITY PERSPECTIVES: ESSAYS BY EDWIN E. WITTE 3-4 (Robert J. Lampman, ed., 1962) (“[T]he fundamental ideas in social security are old. From time immemorial, religion has made it a duty to feed the hungry and clothe the naked.”).

Goodin and LeGrand characterize this view as entirely “conventional”:

[A]ccording to all the conventional understandings, the welfare state has as one of its most central aims that of *redistribution*. It has always been regarded at least in part as a mechanism whereby the distress among the poorer elements of society is relieved at the expense of the better off members of society.

Goodin & LeGrand, *supra* note 32, at 4.

53. See, e.g., ROBERT E. GOODIN, REASONS FOR WELFARE—THE POLITICAL THEORY OF THE WELFARE STATE 123-52 (1988) (justice requires poor to have enough resources to escape exploitation by nonpoor); JOHN RAWLS, A THEORY OF JUSTICE 11-22, 118-92 (1971) (justice requires one to adopt heuristic of the original position, which yields democratic equality); THOMAS H. MARSHALL, CLASS, CITIZENSHIP, AND SOCIAL DEVELOPMENT 65-122 (1964) (liberal right to equal citizenship entails social rights to economic security, in order to make other rights effective); RICHARD H. TAWNEY, EQUALITY 57 (4th ed. 1964) (civilized society should eliminate inequalities that derive from social organization rather than individual differences).

54. Gary Burtless, *Public Spending for the Poor: Trends, Prospects, and Economic Limits*, in FIGHTING POVERTY, *supra* note 51, at 18, 21. One could plausibly argue that, in the United States, we have no generalized commitment to fighting poverty—only a narrower commitment to helping the “deserving poor.” That narrower commitment, however, cannot account for the existence of Food Stamps, General Assistance, and subsidized housing programs that provide assistance to people outside the traditional “deserving” categories. I prefer to explain the limitations on American assistance to the poor by reference to other, conflicting commitments—commitments that limit American social insurance and opportunity-oriented programs as well. See *infra* Part I.D.2.

55. See Gary Burtless, *The Effect of Reform on Employment, Earnings, and Income*, in WELFARE POLICY FOR THE 1990S, *supra* note 22, at 103, 137. The Earned Income Tax Credit (EITC) is a refundable tax credit. To calculate the amount of credit, one takes a fixed percentage of a taxpayer’s earned income, up to a specified maximum credit amount (roughly \$1000 in 1990). The amount of available credit is reduced from the maximum to zero over a “phaseout range” of adjusted gross income (ending at roughly \$20,000 of adjusted gross income in 1990). If the amount of credit exceeds a taxpayer’s income tax liability, the taxpayer is entitled to receive a cash refund of the excess.

The EITC is sometimes described as “a form of negative income tax,” see, e.g., p.172, but this description masks some important differences between the EITC and the traditional “negative income tax” proposals of the 1960’s and 1970’s. Whereas the negative income tax proposals incorporated an implicit tax of 50% on every dollar earned by low-income workers, the EITC subsidizes work, increasing as workers

There is no necessary tension between a commitment to fighting poverty and commitments to social insurance or to enhancing opportunity through human capital investment. Both social insurance and human capital investment can be understood as particularly attractive means to a broader end of providing collective protection against the pain that can follow from uncontrollable uncertainties in modern life.⁵⁶ As Marmor, Mashaw and Harvey emphasize, social insurance programs do more to minimize officially measured poverty in the United States than do means-tested programs, and are able to do so in a less stigmatizing manner.⁵⁷ And political rhetoric has long favored offers of means-tested *services* to the poor over offers of means-tested cash.⁵⁸

Yet, the analytic relationship may be more than merely one of means and ends. It may also involve a certain amount of complementarity. Both the authors' vision of "opportunity" programs and their vision of social insurance can be seen as efforts to *prevent* poverty rather than as efforts to rescue people from it. But sometimes prevention fails. A "commitment" to fighting poverty may thus be understood as a collective interest in those for whom the preventive efforts were ineffective. If one surveys the range of American means-tested

continue to earn income up to the first breakpoint. "A negative income tax is a guaranteed minimum income in disguise; an EITC is a wage subsidy in disguise." DAVID T. ELLWOOD, POOR SUPPORT 254 n.35 (1988). The EITC began in 1975 as a small program, offering a maximum credit of \$400 per year, intended to neutralize the effects of the payroll tax on working poor families with children. Pub. L. No. 94-12, § 204(a) 89 Stat. 30 (1975). Throughout the 1980's, however, commentators urged that the program be expanded. See, e.g., ELLWOOD, *supra*, at 114-16; WELFARE POLICY FOR THE 1990S, *supra* note 22, at 20, 60, 137, 281; Sheldon H. Danziger et al., *Antipoverty Policy: Effects on the Poor and the Nonpoor*, in FIGHTING POVERTY, *supra* note 51, at 50, 76; *All-Purpose Increase for the Poor*, WASH. POST, July 5, 1989, at A16; *A Veto That Can Help the Poor*, N.Y. TIMES, June 15, 1989, at A30; *Helping the Poor*, CHRISTIAN SCI. MONITOR, May 3, 1989, at 20. In the autumn of 1990, as part of budget legislation that was intended to cut spending and increase revenues overall, Congress voted to roughly double the size of the EITC by 1994, adjusting it for family size and the age of the youngest child. Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, §11111, 104 Stat. 1388.

56. See Robert E. Goodin & John Dryzek, *Risk-Sharing and Social Justice: The Motivational Foundations of the Post-War Welfare State*, in NOT ONLY THE POOR, *supra* note 32, at 37, 38-46.

57. Government estimates of "antipoverty effectiveness" show almost three times as many persons being spared from poverty due to social insurance programs as are removed by means-tested programs. See 1991 GREEN BOOK, *supra* note 22, at 1163 tbl. 17; see also p. 101 (reprinting table from Isabel Sawhill, *Poverty in the U.S.: Why is it So Persistent?*, 26 J. ECON. LIT. 1100 (1988)). These figures are probably higher than the number of individuals who would actually live in poverty if the programs did not exist, since at least some of the individuals in question could draw on other resources (e.g., elderly parents moving in with their children).

Note, however, that "effectiveness," like "efficiency," is always with respect to a particular target. Thus, rather than caring about how many people are on one side or the other of a single arbitrary line, one might be more concerned with the effect of transfer programs on the "poverty gap"—the amount it would take to permit people who would otherwise be in poverty to live at the poverty line. Social insurance programs have only about twice the effect of means-tested programs on the poverty gap. 1991 GREEN BOOK, *supra* note 22, at 1164 tbl. 17.

Similarly, the heterogeneity of the population might make one wonder whether the effectiveness of particular programs depends on the category of individuals one is examining. Thus, if one limits one's attention to individuals in families with related children under 18, social insurance programs have smaller effects on the poverty rate than means-tested programs. Moreover, for that category of recipients, means-tested programs are three times as effective as social insurance programs at reducing the poverty gap. *Id.* at 1166 tbl. 18.

58. See, e.g., LEMANN, *supra* note 40, at 149-50.

programs, it is hard to say that the country holds *no* such commitment. It appears to exist, but it also appears to be subordinated to other concerns.⁵⁹

2. *A Commitment To Minimizing Public Incentives for Socially Irresponsible Behavior*

Commitments to opportunity, to insurance, and to reducing poverty all offer reasons for a government to spend money. That feature should not, however, be taken as a defining trait of the “commitment” category. Societies, like individuals, can wed themselves wholeheartedly to values that never generate a penny of public expenditure. Commitments that are “nongenerative” (in that essentially fiscal sense) show their power by *blocking* the expansion of programs in particular directions. It would seem that such commitments are important pieces of any ideological description of a society, since often what people choose *not* to do says as much about what they deem sacred as what they choose to do.

One cannot always be confident that a particular failure to act provides useful evidence that a nongenerative commitment is at work. We do not always have adequate information to distinguish carefully considered refusals to act from mere oversights. Nonetheless, such commitments can greatly strengthen the “fit” between an ideological account and the programs we see in place.

Let me offer one example. Consider the possibility that Americans feel a core commitment to minimizing public incentives for socially irresponsible behavior (behavior that differs from what individuals would do if they were forced to feel personally all of the consequences of their actions).⁶⁰ Such a commitment would seem to explain what otherwise appear to be strange gaps in the scope of American social provisions.

Take as an illustration our pattern of social insurance provisions. In Table 2.1 from the book, the authors present a program-oriented summary of our national social insurance expenditures for 1986. One can also present the data underlying that table in a different form, so as to emphasize the categories of risk that the programs “insure” against. Such a presentation would look as follows:⁶¹

59. Sar Levitan describes this complementarity in the opposite way—making the relief of poverty primary and the development of opportunity secondary. SAR A. LEVITAN, *PROGRAMS IN AID OF THE POOR* 26 (6th ed. 1990) (“It is necessary not only to assuage poverty through cash and in-kind aid, but also to prevent deprivation by promoting self-sufficiency in the first place. Many programs serve both ends.”).

60. For a more general discussion of the concept, see Jeffrey Lehman, *Social Irresponsibility, Actuarial Assumptions, and Wealth Redistribution: Lessons about Public Policy from a Prepaid Tuition Program*, 88 MICH. L. REV. 1035, 1035-39, 1057-61 (1990).

61. Following the authors’ lead, I draw this data from tables 571 and 595 of the 1989 Statistical Abstract of the United States. See p. 32.

Social Insurance Expenditures, 1986, in billions of dollars

Aging ⁶²	261
Suffering grave injury or disability	69
Having a parent or spouse die	46
Becoming temporarily unemployed	16

Note some of the conditions that are *not* included—having a child, getting divorced, having one’s skills rendered totally obsolete,⁶³ getting sick (but not gravely so), having a child drop out of school, or having a parent become too sick to live independently. Nothing in the logic of social insurance prohibits a society from recognizing the economic vulnerability associated with these excluded conditions. Each one places families in situations where they might arguably need help to “maintain the security they have achieved through productive work.”⁶⁴ What distinguishes the included cases from the excluded cases is the popular sense that the excluded ones create a risk of engendering socially irresponsible behavioral responses that are perceived as too costly to the larger society.⁶⁵

One can offer the same sort of account to explain gaps in the structure of our means-tested programs. At the level of general program tendencies, a sense of the potential for socially irresponsible behavior matches well with the historical understanding that certain groups of poor people (the elderly, the disabled, children of single parents, and the working poor) are “deserving,” while others are not. And at the level of specific program design, the same commitment explains the parsimonious benefit levels, the sometimes coercive participation requirements, and the preference for in-kind benefits associated with many programs.⁶⁶

62. In this table, I use the term “aging” rather than the more common label “retirement,” because virtually all of the so-called cash “retirement” programs permit beneficiaries to receive benefits while working, once they have reached age 70, and Medicare benefits are available to workers with the requisite employment history as soon as they reach age 65.

63. Unemployment insurance is generally available for only 26 weeks, but for up to 39 weeks during economic downturns. During the 1991 recession, Congress increased the maximum period to 46 weeks for some states. Emergency Employment Compensation Act of 1991, Pub. L. No. 102-164, 105 Stat. 1049.

64. P. 34.

65. To be sure, two of the included cases (aging and short-term unemployment) entail a significant risk of social irresponsibility: old people might stop working before they otherwise would, and unemployed people might not take the first job that comes their way. These cases suggest that our commitment to minimizing social irresponsibility is by no means absolutely supreme. We are comfortable allowing old people to shift the costs of life to others through retirement, even when we are not comfortable allowing younger adults to do so. Similarly, we are comfortable with the idea that it is often counterproductive to force people to take the very first job that comes along.

66. I will offer one very old example and one very new one. First, from the time of the English Poor Law Reform of 1834 to the present day, the principle of “less eligibility” has ensured that means-tested cash benefits remain lower than anything the able-bodied earn in the marketplace. *See, e.g.*, I SIDNEY WEBB & BEATRICE WEBB, ENGLISH POOR LAW HISTORY: PART II, at 61-64 (1929). Second, the Family Support Act of 1988 authorizes special sanctions for a single mother under the age of 18 who moves out of her parents’ home in order to obtain benefits. 42 U.S.C. § 602(a)(43) (1988).

None of this is to say that the American preoccupation with minimizing socially irresponsible behavior is sensible. It is certainly wrongheaded to make such a preoccupation the central concern of public policy. As Marmor, Mashaw, and Harvey convincingly demonstrate, incentives are *not* always behaviors.⁶⁷ But as a descriptive matter, it would seem that the two are equated often enough that a (frequently wrongheaded) preoccupation with minimizing socially irresponsible behavior must lie at our collective core.

3. *The Quest for Commitments*

The book contains a number of indications that Marmor, Mashaw, and Harvey thought carefully about whether to include commitments other than insurance and opportunity in their account. For example, their deliberate decision to exclude “reducing poverty” from their set of central themes is reflected in their negative—even dismissive—response to commentators who suggest such a possibility. Thus, in chapter two, when the authors discuss their decision to characterize means-tested programs as reflecting an “opportunity theme” rather than a commitment to reduce poverty, they argue:

These means-tested programs are often visualized as a residual safety net protecting Americans against complete destitution. However, if ensuring a minimally adequate income for all were the primary focus of American social welfare policy outside the domain of social insurance, it could have been pursued more readily by other means [such as a negative income tax].⁶⁸

Note the structure of this form of argument. If our “primary focus” were a particular goal, we could have pursued it “more readily” with a particular program. Since we did not enact that program, we must not really hold the goal as a core commitment. The authors seem to have fallen prey to precisely the sort of logical error that they often expose in the arguments of others.

In thinking about a complex society that holds multiple commitments, one runs a serious risk by dismissing a value as insignificant simply because we

67. See pp. 219-22.

68. P. 38. The argument is repeated in slightly longer form on p. 99; see also pp. 22, 33-34, 40, 42, 96-103, 154-60. At some points in the book, the authors are willing to concede that *some* of our public policy has been animated—at least in part—by a desire to fight poverty. Yet, even at those moments, the concession is heavily qualified, and the tone is usually somewhat grudging. See, e.g., p. 39 (“A simple altruistic sense that no American should fall below a certain level of subsistence is one motive. *But . . .*”); p. 40 (“A *limited set* of programs provide cash income and are based neither on insurance principles nor on a vision of investment in future capacity for self-support.”); p. 42 (“*In some sense*, the impetus for both the New Deal and the Great Society programs was the fact of income poverty. *But . . .*”); p. 86 (“Assistance for destitute individuals and families is *only grudgingly provided* unless it is perceived as a ‘hand up’ to self-improvement and productive employment”); p. 99 (“[A]s we previously explained, Congress has consistently refused to adopt such a forthright program of poverty reduction . . . [D]irect poverty reduction is but one purpose of the American welfare state and not the sole purpose of any of its programs.”) (emphasis added in all cases).

have not yet acted to promote it in a particular way. We may just be moving towards the goal in slow, incremental steps. We may have chosen to pursue the goal via a different program (which admittedly gives us less of the goal than the preferred program would) because we are also committed to other values in addition to the goal. We may simply believe that the most efficient way to reach our ultimate goal (such as poverty reduction) is via a means that others may think of as an independently significant end in itself (such as opportunity expansion).⁶⁹ “No program” does not imply “no commitment.”

The same point can be made, albeit with somewhat less force, about the authors’ treatment of potential *nongenerative* commitments, such as the one I outlined in the previous section. The authors alert their readers to the fact that America’s public programs are not all that one might expect from commitments to insurance and opportunity. But instead of explaining the shortfall as the product of ideological struggle on a level playing field, they cast it as demonstrating how “the political strength of conservative ideological commitments and of conservative interests” has been able to “hedge the American welfare state within narrower bounds than its guiding principles would seem to dictate.”⁷⁰

The intended rhetorical effect here is unmistakable. Conservative ideological commitments are grouped together with amorphous “interests” (equally “conservative”) and then attributed “political strength” that is set in opposition to the “guiding principles” of insurance and opportunity. Yet, in this form of ideological account, the opposition between “political strength” and “principles” is tenuous. “Principles” can account for collective policies only to the extent they are mediated through politics. There is no obvious distinction between the way commitments to opportunity and insurance push the political process to generate programs and the way conservative commitments push that same political process to “hedge” those programs. Or, if there is such a distinction, the book does not provide enough information about the conservative commitments to make it self-evident.⁷¹

And what about other values? Given how many “factors” might plausibly have played some role in the fifty-year development of the American welfare state, why did Marmor, Mashaw, and Harvey simply not assert that our programs are the product of compromise among a wide range of incompatible and conflicting commitments? That is, after all, the way they describe the “purpos-

69. See ROBERT D. PLOTNICK & FELICITY SKIDMORE, *PROGRESS AGAINST POVERTY* 4-6 (1975) (genesis of Great Society community programs was “opportunity theory of poverty”; moreover, “poverty” meant different things to different people—for some it was synonymous with a lack of “equal opportunity”).

70. P. 44.

71. I was able to identify the following candidates for nongenerative commitments in the book’s discussion: limited government, individualism, family autonomy, and market allocation of goods and services. “[T]he logic of limited government” entails “a preference for private, nongovernment assistance to those in need” and “a preference for state or local, rather than federal, government provision.” Pp. 44-45. In the final pages, the authors also make passing allusions to “commitments to individual and family autonomy,” “market allocation of most goods and services,” and “individualism.” Pp. 240-41.

es” behind different programs. What difference do they discern between “purposes” and “commitments”?

The authors make the transition from their discussion of “purposes” (or “goals”) to their discussion of “commitments” with a suggestive sentence: “In the jumble of seemingly contradictory goals that have shaped the design of the American welfare state, we believe a more or less coherent set of enduring commitments can be discerned.”⁷² I would interpret the authors’ move from “purposes” to “commitments” as a move from a perspective stressing explanation of past developments to a perspective stressing positive justification of the present and future.

Thus, the authors’ treatment of “purposes” can be read as responding to the substantial literature in which social scientists debate the historical motives of political actors.⁷³ A range of structural accounts have emphasized different generative factors as the causes of welfare state emergence or expansion.⁷⁴

72. P. 31.

73. Cf. p. 23 (“Each embodies a distinct ideological vision of the welfare state and tends to be preferred by certain political actors and interest groups.”).

74. For useful overviews of this literature, see DANIEL LEVINE, *POVERTY AND SOCIETY* 6-11 (1988); FRED C. PAMPEL & JOHN B. WILLIAMSON, *AGE, CLASS, POLITICS, AND THE WELFARE STATE* 22-49 (1989); *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES* (Margaret Weir et al. eds., 1988); JILL QUADAGNO, *THE TRANSFORMATION OF OLD AGE SECURITY* 1-19 (1988); Yeheskel Hasenfeld et al., *The Welfare State, Citizenship, and Bureaucratic Encounters*, 13 *ANN. REV. OF SOC.* 387 (1987).

Among the most prominent competing models are functionalist accounts that emphasize the way such programs promote the self-interest of all citizens or of specific classes in developing, industrializing states. This form has several important variants: one prominent school of thought has suggested that our social welfare programs are created by the nonpoor to maintain a system of coercive social control over the poor. The most widely read (and extreme) book in this line is FRANCES F. PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR* (1971). The most articulate modern exemplar is JOEL F. HANDLER & YEHESKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY* (1991). For other perspectives and discussion, see MORRIS JANOWITZ, *SOCIAL CONTROL OF THE WELFARE STATE* (1976); LEVINE, *supra*, at 280-82; JAMES T. PATTERSON, *AMERICA’S STRUGGLE AGAINST POVERTY, 1900-1980*, at 134, 164-65 (1981); *SOCIAL WELFARE OR SOCIAL CONTROL?* (Walter I. Trattner ed., 1983); Eugene Durman, *Have the Poor Been Regulated?*, 47 *SOC. SERV. REV.* 339 (1973); Frances F. Piven & Richard A. Cloward, *Reaffirming the Regulating of the Poor*, 48 *SOC. SERV. REV.* 147 (1974); David A. Rochefort, *Progressive and Social Control Perspectives on Social Welfare*, 55 *SOC. SERV. REV.* 568 (1981).

Some commentators have emphasized the programs’ role in maintaining industrial stability. MANUEL CASTELLS, *THE URBAN QUESTION* (Alan Sheridan trans., 1977); JILL QUADAGNO, *THE TRANSFORMATION OF OLD AGE SECURITY* 99-115 (1988); see also EDWARD BERKOWITZ & KIM MCQUAID, *CREATING THE WELFARE STATE* (1980) (arguing that American welfare state emerged out of symbiotic relationship between big business and government bureaucracy). Others have focused on the programs’ power to heighten community solidarity. ELLWOOD, *supra* note 55, at 16. This is sometimes linked to T. H. Marshall’s ideal of “social citizenship.” See MARSHALL, *supra* note 53. At the same time, some observers have emphasized the fact that social welfare programs can promote fertility, thereby increasing the stock of workers to support the elderly. See PHILLIP LONGMAN, *BORN TO PAY* 139-45 (1987); GUNNAR MYRDAL, *POPULATION, A PROBLEM FOR DEMOCRACY* 124-213 (1962).

Less functionalist accounts have emphasized political action “from below,” either by workers as a group, or by shifting coalitions of individuals (defined in economic and ascriptive terms that do not correspond to a simplified labor/capital distinction). PAMPEL & WILLIAMSON, *supra*, at 34-44. Still other accounts have emphasized how the scope of welfare programs can be influenced by features of the state governance structure that affect its ability to create and administer such programs—features such as the centralization and corporatist organization of the state, the bureaucratic strength of administrative agencies, the structure of taxation, the electoral cycle, and the nature of competing demands for expenditures (such as national defense). See *id.* at 44-46.

An overlapping literature has explored structural factors that might have restricted the expansion of social welfare programs or channeled their development in particular directions.⁷⁵ Moreover, factors that seem to be playing nongenerative roles to some observers have been identified as, instead or in addition, playing generative roles by other observers.⁷⁶ Within this literature, debate continues over the meaning and significance of “ideology” as a concept, as well as over the significance of ideological values in the political history of program development.⁷⁷

In contrast to their discussion of “purposes”, Marmor, Mashaw, and Harvey seem to be pursuing a different objective through their discussion of “commitments.” Whereas the former discussion engages debates about the vast set of variables that might in fact have accounted for our history, the latter engages debates in which participants are limited to a more restricted class of variables. That restricted class consists of ideas that may be offered as *public* aspirations in *today’s* world, aspirations to shape the future development of programs that may have arisen for other reasons.

To be sure, such debates need not be ahistorical; the extent to which ideas have been influential in the past is surely relevant to whether they are likely to carry weight today. The primary object, however, is to identify ideas that carry weight in modern political discussion. It is to construct an ideology that can be debated on its merits and can then provide a vantage point from which to appraise our current programmatic structure. Marmor, Mashaw, and Harvey are entering into such debates with a limited objective—to legitimate the status quo in the face of charges of incoherence.

While distinguishing “purposes” from “commitments” in this manner helps to explain how Marmor, Mashaw, and Harvey *could* take different approaches to the two categories, it does not explain why they *did*. Just as historical

75. Many commentators have emphasized Southern employers’ interest in not having the welfare state undermine socioeconomic structures of racist oppression. See, e.g., WINIFRED BELL, *AID TO DEPENDENT CHILDREN* 9-10, 34-35 (1965); MICHAEL KATZ, *IN THE SHADOW OF THE POORHOUSE* 158, 244-45, 252-53 (1986); QUADAGNO, *supra* note 74, at 115-16, 127-51; Kammerman and Kahn, *supra* note 31, at 374. In a related vein, others have focused on men’s interest in maintaining power over women. MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN* (1988); LINDA GORDON, *WOMEN, THE STATE, AND WELFARE* (1990); Linda Gordon, *What Does Welfare Regulate?*, 55 *SOC. RES.* 609 (1988); Carole Pateman, *The Patriarchal Welfare State*, in *DEMOCRACY AND THE WELFARE STATE* 231 (Amy Gutman ed., 1988). Others have emphasized the employers’ interests in maintaining their workers’ “work ethic.” See ELLWOOD, *supra* note 55, at 16; Robert D. Reischauer, *Welfare Reform: Will Consensus Be Enough?*, *THE BROOKINGS REV.* 3-8 (Summer 1987). Finally, some have focused on the middle class’s interest in maintaining its own self-esteem. See Lawrence M. Friedman, *The Social and Political Context of the War on Poverty: An Overview*, in *A DECADE OF FEDERAL ANTIPOVERTY PROGRAMS* 21, 46 (Robert H. Haveman ed., 1977).

76. For example, Handler and Hasenfeld argue that “social welfare policy . . . is fundamentally a set of symbols that try to differentiate between the deserving and undeserving poor in order to uphold such dominant values as the work ethic and family, gender, race, and ethnic relations.” HANDLER & HASENFELD, *supra* note 74, at 11.

77. See, e.g., JOHN B. THOMPSON, *IDEOLOGY AND MODERN CULTURE* 28-121 (1990). If one wished to link Marmor, Mashaw, and Harvey with an illustrious ancestor in these literatures, I would point back to Gunnar Myrdal’s complicated vision of the relationship between an “American Creed” and the structures of racial oppression. See, e.g., GUNNAR MYRDAL, *AN AMERICAN DILEMMA*, at xlv-li, 209-19 (1944).

explanation of the welfare state can be grounded in political compromise among conflicting purposes, idealist justification can be grounded in a pluralist vision of compromise among conflicting commitments. In addition to reducing poverty and minimizing public inducements to socially irresponsible behavior, other commentators have suggested the importance of maintaining an ethic of individual (or family) self-sufficiency,⁷⁸ maintaining a spirit of voluntarism,⁷⁹ maintaining spheres of state discretion within a federal system,⁸⁰ and defining a relationship between citizens and government that is grounded in a conception of reciprocal "social obligation."⁸¹

At bottom, it appears that the authors' reliance on a model that exalts two nonconflicting "commitments" and subordinates plausible sources of conflict reflects a quest for simplicity. One hardly needs a fine-tuned model that accounts for every wrinkle of American public policy in order to rebut the argument that the American welfare state ought to be scrapped because it is incoherent. A simple model of two non-conflicting commitments might provide the strongest refutation of a sweeping charge of incoherence, at least if one's standards of "coherence" do not involve too exacting a notion of "fit."

But if the authors' decision strengthens their case against their chosen adversaries, it attenuates the utility of their conceptual framework for those who share their interest in constructive incremental reform. Consider a hypothetical advocate of a proposal to replace AFDC with a program of "childbirth insurance" that provides more generous means-tested benefits, but only during the first three years of a child's life.⁸² To defend such a proposal in modern political discussion, she should certainly be familiar with American commitments to insurance and opportunity. But she is unlikely to be effective if she visualizes those commitments as dominating an ideological landscape that is merely hedged in by a few conservative political interests at the borders.

The terrain of public commitments is as dense and contested as the terrain of individual purposes. Different groups of voters ally their "cores" with different entries on a long list of plausible but conflicting public aspirations. In entering contemporary debate, reformers who are attracted to the simplicity of Marmor, Mashaw, and Harvey's account of "commitments" would be well advised to temper that attraction with an appreciation of the subtlety of the authors' discussion of "purposes."

78. See ELLWOOD, *supra* note 55, at 16; Stephanie G. Gould & John L. Palmer, *Outcomes, Interpretations, and Policy Implications*, in *THE VULNERABLE*, *supra* note 16, at 414, 425; Reischauer, *supra* note 75.

79. ROY LUBOVE, *THE STRUGGLE FOR SOCIAL SECURITY* 1-24 (1968); Reischauer, *supra* note 74; Michael Walzer, *Socializing the Welfare State*, in *DEMOCRACY AND THE WELFARE STATE*, *supra* note 74, at 1, 19-22.

80. See Reischauer, *supra* note 74. *But cf.* Kammerman and Kahn, *supra* note 31, at 373-75 (noting that interest in federalism does not prevent uniform national programs to benefit elderly).

81. LAWRENCE M. MEAD, *BEYOND ENTITLEMENT* 10-11, 83, 242 (1986).

82. That is a rough description of the French Allocation de Parent Isolé. See *CODE DE LA SÉCURITÉ SOCIALE*, art. L. 524-3, art. R. 524-6 (18th ed. Dalloz 1990).

II. TO CRITICIZE AND TO DEFEND

America's Misunderstood Welfare State is not structured as an abstract tome about welfare state ideology. It begins by throwing down a gauntlet: "This book has a simple message: America's social welfare efforts are taking a bum rap."⁸³ The authors want to change the terms of political debate. They do not seek to conceptualize the purposes of the American welfare state for the sake of conceptualization; rather, the book's conceptualization serves as an instructional prelude to a policy-oriented response to certain criticisms of certain public programs. In this part, I divide such criticisms into two categories and discuss the authors' responses to an exemplar of each form.⁸⁴

A. *Against Ineffectiveness*

One form of policy criticism that the authors address contends that a program is *ineffective*. Criticisms that take this form concede the legitimacy of the program's underlying aim, but argue that the program does not (or will not) really promote that aim. The most common form of "ineffectiveness" criticism is that a program is *relatively* ineffective—not effective *enough* to justify the costs.⁸⁵ Occasionally, however, a critic makes the more extreme claim that a program is *completely* ineffective—that it does absolutely nothing to promote its avowed objectives and may even undermine them.⁸⁶ In keeping with their general mission of defending the welfare state against its most extreme challenges, Marmor, Mashaw, and Harvey concern themselves primarily with such claims of complete ineffectiveness.

In the world of social welfare policy, the most prominent example of a charge of complete ineffectiveness was made during the early 1980's. In *Losing Ground*, Charles Murray argued that the growth of America's social welfare

83. P. 1; see also p. xiv (explaining that book will refute criticisms that are demonstrably "false").

84. It bears mention that *America's Misunderstood Welfare State* does not concern itself with one fairly common form of policy criticism—criticism arguing that our welfare state is *wrong in principle*. The book does not attempt to defend commitments to social insurance and expanded opportunity by linking them to some unified theory of distributive justice. While it seems that the authors might well find such a project interesting, that is not this project.

In place of political theory, the authors offer empirical description. They discuss public opinion polls that suggest that the values of insurance and opportunity are attractive to many Americans. See pp. 7, 47-48, 120. Overall, the polls show substantial support for existing programs and for the idea of helping the poor and the needy. Other polls have confirmed that there is less support, even among poor people, for substantial redistribution of wealth to reduce inequality. For stimulating analyses of the apparent paradoxes, see JENNIFER L. HOCHSCHILD, *WHAT'S FAIR?* (1981); Hecllo, *supra* note 51.

85. Such criticisms differ only in emphasis from the form of criticism I address in the next subpart—criticisms that a program is too costly. I use the distinction to divide arguments emphasizing the magnitude of perceived benefits from those emphasizing the magnitude of perceived costs or the way in which costs and benefits should be amalgamated.

86. Albert Hirschman has recently suggested that such extreme claims are actually a common feature of conservative rhetoric, and he divides them into claims that reflect a "perversity thesis" and claims that advance a "futility thesis." ALBERT O. HIRSCHMAN, *THE RHETORIC OF REACTION* 11-80 (1991).

programs had distorted individuals' behavioral incentives to such an extent that they were becoming socially irresponsible in the rational pursuit of their own financial self-interest. He argued that, as a result, the number of people who would be poor without government transfers had grown, even while the amount of transfers had itself grown.⁸⁷

A host of commentators promptly demonstrated that this aspect of Murray's argument was deeply flawed—both analytically and methodologically.⁸⁸ Murray's criticism was of means-tested welfare programs, not of Social Security, Unemployment Insurance, or Medicare.⁸⁹ Yet, there is no significant association between the levels of means-tested benefits—as they have varied over time and across states—and levels of prewelfare poverty, out-of-wedlock births, or labor force participation.⁹⁰ If one wants to predict prewelfare poverty rates, one should look not at welfare benefit levels, but rather at the variables emphasized by Marmor, Mashaw, and Harvey: overall unemployment rates, the economy-wide distribution of market income, and demographic changes.⁹¹

But while they reject Murray's "complete ineffectiveness" argument, the authors concede that there may be more force to a less extreme "relative ineffectiveness" argument. Let us assume that our welfare state is generally committed to alleviating poverty and to providing all Americans with a fair opportunity for participation in economic life. The argument would start with the proposition that, even if our social welfare programs are, on average, reasonably effective in pursuing those commitments, we should be concerned if they turn out to be systematically ineffective with regard to certain subgroups of the American population, such as African Americans, children, or children of single parents. The underlying premise would be that systematic variation in the effectiveness of a program casts presumptive doubt on whether one can claim to be effectively pursuing a grand goal (such as poverty reduction or opportunity enhancement). One's legitimate claim could only be to be pursuing a more modest goal, such as poverty reduction or opportunity enhancement for particular groups.

In 1989, 31% of African Americans (44% of African-American children) lived below the official poverty line, even *after* one took into account money received through public cash transfer programs.⁹² A recent issue of England's

87. See CHARLES MURRAY, *LOSING GROUND* 56-68 (1984). Murray applied the label "latent poverty" to what had long been described as "pretransfer poverty." See PLOTNICK & SKIDMORE, *supra* note 69.

88. See, e.g., Sheldon Danziger & Peter Gottschalk, *The Poverty of Losing Ground*, CHALLENGE, May-June 1985, at 32-38; David T. Ellwood & Lawrence H. Summers, *Is Welfare Really the Problem?*, PUB. INTEREST, Spring 1986, at 57-58; Robert Greenstein, *Losing Faith in 'Losing Ground,'* NEW REPUBLIC, Mar. 25, 1985, at 12; Christopher Jencks, *How Poor Are the Poor?*, N.Y. REV. OF BOOKS, May 9, 1985, at 41.

89. MURRAY, *supra* note 87, at 220.

90. See sources cited *supra* note 88.

91. P. 113.

92. See U.S. BUREAU OF THE CENSUS, DEPT. OF COMMERCE, *MONEY INCOME AND POVERTY STATUS IN THE UNITED STATES—1989*, at 58, 60 (Current Population Reports Consumer Income Series P-60, No. 168, 1990). In 1974, the numbers were 30% and 40%. The corresponding figures for whites (including white

Economist featured two African-American children on the cover, under the caption, “America’s Wasted Blacks”: “The slums in America’s great cities are shameful. They are a damning indictment of the richest country in the world The nation now has a quarter of a century’s worth of anti-poverty experiments to draw on [P]overty persists despite these efforts.”⁹³

These raw figures do not by any means show that programs are ineffective in helping the African-American community. The poverty rates might well have been higher without the programs. Even if the rates would have been the same, the poverty *gap* (a measure of how far below the poverty line poor people are living) would presumably have been much higher. The figures do, however, offer a rough indication of how much remains to be achieved if one is committed to reducing poverty throughout the American population.

One could also undertake the same sort of “relative ineffectiveness” inquiry, substituting “opportunity” for poverty reduction. Suppose one’s objective is to offer a meaningful degree of economic opportunity to all Americans. It is difficult to learn much about the “opportunities” adults have enjoyed by examining their earnings, since “income outcomes” reflect the interaction between the opportunities adults have enjoyed and the choices they have made. Information about *children’s* situations may be more useful, however, since their positions are unlikely to have been influenced by choices for which we would hold them strictly accountable. For a given generation of children, we can get a crude sense of how “opportunities” are distributed by looking at the distribution of children’s families’ incomes.

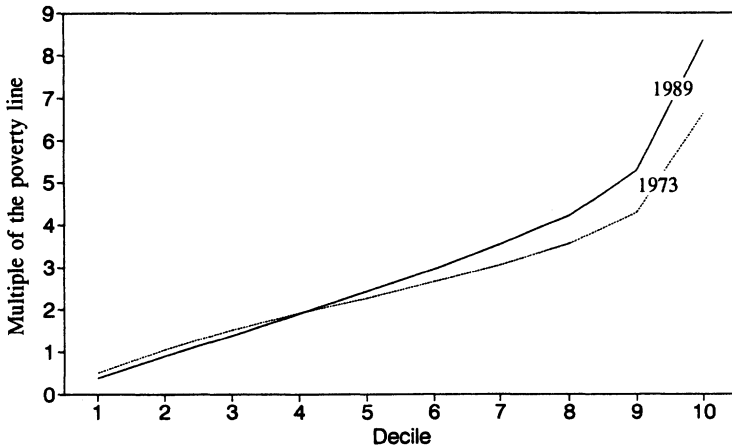
The following graph shows the average inflation-adjusted income (as a multiple of the poverty line) for each decile of children under eighteen in 1973 (the high water mark for the American economy during the 1970’s) and 1989 (the next high water mark after 1973).⁹⁴

Hispanics) were 10% and 15% in 1989, 9% and 11% in 1974. For Hispanics, the best available corresponding figures were 26% and 36% in 1989, 23% and 29% in 1974. *Id.*

93. *America’s Blacks*, THE ECONOMIST, Apr. 5, 1991, at 17, 21.

94. This graph and those that follow are based on data extracted from the U.S. Census Bureau’s Current Population Survey by Jon Haveman and Sheldon Danziger. The data distinguish families according to whether the individual reported by the Census Bureau as the “head” of the family describes him or herself as “Hispanic,” “Black and Not Hispanic,” or “White and Not Hispanic.” The data distinguish between “two-parent” families from “female-headed” families, which are understood to mean families in which no father is present. The graphs use the label “Black” for the “Black and Not Hispanic” category, and the label “mother-only” for the “female-headed” category. Jon Haveman & Sheldon Danziger, Tables from U.S. Census Bureau’s Current Population Survey (Sept. 2, 1991) (on file with author).

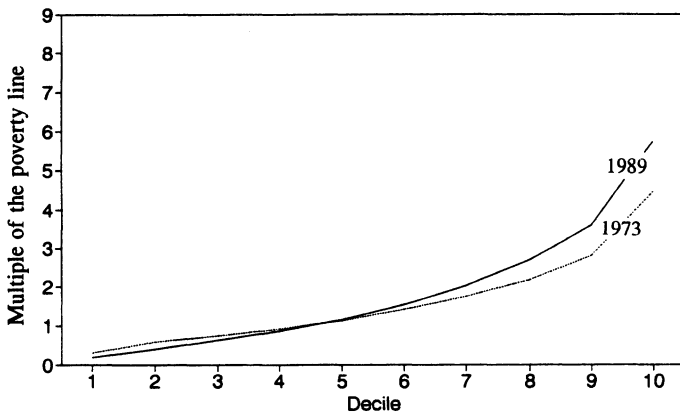
GRAPH 1. Mean family income for each decile (all children)



If all of a society's citizens participated in economic growth, one would expect to see the entire curve shift upwards between such peaks in the business cycle. That is what would happen if everyone became a little bit better off. But during the period shown above, the shift was not complete; it is as if the right end of the curve was able to rise while the left end was anchored in place. Our poorest children in 1989 had a lower standard of living than did their counterparts in 1973, and they started out *farther behind* the rest of society than did their predecessors.

Such a phenomenon might not be troubling if one could be sure that children starting out at the bottom in one generation had no particular link to the children who started out at the bottom in the prior generation. The Census Bureau data do not permit one to link up children with their ancestors in prior years, but the data do permit one to look at groups of children having particular characteristics. Consider the graph for African-American children:

GRAPH 2. Mean family income for each decile (African-American children)

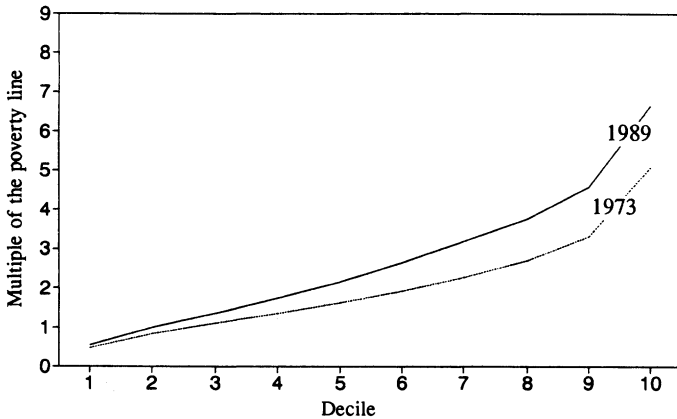


The top half of the curve for African-American children does indeed shift upwards between 1973 and 1989. That is consistent with the conclusion of some observers that, if one considers a broad range of measures, the attack on racial inequality over the past thirty years has been “a relative success story.”⁹⁵ Yet, the relative immobility of the bottom half leaves one with even more concern about whether an identifiable group of families is not benefiting from the overall growth of the economy.⁹⁶

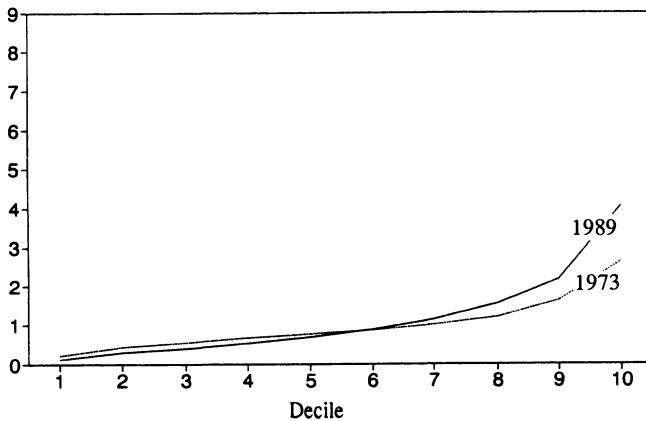
95. HAVEMAN, *supra* note 49, at 59. See generally *id.* at 59-62.

96. If one disaggregates the data for African-American families by family structure, one finds that the relative position of low-income African-American children in two-parent families improved slightly during this time period, whereas the relative position of low-income African-American children in mother-only families actually deteriorated:

GRAPH 3. Mean family income for each decile
(African-American children in two-parent families)



GRAPH 4. Mean family income for each decile
(African-American children in mother-only families)



Sara McLanahan has documented the different forms of disadvantage associated with growing up in a low-income, single-parent family. See, e.g., IRWIN GARFINKEL & SARA MCLANAHAN, SINGLE MOTHERS

These graphs say nothing conclusive about whether social welfare programs did or did not enhance opportunities for low-income children. The picture might well have looked even worse without the programs that exist. The beneficial effects of enhanced opportunity may not appear in crude monetary calculations, or they may take time to manifest themselves. But even with these qualifications, the raw numbers give some cause for concern about how *broadly* effective those programs may be.

Marmor, Mashaw, and Harvey do not address the question of whether our welfare state might not be very effective in furnishing opportunity to a broad sector of African Americans. They do, however, suggest the possibility of a "gap" in our provision of "opportunity" to a subset of the African-American community—what has come to be known as the urban underclass.⁹⁷ An emerging literature has documented the magnification in recent years of the obstacles to daily life and economic mobility faced by children growing up in urban ghettos.⁹⁸ Within that literature, debate continues to rage over what role, if any, public programs may have played in the deterioration of the urban environment.⁹⁹ While the authors' own contribution to that debate is somewhat

AND THEIR CHILDREN (1986); Sara McLanahan & Larry Bumpass, *Intergenerational Consequences of Family Disruption*, 93 AM. J. SOC. 130 (1988); Sara McLanahan & Karen Booth, *Mother-Only Families: Problems, Prospects, and Politics*, 51 J. MARRIAGE & FAM. 557 (1989); Sara McLanahan et al., *The Role of Mother-Only Families in Reproducing Poverty*, in CHILDREN AND POVERTY (Aletha C. Huston ed., forthcoming 1991).

97. Pp. 115-16.

98. Sociologist Elijah Anderson has recently provided an absorbing ethnographic account of life in inner-city Philadelphia, and journalist Alex Kotlowitz has offered an equally compelling account of the lives of two boys in a Chicago housing project. See ELIJAH ANDERSON, *STREETWISE* (1990); ALEX KOTLOWITZ, *THERE ARE NO CHILDREN HERE* (1991). For an introduction to the enormous social science literature on the urban underclass, see INNER-CITY POVERTY IN THE UNITED STATES (Laurence E. Lynn, Jr. & Michael G.H. McGeary eds., 1990); THE URBAN UNDERCLASS (Christopher Jencks & Paul E. Peterson eds., 1991); Glen G. Cain & Ross E. Finnie, *The Black-White Difference in Youth Employment: Evidence for Demand-Side Factors*, 8 J. LAB. ECON. S364 (1990); *The Ghetto Underclass: Social Science Perspectives*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 1 (1989) (collection of articles devoted to topic); Mark A. Hughes, *Concentrated Deviance and the "Underclass" Hypothesis*, 8 J. POL. ANALYSIS & MGMT. 274 (1989); William R. Prosser, *The Underclass: Assessing What We Have Learned*, FOCUS, Summer 1991, at 1; *Special Issue, Defining and Measuring the Underclass*, FOCUS, Spring-Summer 1989, at 1; *The Urban Underclass: Special Issue*, 11 URBAN GEOGRAPHY 213-97 (1990) (collection of articles and book reviews devoted to topic); Finis Welch, *The Employment of Black Men*, 8 J. LAB. ECON. 27 (1990).

In addition to concern over the plight of African Americans born in urban ghettos, serious concern has been raised over the situations of Puerto Ricans and Native Americans living on reservations. See Gary D. Sandefur, *American Indian Reservations: The First Underclass Areas?*, FOCUS, Spring-Summer 1989, at 12; Marta Tienda, *Puerto Ricans and the Underclass Debate*, 501 ANNALS AM. ACAD. POL. & SOC. SCI. 105 (1989). See generally DIVIDED OPPORTUNITIES (Gary D. Sandefur & Marta Tienda eds., 1988).

99. For debate over the causes of urban decay, see, e.g., WILLIAM J. WILSON, *THE TRULY DISADVANTAGED* 151 (1987) (stressing importance of macroeconomic changes); Christopher Jencks, *Deadly Neighborhoods*, NEW REPUBLIC, June 13, 1988, at 23, 26-27 (stressing cultural conflict in workplace); Mickey Kaus, *The Work Ethic State*, NEW REPUBLIC, July 7, 1986, at 22 (arguing that AFDC, by offering benefits of almost indefinite duration, does grave damage to work ethic, and that it should be replaced by public jobs program along lines of WPA); Douglas S. Massey, *American Apartheid: Segregation and the Making of the Underclass*, 96 AM. J. SOC. 329 (1990) (stressing residential segregation and white flight).

confusing,¹⁰⁰ it is nonetheless consistent with the view that significant new efforts are required if we wish to make the claim that no discrete group of Americans is disabled by the accident of birth from enjoying a meaningful opportunity for economic prosperity.¹⁰¹

B. *Against Being Too Costly*

A different form of policy criticism taken up in *America's Misunderstood Welfare State* contends that a program is *too costly*. Criticisms that take this form concede the legitimacy of the program's underlying aim, as well as the program's effectiveness in promoting that aim, but argue that the program will have other consequences that are more important than the benefits that will accrue. Programs can be too costly in two ways. They can be too costly in dollars, demanding more from the society than is justifiable. Or they can be too costly in terms of their side effects—their damage to other economic interests or to public commitments.¹⁰²

100. The discussion begins with the assertion that “the major programs of the American welfare state have little impact on this group.” P. 116. It then recites the availability of AFDC, medicaid, food stamps, subsidized housing, SSI, and “the remnants of our always-modest-and-now-quite-small training and placement programs.” *Id.* It concludes with some more assertions: “This is clearly not a group of Americans for whom the welfare state has attempted to do a great deal. We may be blameworthy for our failure to attend more to the needs of the most disadvantaged among us. But this is evidence of a *gap* in our welfare state, not of the *failure* of welfare state programs.” *Id.*

When the authors suggest that our “major programs . . . have little impact,” they are referring to our social insurance programs. But the list of programs that they acknowledge *do* touch the underclass is precisely the list of means-tested programs that they previously invoked to document our commitment to “opportunity.” If that list means we have not “attempted to do a great deal” for the underclass, then what justifies our claiming a “core commitment” to opportunity? Moreover, it is not clear why the authors see evidence merely of a “gap” and not at all of “failure.” If our means-tested programs are not ensuring opportunity for the underclass, it could well be because the programs are too small, since little programs often fail to do very much. (Ironically, that failure can then be invoked as evidence against expanding them.) But it could also be because they are poorly designed programs.

101. For a catalogue of plausible programs to enhance opportunities for children born in ghetto neighborhoods, see LEMANN, *supra* note 40, at 348-53 (1991). For a more global program designed towards equalizing opportunity generally, see HAVEMAN, *supra* note 49, at 149-77.

102. Within Albert Hirschman's typology, these claims advance a “jeopardy thesis.” See HIRSCHMAN, *supra* note 86, at 81-132. In the welfare state context, recall Charles Murray's argument that the welfare state does not reduce poverty. This argument was premised upon a supposed demonstration that welfare benefit levels have distorted behavior. (That demonstration was both empirically and analytically flawed. See authorities cited *supra* note 88.) A somewhat subtler variant of Murray's argument is presented by Lawrence Mead. See LAWRENCE MEAD, *BEYOND ENTITLEMENT* (1986). Mead argues that, as currently implemented, transfer programs undermine our collective commitment to maintain public order through the internalization of individual obligations and thereby consign beneficiaries to a socially subordinated role. See also NATHAN GLAZER, *THE LIMITS OF SOCIAL POLICY* 13 (1988) (cautioning against programs that undermine traditional societal institutions); J. Donald Moon, *The Moral Basis of the Democratic Welfare State*, in *DEMOCRACY AND THE WELFARE STATE*, *supra* note 75, at 27, 32-35 (just society must allow people to maintain self-respect by performing the duties of citizens).

Perhaps a more interesting example is found in Bill Simon's argument that the administration of means-tested programs has been transformed in ways that impose enormous noneconomic costs on a wide range of concerned parties. William H. Simon, *Legality, Bureaucracy, and Class in the Welfare System*, 92 *YALE L.J.* 1198 (1983). Simon argues that since the 1960's, welfare administration has been transformed into a formalized, rule-bound, impersonal relationship, one that was a Kafkaesque nightmare for claimants and an oppressed slot at the bottom of a hierarchy for caseworkers.

Marmor, Mashaw, and Harvey devote their most significant attention to an argument that our welfare state costs too many dollars. When such arguments are made in the American context, they are often accompanied by proposals to make significant changes in the Social Security Old Age, Survivors, and Disability Insurance program (OASDI).¹⁰³ A particularly flamboyant example is Peter Peterson and Neil Howe's assertion that our commitments to Social Security retirement and disability benefits are "patently unsustainable."¹⁰⁴

Marmor, Mashaw, and Harvey's reply to Peterson and Howe is less than trenchant. They state:

This is nonsense.¹⁰⁵ To see why, we need only compare the share of net national product now devoted to all Social Security entitlement spending, including health care, with the share projected for the year 2060. As Figure 5.5 shows, the amount goes from just under 6 percent in 1990 to slightly below 10 percent in 2060, a shift of 4 percentage points.

As we have said elsewhere, it is not clear what commentators mean when they say that programs are "unaffordable" or "unsustainable." But a shift of 4 percentage points spread over seventy-five years in the way net national product is expended can hardly qualify as

Neither Mead's nor Simon's argument calls for wholesale abandonment of welfare programs. Both arguments highlight critical nonmonetary side effects that may follow from the incentives, rewards, values, and self-understanding of those who are charged with administering such programs. See generally JOEL F. HANDLER, *PROTECTING THE SOCIAL SERVICE CLIENT* (1979); JERRY L. MASHAW, *BUREAUCRATIC JUSTICE* (1983).

103. OASDI accounts for more than one-fifth of the federal budget, almost twice as much as all means-tested programs combined. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, *STATISTICAL ABSTRACT OF THE UNITED STATES* 310, 353 (1990).

104. P. 150, quoting PETER PETERSON & NEIL HOWE, *ON BORROWED TIME* 43 (1988).

105. A word here on tone. Marmor, Mashaw, and Harvey are gifted writers. Their vivid verbs entertain and persuade at the same time. Well-chosen images decorate their prose and propel their arguments. Unfortunately, the authors misuse that talent in discussing other writers. Critics of welfare state programs are characterized as "shrill" and "alarmist." Pp. 139, 156. "Obvious points [are] lost on" them. P. 156. They "advance their position with a stridency typical of the recently converted." P. 158. They "crow," "sneer," and "whack[] away." P. 159. They "take advantage of the American public's unease." P. 13. "[T]hey worked overtime" to undermine our welfare state institutions, but "little of what they said was really new." P. 13. Some critics are so "analytically and politically naive" that they make "a political error that seems so obvious that we marvel at how common it has become." P. 159. Those who favor a generous negative income tax are talking about an idea that is not merely "well off the agenda of practical political action"—it is a "preposterous proposal." P. 240. Some of the authors' adversaries are lucky enough to be "otherwise well-informed commentators" who "are not lunatics" Pp. 161, 167. Others, less fortunate, make analytic mistakes because they are blinded by a "patrician concern to construct a beneficent welfare system." P. 166. Apparently without irony, the authors condemn the rhetorical excesses of others with the observation that "[w]e live in a world in which to be shrill is to be heard, in which both politicians and publicists continuously commit crimes against common sense." P. 51. Sometimes these rhetorical flourishes are merely amusing or only mildly distracting. At other times (most notably in the discussion of Social Security in chapter six), they detract significantly from the book's persuasiveness. At their worst, they call the authors' own seriousness into question. Thus, after quoting a January 1989 Government Accounting Office report concerning the Social Security Trust Funds, the book goes out of its way to be sarcastic: "The GAO report was, of course, much too moderate and sensible to be reported anywhere in the press." P. 154. Yet a quick NEXIS search turned up *GAO Issues Warning On Use of Surplus From Social Security*, WALL ST. J., Jan. 27, 1989, at A16.

either. This represents a projected annual increase of an infinitesimal four-hundredths of one percent [sic].¹⁰⁶

Unfortunately, these responses by Marmor, Mashaw, and Harvey direct attention to largely irrelevant facts.¹⁰⁷ There is little philosophical or economic significance to the rate of change in the percentage of our output devoted to a particular good or service. (What if, over the course of 500 years, we were to gradually redeploy 100% of our national productive capacity to the production of guns?) If one is moving to a world in which excessive concentration on one good or service squeezes out opportunities for other activities, it may be better to get there slowly. But that does not mean the move is wise.

And yet Peterson and Howe are equally wrong to think that growth in the percentage of Gross National Product (GNP) devoted to Social Security cash transfers is, in and of itself, cause for alarm. Percentage-of-GNP figures fail to account for growth in GNP, or, more pertinently, for growth in GNP per capita. If GNP is growing rapidly, then in the future we can devote a somewhat higher proportion of it to any one good or service, such as health care, and still have more (in absolute terms) of all other goods or services than we have now.¹⁰⁸ Moreover, Social Security retirement and disability payments do not, in and of themselves, consume goods and services beyond the relatively insignificant costs of administering the programs. They do not directly affect the package of items in which we consume and invest; they merely redistribute the right to *decide* what those goods are.¹⁰⁹ Thus, the best economic theory and evidence suggest that aggregate social spending has negligible overall effects on economic growth.¹¹⁰

To answer the question of whether Social Security expenditures are becoming too costly, one should first frame the issues in distributional terms. Among the different groups who will pay into the system and draw benefits at different times, which groups will have grounds to complain about the way the system has treated them, and what will be the nature of their arguments? The question requires an appreciation of the predominantly pay-as-you-go structure of Social

106. Pp. 150-51.

107. The authors' characterization of those facts is a bit stretched as well. On their graph, virtually all of the projected growth is to take place by 2035, rather than being stretched out until 2060. Moreover, because (as the authors correctly observe) Peterson and Howe's argument is primarily about OASDI, the more relevant graph would show growth in OASDI as a share of GNP—growth that is projected to be virtually complete by 2030. See BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE SURVIVORS, INSURANCE AND DISABILITY INSURANCE TRUST FUNDS, 1991 ANNUAL REPORT, H.R. DOC. NO. 88, 102d Cong., 1st Sess. 155 [hereinafter 1991 ANNUAL REPORT].

108. This point is developed more fully in a different context in Lehman, *supra* note 60, at 1045-51.

109. See Burtless, *supra* note 54, at 41-42, 45-48. Marmor, Mashaw, and Harvey offer a specific response to Martin Feldstein's argument that the Social Security retirement program is undermining national savings. Pp. 141-44. Drawing on some careful analysis by James Tobin, they conclude that the only clear, current effect of the program is to increase net national savings.

110. See generally ROBERT J. LAMPMAN, *BALANCING THE BOOKS: SOCIAL SPENDING AND THE AMERICAN ECONOMY* (1985).

Security finance. Each year's benefits are paid from revenues collected during that year through a payroll tax on workers and their employers, the Federal Insurance Contributions Act (FICA) tax; only if there is a shortfall is it necessary to draw down the reserve derived from extra FICA taxes collected in earlier years.¹¹¹

Note that in a perpetually growing economy, this pay-as-you-go structure holds out the promise of improvements in *everyone's* position. Each generation simply gives up part of its claim on consumption while it is young in exchange for an enhanced claim to share in the greater opportunities for consumption that will exist during a future, more productive economy. In practice, however, the design of such a program is complicated by some messy facts: aggregate economic growth is uneven and unpredictable; age cohorts come in different sizes; and within each age cohort individuals earn different amounts in the private market, pay different amounts in taxes, and receive different amounts in benefits.

When Peterson and Howe assert that Social Security is on a "patently unsustainable" course, they are really suggesting that, at some point in the near future, an age cohort of young workers will decide that it is being offered a bad deal. In theory, that could happen if the younger cohort felt that its expected standard of living was unfairly low when compared with the standard of living that the then-retirees had enjoyed during their working lives and were asking to enjoy in retirement. But whether any younger cohort is likely to feel that way in practice is in part a question of economic facts and in part a question of social relations.¹¹²

One important perspective on the economic facts may be drawn from the projections of the Social Security Trustees. Those projections suggest that the OASDI program has been structured so as to deliver to each cohort of workers and retirees substantial real increases in standard of living. Those real increases provide substantial cushions for concessions by both sides in future intergenerational bargaining if adjustments to the program are required.¹¹³

111. The current actuarial structure calls for revenues to exceed benefits from now until after 2015; from then until 2041, the accumulated surplus is to be slowly drawn down. Even between 2015 and 2041, about 80% of benefit payments in any given year will be covered by that year's FICA revenues. See 1991 ANNUAL REPORT, *supra* note 107, at 155.

112. Whenever one sets up a pay-as-you-go program, the first beneficiaries enjoy a windfall, receiving benefits from their children without having been required to pay taxes to support their parents. If every generation begrudged its predecessors that windfall, the program would never be launched. The windfall can itself be stretched out across generations by departing from a pure pay-as-you-go model, but to launch the program a majority of voters must still be content with the fact that their own windfalls will inevitably be smaller than their predecessors'. Whether they will be content depends on a host of unquantifiable social factors. See Hecló, *supra* note 16, at 381, 402-08.

113. The set of assumptions described by the Trustees as "balanced" holds that, during the 21st century, wages will grow at an annual rate 1.1% faster than inflation, the combined OASDI payroll tax on employers and employees will remain at its current rate of 12.4%, and the program will remain solvent through 2040. 1991 ANNUAL REPORT, *supra* note 107, at 12, 39, 43. (The summary section of the 1991 Annual Report is reprinted in modified form at SOC. SEC. BULL., June 1991, at 2, 2-11.)

The most important source of concern with the current structure of the Social Security system lies not in its projections for the future distribution of taxes and benefits, but rather in the fiscal assumptions that undergird these projections. The projections require the Social Security Trust Funds to accumulate surpluses between now and 2015, loan those surpluses to the federal government's General Fund, and then collect those loans (with interest) after 2015 to help pay the cost of benefits for the baby boom generation.¹¹⁴ In order for the General Fund to repay those loans without additional borrowing, the General Fund will need to receive higher aggregate tax revenues during the years after 2015 than it needs for its traditional current expenditures. In order for the General Fund to show such budgetary surpluses, either (1) the economy must grow enough for the existing income tax rate structure to produce extra revenues, (2) the government will have to cut its expenditures on other programs, or (3) the government will have to increase revenues from taxes other than the FICA tax, such as personal or corporate income taxes.

The latter options are sufficiently unattractive that they might well call into question the General Fund's willingness to pay off its debts to the Trust Funds,

If wage growth is indeed that strong, workers could maintain their standard of living even if payroll taxes were to come close to doubling in 10 years. One can derive that result as follows. Assume an employer is willing to pay \$20,000 for a given type of work in the year 2005. Since the combined employer/employee rate is 12.4%, if the worker bears the full combined brunt of the tax, the worker will take home \$17,520. With real wage growth of 1.1% a year, by 2015 the employer would be willing to pay \$22,312 (in year-2005 dollars), an amount which could be reduced by 21.5% and still leave the worker with \$17,520 (in year-2005 dollars). Even if real wage growth were only 0.6% per year (a possibility that, in combination with other pessimistic assumptions, would lead to projected trust fund insolvency in 2022, *see* 1991 ANNUAL REPORT, *supra* note 107, at 93), employees could enjoy a constant standard of living while the combined payroll tax rate went from 12.4% to 17.5% between 2005 and 2015.

Conversely, since retirement benefits are tied to pretax wages, that rate of wage growth would enable retirees to accept substantial cutbacks in the benefit formula while still enjoying a more comfortable retirement than did any prior generation of retirees. (I do not mean to suggest that any generation of retirees would gladly accept retirement at a standard of living no better than the one to which its parents retired. I mean only to suggest that a "freeze" in the retirement standard of living is a plausible benchmark for deciding whether the program has been seriously cut back.)

To be sure, such simplified generalizations submerge some important complicating factors. For example, not every wage earner is the average wage earner; it is entirely possible for some workers to see their wages falling in real terms even while average wages rise, and the recent past has cast some doubt on the economy's ability to sustain real wage growth over the long term. *See* FRANK LEVY, DOLLARS AND DREAMS: THE CHANGING AMERICAN INCOME DISTRIBUTION 78 (1987) (discussing period of declining real wages between 1973 and 1984). Perhaps more importantly, workers born after 1974 have good reason to object to a world in which the Trustees' assumptions play out perfectly, since those assumptions project that the combined Trust Funds will become insolvent in 2041. Wages that entitle one to share in benefits from an insolvent program are worth substantially less than wages that entitle one to participate in today's Social Security. Since workers born in 1974 will begin voting in 1992, one can anticipate ever-increasing pressure to adjust the program so that insolvency is deferred. Workers who will not retire until after that year can be expected to exert pressure for a readjustment in the program as soon as they arrive at voting age in 1992. But one should certainly not exaggerate the likelihood of political upheaval. Workers today continue to pay the Medicare payroll tax, even though the Medicare Trust Fund is projected to turn insolvent in 2005. 1991 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL HOSPITAL INSURANCE TRUST FUND 3, 5 (1991).

114. *See generally* 1991 ANNUAL REPORT, *supra* note 107, at 93 (discussing "contingency fund ratios").

and thereby call into question the Trust Funds' solvency.¹¹⁵ The critical question under the current structure is, therefore, how the General Fund will use its borrowings to ensure a high enough rate of economic growth between now and the year 2020 to generate budgetary surpluses. Accordingly, one certainly ought to be alarmed by the federal government's current propensity to run enormous deficits in the General Fund (deficits that until this year were not entirely reported under the Gramm-Rudman-Hollings deficit-reduction procedures) without substantially increasing the federal investment in growth-enhancing enterprises.

Marmor, Mashaw, and Harvey agree that we should be making a commitment to prudent management of national economic policy to maintain growth.¹¹⁶ But they suggest that it is "ludicrous" to view any problems in that area as problems "*with Social Security*."¹¹⁷ If there has been a problem with the Social Security surpluses disguising the magnitude of General Fund deficits, the "obvious remedy" was a step Congress took just as the book appeared: separate reporting of the deficits in the General Fund.¹¹⁸

Unfortunately, the authors' emphasis on the distinction between the General Fund and the Social Security Trust Funds obscures a vital policy issue that should have been emphasized and not suppressed. The Social Security Trust Funds are making unsecured loans to a General Fund whose behavior is regulated only by the infinitely malleable Gramm-Rudman-Hollings rules. If those loans are repaid, the Social Security program appears to be quite sustainable. If those loans are not repaid, the current promises of the Social Security program are *not* sustainable.

Why is the way the Social Security program loans its money not a problem *with Social Security*? Our legislators can certainly be expected to deal with the Social Security surplus as prudent bankers would, insisting that major borrowers commit themselves to responsible behavior. Moreover, since the same Congress is responsible for both the Social Security Trust Funds and the General Fund, a single body appears to be making promises in the name of the program while acting in ways that seem inconsistent with a serious commitment to keep those promises. The legislative guardians of the Social Security program should be pressed to ensure that the growing surplus is committed to growth-enhancing

115. Note that the General Fund could effectively default on its obligations to the Trust Fund without triggering the enormous repercussions that would attend a default to ordinary creditors. Because Congress controls the "creditor," it does not need to default formally; it can simply cause the creditor Trust Funds to "forgive" or "renegotiate" some of the General Fund obligations. Since such a "renegotiation" would concern only the distribution of consumption options between American workers and American retirees, it would not be likely to have nearly the same effect on the government's ability to borrow in world credit markets as would a true default on an obligation to an outside lender.

116. Pp. 153-54.

117. P. 146.

118. P. 145.

uses.¹¹⁹ If they do not, future generations of workers may justifiably conclude that the baby boom generation has promised itself a pension that is unfairly generous. They may well decide that the promise is simply too costly to be sustained.

In sum, Marmor, Mashaw, and Harvey correctly argue that the actuarial structure of Social Security is sufficiently sound to reject sweeping assertions that the program will inevitably prove too costly. But that does not mean the program is secure. Prudent management of the Trust Funds requires close attention to whether the Funds' investments over the next ten years will reliably yield the revenues needed to match future costs.

III. TO IMPROVE

The discussion in Part II suggests two lessons about how one ought to talk about public programs. The first is that the most sweeping public attacks on America's welfare state to attract recent attention—arguments that the whole apparatus or significant pieces of it should simply be jettisoned—are unpersuasive. The more important lesson, however, is that there can be grains of legitimate concern embedded in such arguments. The challenge is to identify those concerns and then to incorporate them into a more constructive criticism. In the words of Marmor, Mashaw, and Harvey:

We believe these claims [of ungovernability, unaffordability, and undesirability] to be demonstrably false. And yet, to see why and how is also to see that there is a real and important agenda for reform that those concerns help identify. Entrenched interests *are* a problem, scarcity *is* ubiquitous, and it *is* hard to do good without also doing bad. What is missing from the critic's account is an understanding that American social welfare policy has always taken these concerns seriously. Missing from most defenses of current arrangements is the sense that it must continue to do so.¹²⁰

Taking these concerns seriously implies a willingness to engage in a process of constructive criticism. Constructive criticism can be at the level of ideology: proposing changes in our set of collective commitments that enhance our ability to improve our lives through collective action. Constructive criticism can also be at the level of implementation: proposing changes in program

119. One stimulating proposal would ask that the Fund be used for human capital investment. It would provide that any child could borrow up to \$40,000 for education or training and then repay the loan through a tax on the first \$50,000 of his earnings during each of his first 25 years in the workforce. See Barry Bluestone et al., *Generational Alliance: Social Security as a Bank for Education and Training*, AM. PROSPECT, Summer 1990, at 15; see also HAVEMAN, *supra* note 49, at 168-71 (outlining a universal capital account for youth).

120. P. 52.

design that permit us to serve our collective goals better at the same or reduced monetary and nonmonetary cost.

In this part, I offer some tentative suggestions about constructive criticism at the level of implementation. I take as my starting point the idea that the type of criticism being addressed by the authors is not constructive. Part of what makes that type of criticism nonconstructive is its insistence on measuring collective activity against an extreme baseline for comparison. For the most part, the book confronts critics who look at one or another cluster of public programs and ask us to compare them with a hypothetical world in which that cluster is obliterated. Marmor, Mashaw, and Harvey accept those critics' challenge and show that our existing world is in fact *better* than, not worse than, the hypothetical alternative world.

Yet, the polarized discussion that such criticisms provoke can obscure important partial truths. The radicalized rhetoric that accompanies such extreme attacks can discourage readers from seeking out partial truths and developing them in a different direction. Conversation in a spirit of constructive criticism can help participants and observers to appreciate partial truths by emphasizing that the universe of potential reference points is infinite. An argument that fails to demonstrate that we should purge a cluster of programs might still suggest that we eliminate one program or redesign another one.

In the remainder of this Review, I develop two examples of situations in which the authors of *America's Misunderstood Welfare State* may have missed opportunities to identify and develop the partial truths buried within overstated criticisms. Marmor, Mashaw, and Harvey respond to critics who allege that the regressiveness of the payroll tax and the target inefficiency of social insurance require us to dismantle the Social Security program. While the authors are correct that neither criticism justifies wholesale dismantling of the program, each criticism can illuminate important directions for meaningful improvement in our welfare state.

A. *The Uneasy Case Against Regressive Taxation*

What is commonly known as the "payroll tax" or "FICA tax" is actually a combination of taxes to support three separate Trust Funds—the Old Age and Survivors Insurance (OASI) Trust Fund, the Disability Insurance (DI) Trust Fund, and the Hospital Insurance or Medicare (HI) Trust Fund. Since the payroll taxes do not apply to worker earnings that exceed what are known as the taxes' "contribution bases," there are effective ceilings on taxpayers' potential payroll tax liabilities.¹²¹ Accordingly, the rate structures of the pay-

121. During 1991, the "contribution base" for the OASI and DI payroll tax is the first \$53,400 of an employee's wages. I.R.C. § 1402(k)(1) (1988). Both employer and employee incur payroll tax obligations at identical 6.2% rates against that base. I.R.C. §§ 3101(a), 3121 (1988). Out of the 6.2% total, 5.6% is allocated to support the OASI Trust Fund, and 0.6% to support the DI Trust Fund. In the year 2000, the

roll taxes are proportional with respect to wages across the incomes of most taxpayers, but then take regressive plunges at the ceilings.¹²² Over the years, critics ranging from Milton Friedman to Joseph Pechman have suggested that the regressive structure of the payroll taxes presents a problem of distributional equity.¹²³

In response to concerns about the rate structure of payroll taxes, Marmor, Mashaw, and Harvey contend that “this decent concern reflects a partial misapprehension.”¹²⁴ They suggest that such concerns overlook the availability of the EITC to very low-income workers with children.¹²⁵ “[W]hen the joint effects of FICA and the EITC are understood, the burden of the Social Security tax at the lower end of the wage scale is not as great as it seems, at least not for taxpayers with children.”¹²⁶

One of the original legislative justifications for the EITC was indeed that the payroll tax was bearing too heavily on those families. That fact alone, however, is not enough to demonstrate a misapprehension on the part of those concerned about the FICA taxes’ regressive feature. Several different reasons give people who are fully aware of the EITC good cause to have questions about the OASDI payroll tax.

One problem is explicitly recognized by the authors and leads them to describe the “misapprehension” as “partial.” Since the EITC does nothing for low-income families without children, low-income earners without children still face a higher marginal tax rate than high-income earners do. The authors properly note that this problem can be completely resolved by expanding the coverage of the EITC.

A trickier problem surfaces when one looks closely at the precise nature of the distributional concern over regressive taxes. Most people accept the view that taxes with proportional rate structures are more just than taxes with regressive ones. The logic underlying that view suggests that whenever a tax

balance is scheduled to shift so that 6.09% goes to OASI and 0.71% to DI. Self-employed taxpayers pay the entire 12.4% themselves. I.R.C. § 1401(a) (1988).

During 1991, the “contribution base” for the HI payroll tax is the first \$125,000 of an employee’s wages. I.R.C. §§ 1402(k)(2), 3121(x)(2) (1988). In addition to their OASDI payroll tax obligations, both employer and employee incur obligations to support the HI fund at identical 1.45% rates against the higher base. See I.R.C. §§ 3101(b), 3121(x) (1988). Self-employed taxpayers pay the entire 2.9% themselves. I.R.C. § 1401(b) (1988). Before 1991, the HI contribution base was the same as that for OASDI. In 1990, the HI base was raised substantially. The contribution bases are all adjusted each year to reflect inflation in average total wages in the economy. 42 U.S.C. §§ 409(k)(1), 430(b)(2), 430(c) (1988).

122. Approximately 6% of all covered workers are estimated to have had wages at or above the joint OASDI and HI ceiling in 1987. See 1991 GREEN BOOK, *supra* note 22, at 109. Now that the HI ceiling has been raised significantly, it has much less practical significance.

123. E.g., Milton Friedman, *Payroll Taxes, No; General Revenues, Yes*, in THE CRISIS IN SOCIAL SECURITY 25, 27 (Michael Boskin ed., 1978); Joseph A. Pechman, *The Social Security System: An Overview*, *in id.* at 31, 33-35.

124. P. 171.

125. Pp. 164, 172; see also Burtless, *supra* note 55, at 135-37 (description of Earned Income Tax Credit).

126. P. 172.

structure shows a drop in rates, *everyone* with incomes below that “breakpoint” has a legitimate claim to being treated unfairly in comparison with people whose incomes are above the breakpoint. Yet the EITC does nothing for middle-income families. Even if the FICA-plus-EITC package does not take too much from the poor, it can still take too much from the middle class and too little from the rich.

But the most important problem with the suggestion that we view the EITC as a corrective to the FICA tax is that, regardless of how the EITC may have begun in the 1970’s, in the 1990’s there is no necessary link between the two programs. Congress has learned that nothing in the logic of our payroll tax structure restricts our ability to increase the generosity of the EITC.¹²⁷ Conversely, nothing in the logic of the EITC restricts our ability to make the payroll tax structure less regressive.

An alternative defense of the element of regressivity in the payroll tax might emphasize the nature of Social Security benefits. It would suggest that since the reason to eliminate the covered-earnings maximum would presumably be to reduce payroll taxes for the lower and middle classes, and since benefits are calculated by reference to past covered earnings, eliminating the FICA earnings ceiling would force the program to pay more benefits to the upper classes and fewer benefits to the lower and middle classes upon retirement. Thus, one might conclude that a regressive tax is necessary to avoid having retirement benefits skewed even more heavily towards upper-income retirees than they are now.

But this alternative defense assumes too much as well. Social Security is social insurance, not a savings plan.¹²⁸ The connection between benefits and past earnings is loose, and subject to societal renegotiation. At present, benefits are distributed to retirees under a formula that only partially reflects lifetime earnings. The percentage of prior earnings replaced through retirement benefits declines as those earnings approach the maximum level, even though the payroll tax applies at a flat rate to all earnings under the maximum.¹²⁹ Declining to give substantial extra benefits to retirees on account of their extra earnings above a high ceiling would do no great violence to the program.¹³⁰

One can describe the problem here in a variety of ways that all reflect a single concern. One can describe it as an inquiry into whether it is a “realistic alternative” to think of a world with the same EITC and OASDI benefit

127. See Burtless, *supra* note 55.

128. Almost 90% of current tax payments are used to support current retirees; the balance is loaned to the General Fund. See 1991 ANNUAL REPORT, *supra* note 107, at 154.

129. See 1991 GREEN BOOK, *supra* note 22, at 15.

130. In 1991, a 62-year-old retiree’s “primary insurance amount” was 90% of the first \$370 of Average Indexed Monthly Earnings, 32% of the next \$1850, and 15% of the rest. 1991 ANNUAL REPORT, *supra* note 107, at 129-32. If the earnings ceiling were raised, one could easily envision a new “benefit” bracket at, for example, only a 5% level. See generally JOSEPH A. PECHMAN, TAX REFORM, THE RICH, AND THE POOR 181-82 (1989). Alternatively (or perhaps in addition), the taxation of Social Security benefits could be expanded along the lines recommended by Marmor, Mashaw, and Harvey. Pp. 169-71.

structure, but a higher OASDI payroll tax earnings ceiling. One can describe it as an inquiry into whether such an alternative world is an appropriate “baseline” against which to compare our existing world, or whether the only appropriate baseline is a world without any Social Security system at all. One can describe it as an effort to define the analytic unit that is to be considered a single “program.” Or one can describe it as an inquiry into the intensity of the “linkages” between different features of the status quo.¹³¹

However one describes the problem, it is ultimately one of politics, not logic. If, as a matter of public perception and political compromise, the payroll tax were inseparable from the EITC or from the OASDI benefit structure, then it would be an exercise in irrelevant utopianism to isolate the payroll tax structure in discussions of distributional equity. On the other hand, if one assumes a stronger linkage than really exists, one assumes away an important possibility for constructive reform.¹³² Marmor, Mashaw, and Harvey correctly observe that the regressivity in the payroll taxes “is hardly reason to junk the entire scheme.”¹³³ Conversely, the value of the entire scheme is not, standing alone, a sufficient reason to be content with an unnecessarily regressive payroll tax.

B. *The Uneasy Case for Target Efficiency*

It is common in debates about public policy to speak of a program’s “target efficiency.” Target efficiency evokes the image of a government aiming money in a particular direction (at the poor) and asking how much hits the target and how much ends up off target, in the hands of the nonpoor. That image lies in the background of criticisms that take the form, “If we only had a poverty gap of \$122 billion before making any transfers, how could we spend 4½ times that much on the welfare state and still be left with a poverty gap of \$40 billion?”¹³⁴

131. Cf. EDWARD M. GRAMLICH, *A GUIDE TO BENEFIT-COST ANALYSIS* 43-44 (2d ed. 1990) (discussing example of projects that are “tied together and proposed as a package”).

132. There can be other analytic costs to assuming linkages that are not really there. For example, a program’s benefits can be double-counted—used by different observers to “offset” problems in several different programs. Thus, while Marmor, Mashaw, and Harvey suggest that the EITC should be seen as offsetting the burden of the payroll tax, other analysts have asked us to see it as offsetting the increased burden imposed on the poor by the declining real value of tax exemptions. See Rebecca Blank & Alan Blinder, *Macroeconomics, Income Distribution, and Poverty*, in *FIGHTING POVERTY*, *supra* note 51, at 180, 208.

133. P. 164.

134. See, e.g., p. 98; see also 1991 GREEN BOOK, *supra* note 22, at 1163-64. The story in *The Economist* mentioned earlier, for example, includes the following passage: “The plight of inner-city blacks affects the whole of America. The cost of the welfare system has skyrocketed: spending on all federal programmes more than tripled between 1965 and 1987, from \$141 billion to \$520 billion (in 1988 dollars).” *America’s Blacks*, *supra* note 93, at 17.

One could answer such criticisms in a narrowly technical fashion,¹³⁵ but Marmor, Mashaw, and Harvey emphasize a more significant general point—a point they summarize in an aphorism at the end of their book: “Purposes Are Never Unitary.”¹³⁶ Our programs are attempting to achieve multiple purposes at the same time. The more purposes simultaneously pursued, the less likely it is that a program will be efficient with respect to any *one* of those purposes. Even if one were to attempt to construct a more complex, multidimensional measure of efficiency with respect to several purposes, one would have to be extremely careful to avoid having the very language of efficiency lead us to overlook commitments to “soft,” nonquantifiable purposes.¹³⁷

Discussion of the idea of target efficiency should not end, however, at such a sweeping level. As was true of the interchange over payroll tax regressivity, both the criticism stated above and its refutation are implicitly structured by an extreme point of reference: a world with no programs at all. The critic asks why there were not more benefits associated with a transition from a world without transfers to a world with transfers. The defender points out that there really *are* a lot of benefits once one appreciates the different forms of benefit that should be taken into account.

The notion of target efficiency, however, can enter productively into more limited forms of criticism. Consider, for example, the authors’ response to arguments that the Social Security retirement program is “wasteful” because it is not sufficiently target efficient.¹³⁸ Marmor, Mashaw, and Harvey characterize those who make such arguments as “poor-law residualists” who believe that “legitimate social programs exist solely to help those who would otherwise be demonstrably destitute,” and who are driven by a “fundamental disagreement with social insurance’s core assumptions.”¹³⁹ Whether or not the book fairly characterizes these critics,¹⁴⁰ its argument has power only when the critic is comparing Social Security to a simple, extreme baseline alternative—complete abolition. If one is committed to exploring multiple alternatives, however, target efficiency emerges as a useful analytic tool.

Suppose that instead of proposing to deny benefits entirely to the high-income elderly (thereby creating a means test), a critic were to propose that the

135. For example, in deciding where a person is with respect to the poverty line, the Census Bureau does not take into account the in-kind benefits that make up over 30% of all transfers and over 70% of all means-tested transfers. Thus, dollars spent on in-kind transfers to people below the poverty line may improve their well-being but will not affect the official “poverty gap.”

136. P. 222.

137. For examples of program purposes that may not be easily measured, consider the effects that a state-run prepaid tuition program can have in strengthening *nonparticipating* parents’ sense of responsibility for their children’s future, Lehman, *supra* note 60, at 1060, or the effects that mandatory pro bono obligations might have on the perceived social and professional value of legal service to the poor, Richard H. Pildes, *Directions for a New Public Law Scholarship: The Unintended Cultural Consequences of Public Policy*, 89 MICH. L. REV. 936 (1991).

138. Pp. 154-60.

139. Pp. 156-58.

140. See *supra* note 105.

high-income elderly, as a group, be given a smaller aggregate piece of the total benefits pie. The mechanism might be to weaken the link between past earnings and current benefits along the lines I suggested earlier in my discussion of regressivity in the FICA tax.¹⁴¹ This is a proposal for increased target efficiency with respect to the poor.

If our country had no interest at all in fighting poverty, such a proposal would be peculiar, indeed irrelevant. But while Marmor, Mashaw, and Harvey do not recognize a "core commitment" to fighting poverty, they do accept it as a legitimate concern.¹⁴² And if fighting poverty is a legitimate concern, it is fair to ask whether we should do more of it by increasing a program's target efficiency. The question becomes: "Might we be able to target more of our social welfare expenditures on the poor, at an acceptable cost to our other values?"

Where changes in Social Security's retirement benefit formula are concerned, one cannot answer that question without coming to grips with what Marmor, Mashaw, and Harvey term "social insurance's core assumptions."¹⁴³ If those assumptions involve a sense of proportion between prior "contribution" and subsequent "benefit," then how close a sense of proportion? If they involve an integrative sense that everyone is participating, regardless of current income, or a political sense that one needs a critical mass of potential beneficiaries to sustain generous programs, then how small a piece of the pie can go to the high-income people while still maintaining those senses? If they involve the distinction between "preventing" poverty and "rescuing from" poverty—a sense that individuals should not be required to declare themselves "poor"—then to what extent can we define benefits based on proxies for current poverty while still respecting that sense?

All of these candidates for "social insurance's core assumptions" depend upon our society's "sense" of a critical value: a sense of just proportion, of universal participation, or of public humiliation. These critical values cannot be quantified and mechanically inserted into some more complicated formula for evaluating "multiple target efficiency." Indeed, they cannot even be resolved by reference to universal abstract principles of justice. Each society must define those values for itself, and the development and refinement of public programs is a natural vehicle for that process of collective self-definition.¹⁴⁴

141. See *supra* text accompanying notes 128-30.

142. See *supra* note 68.

143. P. 31.

144. Cf. JERRY R. CATES, *INSURING INEQUALITY: ADMINISTRATIVE LEADERSHIP IN SOCIAL SECURITY, 1935-1954*, at 14, 155 (1983) ("It is important to remember that social insurance is an imprecise term that could be used to describe any of a wide range of programs from highly distributive to minimally or regressively redistributive, from ones that cover only those people with substantial work force attachment to those with little or no such attachment . . . [It] is a fluid concept, a social and political construction. It means largely what we want it to mean.").

Marmor, Mashaw, and Harvey are correct to articulate the risks associated with misapplication of the concept of target efficiency. But the authors go overboard in their attempt to remove target efficiency entirely from public debate about social insurance programs.¹⁴⁵ Where our efficiency at reducing poverty can be increased without significant cost to other values, it is surely a worthy goal. Moreover, asking ourselves how much target efficiency we can afford can force us to think more precisely about the multiple purposes to be served by a social insurance program, to clarify our understandings of those purposes, and to define the extent to which we are willing to sacrifice target efficiency in order to attain those purposes.

Sometimes close analysis will reveal that the relationship between a programmatic change and “core assumptions” underlying our commitments is indeterminate. It depends upon how we collectively decide to treat the program and the people who participate in it. At such times, the critic can force us to confront our commitments in a way that we have not been forced to do before, and to construct core assumptions where previously there were none.

IV. CONCLUSION

In Part I of this Review, I discussed the effort of Marmor, Mashaw, and Harvey to provide an ideological account of America’s welfare state. One might well ask what makes such an account worthwhile. It is obviously artificial to project a single set of ideas onto a collection of statutes that were in fact produced at breathtakingly different historical moments over the course of more than half of a century. Our heterogeneous population makes it especially difficult to feel comfortable describing such general ideas as collective. At times we wonder whether it is proper even to call a single statute “representative” solely by virtue of its creation through constitutionally sanctioned procedures.

145. At one point, the authors go so far as to state that “efficiency is ineffective.” P. 102. The statement follows on the heels of a discussion of the fact that the programs that are currently most effective at reducing poverty are, by design, not particularly “efficient” at doing so. *See supra* note 57. The authors appear to have misspoken; at most, the facts of current effectiveness suggest that well-funded inefficient programs can be more effective than poorly funded efficient ones.

At another point, the authors suggest that, for a “principled advocate of social insurance,” lack of targeting is “praiseworthy evidence of success”—“the very source of social insurance’s widespread acceptance and political stability.” P. 157. Such a suggestion may be appropriate in the context of polarized debate over whether a social insurance program should be replaced with a program that provides no benefits at all to middle-class and upper-class individuals. If “targeting” is seen in less absolute terms, however, the suggestion is misleading. The question of how much “targeting” we can afford politically cannot be answered without doing much more work to unpack the core assumptions that underlie our commitment to social insurance.

The authors do suggest that one might “make a sensible contribution to reduced deficits (and greater social equity)” by subjecting a greater proportion of Social Security benefits to income taxation. P. 169. But that nod towards an indirect form of target efficiency is then qualified by the (correct, in my view) observation that such a change “should be considered in the broader context of both overall retirement and overall tax policy.” P. 171.

A good answer begins with Marmor, Mashaw, and Harvey's observation that "our social welfare arrangements are ideologically definitional—they say much about who we are as a people and what we believe."¹⁴⁶ That observation runs in the opposite direction as well. Just as our existing social welfare arrangements define our ideology, the ideology we discern and claim as our own helps to define both the social welfare arrangements we adopt in the future and the way in which we will react to those arrangements. It creates a referent for evaluating the programs we have put in place, specifying the benefits that are to be understood as the primary justification for the incursion of costs. And it defines, at least momentarily, how we ought to envision the ends of further collective action.

In Part III of this Review, I considered the way in which criticism can be made more constructive through a conscious effort to maintain an expansive sense of alternative baselines for comparison. Such an effort can help one concentrate on the critical question of how programs are linked with one another in the public consciousness. And it can help one explore the conflicts among our commitments, and the tradeoffs we are willing to make among them.

Whether a critic is offering an abstract ideological account of public commitments or a particularized criticism of public programs, the words of the critic themselves join and alter the world that is being described. When Marmor, Mashaw, and Harvey offer an ideological account of our commitments as a critical grammar for policy analysis, they engage their readers not only as observers of the political process, but also as participants in it. When they assert that one cannot make Social Security much more target efficient without violating our commitment to social insurance, they invite us to think seriously about how we understand social insurance and our commitment to it.

America's welfare state needs critics who are committed to a process of constructive criticism. It needs criticism that constructs improvements to our programs so that they better harmonize with our collective commitments. It needs criticism that forces us to construct more precisely the assumptions that underlie those commitments. Most of all, it needs criticism that helps us to make public commitments that capture our noblest aspirations.

And so we should be grateful for *America's Misunderstood Welfare State*. It asks its readers to take seriously the enterprise of self-government. It asks them to take personal responsibility for the collective decisions we make about our welfare state. It offers them helpful guidance—both factual and logical—about how to fulfill that responsibility. It is a project worth continuing.