

Reinventing Poverty Law

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We need to reinvent poverty law. This has been true for some time, but we can no longer put it off. We are losing ground, not gaining. For a decade, poverty has been rising and class stratification has been increasing. There has been a massive transfer of wealth from the middle class and the poor to the wealthy.¹ Women and children comprise increasingly large portions of those trapped in poverty. None of this is “our fault.” But it becomes our fault if we fail to change tactics in the face of an altered reality.

Things are not going to change without radical rethinking, restructuring, and action. True, an era of unremitting hostility to legal services has ended, but the prospects for significantly expanding that program are slim, at best. Even with a sympathetic and supportive administration, scarce resources and competing imperatives sharply constrict growth. The deficit is an omnipresent problem, as is the negative balance of trade and foreign competition. The elderly are locked into a divisive intergenerational battle over resources with the young. The plight of the homeless, the needs of AIDS patients, the growing dimensions of substance abuse, the demands of the environment, the state of public housing, the dire condition of public education, the cost of health care reform—all lay immediate claim to scarce resources.

The problems facing the poor are compounded irreversibly by the globalization of both wealth and poverty. International economic competition pits our poor against the poor of the rest of the world; our work force must now compete against laborers in economically developing nations, who earn far less.² At the same time, an apprehensive middle class and a besieged

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1. “[T]he poverty percentages recorded over the past three years are higher than at any time during the 1970’s; and the number of Americans living in poverty in 1992 was greater than at any time since 1962, when 38.6 million (21 percent) of Americans were poor.” KEVIN PHILLIPS, *THE POLITICS OF RICH AND POOR* 82-85 (1990); see Guy Gugliotta, *Number of Poor Americans Rises for 3rd Year: 36.9 Million Live in Poverty and 37.4 Million Lack Health Insurance, Census Bureau Says*, WASH. POST, Oct. 5, 1993, at A6.

2. DONALD L. BARTLETT & JAMES B. STEELE, *AMERICA: WHAT WENT WRONG?* 35 (1992). We know that those living on the border of Mexico face the prospect of severely depressed wages for the foreseeable future. The problem is, with the North American Free Trade Agreement in the offing, we may all be “living on the border.” See Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America’s Eroding*

wealthy class continue to circle the wagons. Any efforts undertaken by legal services attorneys to redistribute wealth, whether by legislation or litigation, are bound to meet with continued and increasing political and judicial resistance.

This Essay proposes that we mobilize time in a way that empowers the poor; that dramatically enhances our collective capacity to meet need, reduce suffering, and expand opportunity; and that renews, even for the least privileged among us, the promise of this land. The Introduction to this Essay explains the current urgency of society's need to reinvent poverty law. Part I of this Essay explores a new strategy for mobilizing the value of time through a currency called service credits or Time Dollars, examines experiments with this strategy, and delineates its implications. Part II argues that clients need to become co-producers of legal services, to ensure that their own voices play a central role in their legal representation. Part III specifically proposes that poverty law practitioners develop a fee-for-service arrangement that would oblige clients to pay for legal services with this new currency, Time Dollars,³ earned by helping others. By requiring payment in Time Dollars, poverty lawyers turn their clients into co-producers of justice and turn legal services for the poor into a major stimulus for community organization and self-help. The direct impact will be greatest on the nonmarket economy—but, as we shall see, this plan also has significant ramifications for the market economy and for how we approach social problems. Part III details the structure of a Time Dollars program and addresses some of the difficulties that sometimes arise. Part IV concludes, describing the potential of Time Dollars to form a new covenant that transcends the conventional paradigm of rights and remedies.

INTRODUCTION

There is a fundamental need to “reinvent poverty law.” If we are to be candid, our mission, whether equal justice or empowerment, cannot be achieved through linear expansion in the ranks of lawyers serving the poor. Without a more fundamental change, legal services for the poor will remain mired, fighting valiantly, winning more than losing—but unable to make major inroads on poverty and disenfranchisement. There is danger for those of us in the so-called “helping professions” that we will constitute a latter-day version of the Bureau of Indian Affairs, multiplying and prospering while lamenting

Industrial Base, 81 GEO. L.J. 1757, 1772-84 (1993). Additionally, fears at the beginning of 1993 over the prospect of a massive flotilla from Haiti simply presage the mounting pressure of multitudes from poor nations who will continue to immigrate to our shores. The Lady with the Lamp still beckons; no matter what we think, this still looks like the land of opportunity to others far worse off. And whether legal or illegal, our population will continue to explode with newcomers, on a scale that can impinge directly upon the ability of those now locked in poverty ever to gain upward mobility.

3. This currency goes by several names, including service credits, care shares, and Time Dollars.

the inability of our wards to escape from a state of dependency we perpetuate.⁴

To become agents of justice and catalysts of empowerment, we first must be clear about our objective. The legal services program brought a new dimension to the older tradition of legal aid. Legal aid for the poor represented an historic commitment to the ideal of equal justice. The legal services program, as part of the War on Poverty, sought to do something rather profound. It asked: What contribution can lawyers make to enable people to find their way out of poverty?⁵ And in asking that question, it also had to ask: What is poverty? To reinvent poverty law, we, too, must begin with the fundamental question: What is poverty?

Poverty is, at least, being poor; it is deprivation of the basic necessities of life. But it is more than an economic state. Poverty is also isolation, lack of access to resources and support systems. For this reason, cohesive families tend to escape poverty's worst effects, while isolated individuals and single heads of households do not. Poverty is also powerlessness: being trapped, relegated to a status from which one cannot escape, impotent to change circumstances that affect one's fate and unable to alter the conduct of others that impacts adversely on oneself, one's family, one's neighborhood. Poverty is ultimately economic, social, and civic disenfranchisement.

Originally, the mission of legal services was to help people escape from poverty by securing a redistribution of goods, services, and power on a more equitable basis. In the late 1960's and early 1970's, legal service programs made headway by expanding entitlements and creating new remedies for consumers and tenants. In effect, we helped the poor increase their share in the market economy by expanding rights to receive money, rights to consume, and rights to share. We called these rights "The New Property."⁶

In recent years, lawyers have been far less successful in expanding such rights. As this society moved from an era of sustained growth and surplus to budget deficits and trade deficits, it has become less willing and somewhat less able to address social problems by expansion of those rights. Political and

4. See generally EDGAR S. CAHN, *OUR BROTHER'S KEEPER: THE INDIAN IN WHITE AMERICA* (1969).

5. Our roots are thus not just in legal aid and equal justice. Our roots are also in the civil rights cases, in which the right to counsel was accorded constitutional protection as a form of First Amendment speech, as part of the means whereby citizens could petition their government for a redress of grievances. See *Brotherhood of R.R. Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964); *NAACP v. Button*, 371 U.S. 415 (1963).

6. The term is derived from Professor Charles Reich's seminal article, *The New Property*, 73 *YALE L.J.* 733 (1964).

judicial receptivity to further redistribution diminished sharply.⁷ And contemporary efforts to expand rights consequently have been frustrated.

The basis of this predicament, however, is not simply society's lack of material abundance. This society produces enough and has sufficient know-how and productive capacity to satisfy the material needs of every American. The issue is distribution.⁸ We distribute wealth based on the logic of the market economy. Those who contribute capital or labor are entitled to a return, although the lion's share seems to go to those who contribute capital.⁹ Those who do not contribute are not entitled to a return—except to the extent that taxes redistribute wealth generated by the market economy.¹⁰

This society is committed to protecting the work ethic. Unless people contribute, they cannot share. We adhere to this principle as a matter of historical faith. That moral fervor was buttressed by experiments with a negative income tax that gave generous, unconditional financial support to welfare-dependent families. Evaluations of these experiments, which ran from the late 1960's to the mid-1970's, indicated that such payments reduced the work effort of the poor and actually added to the instability of families.¹¹ Any distributive scheme that undermines the work ethic is regarded as threatening to our capacity to maintain or improve our nation's standard of living.

Trying to retain the work ethic as the primary distributive mechanism for our own society becomes more difficult when there is less work that pays

7. For opposing perspectives on this shift, compare ROBERT LEKACHMAN, *GREED IS NOT ENOUGH: REAGANOMICS* (1982) with CHARLES A. MURRAY, *LOSING GROUND—AMERICAN SOCIAL POLICY, 1950-1980* (1986). For a summary and analysis of the shift in judicial arenas, see Abram Chayes, *The Supreme Court, 1981 Term—Foreword: Public Law Litigation and the Burger Court*, 96 HARV. L. REV. 4 (1982).

8. This is true vis-à-vis the market economy. As regards the nonmarket economy, the issue is at least partly one of productivity: families beset by crisis may be hard pressed to fulfill critical nurturing, value transmitting, educating, credentialing, insuring, and crisis-coping functions. See AMITAI ETZIONI, *AN IMMODEST AGENDA* (1983).

9. See generally BARTLETT & STEELE, *supra* note 2. As their narrative reveals, one does not even have to contribute capital so long as one can find a way to use, raid, or expropriate the capital that others have worked to accumulate.

10. The new effort to expand the earned tax credit reflects a willingness to redistribute—but only for contributors. Elaine C. Kamarck & William A. Galston, *A Progressive Family Policy for the 1990's*, in *MANDATE FOR CHANGE* 153, 169 (Will Marshall & Martin Schram eds., 1993). The Administration's proposal for welfare reform reflects the same perspective: it advocates increased temporary support to prepare for contributing to the market economy, but after two years welfare recipients must work either in private sector or in public sector jobs. BILL CLINTON & AL GORE, *PUTTING PEOPLE FIRST: HOW WE CAN ALL CHANGE AMERICA* 165-68 (1992).

11. See Michael T. Hannan et al., *Income and Independence Effect on Marital Dissolution: Results from the Seattle and Denver Income-Maintenance Experiments*, 84 AM. J. SOC. 611 (1978); Michael T. Hannan et al., *Income and Marital Events: Evidence from an Income-Maintenance Experiment*, 82 AM. J. SOC. 1186 (1977). But see Glen G. Cain & Douglas A. Wissoker, *A Reanalysis of Marital Stability in the Seattle-Denver Income-Maintenance Experiment*, 95 AM. J. SOC. 1235 (1990) (reanalysis of data concludes that the negative income tax plan had no effect on the rate of marital dissolution among 'treatment' couples relative to the control couples).

above-poverty wages.¹² When global competition pits our domestic work force against those of other nations,¹³ our poor and our lowest paid workers are underbid by the poor of nations with lower standards of living.

As a result, any advocacy efforts focused uncritically on redistribution are likely to prove unsuccessful, even under an administration that is concerned with poverty and supportive of legal services. We have to go at it differently. We have to find ways that enable the poor to increase the pie, not just fight for a larger piece of a fixed pie.¹⁴

At first blush, that seems quite impossible. Many poor people—for example children, mothers of newborn infants, dropouts, or the homeless—seem ill-equipped or unsuitable for the work force. Others, such as seniors and people with criminal records, are excluded from the work force. Still others are the working poor who, despite their best efforts, cannot earn enough to escape poverty. So what might the poor possibly do if they are excluded, subordinated, or rejected by the market economy? And what can lawyers contribute that would make any difference, other than trying to obtain greater access for the poor to the market economy?

I. CONVERTING TIME INTO PRODUCTIVITY AND EMPOWERMENT

Time is a resource that remains underutilized. At birth, its distribution is relatively egalitarian. It is the personal, private possession of every human being—including the poor. But the poor have not been able to convert their own time into economic, social, or civic empowerment. Time Dollars or service credits are a local, tax-exempt currency that literally convert time spent helping others into purchasing power.

Each hour devoted to helping others earns one credit. The credit, recorded in a computerized savings account, can then be spent to secure similar services for oneself or one's family, given to a friend who needs help, or donated to

12. Wages, health benefits, pension benefits, and the number of jobs have been falling steadily. Peter T. Kilborn, *A Labor Day Message No One Asked To Hear*, N.Y. TIMES, Sept. 5, 1993, § 4, at 1; Jeremy Rifkin, *Watch Out for Trickle-Down Technology*, N.Y. TIMES, Feb. 24, 1993, at A19; Louis Uchitelle, *Stanching the Loss of Good Jobs*, N.Y. TIMES, Jan. 31, 1993, § 3, at 1. The debate over the ratification of NAFTA has been essentially a debate over whether NAFTA will create or destroy U.S. jobs. See, e.g., Rufus Yerxa & Pat Choate, *The Great NAFTA Debate*, WASH. POST, Oct. 3, 1993, at C3.

13. See, e.g., *Nanobytes*, BYTE MAG., Aug. 1992, at 18 (reporting transfer of semiconductor manufacturing from U.S. to foreign countries with lower labor costs); Louis Uchitelle, *America's Newest Industrial Belt: Northern Mexico Becomes a Big Draw for High-Tech Plants—and U.S. Jobs*, N.Y. TIMES, Mar. 21, 1993, § 3, at 1.

14. By an expanded pie I mean the sum total of two distinct, though overlapping, economies: the market economy and the nonmarket economy. I use the term "nonmarket" to describe the vast realm of nonmonetarized economic activity contributed by the family, extended family, neighbors, volunteers, neighborhood-based institutions, and others. It is distinct from the so-called "informal economy," which functions within (but as a marginal extension of) the market economy by evading taxes, paying below minimum wage, and violating health, safety, child labor, and environmental standards.

membership organizations such as congregations or tenants associations.¹⁵ Although Time Dollars resemble a barter currency, the Internal Revenue Service has so far consistently ruled that these exchanges are not commercial and therefore do not constitute taxable barter transactions. Time Dollars do not function as a mechanical exchange of services; the bonding between the person earning credits and those receiving help tends to look more like a form of extended family. The relationships that emerge are more social and familial than professional, charitable, or commercial. A currency that rewards altruism mobilizes time that is untapped by the market economy, or by conventional volunteer programs.

Because of the inherent flexibility of this currency, Time Dollar programs enable people to secure a growing array of services and even basic goods and necessities.¹⁶ In Pittsburgh, Pennsylvania, an intergenerational Time Dollar program plans to open a store where service credits can be used to purchase children's toys, used infant clothing, educational materials, and other items. In El Paso, Texas, donated clothing will be sold to the homeless for Time Dollars in a store to be managed and staffed by other homeless persons.¹⁷ In Miami, Florida, Rotary Clubs have used the Time Dollar program as a clothing distribution system for schoolchildren.

In another Time Dollar program, also located in Miami, trained members operate a child day care center for the children of teen mothers who are trying to graduate from high school. The school system supplies a classroom and a licensed teacher; the members earn credit for their work. And in Camden, New Jersey, a hospital-based Time Dollar program is developing a package to market to local employers.

The successful implementation of these programs shows that Time Dollars work. The first pilot programs got underway in 1986. Now, Time Dollar programs are operating on various scales, with anywhere from several dozen to several thousand participants, in approximately 150 communities spread over thirty states and three other nations.

A. *Time Dollar Economics: Why They Work*

Time Dollars work. They generate a volume of service that is not and cannot be supplied by alternative means, such as government entitlements, the

15. Normally, a local organization such as a senior center, congregation, housing complex, or community college acts as the bank. The idea is to reinforce the affiliation that people have with organizations or institutions so as to make that bond constitute the entry point to an informal support system. Those local organizations then link together into a consortium, each back-stopping the other.

16. In Washington, D.C., and throughout New England, an organization called SHARE enables persons to purchase a \$35 bag of groceries for \$13 plus two hours of community service.

17. See *infra* note 56.

underground economy, volunteering, or informal support systems. The benefit derived from earning Time Dollars comes from four sources: purchasing power, autonomy and security, psychological reward, and "linkage."

The purchasing power of Time Dollars creates substantial benefits.¹⁸ Time Dollars are a tax-exempt currency. Anyone may earn them, young or old. In addition, Time Dollars are inflation proof: one hour will always equal one hour.¹⁹ The return on labor in terms of purchasing power earned is fair: an hour of your time for an hour of someone else's time.²⁰

Time Dollars also confer other benefits: enhanced autonomy and security. Time Dollars are, in part, a way of saving without cutting dollar expenditures. Government programs that seemed to offer bottom-line protection are increasingly regarded as uncertain sources of autonomy and security. The safety net has come unravelled. Part of the appeal of Time Dollars appears to be a sense of regained independence: a way of arranging one's life without having the terms of existence dictated either by social service agencies or by relatives.

Time Dollars reinforce and increase the psychic reward typically conferred by volunteering.²¹ When one does something for someone else, one defines oneself as a producer, as someone who is useful. Time Dollars do more than affirm self-worth; they provide a kind of external corroboration of one's worth.

Time Dollars also create a form of social capital, an instant informal support system. Consistently, observers note a social dimension and a quality

18. Initially, it was assumed that people who could not find employment in the market economy would be attracted to Time Dollar programs primarily by the opportunity to increase purchasing power.

19. Economist Nicholas Barr at the London School of Economics characterized this as a form of indexing: "Service credits earned by supplying one hour of care will itself buy one hour of care. The purchasing power of service credits is therefore fixed in terms of goods. Unlike money, service credits are therefore in principle indexed, and hence immune to inflation . . ." Nicholas Barr, *Service Credits: An Economist's View*, in EDGAR CAHN, *SERVICE CREDITS: A NEW CURRENCY FOR THE WELFARE STATE* 37, 38 (Suntary Toyota Int'l Centre for Economics & Related Disciplines, Discussion Paper No. 8, 1986).

20. In many ways, that is better than one can do in the market economy. One cannot buy an hour of one's own time with the take-home pay from an hour of work. Taxes, insurance premiums, overhead, administrative charges, and employer profit mean that one may have to work two hours to get the take-home pay needed to purchase an hour of identical services. Purchasing power turns out to be limited. Time Dollars have their own limits, however, since they can only be exchanged for a limited range of services. Moreover, the purchasing power of Time Dollars may be of limited duration: initial projects were limited to three years.

21. There is an ongoing debate as to whether "pure" altruism is possible. Richard Titmuss championed the possibility of pure altruism without regard to any return as the motivation driving the donation of blood to strangers. RICHARD M. TITMUSS, *THE GIFT RELATIONSHIP: FROM HUMAN BLOOD TO SOCIAL POLICY* (1970). Other scholars, examining various forms of social exchange contend that "altruism is in fact a form of reciprocity." MARTIN BULMER, *NEIGHBOURS: THE WORK OF PHILIP ABRAMS* 107 (1986) (quoting Abrams). Gary Becker, analyzing altruism in the family, perceives it as an extremely important economic principle that "helps families insure their members against disasters and other consequences of uncertainty." GARY S. BECKER, *A TREATISE ON THE FAMILY* 172, 176 (1981) [hereinafter BECKER, *A TREATISE ON THE FAMILY*]. And he notes elsewhere that altruism may even play a critical role in determining the survival of a species. See GARY S. BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR* 282 (1976) [hereinafter BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR*].

of interaction that distinguishes Time Dollar programs from traditional volunteer programs.²² Over and above the psychic satisfaction of volunteering, Time Dollars programs provide something of exceptional value to their participants: membership in a kind of extended family and access to an informal network of strangers one can trust. In a rapidly changing society with old certitudes vanishing, Time Dollars create a kind of psychic security. This network-rooted security is at least as important as immediate psychic gratification;²³ it generates a social infrastructure that links, protects, and insulates its participants.

B. *Focusing on the Nonmarket Economy: Creating Growth While Eliminating Poverty*

We have two economies: the market economy on which the orthodox economists focus, and the nonmarket economy, which tends to be ignored and undervalued, chiefly because it is not monetarized.²⁴ Too often, what we have called growth, and measured as Gross Domestic Product (GDP), is simply a misleading juxtaposition of different economic realms which undervalues the nonmarket economy. For instance, every time we put a grandmother in a nursing home, we record growth in the GDP. Keeping a grandmother out of a nursing home, to the contrary, does not contribute to GDP.²⁵ Every time we

22. The most authoritative evaluation to date of service credit programs notes: "[Service credit program] sites have tended to emphasize the establishment of relationships among participants—building a sense of community—over formal rules for banking or service exchange. As a result, programs have developed less as anonymous or mechanical exchanges than as community membership organizations." Judith Feder et al., *Helping Oneself by Helping Others: Evaluation of a Service Credit Banking Demonstration 2* (unpublished manuscript prepared for Center for Health Policy Studies, Georgetown Univ., on file with author, n.d.) (evaluating six service credit programs supported by grant from Robert Wood Johnson Foundation).

23. This may be why participants in diverse programs and diverse parts of the country consistently refer to themselves as "members," rather than volunteers.

24. The nonmarket economy may be getting more fashionable. The 1993 Nobel Prize in Economics went to Gary Becker for his pioneering theoretical work on the economics of family. BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR*, *supra* note 21, at 141-42; BECKER, *A TREATISE ON THE FAMILY*, *supra* note 21, at 1-37, 172-201. The communitarian movement with its implicit endorsement of socioeconomics will also bring renewed attention to the family and the nonmarket economy. ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985); AMITAI ETZIONI, *THE SPIRIT OF COMMUNITY: RIGHTS, RESPONSIBILITIES AND THE COMMUNITARIAN AGENDA* (1993).

25. In a paper urging that we give economic value to unpaid work by seniors, Robert Morris and Francis G. Caro examined studies that indicate that 13.5% of all older persons engage in unpaid productive activity for a minimum of 20 hours a week. The excess of \$67 billion per year, none of which is reflected in the GDP. Robert Morris & Francis G. Caro, *Productive Retirement: Significance of Unpaid Work by the Retired as an Economic Resource* (unpublished manuscript prepared for Gerontology Inst., Univ. of Mass. at Boston, on file with author, May 1993).

put a child in reform school, that is growth in the GDP; every time we keep a child out, that is not.²⁶

No one asks how to rebuild the nonmarket economy. Yet, there is a widespread understanding that the source of most social problems is the disintegration of family,²⁷ neighborhood, and community. At the same time, an avalanche of studies documents a phenomenon characterized as the feminization of poverty:²⁸ an increasing number of households headed by a single woman, and growing portions of the impoverished population comprised of women and children. And the data indicate that neither the nuclear family nor the multigenerational extended family is dominant; their numbers, in absolute and relative terms, have declined markedly.²⁹

In fact, something still more fundamental than economic dysfunction underlies escalating social problems.³⁰ No society can afford to buy, at market wages, the quantity, range, and quality of services that the family used to provide for itself. The history of the past century or more is the history of the market economy taking over functions previously performed by the family, the

26. One report notes that:

Today over forty (40) states are under Federal court orders to reduce prison overcrowding. Department of Justice figures reveal that in calendar year 1990, prison populations increased by 80,000 to 1.23 million—a 780,000 increase in prisons and 450,000 in jails. At this rate, some experts estimate that by the year 2053, one (1) of every two (2) Americans will reside in a penal institution. The additional 2.5 million offenders now assigned to community supervision are expanding at a rate of thirteen percent (13%) annually. Concurrently, to accommodate such growth, some 2,000 new jail beds would have to open each week, at an average cost of \$50,000 per bed; construction would approximate \$100,000 million [sic] per week. In five (5) years, the corrections obligation could easily double the current national debt.

GOVERNOR'S TASK FORCE ON ALTERNATIVE SANCTIONS TO INCARCERATION, FINAL REPORT 5 (1992) (prepared for Governor of Maryland).

27. See Kamarck & Galston, *supra* note 10, at 169.

28. *Id.*; JOHN T. COOK & J. LARRY BROWN, CENTER ON HUNGER, POVERTY & NUTRITION POLICY, TUFTS UNIV., TWO AMERICAS: ALTERNATIVE FUTURES FOR CHILD POVERTY IN THE U.S. (Research in Progress Working Paper No. CPP-040193, 1993); WOMEN, CHILDREN AND POVERTY IN AMERICA, A WORKING PAPER FROM THE FORD FOUNDATION (1985).

29. Estimates are that only one in 17 American families now conform to the nuclear family prototype. ETZIONI, *supra* note 8, at 109; ALVIN TOFFLER, *Families of the Future*, in THE THIRD WAVE 208-25 (1980).

30. When Japan and Sweden launched Time Dollar programs because they could not afford to provide the services needed by the very young and the very old, it became clear that the problems with which we are dealing are not merely a function of the budget deficit, the social agenda or ideology of the political party in power, the balance of trade, or the recession. The Swedish initiative stemmed directly from an inquiry launched by the government's Secretariat for Future Studies which had concluded that continued expansion of government-funded care would "soon lead to economically disastrous consequences." MÅRTEN LÅGERGREN ET AL., TIME TO CARE at v (Roger G. Tanner trans., 1984). The underutilized resource they identified was Time. "We will not be short of time in the future, and so the focus of this discussion is how we will organize our time so that we will have 'time to care'." *Id.* The solution they devised was a required year of national service at age 19 supplemented by a system of mandatory service which municipalities would be empowered to levy flexibly on all their members between the ages of 20 and 65. Over 65, community service would be voluntary. *Id.* at 257-60. The government was unwilling for political reasons to move forward with the proposal. Time Dollars provided an alternative: a hybrid of market and voluntary community service that was particularly attractive.

neighborhood, and nonmarket institutions—because of seemingly superior efficiency. We have contracted out as many of the functions of the nonmarket economy as possible.

Failure to focus on the nonmarket economy has led to a simplistic fixation on entry into the job market as the panacea for eradicating poverty. Thus, welfare reform has been almost exclusively preoccupied with forcing single mothers into the market economy³¹ and providing a tax credit to subsidize families earning poverty wages and to businesses paying poverty wages.

The market economy, including those public institutions it supports, can no longer continue to expropriate functions from the household economy without disastrous consequences. Everywhere sectors of the market economy and the formal political system are crying out for help from the nonmarket economy. Schools cannot educate without the help of parents. Delinquency, dropout rates, and illegitimacy cannot be checked without help from home. Drugs cannot be curtailed without parental involvement or peer support. Crime cannot be prevented without neighborhood watch committees. Local government and the democratic process itself rest on effective citizen participation. The elderly cannot be cared for without help from family and spouse, from relatives and neighbors.³² Affordable, high-quality child care cannot be achieved without the functional equivalent of extended family that combines emotional nurture, developmental stimuli, and flexible hours. Good health requires prevention, maintenance, nutrition, exercise, rest, and social support.

But there is no one left to do the job. Everyone is busy working one or two jobs to pay for the services that we erroneously thought were substitutes.³³ All are stretched to the outer limits of their capacity to cope. And those with the least resources are doubly handicapped. They lack the resources to buy even partial substitutes from the market economy, and they lack the personal experience, support, and resources that their family might once have provided.

Several propositions summarize this seemingly intractable predicament: (1) the market economy consistently absorbs functions previously performed by

31. See generally JUDITH M. GUERON & EDWARD PAULY, *FROM WELFARE TO WORK* (1991).

32. It is no coincidence that Time Dollars started as a respite care program, designed to help families struggling to take care of an elder member. But respite is often a euphemism for what is really needed: an informal support system where there is no family to provide care, only an isolated individual struggling to remain self-sufficient.

33.

Parents today spend 40 percent less time with their children than did parents in 1965, according to data collected from personal time diaries by sociologist John Robinson of the University of Maryland. In 1965, parents on average spent approximately 30 hours a week with their kids. By 1985, parent-child interaction had dropped to just 17 hours a week.

William R. Mattox Jr., *The Parent Trap: So Many Bills, So Little Time*, POL. REV., Winter 1991, at 6.

family and neighbors in a way that gradually depletes and devastates the nonmarket economy; (2) the market economy does not provide complete and adequate substitutes for what family, extended family, and neighbors at one time provided; and (3) no society can afford to purchase, at market prices, the range of services that we used to produce for ourselves. The bottom bottom line is that a healthy, functioning nonmarket economy is essential to the viability of the market economy.

If these propositions are true, we need to find a way to rebuild the nonmarket economy. In order to get at the root causes of poverty, we will have to find a reward system that can do a better job than we are now doing to get people to invest more time and effort in family and community. That is a central premise underlying Time Dollars.

Unfortunately, we are still living in the past. We are committed to a laissez-faire attitude toward the nonmarket economy, an approach that ignores the stresses placed on it by the market economy and that expects the nonmarket economy to do more with less. At very least, it is clear that the nonmarket economy—especially the household economy—was held together and subsidized by the subordination of women and minorities.³⁴ As both began to enter the market economy on a massive scale on somewhat more equal terms, that subsidy dried up.³⁵

Time Dollars represent a response to these difficulties. From a programmatic viewpoint, Time Dollars turn volunteers into a part-time, flex-time work force. They make it possible to redefine “real work” without the debilitating effects of status and hierarchy.³⁶ Time Dollars provide a reward

34. At market prices, the services provided by a woman to her household were estimated to be worth slightly over \$40,000 in 1979 dollars. MICHAEL H. MINTON & JEAN L. BLOCK, *WHAT IS A WIFE WORTH* (1983). When updated to 1990 dollars, the replacement cost valuation of a homemaker totalled \$68,195.40. *Id.*

35. Amitai Etzioni, the leading proponent of socioeconomics, puts it this way:

In any other industry, if you remove a million employees without reducing the job requirements very much, nobody would deny that the industry is woefully shorthanded. If we take a million women out of a million households to work outside the home, and replace them with precious little in child-care services, few babysitters, and little more grandparenting, then the parenting “industry” is woefully shorthanded (and television sets and the streets are overworked). This is not an argument for women to stay home to do the parenting, but for *someone* to do more of it.

ETZIONI, *supra* note 8, at 116.

36. Robert Heilbroner notes that “there is no work in primitive societies.” ROBERT L. HEILBRONER, *BEHIND THE VEIL OF ECONOMICS: ESSAYS IN THE WORLDLY PHILOSOPHY* 81 (1988) (emphasis deleted). He continues,

I mean that the tasks associated with the physical sustenance of the group are not distinguished by organization or esteem from other tasks and activities also required to maintain collective life, such as the rearing of children, the participation in various social decisions, the transmission of culture, and the like.

Id. at 82. Contemplating the future, Heilbroner argues that “[t]he essence of work is that these tasks are carried out in a condition of subordination imposed by the right of some members of society to refuse access to vital resources to others.” *Id.* at 85. And he asks whether technological change will make possible

system, a management system, and a level of stability that bridge the gap between volunteering and professional service systems.

By enabling the poor—who have been largely reduced to passive dependency—to assert their power to create, to contribute, and to fashion new forms of participatory governance, Time Dollars provide a substantial measure of civic empowerment. They enable the poor to break out of bondage, dependence, passivity, and impotence.³⁷

II. INCORPORATING THE CLIENT AS CO-PRODUCER

When legal service programs provide assistance to indigent clients without charging for those services, we are unwittingly transmitting a message: “Nothing you have and nothing you can provide is of any value to me, the poverty lawyer.” That is not only patronizing; it is wrong and it is self-defeating. It is a strategy more likely to generate frustration and a sense of powerlessness than progress. Helping the poor with legal representation will not work if it does not enable our clients to produce and to contribute. If we are to be true to our commitment to the client community, we must understand that we need them at least as much as they need us.

Time Dollars provide a new vehicle for advancing the mission of legal services. They enable the poor to help rebuild the nonmarket economy. If rebuilt, that economy can once again provide child care, education, mentoring, housing, neighborhood safety, and many services we have begun to assume must be purchased from the market economy. Time Dollars use the occasion of legal intervention as an opportunity to mobilize those special human resources that the market economy so often discards or rejects.

From the outset, the ideal of empowerment has been at the heart of the legal services program. The original proposal for a neighborhood law firm saw legal representation as a means, not an end—as a vehicle for “implementing

“a society without submissive striving, without subordinative effort.” *Id.* at 100.

37. Time Dollar programs that provide civic empowerment can be broken into three categories: (1) those that enlist the citizen as co-producer of a service that furthers some public objective; (2) those that empower the citizen as consumer of public services to make known their preferences; and (3) those that create what President Clinton has called the New Covenant, a renegotiated social compact that exchanges public service for upward mobility and opportunity. As more high school systems impose community service requirements for graduation and more college courses incorporate “field assignments,” it becomes clear that “academic credits” are themselves a currency being used to pay for public service work. At this point, the nonprofit world is not prepared to absorb a huge influx of volunteers—and indeed, the availability of volunteers poses a potential threat to “helping professionals.” As a result, the role of the helping professions will have to change from one of dispensers of scarce services to one of entrepreneurs who organize citizen energies into constructive channels that meet public needs and advance public purposes. Time Dollars can provide the “management tool” for deploying and supervising a vastly expanded work force. But it will take entrepreneurs with vision to shape tasks, programs, and undertakings that excite the imagination. Otherwise, community service will deteriorate into busy work, and an opportunity for major social change will be lost.

the civilian perspective," for amplifying not only the voices of dissent but the voices of silence.³⁸ It assumed, perhaps naively, that lawyer fidelity to client perspective would convert advocacy and legal knowledge into an empowering tool that would enable citizens to compel accountability from officials and to get on with the process of building community.³⁹

Subsequent scholarship has documented the extent to which lawyer and client perspectives have diverged rather than converged. A more critical formulation of the lawyer-client dynamic would recognize that "existing practice privileges lawyer views of dispute resolution technique, excludes client voices as irrelevant or interfering with that technique, and as a result focuses lawyer and client energies on litigation-based remedies that perpetuate and reinforce client powerlessness."⁴⁰

Lucie White and others have urged with good reason that lawyers "incorporate client voice 'continually'" and that "legal storytelling . . . in pleadings, argument, negotiation, publicity, and so forth ought to be the client's story, not the lawyer's reconceptualization of that story."⁴¹ Yet, lawyers know full well that, at times, conflicts will emerge between the goals of amplifying the client's voice and conceptualizing the client's story in legal terms. This is so because law is the shorthand language by which a society defines which grievances it is committed to remedying and which ones it is prepared to leave without redress. There may be truth to the assertion that it may be as significant for a client to have her story heard in a meaningful way as it is to win her case on the merits.⁴² A moral dilemma is posed wherever the cost of amplifying the client's voice is incurred at the expense of securing remedy.⁴³ The best one can say is that the only resolution available is in terms of informed consent. The client must know the risk being taken and must make that choice.

But this approach overlooks the context in which legal representation takes place. "The more that a legal services office assumes the role of the community's legal emergency room, the more difficult it will be to stress . . .

38. Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317, 1333 (1964).

39. It did not take us long to realize that we had underestimated professional imperialism and that the legal system itself had a capacity to trivialize, to paralyze, and to minimize sincere efforts to obtain justice. Edgar S. Cahn & Jean C. Cahn, *What Price Justice: The Civilian Perspective Revisited*, 41 NOTRE DAME LAW. 927 (1966).

40. Paul R. Tremblay, *A Tragic View of Poverty Law Practice*, 1 D.C. L. REV. 123, 128 (1992) (footnotes omitted).

41. *Id.* at 129.

42. Naomi R. Cahn, *Defining Feminist Litigation*, 14 HARV. WOMEN'S L.J. 1, 17 (1991).

43. Lucie E. White, *Goldberg v. Kelly and the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861, 863 (1990). See generally Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients To Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-88).

a focus on long term remedies⁴⁴ or on the value of expression for its own sake. And those who elevate amplification of the client's voice as an absolute end in itself confront another moral dilemma, one rooted in the practical reality of limited resources. These proponents tend to be highly selective, noting that "[r]emedial litigation should not be mounted, even when altruistic relief is possible, without the activization of class consciousness among the poor, nor without the political organization and mobilization of the poor."⁴⁵ But when we lawyers start making the decisions about what "class consciousness" we will exact as the prerequisite of legal representation, we have done more than disempower clients. We have used our monopolistic license to designate ourselves as their leader, spokesperson, and messiah.⁴⁶

Achieving empowerment through legal representation poses dilemmas.⁴⁷ This Essay assumes that legal representation is invariably dominated by a professional perspective that puts an extraordinarily high value on securing a remedy where a remedy is available.

There are ways of empowering clients directly. This can be done, to some extent, in the production of legal services; it can be done much more directly in mobilizing client energies to address the causes of injustice. If we expand the lawyer-client relationship to include the client as "producer" as well as the client as "consumer," and if we embed that relationship in community, then we can avoid an either-or choice. There is a hidden cost, however: The circle we draw must include *both* lawyer and client in the community and include them in a web of reciprocal relations that are as obligatory as those which are legally enforceable. The result may be a new social compact—one that will bind lawyers as well as the poor.

For the past three decades, efforts have been made to involve clients in the direct production of legal services. These efforts have involved, first, securing

44. Tremblay, *supra* note 40, at 139.

45. Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 664 (1987-88) (footnotes omitted).

46. It is important to note how far legal services attorneys and legal services programs have come since the mid-sixties. On all fronts, we have tended to move away from community, away from the poor, away from collective efforts to mobilize resources. The initial battles were fought, and properly fought, to protect lawyer autonomy and to preserve the integrity of the advocacy role. Accordingly, first legal services won separation from community action programs, and from any other grant program seeking to address problems of poverty. It was regarded as a triumph then, but it had its costs. We lost contact with anything remotely like a constituency. The National Clients Council, created to keep the program honest and accountable, was de-funded. And in city after city, we professionalized legal services offices by moving back downtown to improve working conditions—for lawyers. It is no coincidence that the NAACP Legal Defense and Educational Fund did the same thing: it severed all connection with the NAACP—and continued its lone and valiant representation, increasingly isolated from those it sought to help, only to discover somewhat belatedly the emergence of an underclass for whom most of its past victories were irrelevant.

47. Elsewhere, my wife and I have proposed other methods of participation by clients in forms of co-production through neighborhood courts. Cahn & Cahn, *supra* note 39.

representation of the client community on governing boards, and second, hiring members of the client community and training them as legal technicians, intake personnel, outreach workers, and paralegals. A third tactic has involved moving toward various forms of pro se representation.⁴⁸

The most obvious next step is to take advantage of the information and telecommunications revolution taking place all about us and harness it to further integrate clients into legal services as producers.⁴⁹ Legal services programs and law school clinics have an historic opportunity to dramatically alter the way in which legal services are rendered and the quantity of representation available. If we are serious about expanded access to the legal system, we ought to be leading the way in creative adaptations of information technology. We ought to be mapping a nationwide software development strategy to expand the supply of available legal services, to level the playing field in dispute resolution, and to facilitate the capacity of those we serve to petition the government for a redress of grievances.

III. EXPANDING CO-PRODUCTION FROM LEGAL SERVICES TO JUSTICE

Legal services are to justice what medical care is to health. Lawyers provide specialized crisis intervention. But we cannot begin to make major inroads on the sources of injustice and inequity until we incorporate the client community, the consumers of our services, as co-producers. Not simply co-producers of legal services, but co-producers of justice. Legal services programs and law-school based legal clinics will become major catalysts for change by the simple expedient of charging their clients a fee to be paid with Time Dollars that are earned by helping others. Properly channelled, this one relatively simple change becomes the basis of a fundamentally new approach to poverty law.

An initiative by lawyers will trigger the creation of a new and far more extensive safety net, woven collaboratively with clients and protected by the norm of reciprocity against regressive, counterproductive retrenchment. The way this is done is critical. People do not take kindly to being charged for

48. Some legal services programs conduct pro se clinics to help clients with similar needs fill out forms and applications for simple legal procedures, such as uncontested divorces. Do-it-yourself kits have won grudging but expanding acceptance by the bar. Given the ready availability of increasingly sophisticated software from companies like Nolo Press, it is clear that client-generated legal documents will play an increasingly significant role in expanding access to law.

49. There is no reason why joint ventures with software companies could not dramatically accelerate the process. Within less than a decade, voice recognition and pen-operated, hand-held clipboard computers will transform the ways in which users interact with this technology. In areas such as wills, powers of attorney, tax returns, eligibility determinations for entitlements, and bankruptcy law, the prototypes have already been developed. Computer-assisted pro se representation is probably the fastest way to incorporate the client as co-producer of legal services on a dramatically expanded basis.

what they now are accustomed to receiving free. Some will argue that such a "fee" arrangement violates the terms of funding from the Legal Services Corporation. Others will protest that there are some clients who simply cannot provide service, that there will always be emergency cases where requiring repayment is inappropriate. They are right; exceptions must be made. Those with experience managing volunteers will ask: How are we to make use of thousands upon thousands of hours and hundreds upon hundreds of clients who "owe" services? Still other questions proliferate. The proposal becomes more manageable if we structure the discussion around three issues.

The first issue concerns how to organize the production of legal services in a way that will trigger this outpouring of client service. The second deals with the question of how to channel the hours of service so that they are used effectively to rebuild the nonmarket economy and address the critical dimensions of poverty. Linking the two is a third issue: What kinds and quantity of services will the lawyers provide in order to generate the corresponding community-based effort?

The first issue is easiest to handle. Law school clinical programs (and their alumni), legal services programs, and private bar pro bono programs provide ready-made organizational sites from which to launch Time Dollar programs. Each of these organizations brings special strengths but also distinctive limitations.⁵⁰ Possibly the best answer would be a joint venture, combining all three by staffing an outreach office with a handful of attorneys, assisted by students earning credits in a law school clinical program, and backed by a referral network of attorneys in private practice who had made a pro bono commitment. Such a shared undertaking would be able to tap specialized sources of expertise in legal services, academia, and the private bar.

Legal services programs are likely to be reluctant, ambivalent, or downright hostile to charging poor people for the services they are funded to provide.⁵¹ They are likely to be far more receptive to identifying a specialized

50. Legal service programs bring in-depth expertise plus a working process for client participation in policymaking. On the liability side, these programs bring a huge ongoing case load, as well as relations with the client community that may be a barrier to change, and possibly an antipathy to keeping strict track of hours or to any joint venture with community groups that involves something beyond the provision of legal services. Law school clinical programs bring students, faculty resources, access to a variety of specialties and disciplines, a capacity for interdisciplinary research, and prestige that can draw local talent. On the liability side, schools are locked into semester schedules, examination periods, demands of academic governance on faculty, conventional definitions of legal scholarship, a tendency to treat service and pedagogy as rival priorities, and a possible resistance to community involvement extending beyond individual service. A private bar pro bono program brings the perceived clout of the private sector, an enthusiasm born of the distinctive ethical appeal of the work, an entrepreneurial perspective, special areas of expertise, and hopefully an ability to network within a firm and across law firms. On the liability side, the private bar brings competing responsibilities, a lack of in-depth expertise about poverty-related legal issues, possible client suspicion, and resource constraints which may be severe.

51. Some will ask whether this is simply a disguised form of workfare. The real issue is whether service is exacted as a "badge of slavery" and merely perpetuates class and caste stratification or whether

area of service where service-for-service would be useful and acceptable.⁵² Starting with a private bar pro bono program might generate less initial resistance, because payment in the private sector is perceived as the norm rather than the exception. Even so, private attorneys would want some gatekeeper system that would put manageable limits on the scope of their commitment. Law school clinics would typically be concerned about whether the service it is committed to provide has adequate pedagogic value in a context where service is a primary objective.

All would share one concern and insist on one critical limitation: the power of the provider to exercise control over the intake of cases. The conflict posed by this limitation seems formidable, but is actually neither unique nor insurmountable. One must always put limits on the legal services that one can provide; one has to condition that preferred access to legal services in a way that furthers the larger objectives one seeks to advance.⁵³

Because different conditions are appropriate to different objectives, access has to be determined by reference not only to the availability of a lawyer, but

it empowers people to redefine themselves. That issue has surfaced before in the context of various forms of obligatory community service by "able-bodied men," students, and court-appointed lawyers. The courts have treated the imposition of a community service requirement as an obligation of citizenship rather than a form of peonage. In *Butler v. Perry*, 240 U.S. 328 (1916), the Supreme Court upheld a Florida statute that forced able bodied men within specified ages to labor on roads without pay for six ten-hour days each year. Justice McReynolds observed:

In view of ancient usage and the unanimity of judicial opinion, it must be taken as settled that, unless restrained by some constitutional limitation, a State has inherent power to require every able-bodied man within its jurisdiction to labor for a reasonable time on public roads near his residence without direct compensation. This is a part of the duty which he owes to the public. . . .

. . . .
From Colonial days to the present time conscripted labor has been much relied on for the construction and maintenance of roads. The system was introduced from England, and, while it has produced no Appian Way, appropriateness to the circumstances existing in rural communities gave it general favor. In 1889 the statutes of twenty-seven States provided for such labor on public roads. . . .

. . . . [The Thirteenth Amendment] introduced no novel doctrine with respect of services always treated as exceptional, and certainly was not intended to interdict enforcement of those duties which individuals owe to the State, such as services in the army, militia, on the jury, etc. 240 U.S. at 330-33 (citations omitted); *see also* *Boblin v. Board of Educ.*, 403 F. Supp. 1095 (D. Haw. 1975) (mandatory student cafeteria duty in public schools); *cf.* *Nine Applications for Appointment of Counsel in Title VII Proceedings*, 475 F. Supp. 87 (N.D. Ala. 1979), *vacated sub nom.* *White v. United States Pipe & Foundry Co.*, 646 F.2d 203 (5th Cir. Unit B 1981) (district court's holding that provisions of Title VII permitting trial court to appoint attorney for indigent plaintiff was contrary to the Thirteenth Amendment and reversed without reaching the merits of the question).

52. For example, in cases involving families (such as divorce, custody, foster care, or neglect), legal services attorneys might welcome the access to an informal support system that a service-for-service transaction could provide. A landlord-tenant attorney might welcome an exchange where clients serve as lay housing code inspectors or assist in minor repairs as part of a deduct-and-repair remedial initiative.

53. Frequent flier clubs provide an useful analogy: first, a minimum number of miles must be accumulated before any can be spent; second, certain additional privileges become available only after a minimal number of miles have been logged in the previous year; and third, miles may become "stale" if not used within a set time frame.

also to the types of client one wants to serve in order to generate a substantial volume of targeted community service. We shall have to return to this issue—after examining the second set of issues: how to channel the hours of service provided by clients so that those hours are used effectively. But one thing is clear from discussions with attorneys: they do not want to supervise the way in which their clients render the service owed. They do not have to, and they do not need to.

In theory, a law firm, legal services program, or law clinic would simply issue a Request For Proposals (RFP), offering a block or blocks of thousands of hours of volunteer service and inviting community groups to submit competing bids as to how they would propose to make use of those hours. A rating sheet would assign points to bids based on impact, effectiveness, and types of benefits likely to flow.⁵⁴ Conceptually, that approach separates out the role of lawyer as service provider and as catalyst for social change from the role of supervising the actual discharge of the obligation. The exciting new dimension contemplated by Time Dollars is that lawyers can be architects of new community self-help efforts, without assuming responsibility for overseeing day-to-day implementation. This strategy gives lawyers the opportunity to help shape the social impact that they generate through service to clients.

In practice, the shape of the program is not likely to be determined by a formal RFP. It is far more likely to come about through dialogue between the attorneys advocating the idea and community organizations intrigued by the Time Dollar strategy and interested in securing augmented access to legal representation. It will probably start either with some form of client counsel or with some organization that is particularly well-positioned to supervise clients and make use of their time; it is likely to evolve into a consortium of organizations pursuing a variety of agendas and implementing a variety of programs.⁵⁵

54. Many organizations, such as hospitals, schools, or libraries, say they need more volunteer help. Simply referring a client to an organization, saying, "Pay there," will not work well. There will be bad receivables and clients who do not pay. The best assurance that clients will pay their bills is to make that service a point of entry into a new, informal support system where membership is in the client's continuing self-interest. That future self-interest, then, is simply reinforced by helping to build community in a way that affirms the client's own sense of self-worth as a contributor.

55. For example, a cooperative food-buying service such as SHARE might be willing to provide food at cut-rate prices. A health clinic might be willing to give blood-pressure testing in return for Time Dollars. A public service Youth Corps might be willing to do a clean-up, or a graduate school might be willing to detail students as part of a practicum. Or a community college or adult education division might be willing to offer courses in return for Time Dollars. At that point, the array of services the lawyers can offer becomes more varied because a *de facto* consortium has been formed. There may be a *quid pro quo*, such as incorporating the group, reviewing its corporate minutes or by-laws, or drafting forms. In return, the role of attorney will have shifted to that of house counsel for community groups. Almost all legal services programs are involved with the elderly or allied with an organization providing legal services to the elderly. In return for running a *pro se* clinic for residents in a senior complex, or helping seniors with a living will

There is no single right answer to all the questions or issues. But there is a wrong way to arrive at the answers: *unilaterally*. To change poverty law, we must change the relationship between lawyer and client, from one of dependency and implicit subordination, to one of reciprocity and mutuality. None of those decisions can be made unilaterally. Even an exploratory effort to develop and flesh out the undertaking may require authorization from governing boards and client councils of legal services programs, from colleagues and support staff, from funding sources, from faculty and dean, and from law firm partners or bar committees. Certainly, dialogue and authorization will be necessary at some point; the question is whether to develop the plan fully beforehand and then seek approval or bring the other decisionmakers along from the outset.⁵⁶

This brings us to the third, linking question: What kinds of services will the lawyers provide in order to generate the corresponding community-based effort and in what quantities? What must lawyers offer by way of legal services to induce an institution or organization to undertake a specific program utilizing Time Dollars to mobilize its membership?

The Time Dollar program could be set up as a form of prepaid legal insurance. In return for a specified monthly premium, members would receive the right to a certain number of lawyer hours on a specified range of matters; additional lawyer hours would be purchased on an hourly fee basis, except that the fee schedule would include an option to pay part (or even 100%) in Time Dollars. Alternatively, the Time Dollar program could be set up as a specialized pro bono lawyer referral panel, where lawyers in private practice committed themselves to handling a specified number of legal matters for any person who had earned a specified number of credits and agreed to make

or a durable power of attorney, one might call upon the senior center to make its bus available for a mid-day field trip for school children—or one might ask the seniors to serve as mentors in the school system. Better still, those seniors might set up and oversee a peer tutoring program.

56. In El Paso, once a Coalition for the Homeless had decided to set up a program which would enable homeless persons to use Time Dollars to purchase shelter, food and clothing, a proposal was made to open a store where additional food and clothing and donated items could be purchased. There was a big debate about whether or not it made sense to “sell” clothes when so many had been donated and were now being given away. It was decided that the “better” clothes could be kept for sale in the store. When it came to the details, the group wisely decided to set up a store committee, comprised of homeless people, and to have them make such decisions as how to set prices, how many items could be purchases, whether any IOU’s would be accepted. It was felt that the ability to make real decisions about real things would be empowering; this was the group that would have to live with the decisions, both as sellers and buyers. As De Tocqueville observed:

It must not be forgotten that it is especially dangerous to enslave men in the minor details of life. . . .

Subjection in minor affairs breaks out every day, and is felt by the whole community indiscriminately. It does not drive men to resistance, but it crosses them at every turn, till they are led to surrender the exercise of their own will. Thus their spirit is gradually broken and their character enervated. . . .

ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 305 (Richard D. Heffner ed., Mentor 1956) (1835).

“payment” in service credits on an ongoing basis. These examples are only illustrative, not exhaustive. The decision hinges on the nature of the community effort being launched. The answer must depend on the kinds of change sought. Shifting the burden of program development, recruitment, and supervision will probably work best by undertaking a joint venture with an organization: The community-based organization sets up the day care or mentoring services in return for legal services programs (or the law clinic) providing legal representation to the organization or to its members. Once a basic initiative has been developed and a mechanism for delivering the promised legal services is worked out, experience confirms that there is no dearth of community groups that may be galvanized into action—if they are asked and if they understand what is being proposed.⁵⁷

The ownership and control of the program must be shared. And the process of sharing ownership and shaping and reshaping the undertaking does not stop at the level of ratification or organizational commitment.

All parties need to go at risk; all parties have to commit; all parties have to be prepared, at times, to assume a disproportionate share of the burden. The lawyers will not be involved in anything completely new or different; they will continue to be lawyers. The persons earning Time Dollars will be the ones walking out on space, doing something that they have never done before. They will need some leeway, understanding, and sometimes help, to pull it off.

Here, several other caveats are in order: Everything will take more time than anticipated. The scale will initially be smaller than hoped. The community group will want help in raising money to pay staff and expenses to get the program going. There will be times when the lawyers feel that they have done what they promised and resent delay by the organization in living up to its part of the bargain.

The choice of organization and the allocation of responsibilities are critical variables. They determine access to clientele, access to resources, and range of services.⁵⁸ Different consequences follow if the joint venture is with an advocacy membership organization such as the Grey Panthers, the NAACP, or La Raza. The choices are not mutually exclusive: A legal services program may enter into a joint venture with a consortium of groups so long as it takes

57. The only issue is one of resources: a staff person to organize and supervise. Funding for Time Dollar Programs has become increasingly available from government and foundations. Time Dollar programs are so uniquely cost-effective that growth can be expected even in an era of fiscal austerity. Three quarters of a million dollars in Administration on Aging funds are earmarked for additional new pilots in the current fiscal year.

58. Consider the following “partners” in a venture. A seniors complex brings a client base, with one set of legal problems and with resources to deliver child care, mentoring, home visiting, and outreach; a public school system (with an adult education component) or a community college brings a different clientele, with the ability to supply services from literacy training to students with community service graduation requirements; a hospital or health clinic brings still other resources and other legal problems.

appropriate steps to address conflict of interest problems. Conversely, there is nothing to prevent a legal services program from utilizing its client counsel to create Time Dollar subsidiaries as part of a community economic development strategy or as a natural complement to its practice on behalf of juveniles, welfare mothers, or seniors.

Other objections can be predicted. Among these is the assertion that lawyers are not competent to do this, or that it is not appropriate for lawyers to do this. This is not what *real* lawyers do. I can give only two responses.

First, this is exactly what so-called “real” lawyers do.⁵⁹ Major law firms, particularly those specializing in international trade, have set up specialized subsidiaries with access to and expertise in finance, investment, and development. Other law firms have entered into a variety of collaborative arrangements with professionals from other disciplines in order to provide the variety of services clients need to survive in a fast changing economic environment. Indeed, this reality lies behind the modification in the Rules of Professional Responsibility governing partnerships with nonlawyers. If the profession can transform its actions for the rich, why can this not be done for the poor? And what prevents us from setting up subsidiaries that will bring the necessary range of talents to bear on the problems of the poor?

It is clearly within our power to be the catalyst for these kinds of undertakings. We have a choice. We can do what is most comfortable: stick to the old ways. Or we can accept the challenge and venture into uncharted territory. It is, indeed, more comfortable to keep doing what we now do. Asking clients to “pay” for legal services by helping others—even though the clients choose the times and the types of help they will provide—can be disquieting and, indeed, threatening to poverty lawyers.

But now that an alternative course is possible, the opportunity cost of not acting is clear: forgoing the economic, social, and civic empowerment for the poor. The opportunity cost is abandoning the *raison d’être* for legal services. Ultimately, effective procedures are critical; structure is critical; phasing is critical; design is critical; staffing is critical; planning is critical. But when all

59.

Only a few years ago the idea of a law firm starting a non-legal business was viewed as farfetched or, at best, a novel experiment for a few top firms in Washington, D.C., and New York City.

Today, however, the trend has spread nationwide. Marketing consultants estimate that from 44-62 law firms from Boston to Seattle have launched non-law businesses, operating as subsidiaries, affiliates or in-house consulting groups.

And that number is growing as more and more firms see the advantages of moving beyond traditional lawyering into a wide range of business dealings—from offering financial planning services to such exotic ventures as consulting on satellite launching and advising on how to do business in the Orient.

Thomas F. Gibbons, *At Least 45 Law Firms Have Opened Non-Law Businesses. Is It Smart Marketing or the Death of Professionalism?*, A.B.A. J., Nov. 1989, at 70.

is said and done, the plan is very simple. We must begin from the premise that each individual has something precious that is desperately needed by someone else.⁶⁰ We must stop defining people as the sum of their deficits.

IV. THE NEW COVENANT: BEYOND RIGHTS AND REMEDIES

This nation has given the world two legacies: democracy and market economics. Both have, for the time being, vanquished all comers. But that triumph may be short-lived if democracy simply amounts to selecting new demagogues who can only wring their hands and plead poverty.⁶¹ For those in Eastern Europe, market economics has meant sinking into abject poverty while watching a handful of entrepreneurs reap inconceivable wealth as the sole beneficiaries of free enterprise. We leave a legacy which still bears the imprimatur of *caveat emptor*. We have unfinished business.

The market economy we promote as the way to unleash initiative and reap abundance has to do better than decimate the household economy and turn communities into wastelands. The market economy has done to family and neighborhood what toxic waste and pollution have done to air, land and water: rendered them incapable of providing the nurture necessary to support life.

If we cannot achieve a better future here, in our own land, then where can we do it? And if not now, when? That is the challenge of the new covenant: to abolish poverty amidst plenty, to empower the citizenry, to call forth the best within us and to leave to posterity a land as bright with promise as that shared with newcomers by the first Americans.

What does democracy mean under these circumstances? It has to mean taking back some of the responsibilities delegated to government so that ordinary people will indeed exercise greater control over the quality of life, notwithstanding phenomena like inflation, recession, and fluctuation in the relative value of the dollar.

60. The evidence is all around us: Blind, infirm, minority elderly help second graders with word pronunciation and sentence comprehension. A six-year-old earns credits putting out the trash and washing dishes for an elderly person who is looking after her, while the child's single mother gets instruction that will lead to a nursing certificate. A stroke victim leads a class in aquatic exercises for other accident and stroke victims. Frail, homebound elderly are part of a telephone reassurance program, a telephone latchkey program, and a telephone outreach program for pregnant teenagers. Children and adults with Downs syndrome bake cookies and practice simple songs for a recital at local nursing homes. Their mere presence creates joy; the hugs they get and give represent the first human touch that those seniors have had in days or weeks.

61. See, e.g., William E. Schmidt, *Land That Threw Off Soviet Rule Rejects New Regime as Too Harsh*, N.Y. TIMES, Apr. 10, 1993, at A1. "Of the former Soviet satellites and republics, Lithuania is the first in which voters voluntarily agreed to restore power to elements of a political elite from the old Communist system." Rimantas Pirmaitis, a laid-off engineer in Vilnius who has been reduced to selling flowers to feed his family said: "We are past the time for marches and anthems. What we need now is something real, something we can eat and touch." *Id.* at A4.

What does economic growth mean when building prisons and nursing homes are growth industries and when employment opportunity amounts to a choice between a fast food outlet or a private security company? Growth has to be achieved. But achieving it requires rebuilding the only economy over which we have direct control, the nonmarket economy. Growth has to mean regaining a greater measure of control over the terms of our existence. It has to mean balancing the interdependence of market economics in a global economy with a greater measure of self-sufficiency that will at least provide a minimal decent standard of living for all.

Time Dollars operate to infuse a norm of reciprocity that establishes a link between present conduct and future consequences, a link now missing for all too many. By requiring payment for service with service, legal service programs can engender an ethos of mutuality. It is the social glue we need to piece back together lives and ultimately to rebuild community.

Founding this nation took an act of faith; the Founders set in motion a process they could not control. Bringing a child into this world is a similar act: we set in motion a being who cannot mature if confined to the role of dependent recipient. We need—in reinventing poverty law—to take that same leap of faith, to affirm by our actions that our clients must be our partners in seeking justice, in fighting injustice. In the process, we might just possibly redeem ourselves.

