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# LIBERALISM, DEMOCRATIC CITIZENSHIP, AND WELFARE REFORM: THE TROUBLING CASE OF WORKFARE

JAMES W. FOX, JR.\*

## I. INTRODUCTION

The banner of welfare reform has flown over both conservative and liberal camps in recent years. While the two sides disagree on much, they agree on one principle: recipients of welfare must work. Though conservatives tend to eschew government programs and jobs in favor of direct entry into the workforce and liberals tend to emphasize the need for job training, child care, and some government jobs prior to entry into the private market, both sides advocate conditioning the receipt of welfare on work in the paid labor force.<sup>1</sup>

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1. For a sampling of conservative positions on welfare and work, see LAWRENCE MEAD, *BEYOND ENTITLEMENT* (1986) [hereinafter MEAD, *BEYOND ENTITLEMENT*]; LAWRENCE MEAD, *THE NEW POLITICS OF POVERTY* (1992) [hereinafter MEAD, *NEW POLITICS*]; CHARLES MURRAY, *LOSING GROUND* (1984). For some of the moderate to liberal positions, see DAVID ELLWOOD, *POOR SUPPORT* (1988); IRWIN GARFINKEL & SARAH MCLANAHAN, *SINGLE MOTHERS AND THEIR CHILDREN: A NEW AMERICAN DILEMMA* (1986); CHRISTOPHER JENCKS, *RETHINKING SOCIAL POLICY: RACE, POVERTY AND THE UNDERCLASS* (1992); MICKEY KAUS, *THE END OF EQUALITY* (1992); MAURICE ROCHE, *RETHINKING CITIZENSHIP: WELFARE, IDEOLOGY, AND CHANGE IN MODERN SOCIETY* (1992).

The proposals of scholars have also achieved prominence in Washington. President Clinton, with the assistance of David Ellwood, advocated a welfare reform program that included two-year time limits on the receipt of Aid to Families with Dependent Children ("AFDC") grants, mandatory job training or work participation, limited government employment for people who cannot find private market jobs, and increased child care for single parents. See H.R. 4605, 103d Cong., 2d Sess. (1994); S. 2224, 103d Cong., 2d Sess. (1994). See also Rebecca M. Blank, *Policy Watch: Proposals for Time-Limited Welfare*, 8 J. ECON. PERSPECTIVES 183, 184 (1994) (discussing Clinton's plan). See also Draft Discussion Paper of the President's Working Group on Welfare Reform (Spring 1994) (unpublished manuscript, on file with author).

Recent proposals for welfare reform produced by the Republican Congress have focused more on returning responsibility for the programs to the states and reducing teen pregnancy, though work

Why is such reform necessary? The answer given by some reformers appears at first quite simple: Welfare has failed its purpose of ending poverty.<sup>2</sup> Even worse, welfare appears to perpetuate poverty.<sup>3</sup> Recipients become dependent on the transfer, forget or never learn how to work for a salary, and so lose or do not develop a sense of self-sufficiency. Instead of rising out of severe poverty and joining the dominant society, recipients become perpetual members of an excluded class (or “underclass”) that cannot support itself, has low self-esteem, and suffers a variety of “disorders,” from crime to teen-age pregnancy.<sup>4</sup> Welfare, it is argued, excludes the poor from social citizenship.<sup>5</sup>

Reform advocates champion *workfare* as the solution to dependency poverty.<sup>6</sup> They argue that inducing self-sufficiency through work will

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continues to be an important element. See generally H.R. 4, 104th Cong., 1st Sess. (1995); S. 707, 104th Cong., 1st Sess. (1995). Even with the recent congressional focus on devolution of welfare authority to the states, work requirements remain central to both liberal and conservative proposals, especially at the state level. See, e.g., S. 736, 104th Cong., 1st Sess. (1995) (Senator Harkin’s liberal counter to Republican bills); S. 828, 104th Cong., 1st Sess. (1995) (Senator Moynihan’s proposal). See also *Faster Exit Off Welfare?*, N.Y. TIMES, May 19, 1995, at B1; *Fear and Optimism on the Welfare Rolls*, WASH. POST, May 28, 1995, at A1; *Rethinking Welfare: Time Limits—A Special Report*, N.Y. TIMES, Apr. 7, 1995, at A1. For a detailed analysis of both the Presidential and Republican plans, see Larry C. Backer, *Welfare Reform at the Limit: The Futility of “Ending Welfare As We Know It,”* 30 HARV. C.R.-C.L. L. REV. 339 (1995).

2. The number of people in poverty decreased from about 40 million in 1959 to under 25 million in 1978, only to rise again thereafter to about 37 million in 1992. Because the general population has increased, the changes in the poverty rate have not been quite so dramatic: 22.4% in 1959, 11.4% in 1978, and 14.5% in 1992. See 1994 GREEN BOOK: BACKGROUND MATERIAL AND DATA ON PROGRAMS WITHIN THE JURISDICTION OF THE COMMITTEE ON WAYS AND MEANS, Committee on Ways and Means, U.S. House of Representatives 1157-58 (1994) [hereinafter 1994 GREEN BOOK]. See also Sheldon H. Danziger & Daniel H. Weinberg, *The Historical Record: Income, Inequality, and Poverty, in CONFRONTING POVERTY: PRESCRIPTIONS FOR CHANGE 18* (Sheldon H. Danziger et al. eds., 1994). For a helpful review of the distribution of poverty across groups, see Peter B. Edelman, *Toward a Comprehensive Anti-poverty Strategy: Getting Beyond the Silver Bullet*, 81 GEO. L. REV. 1697, 1703-10 (1993).

3. See Marc Lacey, *Please don’t forget to write—Especially to your Constituents*, L.A. TIMES, Aug. 25, 1995, at B5; A.J. Da Silva, *Change Welfare System*, HOUSTON CHRON., Dec. 30, 1993, at A29; Dan Quayle, *Family Values Revisited*, ST. LOUIS POST-DISPATCH, Dec. 29, 1993, at B7; Paul Taylor, *The Welfare Beast: Can the Program Ever Be Tamed?*, WASH. POST, Feb. 9, 1992, at B1.

4. See, e.g., MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 65-66 (“a benefit-oriented social policy might after a point produce more poverty rather than less,” because it produces nonwork and family breakup); MURRAY, *supra* note 1, at 157-62 (describing how AFDC can produce rational choices to avoid full-time work).

5. Lawrence Mead advances this position. See *infra* notes 33-47 and accompanying text.

6. See Brad Hayward, *Minimum Wage Bill Clears Senate*, SACRAMENTO BEE, July 25, 1995, at A3.

enable recipients to support themselves above the poverty line.<sup>7</sup> The poor will work productively in the economy and pay taxes rather than receive handouts. Moreover, reformers claim that recipients will gain self-esteem and become participating members of society.<sup>8</sup> They will attain equal social citizenship by performing the primary obligation of citizenship: work.<sup>9</sup> The poor will join the rest of America in a glorious “Work-Ethic State.”<sup>10</sup>

Yet in the rush to reform, few questions are being asked about the theoretical assumptions and foundations for work-based reforms. Reformers boldly proclaim the coming of an egalitarian work-state, a new civic republican order, and a new citizenship based on work and duty.<sup>11</sup> The image of a new citizenship in particular has gained currency among scholars and politicians.<sup>12</sup>

The application of citizenship ideas to welfare provision, however, has not grown out of developed concepts of citizenship; instead, this application relies on unexamined assumptions that frequently run counter to ideals of democratic citizenship. This Article clarifies some of this discourse by critiquing the application of work requirements to the provision of welfare. It further provides a framework for understanding how work requirements can and cannot be imposed on citizens consistent with a developed—as opposed to a caricatured—theory of liberal democracy.

The Article concludes that reform advocates, in their efforts to focus on

7. William Claiborne, *Price Chosen as President of National Urban League: Foundation Officer is Native of Washington*, WASH. POST, May 25, 1994, at A14.

8. See William Weld, *Welfare Reform: Plan Would Wean Recipients with Work*, DALLAS MORNING NEWS, July 24, 1994, at J5; Don Aucoin, *Weld Aides Say Workfare Succeeding*, BOSTON GLOBE, July 23, 1994, at Metro 17.

9. See, e.g., MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 12.

10. KAUS, *supra* note 1, at 127.

11. See, e.g., *id.* at 137 (contending that Kaus’ version of workfare will produce a “community of workers”); *id.* at 149 (describing the egalitarian world of a successful civic liberation); MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 241-58 (advocating a citizenship of equal obligation, including work).

12. See, e.g., ROCHE, *supra* note 1; MEAD, BEYOND ENTITLEMENT, *supra* note 1; MEAD, NEW POLITICS, *supra* note 1; President William J. Clinton, State of the Union Address (Jan. 24, 1995), reprinted in WASH. POST, Jan. 25, 1995, at A30. For an excellent presentation of the current work in general citizenship theory, see Will Kymlicka & Wayne Norman, *Return of the Citizen: A Survey of Recent Work on Citizenship Theory*, 104 ETHICS 352 (1994), and sources cited therein. On citizenship and democracy generally, see CITIZENSHIP (Geoff Andrews ed., 1991); DIMENSIONS OF RADICAL DEMOCRACY: PLURALISM, CITIZENSHIP, COMMUNITY (Chantal Mouffe ed., 1992) [hereinafter DIMENSIONS OF RADICAL DEMOCRACY]; JUDITH N. SHKLAR, AMERICAN CITIZENSHIP: THE QUEST FOR INCLUSION (1991); DENNIS F. THOMPSON, THE DEMOCRATIC CITIZEN (1970); Michael Walzer, *Citizenship*, in POLITICAL INNOVATION AND CONCEPTUAL CHANGE 211 (Terrance Ball et al. eds., 1989).

social citizenship, eviscerate political and legal citizenship. The reformers' social citizenship, closely examined, has little to do with democracy and everything to do with glorifying a capitalist work ethic. This causes reformers to denigrate or ignore arguments in favor of a citizenship minimum of basic necessities, a minimum essential to possession of basic political and civil rights, such as free speech, voting rights, and employment rights, and also essential to the communal constitution of dignified citizenship. Reformers unfairly equate liberal support for minimal provision with an inability to conceive of a workable theory of social citizenship and self-esteem. To the contrary, liberalism can and does have a developed conception of social citizenship and self-esteem in which work obligations imposed at a level above the citizenship minimum play a role as one of several citizen activities.

Part II of this Article presents the basic arguments of work-welfare reformers regarding citizenship and participation in society. It includes a discussion of the reformers' critique of the liberal positions that they blame for the current problems of welfare.

Part III argues that, contrary to the claims of reformers, liberalism does have a theory of democratic citizenship in which the problems of welfare can be addressed. Liberalism, by focusing on human dignity and the values of equality, freedom, and pluralism, provides a well-developed theory of citizenship and welfare.<sup>13</sup> Under this theory, minimal provision is regarded as essential to basic democratic rights and liberties and constitutive of citizenship and dignity. Moreover, because minimum provision is an

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13. In developing this theory of liberal-democratic citizenship, the Article relies heavily on several left-liberal theorists, some of whom stake out quite divergent positions. Certain theorists on which the Article draws could be classified as "individualist" liberals. *See, e.g.*, RONALD DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977); ROBERT E. GOODIN, *REASONS FOR WELFARE: THE POLITICAL THEORY OF THE WELFARE STATE* 306-12 (1988); AMY GUTMANN, *LIBERAL EQUALITY* (1980); STEPHEN MACEDO, *LIBERAL VIRTUES: CITIZENSHIP, VIRTUE, AND COMMUNITY IN LIBERAL CONSTITUTIONALISM* (1990); JOHN RAWLS, *POLITICAL LIBERALISM* (1993) [hereinafter RAWLS LIBERALISM]; JOHN RAWLS, *A THEORY OF JUSTICE* (1971) [hereinafter RAWLS THEORY]. Others could be considered "communal" liberals. *See, e.g.*, KENNETH L. KARST, *BELONGING TO AMERICA: EQUAL CITIZENSHIP AND THE CONSTITUTION* (1989); MICHAEL WALZER, *SPHERES OF JUSTICE* (1983). Still others are strong critics of liberalism but retain some liberal ideals, *see e.g.*, CHANTAL MOUFFE, *THE RETURN OF THE POLITICAL* (1993); CAROLE PATEMAN, *THE DISORDER OF WOMEN: DEMOCRACY, FEMINISM, AND POLITICAL THEORY* (1989), while some are simply hard to classify. *See, e.g.*, DON HERZOG, *HAPPY SLAVES: A CRITIQUE OF CONSENT THEORY* (1989); J. DONALD MOON, *CONSTRUCTING COMMUNITY: MORAL PLURALISM AND THE TRAGIC CONFLICTS* (1993). Though these scholars often write penetrating and stimulating critiques of each other, the focus here is on the threads and broad principles common to many diverse versions of liberalism. For an excellent review of the differences between Rawls and Walzer in particular, see STEPHEN MULHALL & ADAM SWIFT, *LIBERALS AND COMMUNITARIANS* (1992).

elemental aspect of human dignity, it cannot be conditioned on work or any other social value without the loss of dignity. Beyond minimal provision, however, the Article argues it is both possible and essential to develop programs that foster self-esteem and full social participation. Such programs can and should include work obligations as one prong of their attack on poverty, so long as the state meets its portion of the bargain by providing proper services. As part of the development of this theory, Part III also discusses the proper justifications for governmental actions toward its citizens on matters of both minimal provision and social citizenship.

Part IV applies the developed theory of liberal citizenship to the welfare proposals of the critics and argues that the theories of citizenship advanced by reformers deprive recipients of essential dignity and are incompatible with the foundations of liberal democracy. Part IV further contends that democratic citizenship must involve a variety of spheres of social activity and interests, including work, family care, and community involvement. Attention is misplaced when focused on a workfare policy that hinders or precludes other social activities central to democratic citizenship ideals.

Not wanting to end the critique without some thoughts on a constructive program, Part V proposes some options for a work policy that remain consistent with principles of democratic citizenship. These include employment support programs such as day care, the recognition of family care as legitimate "work," the conditioning of non-essential benefits on work obligations, and programs to apply the work obligation to more affluent citizens. Though recognizing that such suggestions are only hints at a developed policy, this Article argues that they provide a concrete basis for refocusing welfare reform on the ideals of democratic citizenship.

## II. WELFARE REFORMS, WELFARE REFORMERS

### A. *Some General Points*

Proposals for a work-based reform of our welfare system vary widely in their details and emphases, but their advocates share a few common principles. All view the current system as failing not just because substantial poverty continues in this country despite thirty years of anti-poverty programs,<sup>14</sup> but more importantly because current welfare programs themselves perpetuate poverty.<sup>15</sup> As a consequence, reformers

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14. *See supra* note 2.

15. *See supra* note 3.

argue, there now exists a growing “underclass” of people who suffer a complex of problems and/or engage in behaviors that exclude them from mainstream society.<sup>16</sup> Predominant among these problems are non-work, single parenting, welfare dependence, low educational attainment, and crime. Without some changes soon, reformers contend that poverty and its parade of horrible effects will devour an ever-increasing percentage of our population.<sup>17</sup>

For many reformers, non-work represents the most significant problem for welfare. Part of this concern is pragmatic: Resolving non-work—getting the poor to work regularly—can have strong positive effects on the other problems of poverty as well as eventually saving the government money in welfare payments.<sup>18</sup> Nevertheless, the concern with work goes deeper than pragmatism. Work-based reformers view work as an almost universal primary value of American society and an essential feature of citizenship.<sup>19</sup> They claim that Americans expect people to work in order to support themselves and their families, regardless of whether that person is poor, middle income, or wealthy.<sup>20</sup> Because of this expectation, self-supporting employment is one of the “social obligations of citizenship” and a prerequisite to full citizenship.<sup>21</sup> Perceiving a broad acceptance of the

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16. MEAD, *NEW POLITICS*, *supra* note 1, at 29-30; ELLWOOD, *supra* note 1, at 189-92. Mead's work deals primarily with the underclass, or “nonfunctioning” citizens, while Ellwood is concerned with both the working poor and the “ghetto poor,” which he equates with the underclass. The propriety and definition of the term *underclass* have been widely debated. *See generally* KEN AULETTA, *THE UNDERCLASS* (1983); JENCKS, *supra* note 1, at 143-204; William J. Wilson, *Public Policy Research and the Truly Disadvantaged*, in *THE URBAN UNDERCLASS* 460, 474-76 (Christopher Jencks & Paul E. Peterson eds., 1991) [hereinafter Wilson, *Public Policy*]; WILLIAM J. WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS AND PUBLIC POLICY* (1987) [hereinafter WILSON, *TRULY DISADVANTAGED*]; *THE “UNDERCLASS” DEBATE* (Michael B. Katz ed., 1993); Erol R. Ricketts & Isabel V. Sawhill, *Defining and Measuring the Underclass*, 7 *J. POL'Y ANALYSIS & MGMT.* 316 (1988); Isabel V. Sawhill, *The Underclass: An Overview*, *PUB. INTEREST*, Summer 1989, at 3. On the problems of measuring the underclass, see Ronald B. Mincy, *The Underclass: Concept, Controversy, and Evidence*, in *CONFRONTING POVERTY: PRESCRIPTIONS FOR CHANGE*, *supra* note 2, at 109. For a criticism of the application of the term to concepts of citizenship, see *infra* notes 194-215 and accompanying text.

17. *See supra* note 4.

18. MEAD, *NEW POLITICS*, *supra* note 1, at 48-57. On the positive (but not panacea) effects of employment for reducing poverty, see Paul Osterman, *Gains from Growth? The Impact of Full Employment on Poverty in Boston*, in *THE URBAN UNDERCLASS*, *supra* note 16, at 122.

19. ELLWOOD, *supra* note 1, at 6; MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 6; MEAD, *NEW POLITICS*, *supra* note 1, at 20.

20. *See, e.g.*, ELLWOOD, *supra* note 1, at 16; MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 242-43.

21. MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 6; MEAD, *NEW POLITICS*, *supra* note 1, at 13.

“work ethic,”<sup>22</sup> reformers convert consensus on work into the justification for the government to require work as a condition for receiving welfare.

The true failing of the current welfare system, according to its critics, is not just that it perpetuates poverty, but that it breeds a non-work mentality among the underclass which incapacitates them and excludes them from social citizenship.<sup>23</sup> Reliance on an income-maintenance welfare system rather than a work-based system enables society to avoid making necessary judgments about citizens’ obligations, especially the obligation to work. “By turning to welfare [income-maintenance],” says David Ellwood, “we are actually turning away from our values and ignoring the causes of poverty.”<sup>24</sup> These critics thus argue implicitly that when society avoids such judgments, the poor cannot enter the broader society as full citizens.

To respond to this perceived hazard of the current welfare program, reformers advocate a variety of methods to enforce a work obligation. Some argue that we should simply abolish welfare and force people to work in the existing market with whatever skills they have.<sup>25</sup> Others propose that welfare should exist only as a time-limited transition to work for people temporarily in dire straits and should be a subpart of a general employment strategy, perhaps including government employment programs.<sup>26</sup> Still others advocate a system of work combined with welfare, including job training and educational programs.<sup>27</sup> All of these policies, however, mandate work as a condition of receiving benefits and call for some time limit on welfare benefits to compel recipients’ participation.

22. Here, *work ethic* means the belief that each person must work to support herself and her family, not the more precise idea that people should work hard and well at whatever job they do. While the latter may also be widely shared, it is not particularly relevant for welfare work programs.

23. MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 65-66 (welfare creates nonwork mentality); MEAD, *NEW POLITICS*, *supra* note 1, at 60 (nonworking poor are not considered “real citizens”); *id.* at 64 (dependent people must either work or “regard themselves as less than full members of society”).

24. ELLWOOD, *supra* note 1, at 43.

25. Charles Murray has advanced this draconian “reform” since at least 1984. See MURRAY, *supra* note 1, at 227-28; Charles Murray, *What to Do about Welfare*, COMMENTARY, Dec. 1994, at 26, 29 [hereinafter Murray, *What to Do About Welfare*]. Additional aspects of Murray’s program include significant improvements in the educational system so as to provide working skills, MURRAY, *supra* note 1, at 223-27, and state run orphanages, Charles Murray, *The Coming White Underclass*, WALL ST. J., Oct. 29, 1993, at A14 [hereinafter Murray, *The Coming White Underclass*]. For critiques of Murray’s arguments and his use of data, see JENCKS, *supra* note 1, at 70-91; WILSON, *TRULY DISADVANTAGED*, *supra* note 16, at 93-106; Sheldon Danzinger & Peter Gottschalk, *The Poverty of Losing Ground*, CHALLENGE, May/June 1985, at 32; Jeffrey Lehman & Sheldon Danzinger, *Reflections on Welfare Reform*, 37 U. MICH. L. QUADRANGLE NOTES 34, 37-38 (1994).

26. ELLWOOD, *supra* note 1, at 12, 238-41. See also KAUS, *supra* note 1, at 125-27.

27. MEAD, *NEW POLITICS*, *supra* note 1, at 251-54.



Without such an obligation, it is argued, recipients will remain passive, rely on the benefits, and not take seriously the duty to work.<sup>28</sup> With work obligations, recipients will be forced to come to terms with the value of self-support and eventually become full citizens in our work-ethic society.<sup>29</sup>

Up to this point, we have discussed only the general principles behind work-based reforms. Some reform advocates do not venture much beyond the general statements for a grounding of their positions. David Ellwood, for example, asserts that autonomy, responsibility, work, family, community, and compassion are “our” precious values and that the current welfare system forces these values into irresolvable conflict.<sup>30</sup> He provides no basis for choosing these values over others, no theory of how the values inter-relate (other than noting that they conflict), and no principles of resolving conflicts among values. Nor does he connect the implementation of these values by the government to principles of democracy, other than by implicitly asserting a simple consensus theory: “Our” values are widely shared and hence democratically valid.<sup>31</sup> Other advocates, however, do flesh out some principles to support work-based welfare, and it is to those theories that we now turn.

### B. *The (Alleged) Failures of Liberals and Liberalism*

A central thesis of the reformers’ critique of liberal welfare policies is that liberals wrongly apply rights-based theories to the area of welfare. By converting welfare provision into a right in the traditional sense of political and civil rights, liberalism encourages a duty-free entitlement to income.<sup>32</sup>

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28. See, e.g., *id.* at 162-65, 171-72 (criticizing voluntary work programs and advocating mandatory programs).

29. The connection of work obligations to welfare and communal responsibility marks a central theme for President Clinton’s “New Covenant.” See President William J. Clinton, State of the Union Address, *supra* note 12; see also *Clinton Proposes New Job Training*, WASH. POST, Jan. 11, 1995, at A1. It is also a significant aspect of the Republican’s original “Contract with America” welfare reform plan. See CONTRACT WITH AMERICA 65-77 (Ed Gillespie & Bob Schellhas eds., 1994).

30. ELLWOOD, *supra* note 1, at 6.

31. I do not expect Ellwood to develop a theory of democratic action in order to advocate welfare reform. His policy suggestions, however, remain susceptible to critiques of the theories which, explicitly or implicitly, underlie his assumptions.

32. I should note here that the rights-duties talk in welfare discourse does not follow the usual conceptions of rights and duties. Traditionally, a duty is understood in direct correspondence to a right: If A has a right to X, then someone (a person or the State) has a correlative duty to provide X, that is, to grant or enforce A’s right. Thus, if A has a right to welfare, the relevant duty is on the state to provide it. See, e.g., Raymond Plant, *Needs, Agency, and Welfare Rights*, in RESPONSIBILITY, RIGHTS, AND WELFARE 55 (Donald Moon ed., 1988) (setting out features of rights claims and arguing for a right

But income without work or obligation, the reformers contend, breeds dependence on the state, fosters a non-work mentality, and renders the recipient unable to become self-supporting and to escape poverty. Such dependency prevents the poor from participating in the mainstream economy or society and perpetuates the culture of the underclass. Ultimately, the *right* to welfare denies the poor full social citizenship and denies them the full use of the freedom and equality that liberalism champions.

This argument has been developed and popularized largely by Lawrence Mead.<sup>33</sup> Mead argues that because liberals saw poverty only in terms of

to welfare provided by the State).

In welfare and citizenship discourse, however, many people discuss rights and duties of a single agent: If A has a right to X from B, then A also has a duty to provide Y to B. Thus, reformers argue if A has a right to welfare claimed against society, then A also owes a duty to society to work. This approach might more accurately be described as a system of mutual obligations—the state is obligated to provide, the citizen to work. See Rebecca M. Blank, *The Employment Strategy: Public Policies to Increase Work and Earnings*, in *CONFRONTING POVERTY*, *supra* note 2, at 168, 185. The rhetorical move, however, of focusing on the duties of the recipient rather than on mutual obligations allows reformers such as Mead to ignore or downplay the state's end of the bargain. See *infra* notes 33-44 and accompanying text (discussing importance of state provision for inspiring recipient's duty). In any event, the reader should be aware of the two possible meanings associated with rights-duties talk in welfare reform.

33. Mead's position bears a strong resemblance to certain versions of Civic Republicanism, particularly that advanced recently by Suzanna Sherry. See, e.g., Suzanna Sherry, *Without Virtue There Can Be No Liberty*, 78 *MINN. L. REV.* 61, 71 (1993) [hereinafter Sherry, *Without Virtue*]; Suzanna Sherry, *Responsible Republicanism: Educating for Citizenship*, 62 *U. CHI. L. REV.* 131 (1995) [hereinafter Sherry, *Republicanism*]. For a sympathetic critique of Civic Republicanism, see MOUFFE, *supra* note 13, at 35-36, 60-63; see also Don Herzog, *Some Questions for Republicans*, 14 *POL. THEORY* 473 (1986). For a critical discussion of Republicanism as applied in historical scholarship, see Daniel T. Rogers, *Republicanism: The Career of a Concept*, 79 *J. AM. HIST.* 11 (1992).

This Article is not a direct critique of Civic Republicanism. Indeed, some versions of Civic Republicanism provide important content to the theory argued herein. See, e.g., CASS SUNSTEIN, *THE PARTIAL CONSTITUTION* (1993). In particular, the argument I make regarding the communal constitution of human dignity, see *infra* note 152, 172-73 and accompanying text, has some obvious parallels to some civic republican principles. However, the extremes of a communally derived republicanism—which are especially evident in portions of Professor Sherry's work and almost all of Professor Mead's—do violate the principles advocated in this Article. Cf. Roger M. Smith, "One United People:" *Second-Class Female Citizenship and the American Quest for Community*, 1 *YALE J.L. & HUMAN.* 229, 238 (1989) (arguing that in order to preserve its values of shared community and membership, Republicanism has historically validated the enslavement and subjugation of fellow humans by labelling them (e.g., women, African-Americans) as non-citizens). See *also id.* at 244 (observing the patriarchal foundations of Republicanism in the fact that "[t]he very words 'public' and 'virtue' derived from Latin terms signifying manhood"); Gwendolyn Mink, *The Lady and the Tramp: Gender, Race, and the Origins of the American Welfare State*, in *WOMEN, THE STATE, AND WELFARE* 92-96 (Linda Gordon ed., 1990) (arguing that "[b]oth gender ideology and white men's democracy sprang from the core of American republicanism" and that virtue and citizenship were exclusive aspects of manhood).

rights and not duties, they could not resolve the critical problems plaguing stereotypical welfare mothers: non-work and family breakdown.<sup>34</sup> Absent any basis for government imposition of obligations, liberals believe that “government must solve the social problem with benefits and without authority. [They favor] government but [oppose] governing.”<sup>35</sup> For Mead, this reliance on duty-free rights breeds the dependency liberals claim they want to resolve: “[T]he recipients [of welfare] were vulnerable precisely because they had *only* rights. Without functioning in expected ways, such as work, they could never truly be *entitled* to their benefits.”<sup>36</sup> Apparently, for Mead, entitlement must reflect a reward for correct citizenship behavior, not an automatic gift of citizenship status.

Mead further contends that liberal rights-talk makes no sense in an era of dependency politics.<sup>37</sup> Rights-talk may have been appropriate during the New Deal, when the people subject to social policy—the working poor and middle class—were already “competent” citizen-workers. Since the advent of Great Society social programs, however, poverty issues have transformed from worker issues into questions about morality: crime, family breakdown, drug addiction. “Social order is at issue, not justice.”<sup>38</sup> According to Mead, the traditional theories of Western liberalism, which emphasize justice and rights, are worthless for addressing today’s poverty issues because they assume rational, competent agents.<sup>39</sup> A new political philosophy based on competence and common obligation is needed instead.<sup>40</sup>

The problem with liberalism, reformers argue, is that it fails to see social citizens as anything other than the “rights-claimers” of a bygone era.<sup>41</sup>

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34. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 212.

35. *Id.* at 206.

36. MEAD, NEW POLITICS, *supra* note 1, at 206.

37. This is a general theme of NEW POLITICS. *See id.* at 1-47.

38. *Id.* at 238.

39. *Id.* at 237-39. Charles Murray argues a similar point, though with less direct emphasis on citizenship. Murray contends that the welfare rights movement of the 1960s produced an attitude that self-sufficiency is not a social obligation. MURRAY, *supra* note 1, at 180-82. Entitlement to public charity removed a culture of achievement in poor neighborhoods and replaced it with a culture of non-work; to work for low wages when welfare exists is to be a “chump.” *Id.* at 185. Although Murray and Mead differ in their evaluation of such an attitude—Murray considers it a rational reaction to welfare provision which should be altered by removing welfare, while Mead sees it as a self-delusional social psychology of the poor which can only be changed by government imposed work-welfare—both analysts agree that liberal rights-based welfare produces non-work, destroys the work ethic of the poor and helps perpetuate the underclass.

40. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 215-17.

41. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 212; ROCHE, *supra* note 1, at 31-32.

Just as democratic citizens can claim a right to free speech, a right to contract freely for employment, or a right to employment unaffected by racial and gender bias, a liberal citizen can also claim a right to welfare.

Such a rights-claiming approach to social citizenship is wrong, argue reformers, because social rights come with specific duties on the recipient, including the obligation to work.<sup>42</sup> The absence of reciprocal obligations in current welfare programs erodes recipients' moral capacity.<sup>43</sup> Thus, when people receive money from the community without any duty to work, they lose their sense of morality and become incapable of moral action. Moreover, since reformers believe that freedom only exists with regard to moral agents, welfare recipients in fact lose their capacity for freedom. By making recipients dependent on welfare, liberals, in an effort to expand freedom, risk the irony of "presiding over a diminution of the freedom and moral autonomy of those dependent on [welfare]."<sup>44</sup>

The contention that liberal policies adversely affect recipients' moral foundations by destroying their work ethic is perhaps the most consistent critique of reformers. Even those who do not expressly reject rights-based welfare still believe that it is wrong and dangerous to reward the "indolent" and fear that liberal policies have done so.<sup>45</sup> Personal responsibility, as evidenced through work at paid labor, is the commonly accepted moral good, and liberal policies, the commonly agreed inhibitor of this good. Liberalism's penchant for giving the poor money rather than requiring work created an attitude in the poor of inactivity and wrecked their sense of initiative.<sup>46</sup> Liberal welfare policies paid the poor to remain poor rather

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42. MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 242.

43. ROCHE, *supra* note 1, at 31-32.

44. *Id.* For a different variation on the debate between rights-based theorists and their critics, compare Frank I. Michelman, *On Protecting the Poor Through the Fourteenth Amendment*, 83 HARV. L. REV. 7 (1969) (arguing for a right to welfare founded in the Fourteenth Amendment) and Charles Reich, *The New Property*, 73 YALE L.J. 733 (1964) (arguing for a property right to welfare), with William H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431 (1986) (criticizing Reich's theory). For more contemporary theories of constitutionally based welfare rights, see Akhil R. Amar, *Forty Acres and a Mule: A Republican Theory of Minimal Entitlements*, 13 HARV. J.L. & PUB. POL'Y 37 (1990) (using the Thirteenth Amendment) and Peter B. Edelman, *Mandated Minimum Income, Judge Posner, and the Destruction of the Rule of Law*, 55 ALB. L. REV. 633 (1992) (using the Fourteenth Amendment).

45. ELLWOOD, *supra* note 1, at 19-20; JENCKS, *supra* note 1, at 87-92. Jencks disagrees with Murray's claim that welfare unquestionably hurts the poor, but still accepts the idea that welfare has injured concepts of individual responsibility. *Id.* at 70-87 (critiquing Murray) and 88 (accepting Murray's general point that social policy from 1964-1980 rewarded vice rather than virtue).

46. KAUS, *supra* note 1, at 112-20.

than work for greater wealth.<sup>47</sup>

### C. *After Liberalism: Social Citizenship through Work Requirements*

In place of a rights-based approach to welfare, reform advocates advance concepts of social duty, obligation, and responsibility. The growing theoretical foundations for the implementation of duties consist largely of revisions of the ideas of citizenship and social responsibility. Instead of looking at citizenship in political, rights-bearing terms, reformers try to construct a broader concept of social citizenship which focuses on participation in the social mores, the activities, and the status common to society.<sup>48</sup>

#### 1. *Lawrence Mead: Progenitor of Conservative Social Citizenship Theory*

With the publication of *Beyond Entitlement* in 1986, Lawrence Mead emerged as a leading exponent of these ideas about social citizenship and welfare.<sup>49</sup> According to Mead, freedom cannot exist without social order, and social order is only possible in a society tightly bound by “dense, reliable networks of mutual expectations.”<sup>50</sup> These expectations include the duties to work, contribute to one’s family, speak English, learn in school, and obey the law, and of these, “work for the employable is the

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47. *Id.* at 120. The spate of attacks on liberalism discussed in the Article come mainly from scholars ranging from moderate liberals to conservatives. The Left, however, has not remained silent. William Simon contends that the efforts of liberals to associate welfare with property rights produced a welfare theory that, ironically, supports status quo property structures and prevents further reform of poverty. Simon, *supra* note 44, at 1486-1504. Simon further criticizes liberals for failing to support any work-conditioned welfare programs. Instead of accepting some conditions on welfare and trying to make those conditions more favorable to the poor, liberals blindly objected to all conditions on the “right” to welfare. *Id.* at 1513-15.

Although Simon disagrees with Mead on the degree of influence rights-theories have on the poor themselves and on Mead’s refusal to criticize entitlement dependency among the non-poor, *id.* at 1515 n.240, he ultimately advocates a Mead-style work-welfare program which conditions benefits on work, arguing that it would better integrate the poor into society and better respect their own preferences. *Id.* at 1514-15. See also William H. Simon, *The Invention and Reinvention of Welfare Rights*, 44 MD. L. REV. 1 (1985) (arguing for a needs-based, rather than rights-based, welfare system). For a critique of the problems inherent in Simon’s flexible-right theory of welfare, see MOON, *supra* note 13, at 140-45.

48. See, e.g., MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 12.

49. A recent review of the literature on citizenship theory cites Mead as the primary author of the New Right’s version of citizenship theory. Kymlicka & Norman, *supra* note 12, at 355-56.

50. MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 6.

clearest social obligation."<sup>51</sup> Welfare, however, provides support without enforcing work obligations.<sup>52</sup> It makes recipients outsiders in their own culture.<sup>53</sup> Because government enables recipients of welfare to exist outside the normal social constraints, the government must enforce these social obligations through a clear, authoritarian work requirement.<sup>54</sup> Once these obligations are enforced, the poor will achieve greater freedom and

51. *Id.* at 242-43. See also ELLWOOD, *supra* note 1, at 16; KAUS, *supra* note 1, at 104-05; MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 242-43; MEAD, NEW POLITICS, *supra* note 1, at 62. Though not discussing welfare reform specifically, the late Judith Shklar asserted that work defines citizenship in America: "[w]e are citizens only if we 'earn.'" SHKLAR, *supra* note 12, at 67. Shklar made this point descriptively, arguing that earning and work became values of American citizenship during the Jacksonian era and were heightened by the battles of African Americans, women, and union workers to be included in and protected by employment. *Id.* at 72-95. Shklar did not subscribe to these values as a theory of citizenship: "[They are] irrational and unfair . . . They are not the best possible public values, nor do I wish to suggest that their being shared improves them in any way or endows them with any moral worth." *Id.* at 98 (citation omitted). She did, however, believe that they were key to *American* citizenship. *Id.* at 99.

52. As a factual matter, this is only partially right. Work obligations have been a central part of AFDC since 1967. JOEL F. HANDLER & YEHESEKEL HASENFELD, THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA 138 & n.3 (1991); Gary Burtless, *The Effect of Reform on Employment, Earnings, and Income*, in WELFARE POLICY FOR THE 1990s, 103, 106-07 (Phoebe H. Cottingham & David T. Ellwood eds., 1989). Parents receiving AFDC have had to work or be part of a training program if their children have reached a certain age, and that age has decreased from six to three in the past two decades (states have the option of reducing this age to one). See P.L. 100-485 § 201(a) (1989) (reducing the age from six to three or one). The current rule is codified at 42 U.S.C. 602(a)(19)(C)(iii)(I) (1994). See also GARFINKEL & MCLANAHAN, *supra* note 1, at 115-18, 134-35; HANDLER & HASENFELD, *supra*, at 154; 1994 GREEN BOOK, *supra* note 2, at 341. However, the actual percentage of recipients who have in fact been required to meet these obligations or who have received training services has consistently been small. HANDLER & HASENFELD, *supra*, at 141, 173, 210. See also "Welfare to Work: Current AFDC Program not Sufficiently Focused on Employment," Report of the United States General Accounting Office, Dec. 19, 1994, at 5-7 (approximately 11% of AFDC recipients actually participate in the AFDC employment program ("JOBS")).

Mead responds to this by arguing that prior programs failed because of inadequate resolve on the part of the government. Only with strict enforcement of a mandatory work obligation and full support services (e.g., day care) will programs succeed. MEAD, NEW POLITICS, *supra* note 1, at 171. Handler and Hasenfeld counter that the real reason for non-success is that welfare work programs are designed primarily to give the appearance of supporting the work ethic—actually employing the poor is secondary. HANDLER & HASENFELD, *supra*, at 142. Regardless of the reason for failure, however, it is important to realize that the call for workfare is a call for extending principles currently in place and is not a whole-cloth replacement of our welfare system.

53. "To be on welfare is to lose one's independence and to be treated as less than a full member of society. In effect, the people who belong to the under-class are not quite citizens." SHKLAR, *supra* note 12, at 22.

54. Mead argues that while most people gain a sense of work obligation from their families and communities, the poor already on the dole must get the message from the government: "If the government does not set standards for its recipients, no one else can." MEAD, NEW POLITICS, *supra* note 1, at 89.

social equality.<sup>55</sup>

There are several important themes running through this concept of social citizenship. First, Mead casts the concept of social citizenship as one of competence, participation, and “functioning.” He argues that people are functioning citizens if, and only if, they fulfill the duties he outlines.<sup>56</sup> While one might wonder whether someone who fails at only one of Mead’s criteria can still be a functioning citizen, Mead is not really concerned with such a person. Instead, Mead concentrates on what he considers the least functioning people, the underclass, who suffer a combination of dysfunctions, from lack of employment to crime to the breakdown of family supports,<sup>57</sup> and are thus the most likely candidates for exclusion from social citizenship.

This concept of *functioning* performs significant work for Mead. First, it removes the focus from exclusion of the poor by wealth or geography or race—all external factors—to a focus on the internal capacities of the poor to perform tasks that Mead labels essential. Even if a person cannot “function” because of inferior education, by naming this a problem of “functioning” rather than “education,” Mead keeps the locus of the problem within the individual rather than on the state.<sup>58</sup>

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55. *Id.* at 11-13.

56. MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 12-13. Mead’s schema parallels a distinction that has existed in anti-poverty policy since at least the English poor laws of the Sixteenth Century: the division of the poor into the deserving and undeserving. In this picture, those people determined to be incapable of work—primarily the severely disabled—are seen as “deserving” of public support. Those seen as able-bodied and capable of self-support are deemed “undeserving” of communal benefits. See MICHAEL B. KATZ, *THE UNDESERVING POOR: FROM THE WAR ON POVERTY TO THE WAR ON WELFARE* 11-16 (1989); see also GERTRUDE HIMMELFARB, *THE IDEA OF POVERTY: ENGLAND IN THE EARLY INDUSTRIAL AGE* (1984).

57. MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 22.

58. Mead disputes arguments that external factors explain the growing underclass. See MEAD, *NEW POLITICS*, *supra* note 1, at 66-132. Yet he never denies that these external issues contribute, even if only supplementally, to underclass problems. See, e.g., *id.* at 66-67; *id.* at 101-02 nn.70 & 71 (citing studies qualifying his textual assertion that jobs exist and that joblessness does not affect marriage rates); *id.* at 126 (“While the poor are clearly more impaired than the population, the difference is not enough to explain the greater divergence in their economic status”).

By referring to all problems of the poor as problems of functioning, however, Mead’s rhetoric works to keep the reader’s attention away from external factors and toward internal capacities. For example, in addressing the question of why women, minorities, and the young are in low-paying jobs, he notes that they are less experienced and less educated and then concludes “[t]here is little evidence that low paid groups are treated adversely apart from these factors.” *Id.* at 97. Mead seems to think that “these factors” are somehow distinct from racial, gender, and other biases, or from the economic or structural problems of poverty; for Mead, experience and education are *internal* capacities only. It is puzzling, to put it mildly, how Mead can think that job experience and education are not influenced by external factors. For a refutation of Mead’s earlier arguments that external or structural issues do not help cause

Second, by calling the poor *nonfunctioning*, Mead labels them as noncitizens in a way that maintains the illusion of future citizenship. Mead does not think of the poor as noncitizens only, but as noncitizens with a potential for citizenship if they would learn how to “function.” His goal is ultimately the participation of the passive poor in society and the integration of the underclass, not just relief from income poverty.<sup>59</sup> This maneuver, however, only disguises the true exclusionary character of Mead’s theory. Despite his purported quest for full citizenship for the poor, they remain the “Other.” Under the guise of being inclusionary, Mead’s theory carefully segregates portions of the population.

Indeed, otherness and noncitizenship remain central to Mead’s argument. So central, in fact, that Mead extends the noncitizenship of the underclass beyond the social context of exclusion from common values and into the arena of political participation. For Mead, the nonfunctioning of the underclass denies them any moral claim to participate in political decisions about the role of government. Because “employment is essential to being a functioning citizen[, o]nly adults with a work connection have the moral standing to demand either more government or less.”<sup>60</sup> The underclass become, morally if not legally, noncitizens in the political realm as well as the social; they have no moral right to speak on questions regarding government benefits to their own group. This is a radically undemocratic statement,<sup>61</sup> but it is consistent with Mead’s general concept of a citizenship that highlights social and moral issues to the exclusion of politics and law.

Mead’s *functioning* concept leads to another significant theme of social citizenship: authoritarianism. Once the underclass is defined as a nonfunctioning Other, Mead unlocks the door to paternalistic responses to poverty. Recall that in addition to denigrating the poor as the Other, Mead also argues that this alien status exists because the poor are incapable of

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intense poverty, see Wilson, *supra* note 16; Loïc J.D. Wacquant & William J. Wilson, *Poverty, Joblessness, and the Social Transformation of the City*, in WELFARE POLICY FOR THE 1990s, *supra* note 52, at 70.

59. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 218–40 (discussing favorably “civic conservatives” in Congress who have advocated work-based welfare as a means of including the underclass in mainstream society).

60. MEAD, NEW POLITICS, *supra* note 1, at 13. In a similar vein: “Only workers are qualified even to enter into the progressive debate about what the precise balance of government and the marketplace should be.” *Id.* at 61.

61. See *infra* Part IV (arguing that these and other aspects of Mead’s theory are illiberal and undemocratic).



being free: “Those who cannot manage their own affairs well enough to be independent are necessarily unfree.”<sup>62</sup> Because the underclass are rights-claimers, they are never free and equal citizens.<sup>63</sup> Because the poor are not free and equal, Mead apparently believes government is justified in imposing unique obligations on them. Because he seeks to impose order on the unfree so as to make them free, the order is legitimate. It is like imposing authority on other nonfunctioning people, such as children or the mentally ill.

The analogy to children deserves particular attention in this context. To make the use of authority seem more palatable, Mead asks us to consider the use of authority not as a political issue, but as the equivalent of the social relationship between a parent and child.<sup>64</sup> Mead observes that parents teach children that personal responsibility means being unfree in the sense of obeying society’s reasonable requirements and being accountable for one’s behavior.<sup>65</sup> He also points out that researchers have shown that children who have a good sense of personal responsibility do far better in school.<sup>66</sup> Mead argues that the underclass are simply overgrown children, still immaturely clinging to and living under a child-like dependency mentality.<sup>67</sup> If we look at welfare work requirements as a form of social authority akin to parenting, Mead apparently assumes that we can agree that governmental authority is justified to help create mature, responsible, functioning citizens. According to Mead, government authority “operates as the midwife, not the antithesis, of freedom.”<sup>68</sup>

Significantly, however, Mead does not justify how or when a democratic government should treat its political citizens as if they were children, nor does he follow up any possible implications of this analogy. Democracy

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62. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 42.

63. *Id.* at 43. Similarly, “[in] a polity of interest and rights-claiming individuals, only those who act on their own behalf and are recognized as competent in civil and political society can count as full citizens.” SHKLAR, *supra* note 13, at 99. Shklar is being descriptive of American citizenship and not prescriptive about citizenship generally. *See id.* Nonetheless, it is questionable whether this state of affairs is consonant with democratic, as opposed to simply American, principles. For instance, is it legitimate in a democracy to require adult citizens to pass a test of civil or political competence *prior* to being considered “full citizens”? And, even if it were, how equally is such a principle applied to all economic and social classes?

64. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 88-89

65. *Id.*

66. *Id.*

67. MEAD, NEW POLITICS, *supra* note 1, at 218.

68. MEAD, NEW POLITICS, *supra* note 1, at 172. Suzanna Sherry adopts a similar analogy by comparing citizenship to child-rearing. *See* Sherry, *Without Virtue*, *supra* note 33, at 71.

treats children quite differently from adults, denying them a host of rights and liberties that other members of society enjoy. One wonders how Mead would respond if asked whether society could, as it does with children, deny underclass adults the right to vote or force them into a separate judicial system. Mead simply ignores these questions, expecting acceptance of the analogy to children as common sense. For Mead, the claim that the state acts in a social, not political, sphere stands as sufficient justification for authoritarian measures.

This raises one final aspect of Mead's social citizenship: his principles of justification. To say *principles* here may credit Mead with more than he attempts. Sometimes, such as in his analogy to parent-child relations,<sup>69</sup> he just assumes the right of government to impose social ideals. Mead considers it the task of social policy to "elevate [values] that already exist from the social realm into the political."<sup>70</sup> So long as he can safely assert values which are commonly held, that is justification enough for advocating government imposition of social values.<sup>71</sup> Questions about distinguishing proper and improper social values, or about the limitations government might have when imposing even widely held values, simply do not arise.<sup>72</sup>

It may be a bit unfair, however, to say Mead has no deeper justifications for work obligations. Recall that he defines the poor as nonfunctioning and unfree.<sup>73</sup> The legitimacy for the authority he advocates resides in his belief that a functioning freedom of self-support is the goal of his program. Thus, conceivably, Mead would not accept authority simply for the sake of control or "order." For instance, Mead might not condone placing the poor into poorhouses and requiring them to break stones or make license plates absent any programs to help the poor enter the private labor market. But the emphasis here is on *might*. This restriction only applies if we graft Mead's support for authority-as-source-of-freedom onto a principle of

69. See notes 64-68 and accompanying text.

70. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 12 (emphasis original).

71. The centrist-liberal Christopher Jencks adopts a similar approach of justifying the application of social values, as defined by him, to government policies. See JENCKS, *supra* note 1, at 20-23. Jencks' values also include personal responsibility through employment. *Id.* at 87-92. Similarly, Theda Skocpol, with whose work and proposals I generally agree, also adopts a consensus-based justification for policy. See Theda Skocpol, *Targeting Within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in THE URBAN UNDERCLASS, *supra* note 16, at 411, 429. See also Sherry, *Republicanism*, *supra* note 33, at 171 (arguing that hard work and individual responsibility are part of the "American creed").

72. In this sense, Mead's theory of social citizenship lapses into a simple consensus theory similar to that of David Ellwood. See ELLWOOD, *supra* note 1.

73. See *supra* notes 59-68 and accompanying text.

justification for all authority. His stated principle, however, is only that social values which constitute social citizenship can legitimately be imposed by the government on non-complying persons. Order, as Mead acknowledges, is a social value.<sup>74</sup> The poorhouse provides order for the poor and non-poor alike, and so could logically be justified. In fact, the question of the legitimacy of the poorhouse cannot be determined here precisely because Mead does not see the need to be any more clear about his justifications for the authority of the government to impose work for welfare. As is argued below, this is a dangerous omission for someone advancing an admittedly authoritarian project.

## 2. *Social Citizenship by Another Name: Mickey Kaus and Civic Liberalism*

Although Mead stands as the leading advocate of a social citizenship theory of work-based welfare, others have advanced similar approaches. Mickey Kaus, an editor of *The New Republic*, argues for what he terms a “Civic Liberalism” that mirrors Mead’s citizenship arguments in many ways.<sup>75</sup> According to Kaus, equality properly conceived consists of participation in the values of society and is not a simple matter of income or wealth distribution, as older liberals argued (he terms them “Money Liberals”).<sup>76</sup> Like Mead, Kaus believes that work is the primary American value.<sup>77</sup> Thus, the key to greater equality for the very poor lies in some obligation to work. Indeed, Kaus argues that enforced work obligations offer the *only* opportunity for the underclass to reconnect with the rest of society and become full citizens.<sup>78</sup> Work is the only common value in America in which everyone can participate regardless of wealth and is therefore the true egalitarian value.<sup>79</sup> Instead of equalizing incomes by transfer payments, government should equalize participation in the social norm of work.<sup>80</sup> The goal of welfare policy for Kaus is “the transformation of the welfare state into the Work Ethic State . . . .”<sup>81</sup>

Kaus contends that his Civic Liberalism, by emphasizing work rather than income and wealth, holds the promise of true egalitarianism because

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74. MEAD, BEYOND ENTITLEMENT, *supra* note 1, at 5-7.

75. Mead comments favorably on Kaus’ project. MEAD, NEW POLITICS, *supra* note 1, at 252-53.

76. *See generally* KAUS, *supra* note 1.

77. *Id.* at 175-78.

78. *Id.* at 104-05, 136-37.

79. *Id.* at 104.

80. KAUS, *supra* note 1, at 136-48, 176-78.

81. *Id.* at 127.

it creates a sphere of society apart from the market, a sphere where people are equal without wealth equality.<sup>82</sup> In Kaus' Work Ethic State, "labor would be the admission ticket to Civic Liberalism's egalitarian public sphere."<sup>83</sup> All Americans would be valued if they worked, regardless of wealth and income, and the able-bodied who did not work would be properly stigmatized and shunned; they would be deprived of "admission" to the egalitarian carnival for refusing to pay the price.<sup>84</sup>

Given Kaus' emphasis on Civic Liberalism as a sphere of values with respect to which people are either inside or outside, it should not be surprising that otherness and the underclass play as important a role in Kaus' theory as they do in Mead's. For Kaus, the existence of an underclass, with its crime and other disorders, destroys the ideal of Civic Liberalism and the goal of a valuable public sphere.<sup>85</sup> Like Mead, Kaus does not believe that this exclusion results from structural barriers such as racism, but rather because of a justifiable reaction of the wealthy and middle classes to the very poor.<sup>86</sup> The wealthy and middle-class fear the underclass. They fear the violence, the promiscuity, and the indolence associated with the underclass.<sup>87</sup> These fears cause wealthier Americans to flee to segregated suburbs, and this migration in turn ruins any possibility of inter-class relations.<sup>88</sup> According to Kaus, the segregation

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82. *Id.* at 18-21, 170.

83. *Id.* at 148.

84. Kaus does admit to some provision for even the able-bodied slacker. In sketching out his initial theory, he identifies minimum subsistence as a goal comparable to social citizenship. *Id.* at 14-16. Minimum subsistence consists of what is necessary to prevent starvation and "allow a person to participate in society," *id.* at 15, though it would be limited to stigmatized, in-kind benefits such as soup kitchens. *Id.* at 128.

This issue, which Kaus only alights upon briefly, is the main question of welfare: What is the minimum level of provision required in a liberal democracy and can it be conditioned? Kaus' Civic Liberalism has no solid answer to this question, no proper justification for this apparent hole in his theory. While he spends enormous energy arguing that work conditions are proper, he leaves unexplained a vast realm of unconditioned provision. My hypothesis is that Kaus really aims toward a liberal argument similar to the one I advance, *see infra* Part III, but because work-welfare has more cachet, he wants to focus on the obligatory aspects of his theory. Notwithstanding his endorsement of some minimal subsistence, Kaus is quite clear that its recipients are to be considered non-participants in his egalitarian ideal, unequal and unentitled. KAUS, *supra* note 1, at 179-81. Despite the hints at a more liberal approach, Kaus' emphasis on work as the ticket to egalitarianism makes it appropriate to view him as an advocate of a social citizenship similar to Lawrence Mead.

85. KAUS, *supra* note 1, at 103-04.

86. *Id.* at 107-09.

87. *Id.* at 103-09.

88. *Id.*

caused by fear prevents not just interaction between the underclass<sup>89</sup> and other classes, but interaction among the working classes (lower, middle, and upper) as well, since without the migration, people of various classes would be more likely to live in greater proximity to the cities.<sup>90</sup>

Kaus further argues that the segregation created by fear of the nonworking underclass cannot be solved by any traditional liberal solutions, such as school desegregation.<sup>91</sup> Desegregation cannot work so long as the wealthier class fears the underclass.<sup>92</sup> Only by enforcing the civic ideal of work can society rid itself of the underclass, the one true obstacle to Civic Liberalism. Only elimination of the current welfare system will enable the underclass to join the suburban working and middle classes in the true egalitarianism.<sup>93</sup>

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89. Kaus asserts that when he uses the term "underclass" he does not mean to imply that the poor are a subhuman "under" group. *Id.* at 105. Yet his description of the reaction of the middle and upper classes implies that people certainly will perceive the very poor this way, and Kaus justifies his proposals in part by the fear of others. Whether or not he means to use the term "underclass" derogatorily, his theory depends on the derogatory connotations accepted by many people.

90. KAUS, *supra* note 1, at 103-05.

91. *Id.* at 108-09.

92. *Id.*

93. *Id.* at 119-20. Kaus hypothesizes that absent welfare, the underclass never would have existed; its members simply would have moved to where the jobs are—the suburbs—just as people migrated to jobs from the South or from other countries. *Id.* This theory ignores several basic facts, including that more suburban jobs would have had to exist and that in any migration some substantial population remains behind. While many African-Americans and some white Americans did migrate north in mid-century, many also remained in the rural South (many very poor whites remained there as well) where they continued to work hard labor, were denied unionization, and became subject to piddling and intrusive welfare provisions. *See, e.g.*, JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* 37-44 (1994) (discussing poverty and political action in Mississippi in the 1960s); Jill Quadagno, *From Old-Age Assistance to Supplemental Security Income: The Political Economy of Relief in the South, 1935-1972*, in *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES* 235, 252-63 (Margaret Weir et al. eds., 1988) (discussing poverty and old age in the South during and after the period of migration). Moreover, the creation of urban ghettos and poverty among blacks is at least partly attributable to racism in Northern urban areas. *See, e.g.*, Jacqueline Jones, *Southern Diaspora: Origins of the Northern 'Underclass'*, in *THE "UNDERCLASS" DEBATE*, *supra* note 16, at 27, 46-54 (depicting significance of race in urban poverty by way of the counter-example of the fate of poor Appalachian whites who migrated to cities and were able to assimilate). Racism in the suburbs continues to serve as a barrier to blacks moving to where the jobs are. *See, e.g.*, Jeffrey S. Lehman, *Updating Urban Policy*, in *CONFRONTING POVERTY*, *supra* note 2, 226, 243-49; Michael H. Schill, *Deconcentrating the Inner City Poor*, 67 *CHI.-KENT L. REV.* 795, 839-42 (1991) (discussing residential segregation as an aspect of urban poverty). Why Kaus thinks that the urban ghetto would not have existed, even on a smaller scale, without welfare is not at all clear. *See, e.g.*, KENNETH KUSMER, *A GHETTO TAKES SHAPE: BLACK CLEVELAND, 1870-1930* (1976) (providing a detailed analysis of the formation of an African-American ghetto prior to the advent of modern welfare programs).

#### *D. Can We Recover a Liberal Citizenship?*

Despite differences in the types of employment, the scope of support services, and the connections to educational programs advocated by various reformers, each advocate expresses common themes about work, welfare, and citizenship. Central to the arguments of the reformers discussed above is the distinction between social and political or legal citizenship. Social citizenship becomes a different sort of thing with different rules and is more important to the actual freedom and equality of the poor than political or legal citizenship. Once this distinction is established, the reformers all argue some version of the following: The government must enforce a social value (work in paid labor) upon a defined class (the very poor) and do so at the price of not providing minimal subsistence to adults and their children.

As shall be shown, each of these steps is subject to significant criticism not adequately addressed by the reformers. These criticisms raise important questions about the nature of democracy and the priority and structure of equality, freedom, pluralism, and dignity. Before willingly tossing out these principles as merely worn-out rags of liberalism, however, it may be beneficial to consider a possible defense of liberalism. This defense involves, first, some showing that the reformers attack a paper-tiger liberalism. A fully conceived liberal theory, contrary to the arguments of Mead and Kaus, does understand the problem of social citizenship and does allow room for citizen duties and obligations. The question is not whether liberalism ignores social citizenship, but whether the way it values social citizenship within the context of democracy and human dignity provides some answer to the reformer's criticisms.

### III. LIBERALISM RECONSTRUCTED

Reformers blame liberalism for failing to overcome poverty and for creating an underclass on the ground that liberalism fosters rights without obligations and discourages work and self-sufficiency. Yet a closer look at certain strands of liberalism<sup>94</sup> reveals instead a deep commitment to social

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94. Liberalism does not collapse neatly into one or two types. However, my characterization highlights themes central to several different forms of left-liberalism current in American academic discourse. Advocates of right-liberalism, such as Milton Friedman and Robert Nozick, take significantly different positions from me and the scholars I cite. *See, e.g.,* MILTON FRIEDMAN, *CAPITALISM AND FREEDOM* (1962); ROBERT NOZICK, *ANARCHY, STATE, AND UTOPIA* (1974). While the debates among these and other camps of liberalism are important, I do not address them at this time.

participation, social inclusiveness, and self-respect—in short, to social citizenship. By simply asserting that liberalism does not support social citizenship, reformers ignore vital questions about liberalism, such as how liberalism conceives of social citizenship within a context of rights and how this conception informs both current and ideal welfare policy. To answer these questions fully, the Article first sketches out some central principles of liberalism in the context of citizenship theory. The Article then presents a positive defense of welfare from this theory of liberal citizenship.

A liberal theory of citizenship finds itself on four interrelated principles: equality, freedom, human dignity, and pluralism.<sup>95</sup> A liberal theory of citizenship, social or otherwise, and the role of welfare should remain consistent with and measure itself against these basic principles and assumptions. When a theory of citizenship or welfare violates these principles and assumptions, it runs the danger of being not only antiliberal, but also fundamentally antidemocratic.

#### A. *Equality, Dignity, and Freedom*

At its foundation, a liberal citizenship theory is a theory of people interacting as political citizens and presumes that each person has equal worth and dignity qua citizen.<sup>96</sup> This presumption, the liberal contends, is

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95. The principles of freedom and equality form a constant reference point for liberal theorists. See, e.g. GUTMANN, *supra* note 13, at 107 (being a free and equal person is prerequisite for liberal egalitarian citizenship); KARST, *supra* note 13, at 34-35 (legal equality as foundation of democratic citizenship); MACEDO, *supra* note 13, at 9-10 (liberalism advocates liberty, the rule of law, and equality); RAWLS, LIBERALISM, *supra* note 13, at 29-35 (freedom and the political person); RAWLS, THEORY, *supra* note 13, at 19-22 (equality in the original position); Chantal Mouffe, *Democratic Citizenship and the Political Community*, in DIMENSIONS OF RADICAL DEMOCRACY: PLURALISM, CITIZENSHIP, COMMUNITY, *supra* note 13, at 231 (“what makes us fellow citizens in a liberal democratic regime [are] . . . the principles of freedom and equality for all”). For a discussion of and references for placing pluralism along with freedom and equality as foundational principles, see *infra* Part III.B.2. The principle of human dignity can be seen as forming the foundation for these ideals. See ROBERT GOODIN, POLITICAL THEORY AND PUBLIC POLICY 73-94 (1982) [hereinafter POLITICAL THEORY] (“we respect people’s choices because of a more fundamental premise, that we must respect people and their dignity”); GUTMANN, *supra* note 13, at 180-81; KATZ, *supra* note 56, at 180-84. See also *Goldberg v. Kelly*, 397 U.S. 254, 264-65 (1970) (“[f]rom its founding the Nation’s basic commitment has been to foster the dignity and well-being of all persons within its borders”). In *Goldberg*, the Court used the dignity value of welfare to support its holding that constitutional due process requires a pre-termination hearing for welfare recipients subject to the loss of benefits.

96. DWORKIN, *supra* note 13, at 181-83; JAMES S. FISHKIN, JUSTICE, EQUAL OPPORTUNITY, AND THE FAMILY 158 (1983) (citing Ronald Dworkin, *Liberalism*, in PUBLIC AND PRIVATE MORALITY 113, 115 (Stuart Hampshire ed., 1978)) (identifying the “notion of equal concern and respect for everyone as the ‘nerve’ of liberalism”); GUTMANN, *supra* note 13, at 187-88, 199. See also RAWLS, LIBERALISM, *supra* note 13, at 18-19. Rawls, here and elsewhere, might be interpreted as saying that persons who

the basis of democracy.<sup>97</sup> If we assume that dignity exists a priori in all citizens, then the exercise of political authority over people can only be achieved legitimately with the consent of the governed. To do otherwise is to deny a fundamental level of respect for those being governed; it is to deny their dignity. Even if the basis for the denial of equality and democracy is the improvement of the governed or the achievement of a human good, failing to give the governed a voice in the exercise of power presumes an inferiority incompatible with a presumption of equal dignity.<sup>98</sup>

For liberalism the right to govern originates in the citizens. Citizenship is not granted from above by a pre-legitimated state; rather, the state is legitimated by a pre-existing citizenship.<sup>99</sup> Furthermore, a government only remains legitimate insofar as it acts consistently with the consent and inherent dignity of its member-subjects; when acting otherwise, government becomes tyranny.<sup>100</sup> This is so whether or not the government was initially elected through democratic means—democratic elections are no insurance against tyranny.

The assumption of inherent and equal dignity is perhaps most easily illustrated by the concept of voting in democracies. In an illiberal society that does not believe in the inherent and equal dignity of all citizens,<sup>101</sup> the vote can be restricted to (in ideal but not actual cases) the most honorable or the brightest, or (in the actual cases) simply those with the

do not have the minimum moral capacity are not entitled to equality—a claim that could support Mead's theory. *Id.* at 79. In *Theory of Justice*, however, Rawls makes clear that he means that all people with a *capacity* for moral powers, even if unrealized, are entitled to “the full protection of the principles of justice.” RAWLS, *THEORY*, *supra* note 13, at 509. Only scattered individuals might be considered deficient in such capacities, and no cognizable group (such as the “underclass”) lacks minimum moral capabilities. *Id.* at 506. I would add that to respect the presumption of dignity, a liberal democracy can only make such determinations of incapacity and non-citizenship on an individualized basis within the constraints of due process. *See infra* note 212.

97. *See, e.g.*, JAMES S. FISHKIN, *DEMOCRACY AND DELIBERATION: NEW DIRECTION FOR DEMOCRATIC REFORM* 29-34 (1991).

98. *See* GUTMANN, *supra* note 13, at 106-07 (arguing that Michael Walzer's theory of consent as the proper basis for political power assumes a liberal belief in equality and human dignity).

99. Bryan Turner refers to this difference as citizenship from below and citizenship from above. *See* Bryan Turner, *Outline of a Theory of Citizenship*, in MOUFFE, *supra* note 12, at 44-47.

100. WALZER, *supra* note 13, at 282-83; *see also* FISHKIN, *supra* note 97, at 34.

101. I emphasize here that the belief in human dignity must be a belief in *equal* dignity. One could believe that all people have some inherent dignity, but still accord more weight to the dignity held by certain classes of people. A caste system can still maintain a concept of humans as specially endowed or entitled to respect. The key for liberal citizenship, as I argue, is that the dignity relevant for the concept of citizenship must be regarded as equally held by all—there is no caste structure allowed by liberal theory. *See, e.g.*, KARST, *supra* note 13, at 3; SUNSTEIN, *supra* note 33, at 338-45.



most power, however gained, such as white men with property.<sup>102</sup> But for the liberal, such restrictions violate the basic tenet of equal dignity. When women were denied the vote, they were denied both dignity and political citizenship.<sup>103</sup> When African-American men, nominally citizens under the Fourteenth Amendment, were forced to pass voting tests, tests that no whites had to endure, that too was a denial of citizenship and dignity.<sup>104</sup> The liberal rejects such qualification tests for voting because she honors fully the concept of government by the citizens. "Each citizen is entitled to one vote simply *because he is a citizen*."<sup>105</sup> Equal voting power *is* equal dignity.<sup>106</sup> The long battle for universal suffrage in America was in many ways a battle for dignity through equal citizenship,<sup>107</sup> and it was a battle for a citizen's *entitlement* to vote, not for a privilege that had to be earned or purchased.<sup>108</sup>

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102. On the history of restraint of franchise in America, see CHILTON WILLIAMSON, *AMERICAN SUFFRAGE: FROM PROPERTY TO DEMOCRACY 1760-1860* (1960). As Williamson says, the property qualification was based on "the concept that the freeholders were and should remain the backbone of state and society because they were the repository of virtues not found in other classes." *Id.* at 3. Note the parallels between this statement and Mead's theory of citizenship, *supra* notes 49-74 and accompanying text.

103. On the history of woman's suffrage generally, see CARRIE C. CATT & NETTIE R. SHULER, *WOMAN SUFFRAGE AND POLITICS* (1926); NANCY F. COTT, *THE GROUNDING OF MODERN FEMINISM* (1987); ELLEN C. DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA 1848-1869* (1978); Ellen C. DuBois, *Outgrowing the Compact of the Fathers: Equal Rights, Women Suffrage, and the United States Constitution, 1820-78*, in *THE CONSTITUTION AND AMERICAN LIFE* (David Thelen ed., 1988).

104. See, e.g., ERIC FONER, *RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION* 446-49 (1988) (discussing the Fifteenth Amendment's extension of the vote to African Americans as a symbol of equal citizenship); *id.* at 587-601 (discussing failures of Reconstruction in the South); WILLIAM GILLETTE, *THE RIGHT TO VOTE: POLITICS AND THE PASSAGE OF THE FIFTEENTH AMENDMENT* 162-65 (1965) (discussing the failure of the Fifteenth Amendment to secure voting rights to African Americans in the South); see also JAMES A. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608-1870*, 334-51 (1978) (discussing extension of equal citizenship to African Americans after the Civil War).

105. Michael Walzer, *In Defense of Equality*, 20 *DISSENT* 399, 404 (1973) (emphasis added). This is why liberal theory rejects Lawrence Mead's assertion that there are, or at least should be, social qualifications on exercising the right to vote. See *supra* note 60 and accompanying text.

106. GUTMANN, *supra* note 13, at 187.

107. SHKLAR, *supra* note 12, at 43-62; David Miller, *Complex Equality*, in *PLURALISM, JUSTICE, AND EQUALITY* 197, 223 (David Miller & Michael Walzer eds., 1995).

108. See, e.g., *Harper v. Virginia Board of Elections*, 383 U.S. 663, 670 (1966) (invalidating the poll tax as a violation of the Equal Protection Clause and declaring that "wealth or fee paying has . . . no relation to voting qualifications"). See also Stephen Loffredo, *Poverty, Democracy and Constitutional Law*, 141 U. PA. L. REV. 1277, 1302 (1993) (arguing that the Supreme Court's voting rights jurisprudence operates under the basic principle that "democracy entails some irreducible quantum of political equality"). Loffredo further argues that this principle should be, but has not been, applied to welfare jurisprudence. *Id.*

Voting is not the only core concept connecting citizenship with equality and dignity. Along with the entitlement to vote comes the entitlement to be treated equally under the law. A caste system, whether racial, gendered, or economic, does not offend liberal conceptions of dignity and citizenship only because it prevents equal voting rights, but more fundamentally because it systematically denies to a group of people within the political control of the state the equal protection of all the state's laws—it creates second-class citizens.<sup>109</sup> When women and minorities are legally incapable of owning property, or when they are themselves treated as property, liberalism sees a denial of equal dignity and a violation of democratic citizenship.<sup>110</sup> Liberal democratic citizenship is attained only when the laws apply equally to all, are enforced equally, and are founded on assumptions of equal dignity.<sup>111</sup>

From the view of the liberal state, therefore, citizenship at its most basic level defines that area of social existence where equality reigns, where the wise person is not superior to the (harmless)<sup>112</sup> fool, the millionaire is not better than the penniless vagrant, men are not superior to women, and Episcopalians are not better than Catholics.<sup>113</sup> Liberalism does not deny that conceptions of the Good which value human capacities other than equal dignity might be possible, but it does argue that to accord *political* primacy to other human capacities would produce a government quite different from democracy.<sup>114</sup> Certainly Plato believed in the primacy of a valid human capacity—wisdom—but, in doing so, he envisioned a political structure quite undemocratic.<sup>115</sup> Citizenship would have a

109. See SUNSTEIN, *supra* note 33, at 338-45.

110. On the relationship between legal equality and citizenship, see generally KARST, *supra* note 13, at 34-35. For one of liberalism's early comparisons of the unequal treatment of women and chattel slavery, see JOHN STUART MILL, *THE SUBJECTION OF WOMEN* 5-6 (Susan M. Okin ed., 1988) (1869).

111. The embrace of equality by liberalism should not be taken to exclude concepts of difference. Difference is a significant concept for pluralistic liberalism, see *infra* Part III.B.2. Liberalism simply contends that only with a foundation of equal dignity can difference be handled sensitively and, more importantly, without oppression.

112. Harmless because liberalism usually incorporates a version of the harm principle. See, e.g., JOHN STUART MILL, *ON LIBERTY* 119 (Gertrude Himmelfarb ed., 1982) (1859).

113. I should note here that liberalism does not deny social distinctions in any social interaction. Within the Episcopal Church, the Episcopalian may in fact be considered better (more likely to attain salvation more quickly) than the Catholic, Jew, or Atheist. Indeed, differences of this kind among social associations help create a rich pluralism favored in liberalism. See *infra* Part III.B.2. Liberalism simply argues that such categories are illegitimate for questions of citizenship.

114. RAWLS, *LIBERALISM*, *supra* note 13, at 30.

115. See PLATO, *THE REPUBLIC* (Francis M. Cornford trans., 1941). See also GUTMANN, *supra* note 13, at 106.

different character in Plato's ideal state than it has for contemporary democracies, let alone for liberal political theory. For the liberal theorist, social institutions may pursue and encourage wisdom, entrepreneurship, the work ethic, or other human goods, but they cannot do so at the cost of the equal dignity of people as political beings.<sup>116</sup> Theories of the Good cannot trump the fundamentals of citizenship.<sup>117</sup>

In conjunction with its belief in equal dignity, liberalism also maintains some notion of individual freedom or liberty. Though the contours of freedom vary greatly from one version of liberalism to the next,<sup>118</sup> at some level liberalism implies that citizens have the freedom to express and pursue their own goals, in large part because each citizen is treated with the dignity of having her own goals.<sup>119</sup> Thus we have the basic constitutional

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116. See DWORKIN, *supra* note 13, at 263; RAWLS, POLITICAL LIBERALISM, *supra* note 13, at 79.

117. This issue is closely related to the much debated priority of the right over the good. For Rawls, the right (rights and liberties) is necessarily prior to questions of the individual, social or communal good. RAWLS, THEORY, *supra* note 13, at 30-33, 446-51. Rawls' critics, however, argue that there simply is no way to understand the right without a conception of the good already in place. Michael J. Sandel, *Political Liberalism*, 107 HARV. L. REV. 1765, 1766-67 (reviewing Rawls' *Political Liberalism*); see also ALISDAR MCINTYRE, AFTER VIRTUE 111-13 (1980); MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 165-74 (1982) [hereinafter LIMITS]; CHARLES TAYLOR, SOURCES OF THE SELF 88-89 (1989). Rawls responds, in part, that liberalism only aims to prioritize the right for fundamental political questions (questions of the good can take priority in other spheres). Moreover, he admits that liberalism does adopt its own vision of the good for the political sphere: freedom, equality, tolerance, and other democratic virtues which enable fair cooperation in a pluralist society. RAWLS, LIBERALISM, *supra* note 13, at 173-211. For an excellent general discussion of this debate, see MULHALL & SWIFT, *supra* note 13, 123-25 (Taylor), 216-19 (Rawls).

For the purposes of liberal citizenship, it is sufficient to say that liberalism simultaneously conceives of the Good as consisting of free and equal persons (human dignity) and the right as consisting of the protection of these qualities. Liberal citizenship is the realm in which these goods have their greatest weight, where they have priority. Liberalism does not deny that other societies are possible where a fuller conception of the self takes political prominence, but argues that such a society would necessarily downgrade certain human qualities, i.e., freedom and equality, in ways that liberalism finds undemocratic and historically dangerous. Furthermore, there may be virtues in not having citizenship and political identity reflect one's full identity. See HERZOG, *supra* note 13, at 235-37.

118. See GUTMANN, *supra* note 13, at 5-12. See generally ISAIAH BERLIN, FOUR ESSAYS ON LIBERTY 118-72 (1969).

119. E.g., RAWLS, LIBERALISM, *supra* note 13, at 310-24. Again, as with many other aspects of liberalism, Mill is the touchstone for modern ideas about liberty. See MILL, ON LIBERTY, *supra* note 112. To summarize Mill rather crudely: Mill contends that the only proper exercise of coercion by society is to prevent harm by one person against another. *Id.* at 69. Matters of the Good as related to the individual are not the proper subject of social coercion. "Over himself, over his own body and mind, the individual is sovereign." *Id.* Note, however, that not even Mill accepts the bluntness of this position. He makes significant exceptions for "barbarians" or the uncivilized, *id.*, children, *id.* at 149, and the compulsion of limited civic duties applicable to all citizens, including jury and military service, *id.* at 70.

freedoms of speech, religion, and association. Were some people assumed not to possess inherent dignity, no questions would arise about their freedom, at least not as a first order question. If we assumed that dignity were earned and not inherent, then all sorts of violations of freedom would be allowed, at least until people had passed the tests for earning dignity.<sup>120</sup> But in a world where citizens are presumed equal in dignity there will always be some issue about the base level of freedom attaching to that dignity.

Outlining the contours of the basic level of liberty can get somewhat difficult for, like any broad concept, *freedom* becomes murky rather quickly. Does *freedom* mean freedom from compulsion, so that if one is already endowed with certain attributes (intelligence, money) he can do as he wishes, or does *freedom* imply some freedom to be able to do certain things, some access to human capacities? And if the latter, exactly what is needed? Money? Education? Property? Opportunity?<sup>121</sup> My inclination is that all theories of liberalism really include a bit of both, and the question is one of emphasis. My hope here, however, is not to go quickly down this trodden but still murky path of debate about freedom, at least not yet. Instead an exploration of how freedom can be defined in the context of the sort of citizenship liberalism can advance is appropriate. Though this is a bit circular, because freedom is also one of the fundamental principles of liberal citizenship, freedom cannot receive adequate discussion without further comment on the liberal vision of society—the idea of liberal pluralism.

## B. *Pluralism and Freedom*

### 1. *The Historical Context*

Perhaps the critic of liberal equality will now say “listen, whether you side with Plato and value wisdom or side with liberals and value equality, you are always making an assumption, and neither carries more normative weight” (or “Plato and other theories of *the Good* are more persuasive to me”). “So why should I accept your position?” To this, liberalism responds historically and emphasizes itself as a contextualized political theory.

Put very roughly, liberalism as a political theory originated in the

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120. This, of course, is Mead's position. See *supra* notes 53-68 and accompanying text. For a discussion of why such a position is dangerous, see *infra* Part IV.

121. Thus the familiar debate about “negative liberty” and “positive liberty.” See *infra* note 151.

religious conflicts of post-Reformation Western Europe. Out of the Reformation came religious pluralism and, with great struggle, a realization that religious tolerance could provide a basis for social and political cooperation.<sup>122</sup> Once religious toleration and pluralism gained hold, a belief in the possibility of social cooperation within a generally (not just religiously) pluralist society eventually followed.<sup>123</sup> This evolved into liberal constitutionalism, under which citizens are considered free to decide fundamental issues for themselves (freedom of religion and conscience) and are recognized as equal in their right to do so.<sup>124</sup>

In this way liberalism argues that its foundational principles of dignity, equality and liberty, are not just arbitrarily chosen of many possible human capacities, but are the consequence of difficult historical struggles. This historical contextualization of liberalism serves three important functions. First, it enables liberalism to respond to critics who argue that liberalism puts forth an acontextual concept of the person. This argument usually takes the form of contending that because liberalism focuses on notions of justice abstracted from actual communities, it becomes detrimental, or at least irrelevant, to the actual experiences of life within social environments.<sup>125</sup> Liberalism responds that liberty and equality, as *political* principles, are highly contextualized.<sup>126</sup> They do not arise out of a deracinated idea of people, but out of the actual experiences of many people “yearning to breathe free.”<sup>127</sup> Dignity, equality and liberty are

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122. Rawls finds his theory of political liberalism on this historical context of liberal constitutionalism. See RAWLS, *LIBERALISM*, *supra* note 13, at xxii-xxviii. For one of the fundamental texts for this version of tolerance liberalism, see JOHN LOCKE, A LETTER CONCERNING TOLERATION (James H. Tully ed., 1983) (1689). For an excellent account of the import of Locke's *Letter*, both in the history of liberalism and for understanding contemporary debates about liberalism, see HERZOG, *supra* note 13, at 162-179. See also Michael Walzer, *The Civil Society Argument*, in DIMENSIONS OF RADICAL DEMOCRACY, *supra* note 12, at 89, 101 (discussing Locke's ideas of tolerance).

123. RAWLS, *LIBERALISM*, *supra* note 13, at xxiv-xxv.

124. *Id.*

125. Although I consider Walzer an advocate of liberalism, he is critical of Rawlsian liberalism for this reason. See WALZER, *supra* note 13, at 79. See also MCINTYRE, *supra* note 117, at 229-37 (criticizing Rawls); SANDEL, *LIMITS*, *supra* note 117, at 61-65, 147-54.

126. I take this to be the point of Rawls' historical digression. RAWLS, *LIBERALISM*, *supra* note 13, at xxii-xxvii. See also *id.* at 40-43, 220-21 & n.7; MULHALL & SWIFT, *supra* note 13, at 201-26. Cf. Thomas L. Haskell, *The Curious Persistence of Rights Talk in the "Age of Interpretation,"* in THE CONSTITUTION IN AMERICAN LIFE, *supra* note 103, at 324 (arguing that Rawls' work exemplifies the point that rights are a historical convention that carries meaning for contemporary culture and helps navigate between a Straussian absolutism and a Nietzschean relativism).

127. Emma Lazarus, *The New Colossus*, in EMMA LAZARUS: SELECTIONS FROM HER POETRY AND PROSE 40, 41 [Morris U. Schappes ed., 1944] (quoting her poem inscribed on a plaque on the Statute of Liberty).

essential as political or citizenship values because of the history of their denial.

Second, the historical perspective also enables liberalism to concede its own faults. Liberalism does not argue that the ideals it traces to Locke and others were in fact fully realized by Locke himself or by liberal societies then or now. Instead, liberalism understands that the ideals of equality and liberty in Western political thought and practice have been developing slowly, in (sometimes violent) fits and starts, since at least the time of the Reformation. When critics of liberalism argue that despite its vaunted ideals women have perpetually been subject to second-class citizenship politically and socially,<sup>128</sup> the liberal can agree. As an historically aware theory, liberalism recognizes that political ideals are not realized in most cases, but are imperfectly imitated and bastardized. It is possible for liberalism to recognize that the subordination of women marks a failure of liberalism to live up to its own ideals. Liberalism would argue for a reinterpretation of the principles of citizenship to include the full dignity and equality of women.<sup>129</sup>

## 2. *Pluralism*

The third advantage of seeing liberalism in historical context is the recognition of the importance to liberalism of the general principle of pluralism. Recall that liberalism was founded in the context of multiple and

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128. Carole Pateman has written effective and influential critiques of liberal citizenship and liberalism generally on these grounds. See CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988). For her exemplary discussion of citizenship, see PATEMAN, *supra* note 13, at 50-53, 196-97. See also Barbard J. Nelson, *Women's Poverty and Women's Citizenship: Some Political Consequences of Economic Marginality*, 10 SIGNS 209 (1984) (explaining the relationship between women's experience as clients of the welfare state and concepts of women's citizenship in liberal theory, and criticizing the latter). Susan Moller Okin has criticized Rawls for his failure to consider the inequality and injustice generated toward women by the family structure, though Okin does believe that a revised Rawlsian liberalism holds some promise for a feminist liberalism. See generally SUSAN M. OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1989); Susan M. Okin, *Political Liberalism, Justice, and Gender*, 105 ETHICS 23 (1994).

129. See, e.g., MILL, *THE SUBJECTION OF WOMEN*, *supra* note 110. See also MOON, *supra* note 13, at 3 (arguing for a version of political liberalism that is inclusive of difference and diversity); Smith, *supra* note 33, at 231 (arguing that his reconstruction of citizenship ideas includes a foundation of "liberalism's traditional commitments to equal human rights"). Cf. MACEDO, *supra* note 13, at 284-85 (Macedo's liberal arrangements are "ideals that we often fail to live up to" but sometimes, in our better moments, we do approach). The reformation of liberalism, to be consistent with the ideals of freedom, equality and dignity, does not, of course, answer other feminist arguments that these ideals themselves (as opposed to their historical application) are oppressively patriarchal. See, e.g., CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 160-70 (1989); Linda R. Hirshman, *Is the Original Position Inherently Male-Superior?*, 94 COLUM. L. REV. 1860 (1994).

feuding versions of Christianity.<sup>130</sup> Liberalism initially understood *tolerance* as tolerance for multiple religious views and *freedom* as the freedom to practice different religions.<sup>131</sup> As liberalism flowered into a full-fledged constitutional theory, more general concepts of pluralism took hold. Thus, the Constitution preserves certain fundamentals of pluralism: pluralism of viewpoints, especially political, as secured by the freedom of press, speech, and assembly;<sup>132</sup> pluralism of religion protected by the freedom to exercise one's religious practices and the prohibition of a state religion,<sup>133</sup> and regional political pluralism, protected by a diversity of elected representatives operating under a system of checks and balances.<sup>134</sup> And as liberalism evolved, its recognition of the need for social as well as political and religious pluralism grew, particularly for the role of the social dissenter: "Protection . . . against the tyranny of the magistrate is not enough; there needs be protection also against the tyranny of the prevailing opinion and feeling."<sup>135</sup>

By the twentieth century, liberalism had a fairly well-developed concept of the legitimacy of differing political and religious views and the right of individuals to march to their own drummer.<sup>136</sup> This should not be too surprising, though, considering that liberalism is based on some concept of

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130. See *supra* notes 122-24 and accompanying text.

131. See LOCKE, *supra* note 122; MILL, ON LIBERTY, *supra* note 112, at 66.

132. U.S. CONST. amend. I cl. 2.

133. U.S. CONST. amend I cl. 1.

134. U.S. CONST. art. 1 §§ 2 & 3. From a contemporary perspective one can easily overlook the strong influence pluralism had on the structure of American government, but regional diversity and a balancing of class divisions played a central role in the framing of the Constitution. See, e.g., THE FEDERALIST NO. 10 (James Madison) (the diversity of interests represented in federal government is a virtue as it helps prevent control by any one particular faction); THE FEDERALIST NO. 51 (James Madison) (the diversity among citizens that is possible in a large republic helps prevent tyranny of the majority). *But cf.* THE FEDERALIST NO. 2 (John Jay) (contending that Americans were "a people descended from the same ancestors, speaking the same languages, professing the same religion, attached to the same principles of government, very similar in their manners and customs."). For a discussion of the linguistic and social pluralism existing in America since at least the Revolution, see Juan F. Perea, *Demography and Distrust: An Essay on American Language, Cultural Pluralism and Official English*, 77 MINN. L. REV. 269 (1992).

135. MILL, ON LIBERTY, *supra* note 112, at 63.

136. E.g., NAACP v. Alabama, 357 U.S. 449 (1958) (freedom of association); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943) (free exercise clause); Whitney v. California, 274 U.S. 357, 373 (1926) (Brandeis, J., concurring) (freedom of speech); Abrams v. United States, 250 U.S. 616, 624 (1919) (Holmes, J., dissenting) (pluralism in the marketplace of ideas is the best test of truth). See also Robert M. Cover, *The Left, the Right and the First Amendment*, 40 MD. L. REV. 349, 371-86 (1981) (discussing Brandeis' view that the First Amendment promotes conflict and diversity as essential aspects of a vibrant democracy).

human dignity and freedom. If a person is entitled to some respect and freedom, even for outlandish or uncommon views, this necessarily implies a form of pluralism that encompasses divergent views and practices.

Liberalism has been much less certain, however, about how pluralism works as a theory of social relations. Can pluralism be anything more than a concept of political variety and a defense of the outrageous individual? Michael Walzer has provided an answer to this with his theory of society as a grouping of "spheres" of social relations, spheres that construct meanings around various social goods and set values or principles of just distributions of those goods.<sup>137</sup> Briefly sketched, Walzer's theory holds that various goods are meted out according to principles consistent with that type of good. Offices are distributed according to merit; necessities are distributed according to communal membership and communal definitions of need; and private tangible goods and services are distributed according to the principles of market capitalism.<sup>138</sup> Each sphere also possesses its own principles of violation or injustice: offices should not be sold, necessities not bartered or earned, and property not confiscated.<sup>139</sup>

Walzer applauds the diversity of distributional spheres as a means of avoiding the domination of any particular sphere.<sup>140</sup> This is especially true for avoiding the tyranny of capital, because money can so easily become the dominant good.<sup>141</sup> The idea here is that to have a society where no one talent and no single class of persons dominate others, different goods must be valued according to different principles. Distributional spheres must be maintained, their boundaries must be intact. In such a society, a person may be poorer than her neighbors but she would be valued socially for holding office, volunteering her time to build low-income housing, or actively participating in her religious community. People would have a variety of means to achieve some success, to gain access to some, though not all, valued goods.<sup>142</sup>

137. WALZER, *supra* note 14. *But see* MOON, *supra* note 13, at 17-19 (arguing that Walzer's sphere theory in fact excludes moral pluralism because it assumes general agreement within spheres of goods). Scholars other than Walzer have explored this question of liberalism and social pluralism. *See, e.g.*, ROBERT DAHL, *PLURALIST DEMOCRACY IN THE UNITED STATES: CONFLICT AND CONSENT* (1967); HAROLD LASKI, *AUTHORITY IN THE MODERN STATE* (1919); *see generally* Kristie McClure, *On the Subject of Rights: Pluralism, Plurality, and Political Identity*, in *DIMENSIONS OF RADICAL DEMOCRACY*, *supra* note 12, at 108, 113-25.

138. *See* WALZER, *supra* note 13, at 64-94 (necessities), 95-128 (commodities), 129-64 (offices).

139. *Id.*

140. *Id.* at 19-20.

141. *Id.* at 95-128. Walzer, *supra* note 122, at 99-100.

142. WALZER, *supra* note 13, at 19-20.



This theory of pluralism as a multiplicity<sup>143</sup> of spheres of social relations provides three important additions to the basic ideas of liberalism discussed above. First, equality becomes more complex than just the equal distribution of money or power. Equality is instead both the equal access to a variety of spheres and equal recognition or valuation of each sphere vis-a-vis other spheres.<sup>144</sup> It is proper for someone who is better at manipulating and investing capital to dominate the sphere of commodities, but she should not be allowed to use her money to dominate other spheres, such as politics. The priest has authority in the church, and the trader has authority in the market. Walzerian pluralism rejects the simple equality of flat redistribution in favor of a balancing of power among multiple spheres of value.<sup>145</sup> Equality therefore focuses on the articulation and protection of the boundaries of the spheres to prevent domination among multiple spheres.<sup>146</sup>

The second addition to liberal theory comes with the idea of freedom. Absent a theory of spheres of social relations, we might view freedom as simply the freedom to be an individual, i.e., freedom from interference by the state and other people. With a developed theory of social pluralism, however, we begin to see freedom somewhat more broadly. While we do not lose the idea of the free individual, we can allow for the individual's relations to social arrangements. *Freedom* becomes freedom among spheres. A person is free not just to "be herself" but to move among a variety of spheres of her choosing, because such movement is what "being herself" means. When people are limited to one sphere they are not free; the person forced to live within the company town where he works has no freedom,

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143. Walzer emphasizes the need for multiple spheres, not just one or two, because this makes domination of any single sphere less likely to result in the domination of all spheres and hence other people. *Id.* at 316-21. Mickey Kaus rejects this point in his Walzer-derived argument for two spheres: capital and work. *See* KAUS, *supra* note 1, at 162. Unfortunately for Kaus, it would be all too easy for domination through money to result in domination of work, particularly since work itself is based in part on a connection with capital. *See infra* notes 262-71 and accompanying text. *See also* Miller, *supra* note 107, at 223 ("the more spheres a society contains, the better from the point of view of complex equality").

144. On the difference between complex and simple equality, see WALZER, *supra* note 13, at 13-20. *See also* GUTMANN, *supra* note 13, at 181.

145. For a pre-Walzerian hint at a theory of spheres in relation to capital redistribution, *see* T.H. Marshall, *Citizenship and Social Class*, in T.H. MARSHALL & TOM BOTTOMORE, *CITIZENSHIP AND SOCIAL CLASS* (1992) 3, 44-45.

146. WALZER, *supra* note 13, at 281-311 (arguing that state power guards the boundaries of spheres and should be controlled democratically).

even if he is paid well.<sup>147</sup> A total institution is oppressive, even if well-furnished. It is much better from the view of freedom to be able to move from work to home to church without restraints, overseers, or “Big Brothers.” Freedom is best served through social differentiation: “one is free when one faces a range of significant options.”<sup>148</sup>

Social pluralism provides a third addition to our discussion of liberalism: the role of the government. When liberalism is considered in the context of individual freedoms and equality, the state takes on two roles. It is either the thing against which people are secured in their liberties—the state does not infringe on religious liberty—or it is the means for ensuring protection of equal rights. By adding social pluralism to this mix, the government takes on a slightly different role as the guardian of the spherical boundaries. As the locus of state power, government is uniquely situated to prevent dominance across spheres when that dominance affects the equality or freedoms of citizens.

Furthermore, in a democracy, government is the one sphere founded on simple equality: the equality of equal citizenship. As such, it is also the only legitimate guardian of boundaries among spheres. Most importantly, government protects against domination over equal dignity and citizenship.<sup>149</sup> Thus, when the tycoon attempts to financially force workers into slavery-like conditions, the government can stop the transaction (even if the seller of labor is fully consenting)<sup>150</sup> because money is exercising power beyond its realm to the detriment of someone’s citizenship. The government has a responsibility to protect against such dominance, a dominance most likely when one power—money—is exerted over people with little other competing power.

Similarly, government also plays a role in ensuring access to spheres. If a person is most free when provided a range of options in society, then providing people with the means to maneuver among spheres constitutes an

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147. *Id.* at 295-304 (discussing George Pullman’s company town).

148. HERZOG, *supra* note 13, at 218. *See also* WALZER, *supra* note 13, at 180 (liberalism is “about upholding social differentiation”).

149. David Miller has recently advanced a similar argument that equal citizenship and status serve as foundational principles in a Walzerian system. *See* Miller, *supra* note 107, at 204-09, 223-25; Miller, *Introduction*, in PLURALISM, JUSTICE AND EQUALITY, *supra* note 107, at 12-16. Walzer himself accepts Miller’s refinements of the theory of spheres. Michael Walzer, *Response*, in *id.* at 281, 286-90.

150. *Cf.* HERZOG, *supra* note 13, at 237-40 (arguing that a willing or “happy” slave has lost the dignity of even knowing his own condition); MACKINNON, *supra* note 129, at 50-51 (arguing that a in the Indian practice of suttee, where widows toss themselves onto their husbands’ funeral pyres, the worst victim is not the non-consenting widow forced to die but the woman who voluntarily accepts her death as better than life without the husband).

important aspect of freedom. Having a concept of social pluralism provides liberalism with a context for ideas about equal opportunity, because it allows us to think of what the opportunities might be. We are not constrained to see money as the only good and gifts of money as the only opportunity, but instead we can consider a wide range of opportunities—financial, spiritual, educational, and familial. The government becomes not just a protector of rights but also a provider of diverse opportunities, though the provision can be accomplished by private means.

### *C. Liberal Citizenship*

What has this digression into theories of liberalism given us for a concept of citizenship? As mentioned above, for the liberal, citizenship defines that sphere of social relations wherein all are equal, where each person is accorded respect and where each one's inherent dignity is always recognized. Liberalism requires such a view of citizenship because of its emphasis on dignity and equality, and it preserves these ideals by supporting inherent rights and liberties. Yet a liberalism that includes a Walzerian pluralism also envisions an ideal citizen moving freely among various spheres of social relations. A citizen is thus both a holder of rights that protect her inherent dignity *and* a potential multisphere social actor. Liberal citizenship is simultaneously an enforceable right and an aspirational ideal. To realize this dual idea of citizenship, liberalism argues for particular political and social structures most likely to protect and foster its goals.

#### *1. All Citizens Guaranteed Basic Rights and Liberties*

First among the requirements for a liberal citizenship is the protection of basic rights and liberties for all citizens. To ensure the full recognition and protection of the equal moral worth of citizens, the state must guarantee to all citizens some basic rights and liberties. Though the content and scope of these basic rights and liberties may vary somewhat from society to society, liberalism advocates a core set based on the history of Western European liberalism. These rights and liberties consist primarily of those commonly recognized today by such established cultural texts as our Bill of Rights: freedoms of association, travel, speech, conscience, and religion, and the right to due process. They are advocated by both the deductive liberal theorists such as John Rawls and the inductive or communal

theorists such as Michael Walzer.<sup>151</sup>

These rights carry a special status for liberals not because liberals are vacuous rights-claimers but because without these basic protections, society denies the cornerstone of democracy: human dignity. This denial occurs in two ways. First, without their basic rights and liberties, citizens can easily be trampled by a zealous government, acquisitive capitalists, or indifferent and expansive bureaucracies. In this way, rights and liberties *protect* human dignity. But liberalism, as I conceive it, stands for even more than just the protection of dignity. Liberalism supports rights and liberties because the basic rights and liberties themselves *constitute* human dignity. Dignity, though inherent in each person, is also created and actualized in the social recognition of it through the rights and liberties of the community.<sup>152</sup> The Bill of Rights not only protects, it defines. Citizenship is not just the association of people, but the constitution of moral worth of people in a community.<sup>153</sup>

151. RAWLS, *LIBERALISM*, *supra* note 13, at 291-92; WALZER, *supra* note 13, at 283-84. Berlin referred to these rights as the negative liberties because they ensure the liberty to not be interfered with, as opposed to the positive liberties, which involve a persons fulfillment of his or her life goals. See BERLIN, *supra* note 118, at 121-34. Though a useful distinction to help us sort through some aspects of freedom, the label "negative" freedom unfortunately produces a false belief that governmental protection of freedoms of speech, religion, association, and property are costless. To the contrary, the price of governmental protection of these, and in particular the protection of property, is substantial. This fact becomes particularly important in any discussion of the financial costs of welfare entitlements. See, e.g., Raymond Plant, *Social Rights and the Reconstruction of Welfare*, in *CITIZENSHIP*, *supra* note 12, at 50, 56-57. For critiques of the negative-positive distinction, see GOODIN, *supra* note 13, at 302-12; GUTMANN, *supra* note 13, at 7-10.

152. See, e.g., GUTMANN, *supra* note 13, at 180-81 (declaring an equal right to participate in democracy an essential constituent of human dignity); KARST, *supra* note 13, at 4 (arguing that the act of claiming a right itself asserts membership in a community that recognizes rights and equal dignity); RAWLS, *THEORY*, *supra* note 13, at 233-34; Eric Foner, *Rights and the Constitution in Black Life during the Civil War and Reconstruction*, in *THE CONSTITUTION AND AMERICAN LIFE*, *supra* note 103, at 203, 214-16 (discussing the self-respect and feeling of dignity evident in African Americans upon recognition of their citizenship immediately after the Civil War); Hendrick Hartog, *The Constitution of Aspiration and "The Rights That Belong to Us All,"* in *id.* at 353. One of the best discussions of how rights serve to create a sense of dignity and power within historically excluded groups can be found in Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, in *WOMEN, THE STATE, AND WELFARE*, *supra* note 33, at 226.

153. The constitution-capacity of rights can carry particular importance for the quest to include previously excluded people and groups into a community that aspires to be liberal. See, e.g., Martha Minow, *Interpreting Rights: An Essay for Robert Cover*, 96 *YALE L.J.* 1860, 1867, 1874 (1987) (by asserting rights, an excluded person or group claims membership in larger community); Patricia Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 *HARV. C.R.-C.L. L. REV.* 401, 416 (1987) ("[R]ights imply a respect . . . which elevates one's status from human body to social being. For blacks, then, the attainment of rights signifies the due, . . . the collective responsibility properly owed by a society to one of its members.").

One consequence of the primacy of the relationship between the basic rights and liberties and human dignity is that rights and liberties are, to borrow from Jefferson, unalienable.<sup>154</sup> Despite the staleness of this phrase, it is important to consider exactly what this means. Rights and liberties are not separable from the person. One cannot barter or trade in rights and liberties, either those of others or of one's own. I cannot sell myself into slavery, no matter how free and conscious my decision.<sup>155</sup> The dignity of democratic citizens is not for sale; money cannot govern the sphere of citizenship.<sup>156</sup> Actions such as requiring sterilization in order for poor women to receive Aid to Families with Dependent Children benefits (AFDC)<sup>157</sup> meet with hard criticism from liberals not just because rights are violated *per se*, but because such actions deny the dignity of the impoverished mother.<sup>158</sup>

## 2. *Minimum Provision: Necessities and the Citizenship Minimum*

A further question arises for liberalism once it establishes a citizen's entitlement to the basic rights and liberties: How can these rights and liberties have any relevance if people are not able to use them? As discussed above, this is a central question for Lawrence Mead who contends that the incapacity of the poor renders questions about rights and justice irrelevant.<sup>159</sup> But it can also be asked from people on the left, who

154. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

155. Note, however, that I can agree to employment that limits my speech rights. The difference between slavery and temporary limitations of specific rights is essential and can be understood by reflecting on the import of multiple spheres: slavery is a total institution, limiting all rights and restricting all interaction; willful employment only restricts me within the scope of the employment and still allows me social relations beyond its limits.

156. The bartering in rights of the poor was one of Charles Reich's primary concerns in his classic article, *The New Property*. Reich, *supra* note 44, at 779. On the question of inalienability, see Margaret J. Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987) (advocating a focus on personhood and human flourishing rather than rights *per se*). One need not adopt a strict inalienability approach to condemn the government's trading money and benefits to the poor for the sacrifice of liberties. See, e.g., Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1502-03 (1989); Charles R. Bogle, Note, "*Unconscionable*" Conditions: A Contractual Analysis of Conditions on Public Assistance Benefits, 94 COLUM. L. REV. 193, 218-37 (1994). For a hint at the priority of inalienability of rights in the context of welfare, see *Wyman v. James*, 400 U.S. 309, 326 (1971) (Douglas, J., dissenting).

157. AFDC helps fund state programs that provide financial assistance and other services to needy families with children. 42 U.S.C. §§ 601-617 (1988 & Supp. V 1993).

158. See David S. Coale, Note, *Norplant Bonuses and the Unconstitutional Conditions Doctrine*, 71 TEX. L. REV. 189 (1992); Jeanne L. Vance, Note, *Womb for Rent: Norplant and the Undoing of Poor Women*, 21 HASTINGS CONST. L.Q. 827 (1994).

159. See *supra* note 1.

may question the liberal focus on rights when economic and social conditions prevent people from using those rights.<sup>160</sup> I will postpone my response to the Meadian question, because that is the general purpose of this piece, and will for now answer the question from the left.

The initial answer to the critique of the left is simply “yes, that is a problem.” Without the capability to survive, rights and liberties have little worth or value. This is why liberalism, particularly of the Rawlsian vein, has taken to the notion of a social minimum—that is, some level of basic necessity provision that ensures that citizens can stay alive to enjoy some minimal level of rights and liberties. For Rawls, his

first principle [of justice] covering the equal basic rights and liberties may easily be preceded by a lexically prior principle requiring that citizens’ basic needs be met, at least insofar as their being met is necessary for citizens to understand and to be able fruitfully to exercise those rights and liberties.<sup>161</sup>

Significantly, for Rawls this minimum provision is distinct from and prior to the more general distributional issues of justice covered by his difference principle.<sup>162</sup>

According to this Rawlsian view, a social minimum of some level is necessary in order to have “citizens” in the sense he considers worthwhile

160. See generally Norman Daniels, *Equal Liberty and Unequal Worth of Liberty*, in *READING RAWLS: CRITICAL STUDIES ON RAWLS’ A THEORY OF JUSTICE* 253 (Norman Daniels ed., 1974).

161. RAWLS, *LIBERALISM*, *supra* note 13, at 7 (citing RODNEY PEPPER, *MARXISM, MORALITY, AND SOCIAL JUSTICE* 14 (1989)). Cf. MOON, *supra* note 13, at 129 (arguing that welfare is necessary to enable agency for those people who are victims of a market economy); Frank I. Michelman, *Constitutional Welfare Rights and a Theory of Justice*, in *READING RAWLS*, *supra* note 160, 319, 327-39 (arguing for social minimum comprising minimum of basic needs as opposed to simply a minimum income).

162. Rawls considers the social minimum to be an essential of justice similar to basic rights and liberties: “[A] social minimum providing for the basic needs of all citizens is . . . an essential, [but] what I have called the ‘difference principle’ is more demanding and is not.” RAWLS, *LIBERALISM*, *supra* note 13, at 228-29. There is some confusion in the literature over the exact relationship between the social minimum and the difference principle, confusion engendered by Rawls’ own ambiguity. The difference principle, a fundamental element of Rawls’ *Theory of Justice*, holds that “[s]ocial and economic inequalities . . . must be to the greatest benefit of the least advantaged members of society.” *Id.* at 6, 291. Krouse and McPherson discuss the social minimum as a part of this difference principle. See Richard Krouse & Michael McPherson, *Capitalism, “Property-Owning Democracy,” and the Welfare State*, in *DEMOCRACY AND THE WELFARE STATE* 79, 91, 95 (Amy Gutmann ed., 1988). This seems consistent with Rawls’ own discussion in *Theory of Justice*. See RAWLS, *THEORY*, *supra* note 13, at 275-77. Amy Gutmann criticized *Theory of Justice* on this ground, arguing that the social minimum should be taken on par with basic rights and liberties and so is prior to the difference principle. See GUTMANN, *supra* note 13, at 126-29. Rawls seems to have accepted this criticism and, as mentioned in the text, now places the social minimum prior to the difference principle, though not all commentators acknowledge this change. See, e.g., Sandel, *supra* note 117, at 1784 (discussing basic minimum in context of difference principle).

in a liberal, democratic state.<sup>163</sup> Importantly, this means that it is not enough that a society offer some provision to people deemed worthy by tests of moral behavior: “[h]ungry men and women don’t have to stage a performance, pass an exam, or win an election” to be fed.<sup>164</sup> Rather, all citizens are entitled to the minimum just as they are entitled to rights and liberties. Society should provide some minimum level of basic necessity in order to preserve the individual dignity associated with basic rights and liberties. In more concrete terms, people need to be able to read and think at a minimum level before they can vote, exercise free speech, and make minimally effective life choices. The guarantee of rights and liberties is meaningless without the provision of the necessary education and subsistence.<sup>165</sup>

The question then, of course, is what sort of provision is required. Amartya Sen argues for a minimal provision that corresponds to general human capabilities or sets of “functionings.”<sup>166</sup> Certain basic capabilities are essential to physical survival, such as minimal daily nutritional requirements, shelter, and health care.<sup>167</sup> The liberal political theorist would add some minimal educational requirement to this list of physical necessities, because education, and particularly literacy, is essential for minimal functioning within a democratic framework of voting and free speech.<sup>168</sup>

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163. RAWLS, *LIBERALISM*, *supra* note 13, at 228-30. *See also* GOODIN, *POLITICAL THEORY*, *supra* note 95, at 90-92; GUTMANN, *supra* note 13, at 195-99; Marshall, *supra* note 145, at 16 (discussing education as example of social minimum necessary for citizenship); MOON, *supra* note 13, at 69-70; J. Donald Moon, *The Moral Basis of the Democratic Welfare State*, in *DEMOCRACY AND THE WELFARE STATE*, *supra* note 162, at 27, 43-44.

164. WALZER, *SPHERES*, *supra* note 13, at 75.

165. It is important here to point out what this Article is not arguing. Though I present the citizen minimum as a theoretical and practical prerequisite for citizenship and rights, I do not contend that it is constitutionally mandated. For versions of such arguments, see sources cited *supra* notes 2, 15-33 and accompanying text.

166. Amartya Sen, *Capabilities and Well-Being*, in *THE QUALITY OF LIFE* 30 (Martha C. Nussbaum & Amartya Sen eds., 1993) [hereinafter Sen, *Capabilities and Well-Being*]; Amartya Sen, *Well-Being, Agency, and Freedom: The Dewey Lectures 1984*, 82 *J. PHIL.* 169, 195-203 (1985).

167. Sen differentiates basic capabilities and functionings (nourishment, shelter, health) from complex capabilities (self-respect, social integration). Both are essential to overall well-being and freedom, but the former are particularly relevant for issues of extreme poverty. Sen, *Capabilities and Well-Being*, *supra* note 166, at 31, 36-37, 40-42. The concept of a social or citizenship minimum corresponds roughly to what Sen calls basic capabilities and functionings and would not include ideas of self-respect. The more complicated capabilities are handled by a more general welfare provision above the minimum, discussed later. *See infra* Part V.

168. AMY GUTMANN, *DEMOCRATIC EDUCATION* 136-39 (1987) (arguing for a threshold of education necessary for citizens to be able to participate in democracy). The minimum advocated by Gutmann

In addition to the type of goods required, there is the question of the level of those goods deemed “necessary.” Meeting the basic capabilities may require a certain minimum number of calories per day to prevent starvation, but such provision need not include chocolate eclairs and a ‘64 Bordeaux. Literacy may be necessary, but not the capability to read *Ulysses*. In other words, a social minimum does not require some high level of taste or talent or achievement. It is not designed to achieve maximum human flourishing—to create a society of astrophysicists, Duke Ellingtons, or political philosophers (thank goodness)—but only to maintain the survival of all citizens.<sup>169</sup> Similarly, the minimum leaves room for a variety of means of delivery, from direct cash benefits to in-kind provisions such as vouchers.<sup>170</sup>

By conceiving the social minimum as a substratum of the basic rights and liberties and as equally essential to the preservation of dignity, liberalism rejects attempts to deny the rights and liberties in an effort to achieve the minimum. Society cannot provide health care and bread only to the poor who sign over their freedom of movement. This kind of poorhouse arrangement denies the dignity of the poor by denying their citizenship rights, even though it presumes to respect dignity by providing food and health. It detaches provision from citizenship and treats “the claims of the poor, not as an integral part of the rights of citizens, but as an alternative to them—as claims which could be met only if the claimant ceased to be a citizen.”<sup>171</sup> For the liberal, such trading of rights is akin to offering someone the freedom to travel within the United States on the condition that she agree not to campaign for Republican candidates.

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may be somewhat higher than that advanced by a social minimum as discussed herein: “all children should learn enough to be able not just to live a minimally decent life, but also to participate effectively in the democratic processes that socially structure individual choices among good lives.” Amy Gutmann, *Distributing Democratic Education in a Democracy*, in *DEMOCRACY AND THE WELFARE STATE*, *supra* note 162, at 107, 112.

169. GOODIN, *supra* note 13, at 6, 9, 16-19; GOODIN, *POLITICAL THEORY*, *supra* note 95, at 91.

170. The most effective delivery probably requires multiple means in order to address the variety of causes of poverty. See Edelman, *supra* note 2.

171. Marshall, *supra* note 145, at 15 (discussing consequences of 19th century poorhouses). On the history of the poorhouse and its relation to contemporary welfare, see MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* (1986); FRANCES F. PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* 3-41 (1971); WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* (1974). The poorhouse is not so remote as one might think. See *Robbins v. Superior Court*, 695 P.2d 695 (Cal. 1985) (striking down welfare house run by county which required dorm residence, restricted sleeping and eating hours, and required work participation as a condition for benefits).



The citizenship minimum also acts like the basic rights and liberties in its constitutive capacity. When minimal welfare and education are provided for all citizens, it is not merely a benefit granted to individuals: it is an acknowledgement of citizenship and membership in a liberal community. The recipient is told that no matter how poor he or she is, no matter how unable one is to compete and achieve in the market, that person will not be cast out by society. There are no economic exiles in a liberal society. Such a statement, liberalism believes, has an empowering function in the sense the person is told that she is somebody, that she has dignity.<sup>172</sup> Liberalism contends that such a communal acknowledgement of dignity is not achieved when people are permitted to starve, remain illiterate, or die of reasonably preventable disease, even if they can be said to have “chosen” their state. The ability to live and to live in such a way that one can minimally participate in democratic activity validates one’s membership in a community of human dignity.<sup>173</sup> It also validates the community as dignified.

Of course, the level of “participation” required by a citizenship minimum is fairly low. What is desired in the political realm is to enable people physically to cast a ballot, be able to consider different voting options, and formulate and express fairly simple opinions about political power. But also recall that liberalism seeks social citizenship participation as well. The goal is to have people able to move among spheres; at a minimum this requires us to enable people to make life-defining choices, even if somewhat Hobsonian. A very poor citizen without minimal provision cannot make any choices—he either is too ill or hungry, or “chooses” to work in dismal, degrading positions to avoid these fates. The hope here is that with minimal provision some realistic choice can be made about accepting employment, getting further education, or doing other things which could lead to greater social independence.

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172. Such a statement made by welfare provision is vital in a society that has traditionally denied economic citizenship and status to women by restricting them to unpaid, care-taking labor. See Carole Pateman, *The Patriarchal Welfare State*, in *DEMOCRACY AND THE WELFARE STATE*, *supra* note 162, at 231. On the issue of the dignity-force of minimum provision as an entitlement rather than an act of charity, see GOSTA ESPING-ANDERSON, *THE THREE WORLDS OF WELFARE CAPITALISM* 35-54 (1990) (arguing that social welfare serves essential functions of recognizing citizens as something other than capitalist agents and thus decommodifies the citizen); LINDA GORDON, *PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 1890-1935* 288-89 (1994).

173. Herzog makes a similar point regarding the communal aspect of democratic rights: “[H]aving the right to participate in politics identifies one as a full member of the community; it recognizes and so helps constitute one as a dignified equal.” HERZOG *supra* note 13, at 219.

Indeed, the choice of whether to be “independent” or not is seen here as a choice. Thus, at the level of minimal provision, liberalism does in fact acknowledge that a person’s choice may be remaining on the minimum dole. But, contrary to its critics, liberalism stands for the idea that dignity can only exist in society if the society first recognizes dignity through a minimum level of support and then (and only then) offers realistic opportunities for citizens to increase personal pride and self-respect through a system of conditioned benefits, including “workfare.”<sup>174</sup> Some people will not choose these opportunities, but in a society of human dignity such people cannot become non-members and cannot be denied the citizenship minimum.

Critics are likely to wonder how such a liberal society can maintain a system of support for the nonworker. Implicit in such criticism is the idea that provision uniquely saps the economic productivity of a society to such an extent that democracy cannot be maintained. There are at least three responses to such an attack. First, the citizenship minimum at issue here is rather low. The government will not distribute \$30,000 welfare stipends. The question addressed by the minimum is not how to create simple equality of wealth, but how “to avoid the absolute privation among significant segments of the population.”<sup>175</sup> It is doubtful that the economic system would collapse under the weight of minimal food provision, limited housing, and essential health services.<sup>176</sup>

Second, the claim that social welfare spending hampers economic growth is not as obviously correct as its proponents assume. As one critic of this view has observed, social welfare payments do not themselves consume goods (except for their marginal administrative costs), but only “redistribute the right to *decide* what those goods are. . . . [A]ggregate social spending

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174. For discussion of some possible elements of such a system, see *infra* Part V.

175. Loffredo, *supra* note 108, at 1326.

176. The provision of the minimal subsistence advocated here is not necessarily the same as current welfare provision. Current provisions are probably both more and less generous than my citizenship minimum: more generous in the amount of provision to some categories of recipients and less generous in that they are restricted to limited categories of the poor. A minimal level of housing need not mean private apartments for all adults, but it should also not mean living on the street. Some intermediate shelter, either by means of clean, safe homeless shelters or small but private and sanitary single rooms might satisfy the minimum. Similarly, the food minimum need not be met solely by food stamps. Some combination of soup kitchens, “meals-on-wheels,” and direct food subsidies could prove less expensive and yet provide wider access to essential (though not optimal) nutritional provision. As for health care, wider availability of neighborhood health clinics offering free care for basic preventive and essential health needs might be appropriate.

has a negligible overall effect on economic growth."<sup>177</sup> The more plausible and much less alarmist claim is that in an economy that undergoes decline for other reasons, social welfare payments cannot be maintained at their previous levels.<sup>178</sup>

Third, the minimum can always be lowered if in fact it does drain the economy to the point of crisis. I emphasize here, however, the point of crisis. It is not equitable to force the poor to suffer the burdens of economic decline earlier or more heavily than the rest of the society. Moreover, questions about whether society has enough money to fund the provision of democratically essential services are not limited to welfare payments. Such issues arise for questions of police protection, education, and other affirmative government obligations central to democracy.<sup>179</sup> If the society has enough money to increase police services to protect the propertied classes, then it should have enough to provide a citizenship minimum. Reductions in services for fiscal health reasons should affect services to all citizens relatively equally, whether those services are police protection, road maintenance, or welfare.

Of course, one hopes that a fully funded and aggressive public education system will greatly reduce the number of people placed in the position of choosing between minimum welfare and low-paying, difficult work. A citizenship theory of welfare necessarily assumes some provision of adequate education to all citizens, including an education that prepares people for work and political participation.<sup>180</sup> Liberalism, however, does not accept the idea that society's failure to provide education or a citizen's failure to apply that education condemns one to a life-threatening existence. It may lead to a life of hardship, but it does not strip one of the basic humanity of survival or completely exclude one from social or political citizenship.

Liberalism also requires that the minimum be provided to all citizens equally. It is not distributed based on parenting status or work history, but is provided based on the sole criterion of need. Nor would it vary from community to community, but it would be comparable across the country so that all citizens stood in a similar position in relation to the citizen

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177. Jeffrey S. Lehman, *To Conceptualize, To Criticize, To Defend, To Improve: Understanding America's Welfare State*, 101 *YALE L.J.* 685, 715 (1991) (citations omitted).

178. *Id.* at 715-19.

179. See Plant, *supra* note 151, at 56-57.

180. See GUTMANN, *supra* note 13. See also RAWLS, *THEORY*, *supra* note 13, at 101, 107; WALZER, *supra* note 13, at 197-226.

minimum.<sup>181</sup> The state would provide medical care through free clinics open to all comers and food to all who enter the mess hall. Though this seems radical compared to current American welfare standards, consider the American educational system: tuitionless schooling for twelve years for all, middle class, wealthy, or poor. The fact that we are willing to accept the costs of universal, unconditioned provision of education indicates some acceptance of equal access to the necessities of democratic citizenship. What liberalism argues is that those goods necessary to maintain minimal dignity and democratic citizenship must be provided equally in order to be consistent with democratic principles, and that a citizenship minimum is one of those goods.

### 3. *Liberalism and the Ideal Citizen*

With the establishment of basic rights and liberties and a citizenship minimum, liberal citizenship can then focus on the development of flourishing citizens. As discussed above, for liberalism the ideal citizen is someone who can freely maneuver among a variety of social spheres, who exists in a pluralist society with the full capacity to develop her own social arrangements among many options. This person would be able to be actively engaged in political discussion and might even attend local council meetings. Though she might not quite “hurry to the assemblies,”<sup>182</sup> she would have the self-confidence to assert herself in a communal political context and would probably achieve some degree of self-worth in acting politically.<sup>183</sup>

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181. See, e.g., WILSON, *TRULY DISADVANTAGED*, *supra* note 16, at 152 (arguing for a national standard for AFDC payments). A national minimum would still allow for variations in the cost of living.

182. JEAN-JAQUES ROUSSEAU, *THE SOCIAL CONTRACT*, reprinted in *THE ESSENTIAL ROUSSEAU* 74 (Lowell Bair trans., 1974) (“In a well-governed republic, everyone hurries to the assemblies . . .”).

183. The idea that democratic political action generates both communal comradery and individual self-fulfillment has been advocated by some feminist theorists as a means of opening women to a public activity that does not depend on men, especially if the political activity is within women’s political organizations. See, e.g., Mary Dietz, *Context is All: Feminism and Theories of Citizenship*, in MOUFFE, *supra* note 13, 63, 75-79. But see MOUFFE, *supra* note 13, at 237 (noting that traditional exclusions of women from the political sphere counsel for a multisphere approach to feminist citizenship). Though this perspective seeks to reinvent a traditionally patriarchal liberalism into an active theory for feminism, it relies on a traditionally liberal idealization of the political as a source of self-realization. As I mentioned earlier, liberalism, as I conceive it, is generally open to such expanding claims, especially by groups that have traditionally been suppressed within liberal theory. Although I would de-emphasize the primacy of the political, it is true that the ideal liberal citizen would be able to become engaged politically, on occasion, with the type of commitment that some women have shown to women’s movement politics during the past century.

This ideal citizen would not, however, be solely political. Indeed, politics constitutes only one of many spheres of social activity, and ideally people would maneuver among multiple spheres. Political activity requires certain talents, and politics rewards particular types of people. Someone with the gift of oral rhetoric and media manipulation will achieve greater status and power within the political arena than someone without those talents.<sup>184</sup> For this reason, liberalism cannot afford to idealize the political, but should instead seek to moderate political activity with experience in other social spheres, other aspects of civil society.<sup>185</sup>

Any effort to help achieve this idealized citizenship requires provision of some goods essential to enabling people to become actors in a healthy pluralist society. Sometimes these goods can be provided in the private market or through private charity, but liberalism also recognizes the inequalities historically generated by the market, inequalities which deprive many of the bases for ideal citizenship.<sup>186</sup> People likely need much greater quantities of some of the basic goods discussed above, but, more significantly, they will need some capacity to formulate complicated life plans, adapt to social and economic changes, and maintain the self-respect necessary to act freely in many different social contexts, including contexts where they possess few natural talents. The attainment of such a level of confidence and self-respect is a particularly tricky business. And, contrary to Mead's criticism of liberalism, liberal theories have a developed understanding of the role of self-respect in social structures.<sup>187</sup>

The question for liberalism is not so much whether self-respect is an essential quality of the ideal citizen, but how exactly one attains this ideal and what role government can play in helping people achieve it. One basic difference between liberalism and other approaches is that liberalism maintains boundary conditions around activities that purport to develop self-respect in citizens: Liberalism will not permit the minimal requirements of dignity—rights, liberties, and minimum provision—to be uprooted on the ground that self-respect requires it. This is partially so because self-respect

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184. WALZER, *supra* note 13, at 304. Similarly, political activity has the likely outcome of producing self-interest bearers, not champions of the community good. See Dietz, *supra* note 183, at 71.

185. Walzer, *supra* note 122, at 89; cf. McClure, *supra* note 137, at 120-24.

186. See Michael Walzer, *Liberalism and the Art of Separation*, 12 POL. THEORY 315, 321-23 (1984).

187. Self-respect is considered a primary good within Rawls' system of justice and is necessary for the achievement of a just society. RAWLS, THEORY, *supra* note 13, at 440, 546; see also Michelman, *supra* note 161, at 340-47.

is not conceived of as binary, as it seems to be for Mead and others. It is not either there or not there, but rather is attained in stages, depending on a complex interaction between one's surroundings and internal capacities. As discussed above, the communal recognition of inherent dignity through the first order principles of democracy establishes a base level of self-respect necessary for any further attempt to achieve total self-respect. Liberal democracy produces the fertile ground for ideal citizenship, self-respect, and perhaps even self-fulfillment, but does not force these ideals to grow in each citizen; that would be tyrannical.<sup>188</sup> Liberalism rejects the notion that total submission to authority and structured indignities will produce the sort of self-respect which it advocates. One must be respected as a citizen before one can become a self-respecting citizen.<sup>189</sup>

However, so long as the minimal recognition of dignity is maintained as set out above, liberalism can support notions of an advanced self-respect attained through conditioned rewards, programs that associate benefits with merit, and ideas of individual responsibility. But the acknowledgement of an incentive structure necessary for self-respect does not imply a return to strict capitalist work incentives. Instead, liberalism seeks to achieve self-respect in multiple contexts and so has certain requirements for government action in the context of producing self-respect.

First among these is the principle that the government acts for the purpose of fostering *liberal* citizenship and not solely to implement a majority will. If a requirement should not be justified under some principle of liberal citizenship, it cannot be implemented, even if it conforms to the agreed values of the majority or dominant society. A work requirement for

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188. WALZER, *supra* note 13, at 311. Cf. GUTMANN, *supra* note 13, at 10 (arguing that a self-fulfilled person is not free unless she has chosen her fulfillment); MACEDO, *supra* note 13, at 214 (“[t]o say that in coercing people in the name of authenticity or their higher selves or true interests, we are making them free, is to paper over the real moral costs of interfering in other people’s lives”).

189. Goodin makes this point about dignity: “respecting human dignity is different [than other types of respect] because the thing to be respected is created by the act of respecting it.” GOODIN, *POLITICAL THEORY*, *supra* note 95, at 84. See also Michael Walzer, *Exclusion, Injustice, and the Democratic State*, 40 *DISSENT* 55, 58 (1993) (imagining the excluded citizen as one not respected by society and, as a result, losing his or her self-respect). But see MOON, *supra* note 13, at 132 (“one does not really lose self-respect simply by having one’s rights or dignity violated, but in failing to respond appropriately to such violations”). For Moon, self-respect seems to depend on one’s resilience. But whence this resilience? Where does a person develop the idea, let alone the will, to resist indignity or even to recognize it? Only if the society already recognizes the general rights and dignity of all persons can certain individuals obtain the “self-respect” necessary to challenge indignity. For Moon’s argument to work, indignity must already be the cultural *exception*; when indignity is the rule applied to specific groups (e.g., the poor), the society deprives the group of the main source of self-respect.

welfare (above the citizenship minimum) would be legitimate to the extent that it enables a welfare recipient to have more choices of social relations, to attain greater access to the major spheres of plural society (including the sphere of capital), and to develop the self-respect necessary for social activity in a pluralist society. Workfare cannot, however, be justified simply because it will give society more economically productive citizens or because we are a work-ethic society.

Second, when the government seeks to enforce programs for self-respect, it should recognize multiple sources of self-respect; it cannot privilege one sphere of social relations over others. Self-respect can be obtained through child-rearing, community volunteer activity, and artistic self-expression as well as through labor capitalism. Moreover, it is not enough to argue that society needs labor more than other spheres, because the liberal rejects this privileging of labor capitalism over other spheres of activity.<sup>190</sup> Childcare is likely as “valuable” to society as the manufacture of widgets or the staffing of another *café au lait* stand. The maintenance of multiple viable spheres, whether family care-giving, religion, art, or capitalism, is more valuable to a liberal society than any single sphere in and of itself.

Third, the government should not enforce citizenship ideals only on the poor. When a duty is defined, such as some type of work or care-giving, the middle class and wealthy would also have a duty, and it would be a duty owed to the state, not some glibly asserted social obligation that exists “out there” to which people conform on their own. If citizenship is really the basis for obligations to the state, then, in a democracy, all citizens should bear a duty *to the state*. This is how military duty is supposed to work—the rich are theoretically not supposed to avoid service, and when they do it is unjust.<sup>191</sup> This would be the model for any enforced duty in a democracy. Thus, if care for one’s children and elderly relatives is deemed a duty of liberal citizenship, then the state would enforce the duty on all citizens. If some form of work be deemed essential to building self-respect and social responsibility, then the twenty-two-year-old son of a millionaire would have a work obligation enforced by the state, perhaps through national service.<sup>192</sup> It would be possible for the duty to be met

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190. See Walzer, *supra* note 122, at 94-96 (arguing that “capitalism does not make for citizenship” because it knows no boundaries and sees people as economic, not social or political, actors).

191. WALZER, *supra* note 13, at 98-99.

192. One alternative to national service could be some system of taxation of non-employment income earned by people who do not work a set minimum number of hours per year. The 22-year old millionaire’s son, if he did not work say 500 hours, would pay additional tax on his interest income,

by private activities, but the enforcement of the duty as a thing of citizenship would be the province of the state.

If this last point about government enforcement of citizenship duties sounds frightening, if it conjures up images of totalitarian enforcement of “community” goods, then perhaps it tells us something about the dangers of citizenship talk in the first place. When citizenship is discussed as something apart from the state, it may be easier to accept potentially totalitarian ideas, such as enforced work obligations or communally enforced duties to clean the roadside. While these may be perfectly valid goals to advocate through non-state communal means, once *the state* starts enforcing these duties upon a certain class of citizens as part of a “citizen’s duty,” liberalism begs us to apply this obligation to all citizens. If, under this liberal test of equal treatment for citizenship, the project suddenly seems terrifyingly totalitarian or ridiculous, then the justification for the project as against the particular class—the poor—crumbles.

One may legitimately wonder what sort of programs might be allowed under the liberal citizenship set forth. The beginnings of a program for liberal citizenship is presented toward the end of this piece,<sup>193</sup> but first let us return to the proposals of the welfare reformers and see how they stack up against a revived liberal conception of citizenship.

#### IV. UNDEMOCRATIC REFORMS: LIBERALISM’S CRITIQUE OF WORKFARE

Having sketched a version of liberal citizenship, the arguments of reformers and critics of liberalism can be reevaluated: How does the vision of citizenship and welfare put forth by the reformers compare to a more developed liberalism?

##### A. *The Problem of Equality*

The most striking aspect of the reformers’ approach to the contemporary issue of welfare is the ease with which they assume the inequality of the poor and the degree to which this “inequality” is in fact manufactured by the critics’ own theories. Recall that each of the critics accepts and utilizes the term “underclass” in describing the very poor, particularly the “violent” urban poor.<sup>194</sup> The unquestioning assumption of this term carries with it the rhetorical advantage of creating an Other, some force different than “we

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gifts, and inheritance.

193. See *infra* Part V.

194. See *supra* notes 14-18 and accompanying text.



readers” that must be managed and controlled.<sup>195</sup> Even before raising the issue of citizenship, reformers define a class of citizens as external to mainstream society.

For the liberal, such a ready move to create the Other violates the basic premise of equal dignity. Liberalism does not speak of fellow citizens in terms of otherness; rather, all people have an equal claim to citizenship status. The term “underclass” does not belong in citizenship discourse because it defines people hierarchically by class and denies the equality premise of citizenship. Furthermore, it defines people within a sphere of capitalism instead of a sphere of citizenship and then defines certain people as even lower than the lowest of that sphere. The very poor become untouchables in an economic caste system.

Liberalism rejects this expulsion of the poor from citizenship. But in rejecting the conception of the poor as an underclass, liberalism does not deny the variety of problems reformers associate with underclass behavior. The statistics are not chimeric: people who do not work are frequently poor, and their children will likely remain poor.<sup>196</sup> Poverty is closely associated with violence and poor health.<sup>197</sup> The strategy of liberalism is not to deny these problems, but to accept them as the problems of all citizens. Thus, the liberal views citizenship not as excluding the poor, but as a means of including them, of seeing all Americans as “We the People.”<sup>198</sup> For the liberal, fellow citizens, not the Other, suffer the ills of poverty, and all citizens work together to overcome these problems.<sup>199</sup>

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195. See Thomas Ross, *The Rhetoric of Poverty: Their Immorality, Our Helplessness*, 79 GEO. L.J. 1499, 1502-09 (1991); see also KARST, *supra* note 13, at 125-27 (discussing the relationship among poverty, race, and perceptions of othermen).

196. See ELLWOOD, *supra* note 1, at 93-94, 142-51.

197. See, e.g., Edelman, *supra* note 2, at 1698-99.

198. See Amar, *supra* note 44, at 38-40.

199. Compare to Charles Murray, who contends that the laid-off middle-aged worker “is one of my fellows” but the willful non-working poor are simply “drones.” MURRAY, *supra* note 1, at 197-98.

This distinction between otherness and fellowship also marks the current line between “insurance” welfare programs, such as old-age social security, and means-tested programs, such as AFDC. The former are seen as preventing the poverty of fellow citizens (who have “invested” or “proven” their worth through work), while the latter are viewed as rescuing the poor from destitution. See THEODORE R. MARMOR ET AL., *AMERICA’S MISUNDERSTOOD WELFARE STATE: PERSISTENT MYTHS, ENDURING REALITIES* 26-27 (1990); see also Lehman, *supra* note 177, at 692-93 (exploring the distinction between social insurance and means-tested programs). The liberal perspective I advocate here favors viewing means-tested programs more like a form of universal insurance for all citizens, one which covers those too poor to pay the premiums. I do not, however, adopt the insurance rhetoric because it too easily transports an economic perspective into the sphere of citizenship, thus making it far more likely that those who do not “pay their share” will not be covered. Citizenship is not subject to actuarial

Recognizing poverty as a shared problem does not blind liberalism to internal sources of poverty and adverse behavior. A lack of motivation to work, disinterest in child-rearing (especially among men), and other internal issues certainly play a part in the perpetuation of poverty. However, liberalism also sees causes of poverty in social structures:<sup>200</sup> poorly funded public schools that do not train people for employment and life-skills;<sup>201</sup> bad health care or none at all;<sup>202</sup> inadequate job opportunities and low potential for advancement within jobs;<sup>203</sup> not to mention the social disorders of racism and sexism.<sup>204</sup> For liberalism, the structural causes of poverty are important not just because they exist, but because they highlight the communal nature of responding to poverty. When the poor woman is seen as a fellow citizen, issues of both individual motivation and social structures appear relevant. So long as the poor are seen as external to citizenship the responsibility for conforming will be theirs; if the poor are considered fellow citizens, then obligations will run in both directions. When the dignity of some members of the community is harmed by the effects of poverty, liberalism responds not by labeling them as non- or sub-citizens, but by asserting their citizenship with the guarantee of rights and minimal support while simultaneously providing programs designed to strengthen their participation in the citizenship community through mutual obligation. This is why liberalism advocates both a citizenship minimum of support *and* programs for developing flourishing citizens, programs which can include obligation-based work requirements

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calculations (which favors those most likely to be productive over time) and group rating schemes necessary for true insurance programs. Cf. Simon, *supra* note 47, at 1509 (arguing that social "insurance" is a liberal myth that provides the middle-class with unearned protection from poverty and stigmatizes the poor through means-tested, non-insurance programs and contending that all social welfare should be means-tested or needs-based).

200. See, e.g., Wacquant & Wilson, *supra* note 58, at 78 ("The rise and fate of the underclass . . . are inextricably connected to the structure and performance of the American economy.")

201. See, e.g., Richard J. Murane, *Education and the Well-Being of the Next Generation*, in *CONFRONTING POVERTY*, *supra* note 2, at 289 (analyzing the relationship between education, poverty, and economic productivity).

202. See, e.g., Barbara L. Wolfe, *Reform of Health Care for the Nonelderly Poor*, in *CONFRONTING POVERTY*, *supra* note 2, at 253 (analyzing health care and poverty).

203. See, e.g., WILSON, *TRULY DISADVANTAGED*, *supra* note 16, at 20-106 (lack of jobs in inner city and other structural economic bases for problems associated with underclass); *id.* at 160-62 (focusing on individual characteristics as the source of poverty will never succeed without significant attention to structural economic conditions).

204. See, e.g., Edelman, *supra* note 2, at 1742-44 (discussing race and class as intertwined factors affecting poverty); Pateman, *supra* note 172, at 245-46 (discussing structural sexism as reason for female poverty).

but only in the context of broader social equality and dignity.

The reformers' penchant for casting the poor as unequal is most evident in Lawrence Mead's depiction of the very poor as children.<sup>205</sup> His broadside against the dependency of the poor leads to this analogy-syllogism: Children are dependent on parents; the very poor are dependent on government; therefore, the very poor are just like children. And just as parents use authority over children, the government should exert authority over the poor.<sup>206</sup>

Such paternalism toward adult citizens manifests a deep and undemocratic inequality.<sup>207</sup> Whatever one determines to be the liberal's position regarding the citizenship and treatment of children,<sup>208</sup> no group of people can, under a liberal theory of citizenship, be equated with children. Moreover, Mead's criteria for divining the dependent are not equally applied to all persons. The wealthy non-worker is not subject to governmental authority, but the poor loafer is. Mead determines which behaviors to label as "dependent" and then subjects a politically weak group that he labels dependent to coercive state authority.<sup>209</sup> Furthermore, despite his

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205. For a discussion of Mead's arguments, see *supra* notes 44-49 and accompanying text.

206. See *supra* notes 62-69 and accompanying text.

207. And quite likely a not-too-latent racism. The concept of treating African-Americans as children has a long and ugly history. See, e.g., STANLEY M. ELKIN, *SLAVERY: A PROBLEM IN AMERICAN INTELLECTUAL LIFE* (3d ed. 1976). Mead's depiction of the primarily black "underclass" as children strikes this common chord in American consciousness. Nonetheless, even if his point is applied "equally" to all races constituting the poor, it still violates essential tenets of democratic citizenship.

208. The status of children in welfare, as in the broader context of liberal theory, raises particularly nettlesome issues. Dominance over children and denial of their autonomy are legitimate within some contexts, especially the family and school. Nonetheless, liberalism should, I would argue, connect the state's role vis-a-vis children to their unique situation as both citizens and potential citizens in a liberal democracy. See, e.g., HERZOG, *supra* note 13, at 240-44; see also FISHKIN, *supra* note 96, at 35-43 (discussing limits of family autonomy over rearing of children). Cf. AMY GUTMANN, *DEMOCRATIC EDUCATION*, *supra* note 168, at 19-47 (discussing education of children as important for recreating democratic citizenship and also noting necessity of setting limits on education based on democratic principles of non-repression and non-discrimination). For present purposes, I will limit the discussion of children to the provision of welfare benefits to the parents in support of the care of the children, and acknowledge that this point is sorely in need of further development. For some of this development, see Minow, *supra* note 153, at 1867-71 (describing public and judicial hostility to children's rights) and *id.* at 1878-91 (exploring new ways to conceive and implement children's rights). See generally Martha Minow, *Whatever Happened to Children's Rights*, 80 MINN. L. REV. 267 (1995) (reviewing history of law and scholarship regarding children's rights and suggesting options for the future).

209. Unequal treatment under the guise of competence has arisen recently in Learnfare programs. Under these programs, states deny AFDC benefits to parents if their children do not attend school, the theory being that the state will not support incompetent or unwilling parents. See generally Marcus E. Etheridge & Stephen L. Percy, *A New Kind of Public Policy Encounters Disappointing Results: Implementing Learnfare in Wisconsin*, 53 PUB. ADMIN. REV. 340 (1993); Lucy A. Williams, *The*

efforts to make his analysis seem original, Mead really plays on a well-trodden field of using dependency to define and exclude the poor, women, and African-Americans.<sup>210</sup>

Liberalism does not permit such wholesale determinations of unequal status for adults. A liberal democracy cannot presume a class of flatly incompetent people.<sup>211</sup> Under liberalism, for the state to assert authority over an adult as if she were a child, the state must first make an individualized showing of incompetence or unfitness through a mechanism of due process<sup>212</sup> and must apply such rules to all citizens, not just the poor.

This liberal critique of Mead's dependency rhetoric becomes particularly trenchant when one considers that the rhetoric is *not* applied to nonpoor recipients of social security or people who are not self-employed. Like "welfare" (AFDC), social security causes recipients (or potential recipients) to depend on the income; people fail to save in their employment years because they count on the government to provide income and health insurance, without any regard to their actual lifetime contributions. The children of social security recipients depend on the government to provide for their parents and thus avoid a historic and common responsibility to care for the elderly: communal ties and family responsibility are eroded by

*Ideology of Division: Behavior Modification Welfare Reform Proposals*, 102 YALE L.J. 719, 726-36 (1992) (discussing Wisconsin's Learnfare program). Yet the same states continue to allow tax deductions for the wealthier parents, regardless of the attendance records, drug use, or other delinquencies of their children. *Id.* at 734-35; cf. Ross, *supra* note 195, at 1520 (positing the outrage that would ensue if child-based tax deductions were eliminated for families with several children, similar to welfare family caps). The lesson taught by such Learnfare programs is not that school attendance is a prerequisite of citizenship, but that moral judgments of responsibility and good parenting are enforced only against the poor; the wealthy can do as they wish. For an interesting argument that Learnfare programs violate the Equal Protection Clause, see Marc S. Gerber, Note, *Equal Protection, Public Choice Theory, and Learnfare: Wealth Classifications Revisited*, 81 GEO. L.J. 2141 (1993).

210. See, e.g., Nancy Fraser & Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 SIGNS 309 (1994).

211. See Walzer, *supra* note 189, at 62.

212. This, of course, is the basic premise of constitutional protections for individualized and due-process-protected determinations of criminality and mental incompetence. See, e.g., *Foucha v. Louisiana*, 504 U.S. 71, 72 (1992) ("Due process requires that the nature of commitment bear some reasonable relation to the purpose for which the individual is committed."); *Jackson v. Indiana*, 406 U.S. 715 (1972) (applying Equal Protection and Due Process to confinement of criminal defendant on basis of mental illness). See also *Jones v. United States*, 463 U.S. 354, 375 (1983) (Brennan, J., dissenting) (arguing that due process requires proof of mental illness and dangerousness by clear and convincing evidence in order to support civil commitment). Notably, the right to an individualized showing of one's unfitness for citizenship could be implied from the Thirteenth Amendment: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States . . ." U.S. CONST. amend XIII, § 1.

the old-age pension system. Similarly, people who are employed by others are not “independent” in most common senses of the term. They are subject to the whims of employers for provision of income, health insurance, and other essential benefits, particularly in at-will employment situations. Nonetheless, Mead and others ignore these broader definitions of dependency in order to preclude the poor from equal citizenship.<sup>213</sup>

Because Mead and others dismiss and ignore questions of equality as a first principle of citizenship, reform programs designed under Meadian principles will eventually undermine their desired better citizenship. The poor who are forced to work for benefits or are denied benefits because their child has played hooky<sup>214</sup> will not understand the requirements and punishment as correlated to citizenship, because the wealthy are not similarly punished. The poor will not be fooled by the narrow application of “dependency” to exclude only them. The lesson will not be that citizenship entails responsibilities, but that money is the true measure of social morality. Marx’s claim that money defines the individual is reinforced in Mead’s citizenship of inequality.<sup>215</sup>

### B. *Priority of the Social*

The ease with which reformers advocate inequality stems from their prioritization of social citizenship over traditional liberal rights. Mead is quite explicit in this regard: “Issues of citizenship and the proper definition of the community are politically prior to questions of class and equality, and drive them off the agenda.”<sup>216</sup> Just what sort of citizenship and community does Mead anticipate if equality is not a part of the agenda? Certainly not a liberal, democratic community, because equality is the foundational principle for democratic citizenship. Instead, citizenship

213. See generally Fraser & Gordon, *supra* note 210.

214. See, e.g., Williams, *supra* note 209, at 727 (discussing Wisconsin Learnfare program).

215.

[T]hat . . . which money can buy, that am I, the possessor of money. . . . [W]hat I am and what I can do is by no means determined by my individuality. I am ugly, but I can buy myself the most beautiful woman [so] . . . I am not ugly. . . . I am lame, but money procures me twenty-four legs. Consequently, I am not lame. I am a wicked, dishonest, unscrupulous and stupid individual, but money is respected, and so also its owner. Money is the highest good, and consequently its owner is also good. Moreover, money spares me the trouble of being dishonest, and I am therefore presumed to be honest.

Karl Marx, *Economic and Philosophical Manuscripts*, in EARLY WRITINGS 377 (Rodney Livingstone & Gregor Benton trans., 1975). This quote is particularly relevant to moralistic welfare conditions: bad qualities are only bad for those without money. See also Walzer, *supra* note 122, at 95-97.

216. MEAD, *NEW POLITICS*, *supra* note 1, at 245.

appears to mean whatever beliefs of the dominant society Mead chooses to highlight.<sup>217</sup> This is particularly troublesome considering that Mead is discussing the American community, a community founded on (though frequently falling short of) democratic ideals of equality and dignity.

The reformers' emphasis on social citizenship appears most prominently in their claim that without social duties of citizenship people are morally incapable of achieving freedom and equality, rendering liberal rights-talk irrelevant.<sup>218</sup> Yet reformers ignore a fundamental characteristic of the basic rights and liberties: They do not just protect equality and freedom; they constitute and create it communally.<sup>219</sup> Whereas Mead and others argue that there is no freedom without moral obligation to the state or community, the liberal asserts the converse: There can be no moral assertion of authority by the state without a guaranty and recognition of equality and freedom.

The question of priority between duty/obligation and freedom/equality marks a central point of contention between liberalism and reformer critics. Under the reformers' approach, authority can be justified against the poor so long as it enforces a sense of duty to the community. Such authority could potentially be quite degrading, much like the poorhouses of the Nineteenth Century.<sup>220</sup> If theories of social citizenship are taken seriously,

217. See *supra* notes 33-40, 49-74 and accompanying text (discussing Mead's ideas of justification for government action). See also Sherry, *Republicanism*, *supra* note 33, at 176-77 (acting in accord with "basic cultural norms" is essential to good citizenship, and hard work is one of those norms).

218. See *supra* notes 45-47 and accompanying text. See also MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 6 ("A 'free' political culture is the characteristic, not of a society still close to the state of nature, as some American philosophers have imagined, but of one already far removed from it by dense, reliable networks of mutual expectations."). This attempt to delegitimize issues central to citizenship and equality by removing them from the realm of political or civil rights and into the "social" sphere has a significant parallel with the denial of equal citizenship to African-Americans during and after Reconstruction. See Mark Tushnet, *The Politics of Equality in Constitutional Law: The Equal Protection Clause, Dr. DuBois, in Charles Hamilton Houston, in THE CONSTITUTION AND AMERICAN LIFE*, *supra* note 103, at 224.

219. William Simon similarly errs in criticizing rights-based theories, which, he argues, assume "that society is a zero-sum affair in which the rightholder's gain represents losses to others . . . [and deny] that rights might effectuate shared values or mutually beneficial cooperation." Simon, *supra* note 44, at 1443. To the contrary, liberalism, at least of the Rawlsian variety, maintains as one of its primary goals "specifying the fair terms of social cooperation between citizens regarded as free and equal[.]" RAWLS, *LIBERALISM*, *supra* note 13, at 3. Liberal rights are designed to effectuate cooperation within a pluralist community, not to allow individuals to raid each others' stock of goods. See also MOON, *supra* note 13, at 141-45 (arguing that Simon advances a caricatured view of liberalism and that, in fact, liberalism is deeply committed to reciprocity and community).

220. See HIMMELFARB, *supra* note 56; MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA* 3-35 (1986).

however, there is no degradation in the poorhouse because there is nothing to degrade. The recipient of workfare is defined as a pre-moral being and as such, is implicitly incapable of degradation. He is being helped, not degraded.

For the liberal, questions of duty cannot be so easily asserted, because freedom and equality are always presumed. There is no communal obligation existing prior to equality, no issue of citizenship prior to freedom. The social does not precede the political; citizenship, both political and social, exists coextensively with freedom and equality. The violation of either freedom or equality is an indignity itself violative of equal citizenship.

Another consequence of the focus on social citizenship as distinct from and prior to other issues is that economic issues are converted into exclusively "moral" matters. Mead's claim that the "partisan battle [is] now about 'moral' more than 'economic' issues"<sup>221</sup> amounts to little more than a sleight of hand. The reformers' emphasis on moral issues focuses on obligations to work at paid labor. This is a moral code of capitalism, not some higher morality divorced from economic issues. The advantage of such relabelling for reformers is that it continues to focus on the inherent wrongfulness of people in poverty rather than on broader economic issues and makes authoritarian actions against the poor easier to justify. When the poor are viewed as ineffective economic agents physically and functionally separated from the productive economy, we are more apt to inquire into both structural and personal solutions to poverty. The poor are seen in the broader context of the national economy and not judged solely on their personal failings.<sup>222</sup> Worker training and education take priority. When non-work appears as a moral issue, however, the poor become more culpable, more like social criminals and outcasts. This maneuver, like others of the reformers, converts capitalism into citizenship by converting economic issues into broad moral ones. The sphere of money assumes dominance over citizenship and morality.

What of the social duties and obligations in liberalism? Critics speak of liberalism as if no social duties were ever enforced in a liberal society. The question, however, is not whether there are any duties; it is instead whether

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221. MEAD, *NEW POLITICS*, *supra* note 1, at 131 (discussing speech of President Reagan, December 13, 1988).

222. See, e.g., Margaret Weir et al., *The Future of Social Policy in the United States: Political Constraints and Possibilities*, in *THE POLITICS OF SOCIAL POLICY IN THE UNITED STATES*, *supra* note 93, at 421, 426; Wilson, *PUBLIC POLICY*, *supra* note 16.

special duties can be applied by the state against the poor because of their poverty. Liberalism certainly permits and encourages duties of its citizens. People, rich or poor, cannot violate democratically adopted laws, including laws to prevent civil violence and fraud. A certain amount of civility, of sacrificing one's own freedom to be able to live with others, is required in liberal societies.<sup>223</sup> Reasonable time, place, and manner restrictions on speech are proper and necessary in a liberal society.<sup>224</sup> Children can be required to attend school, and they and their parents can be punished for truancy.<sup>225</sup> The difference between liberals and reformers, however, is that, for the liberal, each duty and obligation is to be enforced by the government against *everyone*. No particular class carries a presumption of indignity or wears a badge of irresponsibility. As will be shown, some societal duties can operate within a liberal welfare system, but only once the presumptions of equality, freedom, and dignity are secured.

### C. *Denial of the Citizenship Minimum*

A key flaw in the reformers' critique of welfare is their failure to consider the possibility of a staggered system of provision. They generally merge all provision into one giant welfare system and argue for the imposition of obligations on the recipients regardless of the level of the benefit.<sup>226</sup> A developed liberalism, however, maintains a strong commitment to a citizenship minimum of provision without conditions, while simultaneously advancing conditioned programs to achieve some of the ends sought by reformers. I will now consider each step in turn.

#### 1. *Citizenship Minimum or Else*

We have already considered liberalism's support for the citizenship minimum as an essential aspect of principles of equal dignity. To recap: The citizenship minimum is essential to the preservation of a minimal level of basic rights and liberties for poorer citizens, rights and liberties which

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223. RAWLS, *LIBERALISM*, *supra* note 13, at 217 (describing civility as a moral, though not a legal, duty).

224. *See, e.g., Ward v. Rock Against Racism*, 491 U.S. 781 (1989) (applying and discussing reasonable time, place, and manner test for restricting speech in a public forum).

225. *See supra* note 208.

226. *See, e.g., ELLWOOD*, *supra* note 1, at 181 (“[E]nsuring a minimum income is dramatically opposed to encouraging self-support.”). This is not necessarily so if the benefits of self-support above the minimum are substantial and tangible enough to motivate recipients. As I discussed earlier, Mickey Kaus is the notable exception to this one-dimensional approach to welfare reform. *See supra* notes 75-93 and accompanying text.



create and affirm equal dignity. Moreover, the minimum itself constitutes dignity and expresses an essential aspect of equality in citizenship. From the perspective of liberalism, welfare reform programs that deny a basic minimum to citizens violate the presumption of dignity essential in a democratic system.

This argument is essentially theoretical.<sup>227</sup> But even if one does not accept the premises of the liberal program I have set forth—even if one believes, for example, that the provision of necessities is simply a question of collective compassion (not a democratic essential) and that nonprovision is necessary to maintain a system of personal responsibility in conjunction with compassion<sup>228</sup>—other purely pragmatic considerations counsel in favor of a citizenship minimum.

These pragmatic considerations are best understood by reflecting on the potential failures of a reformed workfare system. Reformers, quite naturally, tend to focus on the possible benefits of conditioned welfare for those recipients who comply, while ignoring the situations of those who do not. By arguing from a context of a social citizenship based on work and not equality, the reformers imply that such failures are noncitizens and should be so treated. The “loafer” or “slacker” becomes untouchable under a social citizenship theory, even if this means such a person will be unable to find housing, eat, or receive medical care. Indeed, such consequences are essential, reformers argue, to provide the incentive for people to avoid the habits of non-work. It is also irrelevant for reformers that such consequences will further diminish the capacity of legal citizens to participate in the political process, preserve their civil or legal rights, and ultimately to stay alive. Once a person refuses to work, she is no longer entitled to act or be treated as a citizen even for legal and political purposes.

Notice that the resulting situation amounts to a weaker claim than reformers initially contend. Mead and others argue that their proposals will save the poor from poverty and dependency.<sup>229</sup> In fact, they are making the much less ambitious assertion that it is necessary to sacrifice some non-working poor to the perils of destitution in order to force others into self-

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227. See *supra* Part III.C.2.

228. Christopher Jencks believes it is. See JENCKS, *supra* note 1, at 87-88. Notably, Jencks also believes, consistent with my argument in this section, that the fact of some people slipping through the cracks of a work-based welfare system counsels in favor of maintaining some minimal support for single parents and their children. See Christopher Jencks & Kathryn Edin, *Do Poor Women Have the Right to Bear Children?*, AM. PROSPECT, Winter 1995, at 43.

229. See *supra* Part II.B.1 and II.B.2.

supporting employment (even if the employment is low-wage and unskilled) since that will alleviate the horrors of poverty for at least some of the poor.

Yet, even within the context of this deglorified claim, reformers cannot guarantee that any workfare system will fairly distinguish the intentional non-worker from the motivated but temporarily poor. Social policy and governmental structures are imprecise. Despite the best attempt to fashion a work requirement, some people will slip through the cracks. Perhaps a potential workfare success story was wrongly advised by her caseworker and failed to register; maybe during the six months one is allowed to find a job, the local economy suffered badly and jobs were not available; or perhaps someone suffers bad stretches of personal trauma—a marriage falls apart or a parent falls ill—and he loses motivation for a temporary but significant time.<sup>230</sup> Many can weather such situations financially through the help of savings, family, or friends. For the very poor, however, especially those without health insurance, such times of temporary trauma can be ruinous. No program can prevent all such unintended episodes. Some people will fail to become workers. They will then become effective noncitizens, denied basic subsistence, simply because the governmental programs missed them.

Depending on how much one trusts governmental programs to be effective and efficient and how seriously one takes her commitment to welfare provision for the “deserving,” the possible error rate of a workfare system could argue in favor of some fallback minimal provision. If workfare is going to miss some people, is it not better for them to survive at the soup kitchen and neighborhood health clinic until they weather a storm rather than have to turn to crime, illness, or destitution?<sup>231</sup>

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230. See, e.g., Patricia Davis & Robert O’Harrow, Jr., *The Region Grapples with Welfare Reform*, WASH. POST, June 29, 1995, at A1 (reporting that even an educated and skilled AFDC recipient has difficulty retaining employment); Barbara Vobejda, *Inching into Employment: Recipients’ Pace Doesn’t Fit Reform Scenario*, WASH. POST, May 8, 1995, at A1 (reporting on low-skilled welfare recipient attempting to obtain employment).

231. The answer essentially comes down to balancing the value of citizenship for the “deserving” against the danger that provision will expand the number of “undeserving” non-workers, a distinction that I reject but which has a long history. See, KATZ, *supra* note 56, at 11-16 (discussing history of distinction between deserving and undeserving poor). However, if one values citizenship provision for even just the “deserving” as much as other citizenship rights, one should adopt an over-inclusive position, as is done with other valued rights such as free speech (opting for protection of legitimate speech at the cost of permitting libelous or hateful speech) and criminal procedural protections (opting for the privacy interest protected by the Fourth and Fifth Amendments at the cost of truth and accuracy in criminal investigation). See, e.g., Yale Kamisar, *Remembering the “Old World” of Criminal*

This problem of imprecision in the effects of policy is exacerbated by the issues surrounding any employment policy. Logically, if reformers really want all members of society to be full social citizens, and if citizenship is defined through paid employment, they would also advocate policies for full employment—employment for all those who want to work. Given the problems of structural unemployment in modern capitalist economies,<sup>232</sup> this would require very aggressive employment strategies. Yet the reformers generally ignore questions of employment strategy, relying on the market to provide jobs.<sup>233</sup>

When reformers do consider the issue, suggesting, as does Kaus, a broad government jobs programs,<sup>234</sup> they do not consider the negative effects on the work ethic that a full-employment society would likely encounter; they do not consider the paradox of full employment. If we achieve full employment (all who are willing to work have jobs), workers will not have the incentive to work well (or at all) since no one could replace them. There must be some level of unemployment, some reserve army of unemployed laborers who are willing to take a job if the worker does not perform, in order for the work ethic to exist within the labor force.<sup>235</sup> Thus, reformers must either advocate full employment and lose some of the

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*Procedure: A Reply to Professor Grano*, 23 U. MICH. J.L. REF. 537, 542-43 (1990); Scott E. Sundby, "Everyman"'s Fourth Amendment: Privacy or Mutual Trust Between Government and Citizen, 94 COLUM. L. REV. 1751, 1808 (1994); James J. Tomkovicz, *The Truth About Messiah*, 23 U. MICH. J.L. REF. 641, 661-64 (1990). If the over-inclusive position is not chosen, that tells us something about the devaluation of the underlying principle—in this case the citizenship interest in basic provision for someone who "plays by the rules." Notably, the Clinton welfare reform program is under-inclusive in an effort to reduce "fraud" in the use of welfare. See Backer, *supra* note 1, at 371.

232. See, e.g., Wilson, *Truly Disadvantaged*, *supra* note 16, at 39-46; John D. Kasarda, *Urban Change and Minority Opportunities*, in *THE NEW URBAN REALITIES* 33 (Paul E. Peterson ed., 1985).

233. Mead contends that adequate jobs in adequate numbers already exist. See MEAD, *NEW POLITICS*, *supra* note 1, at 85-109 (disputing several theories about the unavailability of adequate jobs for the poor). Such contentions are generally refuted by WILSON, *TRULY DISADVANTAGED*, *supra* note 16, at 20-62, 93-106. See also Blank, *supra* note 1, at 169-78 (noting that while aggregate employment across the country has not been a significant factor in poverty, group-specific employment opportunities and declining demand (and wages) for low-skilled labor have been).

234. KAUS, *supra* note 1, at 125-35.

235. This is related to the idea of labor-market flexibility. See CHRISTOPHER JENCKS, *THE HOMELESS* 114 (1994). Even a well-designed employment policy cannot avoid having some people with needs unmet by employment. MOON, *supra* note 13, at 133-34. *But see* PHILIP HARVEY, *SECURING THE RIGHT TO EMPLOYMENT* (1989). Harvey argues for guaranteed government jobs at market wage rates. He further contends that such a system need not destroy work incentives if it allows for firing from particular jobs and includes piece-work and day-to-day jobs as fall-back employment. *Id.* at 96-98. I generally like Harvey's program, see *infra* notes 292-94 and accompanying text, but disagree that work incentives would not be affected.

work ethic, or advocate necessary unemployment and force well-intentioned laborers to become non-citizens—an explicit contradiction of the reformers’ agenda.

A two-tiered welfare system responds to these practical problems. People who fall between the cracks of workfare still receive minimal support, enough to withstand severe troubles and have a chance to get back on their feet. It also allows the upper tier of support to retain some work incentive and responds to structural unemployment by ensuring that the unemployed receive some assistance. The possibility of receiving more than a bare minimum of income will provide some, even if not optimal, incentives to work.

## 2. *The Trouble with Children*

A further practical question arises for a welfare system that denies benefits to groups of citizens: what becomes of their children?<sup>236</sup> Simply denying a minimal subsistence to people because they do not work does not prevent them from having children; even the refusal to provide funding for children born to such people is no contraception.<sup>237</sup> What would reformers of welfare do to prevent these children from growing up destitute and subject to even worse environments than reformers claim affect current welfare children?

The only response consistent with the social citizenship argument should be to deny the “nonfunctioning” (non-workers) the right to bear children and/or deny them the right to raise children themselves. Indeed, such proposals are on the table for conservative reformers. At least two states have introduced incentives for female<sup>238</sup> welfare recipients to subject

236. Edelman, *supra* note 2, at 1709 (“In leaving the hardcore poor to their own devices, we run a significant risk of condemning their children to a similar fate, which is neither efficient nor humane”).

237. The size of welfare payments has had little to no effect on birthrates. See Williams, *supra* note 209, at 739-40; *Rethinking Welfare: Teen-Age Mothers—A Special Report*, N.Y. TIMES, Apr. 17, 1995, at A1; *N.J. Welfare ‘Cap’ Has No Effect on Births, Study Finds*, WASH. POST, June 21, 1995, at A3. The classic study on this issue is still David Ellwood & Mary J. Bane, *The Impact of AFDC on Family Structure and Living Arrangements*, 7 RES. LAB. ECON. 137 (1985).

238. The bias against women’s sexuality and bodily integrity does not go unnoticed by liberalism. Indeed, recent welfare reform efforts to require birth control, to prohibit receipt of benefits for children born out-of-wedlock or to prohibit benefits for children born into families of a defined size (so-called “family caps”) raise significant questions about the equal treatment of poor women and families in the otherwise constitutionally protected areas of privacy and procreation. See Susan F. Appleton, *Standards for Constitutional Review of Privacy-Invasive Welfare Reforms: Distinguishing the Abortion-Funding Cases and Redeeming the Undue-Burden Test*, 49 VAND. L. REV. 1 (1996).

themselves to sterilization<sup>239</sup> in order to receive more money.<sup>240</sup> Also, the Speaker of the United States House of Representatives has trumpeted the virtues of removing poor children to orphanages,<sup>241</sup> echoing a position long advocated by Charles Murray.<sup>242</sup>

These moves to control the child-bearing and child-rearing of the poor demonstrate just how deeply undemocratic a social citizenship theory can become. Once the theory determines that certain people are noncitizens and/or nonfunctioning, it legitimates an intrusion into the liberties of bodily integrity, procreation, and family that completely denies any sense of dignity for the poor and would never be tolerated among wealthier citizens. The removal of children solely because of non-work by the parent, without any showing of abuse or neglect, imposes a principle of work ethic onto the domain of family in a way foreign to how wealthier classes understand family. A child will be removed not for lack of love or attention, but because the parent has not conformed to the labor-capital work ethic. Similarly, the forced sterilization of the poor imposes the work ethic onto issues of family choice—in order to receive any state support for working one's way out of poverty and becoming a citizen, a woman must sacrifice control over childbearing and become effectively, even if temporarily, defeminized.

Reformers also devalue the citizenship of children in poverty. The child of a poor mother is not viewed as a citizen or potential citizen existing in a family, but is instead either an impediment to work for the mother or a result of the mother's sexual irresponsibility.<sup>243</sup> Though broad claims are made about the importance of a working parent as a role model, few

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239. The sterilization is effected through the Norplant contraceptive system. This temporary sterilization process requires the implantation of six match-sized capsules in the upper arm through a brief surgical procedure.

240. See *supra* note 158.

241. See Jason DeParle, *Despising Welfare, Pitying Its Young*, N.Y. TIMES, Dec. 18, 1994, § 4, at 5.

242. Charles Murray, *The Coming White Underclass*, *supra* note 25, at A14. Though not accepting the idea of orphanages, the Clinton administration appears willing to accept that children can be removed from non-working poor families solely on the basis of non-work. See John J. Dilulo Jr., *The Plain Ugly Truth About Welfare*, WASH. POST, Jan. 15, 1995, at C1 (discussing Administration's support for removal of poor children). Cf. Sherry, *Republicanism*, *supra* note 33, at 204 (recommending that in a school choice system, poor mothers who do not find the best school for their children should have their children removed based on neglectful parenting).

243. HANDLER & HASENFELD, *supra* note 52, at 199; Loffredo, *supra* note 108, at 1338. See, e.g., Sherry, *Republicanism*, *supra* note 33, at 178-80 (arguing that single parenthood is irresponsible and that schools should not allow single teachers who are pregnant to teach because of the negative example it sets for citizenship behavior).

studies have been done on the effects of welfare-work requirements on the children.<sup>244</sup> It is not at all clear that the child will learn about citizenship when the state forces her parent to leave home and deposit the child in whatever day care is available for the poor; supporting parental child-care as a citizenship activity may provide better citizenship lessons.

Furthermore, reform proposals that require work as a citizenship responsibility for poor parents do not address any questions of non-work and parenting among the affluent. With the right of intergenerational transfers of wealth, wealthy citizens can provide enough for their children and not require them to work at "productive" employment.<sup>245</sup> Income unearned by the children will remain with them, and, if invested, will provide continued unearned income. Non-work is rewarded if one is wealthy enough.<sup>246</sup> As discussed above, it seems the true concern of reformers is not non-work per se, but non-work at low-paying jobs by the poor.<sup>247</sup>

The intergenerational effects of a workfare without minimal subsistence highlights another ironic quality of the reformers' proposals. Frequently, reformers indicate that their plan will reduce or eliminate poverty among the children of the poor. The current system, it is argued, perpetuates poverty across generations; children grow up on welfare and then receive it themselves when they have children.<sup>248</sup>

Reform advocates, however, can provide no historically valid argument that lack of governmental dependence leads to independence and ends the generational effects of poverty. To the contrary, the history of poverty is the history of generational dependence on private charity, sparse govern-

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244. See HANDLER & HASENFELD, *supra* note 52, at 199-200.

245. Travel, volunteerism, or artistic pursuits should not count as productive for the wealthy, if they do not for the poor.

246. The possibility of injustice inherent in intergenerational property transfer led Rawls to argue for a strong (but not absolute) system of inheritance redistribution. See RAWLS, *THEORY*, *supra* note 13, at 277-78. See also Krouse & McPherson, *supra* note 162, at 79 (arguing that Rawls' property distribution principles makes his theory far less supportive of traditional capitalism than many critics suggest).

247. See *supra* note 209 (discussing inequalities of Learnfare being applied to only welfare recipients). Cf. Mary E. Hawkesworth, *Workfare and the Imposition of Discipline*, 11 *SOC. THEORY & PRACTICE* 163, 172 (1985) (discussing unfairness of requiring a welfare recipient to pay back her grant through degrading work while exempting other recipients of government largess from similarly degrading repayments).

248. This theme recurs in conservative political rhetoric. See, e.g., Dale Russakoff & Dan Balz, *After a Political Victory, A Personal Revolution*, *WASH. POST*, Dec. 19, 1994, at A19 (box quote of interview with Newt Gingrich).

mental support, and generational disease and squalor.<sup>249</sup> Welfare “as-we-know-it” is a relatively recent attempt to counter pre-existing generational poverty and has had some success when compared to pre-welfare poverty.<sup>250</sup> Never in the history of mankind has the lack of government assistance ended poverty and made for better citizen-workers. Dependency is an historically false argument, paraded about throughout the centuries to argue against any poor relief, but with little evidence to favor it.<sup>251</sup>

Historical considerations are not even necessary to demonstrate the falsity of the dependency argument. Today we have a large group of citizens for whom non-dependence on the government has not ended poverty: single men and women. Single persons receive little to no welfare benefits. The primary federal cash-relief program for the able-bodied, is AFDC, which supports single parents, most of whom are women.<sup>252</sup> The able-bodied poor without dependents are eligible for food stamps, some job-training services, and in some states paltry general assistance payments.<sup>253</sup> Nonetheless, poverty among single persons remains chronically high.<sup>254</sup>

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249. See generally KATZ, *supra* note 220; TRATTNER, *supra* note 171. Charles Murray stands history on its head by arguing in favor of a return to no governmental support for the poor: “How does a poor mother survive without government support? The same way she has since time immemorial [by reliance on friends, family, and charity].” Murray, *The Coming White Underclass*, *supra* note 25. See also William J. Bennett, *The Best Welfare Reform: End It*, WASH. POST, Mar. 30, 1994, at A19. One of the points of the War on Poverty, however, was that such women and their children had been destitute and abused since time immemorial and that condition must change. Returning to such a past is certainly no means of achieving increased human dignity and citizenship.

250. MARMOR ET AL., *supra* note 199, at 96-104 (1990); Danzinger & Gottschalk, *supra* note 25 (discussing positive effects of welfare on the reduction of poverty and debunking idea that welfare has a significant negative effect on work effort). But see Lehman, *supra* note 177, at 708-13 (arguing that the success of welfare programs must be tempered by indications that the successes have missed certain groups, particularly single-parent African-American children).

251. GOODIN, *supra* note 13, at 333-41 (noting that fear of dependency was a significant theme for Thomas Malthus in 19th Century); SAMUEL MENCHMER, POOR LAW TO POVERTY PROGRAMS 96 (1967) (discussing and quoting Benjamin Franklin’s criticism of English poor laws as encouraging poverty); Danzinger & Gottschalk, *supra* note 25, at 32-33 (discussing De Tocqueville’s criticism of poor relief). See generally Fraser & Gordon, *supra* note 210.

252. Around 90% of AFDC families have no father present in the household. 1994 GREEN BOOK, *supra* note 2, at 401-02 (Table 10-27).

253. MARMOR ET AL., *supra* note 199, at 40; PIVEN & CLOWARD, *supra* note 171, at 379-81. General Assistance payments have increasingly met the same fate as other welfare provision, either being completely scrapped or conditioned upon employment. *Id.*

254. The poverty rate for single men has remained 4-5 percentage points higher than for the overall population, fluctuating between 16.9% and 18% from 1979 through 1992. The rate for single women is even higher: 24% to 26% over the same period. Poverty among single African-Americans approaches epidemic proportions of 35% to 37%. BUREAU OF THE CENSUS, U.S. DEP’T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1994, tbl. 733, at 478. These statistics present a sharp

Reformers have to make some pretty convoluted arguments to explain why this poverty exists—such as arguing that most men mooch off of single parents already on welfare—all of which fail to explain the problem.<sup>255</sup>

With strong historical and current evidence against the proposition that ending government dependence will end the cycle of poverty, reformers have a rather weak claim for citizenship indeed. Denial of subsistence is not likely to end poverty, but only make it worse for many who are already in poverty. These people will then be labelled as non- or sub-citizens by their own government, which will deny them even the most fundamental rights cherished by democratic societies.

Instead of denying a minimum subsistence in the false hope of solving poverty, liberalism contends that we should try to conceive of other means of encouraging people to avoid the minimum subsistence in the first place. As mentioned above, liberalism is willing to adopt creative poverty programs, including ones that condition higher levels of benefits. The question is whether some of the suggestions of reformers can be adapted to a liberal structure that also respects equality, freedom, and pluralism.

#### *D. Government Enforcement of Work Above the Minimum Subsistence*

As proposed by reformers, work is a proper goal for governmental poverty programs because work is a commonly accepted responsibility; it is one of “our” precious principles. Given the combination of general support for a work obligation and the general necessity for most citizens to work for self-support, reformers contend that a democratic government can properly require work as a condition for governmental support.<sup>256</sup>

This simple consensus theory of justification for public policy suffers several flaws. First, it presumes that the reformers have correctly divined public attitudes. Yet public opinion is notoriously ambivalent on issues of welfare. While people do seem to want the able-bodied to work for benefits, they also do not believe that people should be allowed to starve.<sup>257</sup> Even if reformers have uncovered commonly held values, there is no certainty that other values do not conflict significantly enough to

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contrast to reformers’ prescription for ending poverty by ending benefits.

255. JENCKS, *supra* note 1, at 87 (refuting Charles Murray’s claim that a mother’s receipt of AFDC fosters non-work by her boyfriend).

256. *See supra* Part II, A.

257. BENJAMIN I. PAGE & ROBERT Y. SHAPIRO, *THE RATIONAL PUBLIC: FIFTY YEARS OF TRENDS IN AMERICANS’ POLICY PREFERENCES* 124-25 (1992); Hugh Hecl, *Poverty Politics, in CONFRONTING POVERTY*, *supra* note 2, at 396, 400-01.



deflate the arguments for workfare.<sup>258</sup>

Second, in a democracy that enshrines protections for minority rights (a democracy that respects the dignity of all members), majoritarian justifications can be particularly tricky.<sup>259</sup> A commonly held belief that gay men and lesbians should not raise children should not justify prohibition of gay and lesbian parenting, just as a generally held distaste for interracial marriage should not legitimate the prohibition of such marriages. Where the majoritarian belief is to be imposed on a minority and involves matters of personal dignity, liberalism requires a closer look into the bases and effects of the policies.

Liberal citizenship does not seek to enforce values simply because they are commonly held, but instead seeks to maintain diverse spheres of values and retain human dignity as a foundational value of citizenship. Its ideal is a society containing several competing spheres, each valued equally but for different reasons. Conversely, its fear is dominance by a particular sphere—dominance that affects the equal status of people as citizens.

With this theory of a pluralism of spheres we can better see the dangers of a welfare program based primarily or exclusively on paid labor. A workfare program that relies on paid labor (or a government substitute designed to imitate and lead to paid labor) for the entry “ticket” to citizenship and equality impermissibly fosters the dominance of a single sphere, labor capitalism, over the sphere of democratic citizenship. Instead of recognizing the equality of citizens *qua* citizens, workfare imposes a work test for citizenship. Rather than standing as a counterbalance to labor capitalism, citizenship becomes a subset of capitalism. Capitalism defines citizenship, with democracy likewise subservient to capitalism’s definition of worth through paid labor: “Only adults with a work connection have moral standing to demand either more government or less.”<sup>260</sup> So while

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258. One can make a compelling argument that the American welfare system operates within a complex cluster of sometimes conflicting beliefs and objectives, including increasing opportunity, poverty reduction, and minimization of “irresponsible” behavior such as non-work. See Lehman, *supra* note 177. This matrix of supporting beliefs often creates contradictory programs and effects, *id.* at 706, and such contradictions may constitute the necessary product of democratic processes. *Id.* at 687 n.7 (citing Richard H. Pildes & Elizabeth S. Anderson, *Slinging Arrows at Democracy: Social Choice Theory, Value Pluralism, and Democratic Politics*, 90 COLUM. L. REV. 2121 (1990)). Yet, despite Pildes and Anderson’s implication that democracy is necessarily incoherent as to social policy, I believe (as argued above) that ideals such as equality and dignity are essential to democracy. Inconsistencies that are subsumed under these concepts are legitimate; but policies that are contrary to these principles are not legitimate, even if accepted by a sufficient plurality (or even majority) of the public.

259. DAHL, *supra* note 137, at 3-24.

260. MEAD, *NEW POLITICS*, *supra* note 1, at 13.

reformers contend that they are advancing the cause of freedom and equality, they are really just subsuming it within the pre-defined structures of capitalism.<sup>261</sup>

Mickey Kaus follows this pattern by implicitly defining equality within the confines of a paid labor system. Yet he also contends that his structure serves as a counter to capitalism's inequalities of wealth and status.<sup>262</sup> Kaus apparently believes that the value of "work" exists independent of labor capitalism. In Kaus' world, the fact that one works hard makes one an equal, regardless of income. Indeed, Kaus believes that work is the only sphere capable of restoring equality to a class-based society.<sup>263</sup>

Kaus' glorification of work is surely a boon for advocates of free capitalism. How fortunate that the source of equality happens also to be the source of capital production, and even better that we can tell people in low-wage jobs "keep on working hard for low pay because that makes you an equal citizen." But has Kaus not missed something about the origins of the work ethic? The work ethic has long been associated with capitalist success, and the moral glorification of economically productive work has been a key component of Western capitalism.<sup>264</sup> When the type of activity one counts as "work" consists of paid labor, the connections between capitalism and hard work are clear. This is not to say that work is not in fact a worthy value, but that work, defined by paid labor, is certainly no antidote to capitalism's inequalities. The inequalities necessary in a functioning capitalism—inequalities stemming from capital accumulation, luck, and an unequal distribution of financial talents—will likely replicate themselves in labor-based citizenship. Kaus' failure to expand his ambit of spheres beyond capitalism and paid labor condemns his theory to supporting labor capitalism's domination of citizenship.

Moreover, it is absurd to believe that the sort of work that the poor will have to do can in any way create dignity, self-esteem, and citizenship. It will likely always be hard, dirty, dangerous, and position-stagnant work. It

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261. Handler and Hasenfeld argue that the history of workfare programs demonstrates that the goal is not so much getting the poor employed as it is reinforcing the work ethic within the dominant society. If the second goal can be achieved without cost to the public, it does not matter that the poor still have neither jobs nor money. *See generally* HANDLER & HASNEFELD, *supra* note 52.

262. *See supra* Part II.A.2.

263. *See* KAUS, *supra* note 1, at 140; MEAD, *BEYOND ENTITLEMENT*, *supra* note 1, at 254-55.

264. MAX WEBER, *THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM* (Talcott Parsons trans., 1958). Indeed, Weber's analysis is especially telling when looking at the Mead-style new moralism of work. For the protestants of Weber's time, an "unwillingness to work is symptomatic of the lack of grace." *Id.* at 159. For Mead, citizenship and freedom replace grace, but the effect is similar.

is low paying, in part, because it has such negative qualities. As Walzer notes, “[s]o long as there is a reserve army, a class of degraded men and women driven by their poverty and their impoverished sense of their own value, the market will never be effective.”<sup>265</sup> Recognition of citizenship must come prior to the valuation of lower-status employment as citizen work. Because the work itself is currently degraded, those forced to do it—the poor—will also be degraded. Such work will not change citizenship status;<sup>266</sup> it will only help the wealthier citizens to get the dirty work done.

Furthermore, without real advances in the democratization of the workplace, it is unlikely that the sphere of work can effectively forge *equal* dignity.<sup>267</sup> So long as there are lords and serfs in the workplace, the unequal social status of work will continue to leak into citizenship. A sphere of work that places people in low-paying jobs with little possibility of control over the enterprise is not a viable source for teaching equality, even if it does enable the employee to support herself. Were Kaus truly an advocate of work as a sphere of equality, he should advocate an aggressive democratization of the capitalist enterprise.<sup>268</sup>

The flaws of having paid labor supply the source for equality and citizenship are most glaring when considering the position of women as citizens in liberal capitalist societies. Women have traditionally been

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265. WALZER, *supra* note 13, at 176. See also KATZ, *supra* note 56, at 182 (“[f]orcing people to work at unrewarding, deadening, or degrading work, as Mead would permit, clearly violates both human dignity and the reciprocity of community . . .” This problem is only exacerbated by the fact that while wages for skilled workers have increased in the last 10 years, wages for the less skilled have fallen. Blank, *supra* note 1, at 186-87. Cf. Hawkesworth, *supra* note 247, at 171-72 (arguing workfare jobs are more likely to degrade participants than to enhance self-esteem). Hawkesworth contends that the focus on workfare subverts questions about whether a person’s freedom is better fostered by choice in the kind and structure of one’s employment. She argues, à la Foucault, that workfare—with its tight bureaucratic controls over recipients—instead serves to discipline and punish the poor who do not conform to the capitalist ethic. *Id.* at 173-76.

266. See ROCHE, *supra* note 1, at 142. Roche contends that workfare will not itself effect social citizenship because it cannot educate recipients on the relationship of workers to society or the role of work in citizenship. If recipients are, as Mead and others argue, imbued with a non-work dependency mentality, it is incoherent and naive to think that employment, and especially the low-wage employment at issue for welfare recipients, can provide a re-education for citizenship.

267. GUTMANN, *supra* note 13, at 188, 203-09; WALZER, *supra* note 13, at 298-303.

268. Kaus must have worked in some very unusual environments to believe that work betokens a sphere of equality. My experiences in larger law firms and universities is just the opposite: class divisions are heightened and reinforced by the job divisions within a work environment. The cleaning staff, support staff, and attorneys or professors may all work hard, but everyone is well aware of where status lies; rarely do fellow workers of different station socialize or “look each other in the eye” with an acknowledgement of equality, as Kaus rather romantically envisions. KAUS, *supra* note 1, at 147-48.

devalued as public citizens precisely because paid labor marks social status: women are given primary responsibility for unpaid family care, both of children and elderly relatives, and have been excluded in law and in fact, from paid labor.<sup>269</sup> Even when women can work at paid jobs, they are handicapped by the double responsibility of family care and work, condemned to perform neither at the level required for full status in citizenship or motherhood.<sup>270</sup> A welfare reform that requires paid labor for entry into citizenship simply perpetuates this double-bind and exclusion of women from full citizenship. Notably, none of the reformers calls on men to assume a caretaking role; the best we hear is that men must pay child support,<sup>271</sup> which, though better than nothing, still reinforces men's superior status as citizen-workers.

Instead of relying solely on work as the source for equality and citizenship, welfare reform should seek to accentuate all spheres of social interaction, with work being one sphere among many. By recognizing that citizenship involves the interrelation of a variety of social spheres, liberalism helps us avoid the trap of a paid-labor workfare.<sup>272</sup> Valuation of several spheres enables different activities to provide entry into citizenship. Recognition of family care-giving as a valuable social activity, one necessary for social harmony, stability, and even perhaps economic productivity can open the way for a citizenship theory broad enough to finally valorize the roles traditionally forced upon women and lead to greater participation of men in family care-giving roles.<sup>273</sup>

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269. See PATEMAN, *supra* note 13, at 185-92; see also Sylvia A. Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1252-61 (1983).

270. The genderization of citizenship and care-giving is concisely, though unintentionally, demonstrated by David Ellwood's question: "Do we want single-mothers to behave like husbands or like wives?" ELLWOOD, *supra* note 1, at 133. That is, are women supposed to work full-time in paid labor or take care of their children? Ellwood's answer is for women to do both part time. *Id.* at 136. Despite what Ellwood's "we" may want, liberalism certainly does not advocate a division of social spheres into husband's and wife's; rather, both men and women should fulfill the two roles. Forcing women into both roles while exempting men from active care-giving (as opposed to simple financial support) only continues the historical subcitizenship of women. See PATEMAN, *supra* note 13, at 196-97; Law, *supra* note 269, at 1318.

271. See ELLWOOD, *supra* note 1, at 155-74; KAUS, *supra* note 1, at 131-32; S. 926, 104th Cong., 1st Sess. (1995).

272. Cf. ESPING-ANDERSON, *supra* note 172, at 35-54 (arguing that social welfare serves essential functions of recognizing citizens as something other than capitalist agents and thus de-commodifies the citizen).

273. Cf. PIVEN & CLOWARD, *supra* at 171, at 393-94 (arguing that the value of communal and family stability provided by stay-at-home welfare mothers is constantly devalued by welfare critics); Suzanne Gordon, *Feminism and Caregiving*, AM. PROSPECT, Summer 1992, at 162 (arguing for a broad

Ironically, welfare in America has been doing this already—though without the full recognition and gender balance required by equality. AFDC was traditionally structured to provide women (originally primarily widows) the means to care for children;<sup>274</sup> care-giving may have been valued less than employment, but at least it was valued. Recent attempts to require paid work of the single parents of very young children<sup>275</sup> demonstrate not progress in accepting women into paid labor—poor women have always had the chance to enter low-quality labor that paid less than men's work<sup>276</sup>—but a decline in the valuation of care-giving.<sup>277</sup>

Instead of allowing the sphere of capital to overwhelm family care, liberalism argues that we should be seeking an increase in the value of care-giving, raising it to the level of paid employment, and strongly encouraging (or requiring, if duties are to be imposed) men to participate in the practice, not just the financing, of the activities. We should treat the sphere of the family as citizenship activity equal to paid labor.<sup>278</sup> In so doing, however, we should not condemn the care-giver to the sphere of family. A theory of liberal pluralism also calls on us to enable the care-giver to move into work when the care-giving is done, to have the education and opportunity to work at paid labor when appropriate. It calls on us to equalize the participation in care-giving and prevent a ghettoization of that sphere. At bottom, what liberal citizenship asks of us is that we strive for a welfare system that enables recipients to achieve self-worth in a variety of spheres, including both child care and paid employment.

The next section explores what sort of welfare policy might best reflect this theory of multiple spheres. Certainly a work-based welfare policy that ignores and discourages other spheres of social action cannot effect the egalitarian and citizenship goals of even its adherents.

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cultural shift to valuing caregiving as equal to work).

274. GARFINKEL & McLANAHAN, *supra* note 1, at 100-07; Law, *supra* note 268, at 1254-61.

275. Congress has progressively reduced the age of the child which triggers a parent's obligation to seek employment, from six years, to three years, to some current requirements to work when the child reaches the spritely, independent age of one. *See supra* note 52.

276. HANDLER & HASENFELD, *supra* note 52, at 33-34; *id.* at 51-57 (discussing ALICE KESSLER-HARRIS, *OUT TO WORK* (1982)).

277. *See* Law, *supra* note 268, at 1281. Not coincidentally, the devaluation of AFDC recipients occurred simultaneously with the participation of African-Americans. HANDLER & HASENFELD, *supra* note 52, at 123. Single African-American mothers were not considered morally acceptable in ways that white widows had been. *Id.* at 206. The combined forces of racism and the moral condemnation of illegitimacy have turned AFDC recipients into citizen-pariahs.

278. *See* Law, *supra* note 268, at 1328-35; Okin, *supra* note 128, at 42 n.42.

## V. SUGGESTIONS FOR WORKFARE IN THE CONTEXT OF DEMOCRATIC CITIZENSHIP

Up to this point, the focus has been on a critique of work-welfare advocates and a resurrection of liberal support for a minimal welfare provision. Within this critique I have discussed some ways in which liberalism can respond to the complaint that welfare, as currently conceived or as envisioned by liberal theory, does not foster good citizenship. I will now try to explicate this response more fully with some references to specific types of programs. This is meant to serve only as a starting point for further investigation of the type of welfare provisions that might foster citizenship consistent with the liberal principles I have espoused. Further work will certainly be essential for developing programs that strengthen democratic citizenship.

Though I have criticized the workfare advocates as illiberal, I do recognize the value of one of their fundamental points: Economic self-sufficiency is an important route to equality, dignity, and freedom. Moreover, economic independence enables free movement among the plurality of spheres and subcommunities that make up the larger democratic community. Programs that foster such independence are vital to a successful welfare system in a democracy, and workfare is certainly one method of achieving this independence. In what context can workfare operate consistently with liberal citizenship?

The initial foundation of the context for workfare, as argued above, is the establishment of a citizenship minimum. This minimum is essential for maintaining other fundamental rights and liberties. It constitutes and creates equal social and political citizenship for economic non-citizens. It also prevents destitution among those for whom other anti-poverty policies, such as workfare, fail.

Nevertheless, the establishment of the citizenship minimum is not itself a sufficient condition for implementing conditioned workfare. It is also essential for the social context of paid labor to approach equality and dignity and to enable the viability of multiple spheres. First, this is done by making employment itself a sphere of dignity. This requires a general economic policy that upgrades pay, especially for degrading jobs often associated with workfare (*e.g.*, road work and cleaning of public facilities). It requires a better structure for mobility among and within jobs, so that entry-level positions can realistically lead to upward mobility. It also requires some democratic control of the workplace, so that the control of

this vital sphere is not solely dependent upon the decisions of capital managers unaccountable to the employees.<sup>279</sup> Welfare-type benefits, such as pensions and health care, must be released from the tight connection to employment that currently creates a caste system between high- and low-wage workers in the areas of medical coverage and income security.<sup>280</sup>

Furthermore, some policy for full employment and aggressive unemployment provision are necessary to realize fully the citizenship values of paid employment. If we are to rely on paid employment as one of the primary sources of self-respect and equal citizenship, then we must try harder to ensure that there are decent jobs for all who are willing and able to work. Full employment policies have been endorsed and enacted in principle by Congress but have not been fully implemented.<sup>281</sup> A policy of aggressive private-sector job creation and public jobs would go a long way toward both relieving poverty and increasing dignity and equality among all citizens.<sup>282</sup>

We must also be prepared to respond to the vicissitudes of a capitalist economy. A cyclical economy prone to booms and busts, or even merely recessionary and inflationary shifts, cannot determine the worth of citizenship and dignity among the marginally employed. A workfare program must be tied to an unemployment system that provides financial benefits parallel to paid wages, training (or retraining) to help workers adjust from their former jobs to available positions, housing subsidies to avoid loss of housing during unemployment (which can result in increased

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279. See WALZER, *supra* note 13, at 116-19, 165-83, 295-303. See also GOODIN, *POLITICAL THEORY*, *supra* note 95, at 91-92.

280. For an excellent analysis of the injustices associated with employment entitlements, see Mary E. O'Connell, *On the Fringe: Rethinking the Link Between Wages and Benefits*, 67 *TUL. L. REV.* 1422 (1993) (hereinafter O'Connell, *On the Fringe*). See also Mary E. O'Connell, *Coming Unfringed: The Unraveling of Job-Based Entitlements*, *AM. PROSPECT*, Spring 1993, at 55. As O'Connell observes, low-skilled workers, particularly domestic and agricultural workers, are disproportionately excluded from essential health and pension benefits. Even for those who do have benefits, the status of one's employment determines the worth of the benefit: 58% of production workers have waiting periods for health benefits, compared to 38% of professional and administrative employees. O'Connell, *On the Fringe*, *supra*, at 1450. O'Connell does not argue, however, that non-workers should receive benefits comparable to workers, but only that society should distribute benefits more justly among workers. *Id.* at 1522.

281. See, e.g., 15 U.S.C. § 3101 (1994). On congressional proposals for full-employment policies, see HARVEY, *supra* note 235, at 4-5; THEDA SKOCPOL, *SOCIAL POLICIES IN THE UNITED STATES* 214-18, 230-49 (1995); Wacquant & Wilson, *supra* note 58, at 100-01.

282. Mead, Ellwood, and Kaus agree on the importance of employment generally and each advocate some version of full employment; Mead contends that the jobs already exist, while Ellwood and Kaus believe some amount of public employment might be necessary. See *supra* Part II.

inability to gain further employment), and relocation benefits for those able to qualify for new jobs.<sup>283</sup>

A liberal-style workfare would therefore be part of an unemployment/job-creation program. These programs would offer a full range of job training, job search, and other employment services. While different programs would be needed for different types of people, from retraining to initial training and education to remedial programs for a few, all should be understood as part of an employment policy for all citizens. Obviously, such programs will have significant costs,<sup>284</sup> but by making workfare part of more general employment programs, these costs would benefit a greater proportion of the community and be more likely to gain political support.<sup>285</sup>

Just as important as employment policies and unemployment programs, however, are child care and child support. As discussed above, a family policy that credits child care with the same citizenship status as paid employment provides an essential component of a liberal society.<sup>286</sup> To achieve this, employment policies must encourage paid leaves for child care, improved access to convenient and reliable day care, and consistent awarding and enforcement of child support payments by absent parents.<sup>287</sup>

Needless to say, these policies should also be central to workfare. Requirements for employment or training participation should be eased for parents of young children—whether dual or single parents. Parenting should be credited as legitimate “work” from the perspective of citizenship, sufficient to qualify for welfare payments even absent full-time paid labor.<sup>288</sup> Indeed, workfare training programs could be coordinated with

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283. See, e.g., Skocpol, *supra* note 71, at 430-31.

284. In 1989, Gary Burtless estimated that successful workfare programs alone cost approximately \$10,000 per participant. Burtless, *supra* note 52, at 138.

285. See Weir et al., *supra* note 221, at 441-42.

286. See *supra* Part IV, C, 2.

287. Theda Skocpol & William J. Wilson, *Welfare As We Need It*, N.Y. TIMES, Feb. 9, 1994, at A21; Weir et al., *supra* note 222, at 442-44. See also Denise F. Polit & Joseph J. O'Hara, *Support Services*, in WELFARE POLICY FOR THE 1990S, *supra* note 52, at 165, 180-82 (showing that availability of day care for poor families has a significant impact on parental employment and the child's cognitive abilities). On child support and welfare generally, see IRWIN GARFINKEL, ASSURING CHILD SUPPORT (1992); Robert I. Lerman, *Child-Support Policies*, in WELFARE POLICY FOR THE 1990S, *supra* note 52, at 219. See also Sara S. McLanahan, *The Consequences of Single Motherhood*, AM. PROSPECT, Summer 1994, at 48, 56-58 (arguing for increased Earned Income Tax Credits for absent parents to pay child support and government-guaranteed minimum support payments for children whose absent parents have no income).

288. See Skocpol & Wilson, *supra* note 287.



parenting, counseling, and assistance programs. By treating parenting and employment as comparable activities in this way (comparable in value to society, though not necessarily comparable in meaning for the individual), workfare would begin to satisfy the liberal goal of equality among spheres and encouragement of multiple sources of dignity.

Another aspect of a multiple sphere approach to workfare is the encouragement of political and community activity among recipients. Almost any concept of democratic citizenship will place political and community involvement at the center of its fundamental values; workfare recipients who volunteer in local community and political organizations evidence some characteristics essential to democratic ideals. Moreover, community activity can provide another route to self-respect and dignity, a route different from paid labor or parenting. A recipient who “works” in a voluntary community program, though not paid, certainly makes as much progress toward ideal citizenship as the recipient who waits on customers at fast-food or retail stores. A liberal workfare program would allow some room for such community activity, either as a legitimate “job” or within some part-time paid employment or part-time volunteer system.<sup>289</sup>

With these policies forming the context for workfare, I would then support a conditioned workfare plan. I agree that for a workfare program to succeed there must be some conditions on its use. Mead and Kaus are correct in identifying conditioning of payments on work as central to the logic of employment. Within the sphere of employment, conditioned rewards are essential, and so long as this conditioning remains within the employment sphere, it is legitimate.

Mead argues for workfare based on the current supply of private employment, supplemented by some social services such as day care.<sup>290</sup> For reasons already obvious, I find such reliance on a generally capitalist market misplaced for guaranteeing employment that builds self-respect. Thus I endorse some system of government-sponsored employment mixed with and structured parallel to private employment. While Kaus presents such an approach,<sup>291</sup> his system retains lower-than-market pay structures that, as I have argued, would retain the indignity associated with dirty work.

Philip Harvey has proposed a somewhat different public employment

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289. For an example of the dignity value of volunteer activity for one welfare recipient, see Vobejda, *supra* note 230.

290. See *supra* notes 34-53 and accompanying text.

291. See KAUS, *supra* note 1.

program that pays market wages and allows for a diversity of jobs, including day labor, so that public works employers retain the option of firing bad employees.<sup>292</sup> Combined with a citizenship minimum,<sup>293</sup> such a program has strong appeal within the theory of liberalism I have advanced. It allows for the operation of incentive structures necessary to employment and essential for the self-development associated with self-support, but it does so without devaluing the participants as second-class citizens by paying them lower wages.<sup>294</sup>

To ensure that such a workfare program complies fully with liberal citizenship, two further principles need implementation: adequate support services and comparable applicability across classes. First, workfare must coordinate a variety of methods of poverty reduction services, including education, training, child care, nutrition, health care, and cash assistance. Part of the reason for this is pragmatic: participants will suffer a wide variety of problems and obstacles to employment—that is why they are not employed in the first place. Multiple methods of assistance are usually the most effective in reducing poverty and dependency generally.<sup>295</sup> Multiple or diverse responses to poverty and non-work also comport with the pluralism of spheres theory of citizenship discussed above: Rather than being funnelled into one method of employment assistance, they should be offered a variety of assistance programs that can be tailored to each person's particular sphere of ability. For example, one person may have trouble working because he has a particularly difficult child-care situation that calls for counseling; another may have health problems that need coordination with medical care; and a third person might have educational deficiencies that require intensive training programs. A workfare structure that does not coordinate this variety of assistance would fail to respond to the equally compelling claims of different people; participants would fail not for lack of effort or "work-ethic" but because of the narrowness of the government's work programs.

In addition to being necessary to the practical success of workfare, governmental support services also constitute a key component for the

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292. HARVEY, *supra* note 235.

293. Harvey rejects a citizen minimum. *See id.* at 22.

294. *But see* Lehman, *supra* note 93, at 238 (arguing that Harvey's proposals run "the great risk of creating a separate worker pool with little movement to the private sector"). Harvey recognizes this problem and advocates prioritizing private employment of the least advantaged and also creation of worthwhile government employment. HARVEY, *supra* note 235, at 62.

295. *See generally* OLIVIA GOLDEN, *POOR CHILDREN AND WELFARE REFORM* (1992); WILSON, *TRULY DISADVANTAGED*, *supra* note 16, at 157; Edelman, *supra* note 2.

legitimacy of compulsory workfare. Requiring work, even in public employment, without offering adequate services amounts to a breached contract. If, as reformers argue, rights imply duties, then the converse is also true: duties imply rights. The duty to work implies a right to support services.<sup>296</sup> Indeed, the strongest card played by reform advocates may be the idea of mutual responsibility: if the state is providing support, then the recipient should work. Frequently the proponents of mutual responsibility characterize welfare provision as a contract between the state and the recipient, and a recent Democratic proposal for reform sought to implement this contractual approach.<sup>297</sup> When the state provides a full range of services and offers dignifying employment, a workfare participant no longer has a claim of external barriers to work. The state can be far more certain that non-work results from choice, and the lack of state support above the minimum attains legitimacy.<sup>298</sup>

It is important, however, not to run too far afield with the seductive idea of mutual responsibility. Even with a well-intentioned system of state obligation, the state still retains all the powers of enforcement. When the state fails to provide education and training sufficient for employment, the citizen has few (if any) options for enforcing the state's obligation. This is especially true if the state's failure is based on inadequate funding by the democratically elected branches. Indeed, the Supreme Court has severely diminished the power of recipients to enforce provisions of federal welfare laws.<sup>299</sup> But when the recipient does not show up for work, the iron fist

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296. See ROCHE, *supra* note 1, at 151-52. Other scholars have advocated similar programs of directly linking the recipient's duty to work with the state's duty to provide support services. See, e.g., KATZ, *supra* note 56, at 164-65; Lehman & Danzinger, *supra* note 25, at 39 (criticizing Mead for failing to advocate the state's obligations as reciprocal to the individuals').

297. S. 828, 104th Cong., 1st Sess., § 102(d) (1995) (Senator Moynihan's proposal).

298. Cf. KATZ, *supra* note 56, at 182 (discussing NATIONAL CONFERENCE OF CATHOLIC BISHOPS, ECONOMIC JUSTICE FOR ALL: PASTORAL LETTER ON CATHOLIC SOCIAL TEACHING AND THE U.S. ECONOMY (1986), and arguing (1) that if society obligates its members to be productive, it must enable people to meet those obligations, and (2) that requiring work at degrading jobs (as Mead does) fails to respect human dignity).

299. See *Suter v. Artist M*, 112 S. Ct. 1360 (1992). In *Suter* the Court held, per Rehnquist, C.J., that the provision of the Adoption Assistance and Child Welfare Act, 42 U.S.C. §§ 670 (1994), that requires states to make "reasonable efforts" to preserve and reunite families was unenforceable by the children who were supposed to benefit from the law. The Court based its holding in large part on the fact that the "requirement" was located in the portion of the statute mandating that states submit a "State Plan" to the Department of Health and Human Services ("HHS") for approval and funding, thus giving HHS full and exclusive powers of enforcement. *Id.* at 1368-69. Since many federal welfare programs are administered under State Plans, *Suter* effectively eliminates any "reciprocity" or enforceable mutual obligation under current law. *But see* Ashish Prasad, *Rights Without Remedies: Section 1983*

of state enforcement can strike quickly to deny all the benefits associated with workfare programs, from medical to housing to food assistance.<sup>300</sup> The disproportionate powers of enforcement render weak the claim of mutuality, and counsel even more strongly in favor of ensuring adequate support provision.

The second factor essential to a workfare program comporting with liberal citizenship is for the obligations deemed central to active or full citizenship also to be required of the non-poor. Mead and Kaus both argue that this is already done: the non-poor work for a living and respect social constraints against idleness and crime.<sup>301</sup> Yet, as mentioned, there is no governmental enforcement of these "social" obligations on the non-poor.<sup>302</sup> The child of a Rockefeller will not be penalized for traversing the world in a dinghy for two years after college, and she will receive full health protection for the various illnesses brought back from her travels. On the other hand, the impecunious "loafer" is forced to forego food, shelter, and health care and may not survive a two-year adventure on the streets of the American city. Though liberal citizenship theory would accept some work conditions for the loafer, it would also require some compulsion of the Rockefeller. This could be accomplished through a variety of means, including a national services requirement for all citizens<sup>303</sup> or a steep tax on the non-labor income and assets of a non-worker, which would tell the wealthy loafer that her non-participation in activities of citizenship require a greater payment of money to the state for the benefit of the active citizenry. These admittedly raw ideas for making citizenship obligations comparable across classes nonetheless express the principles of a theory of citizenship obligation that respects the equal dignity of all citizens.

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*Enforcement of Title IV-D of the Social Security Act*, 60 U. CHI. L. REV. 197 (1993) (arguing that provisions of the child support enforcement provisions of the Social Security Act, 42 U.S.C. §§ 651-669, are enforceable by individuals through 42 U.S.C. § 1983).

300. See HANDLER & HASENFELD, *supra* note 52, at 215-16; Michael Ruston, *Whose Rights of Citizenship?*, in CITIZENSHIP, *supra* note 12, at 228, 231-32.

301. See *supra* Part II.

302. See *supra* note 209.

303. National service might have an added benefit: Direct involvement by citizens in welfare provision could create a bond between those serving and those receiving and lead to a more communal, humanized welfare system better understood and supported by the public. See Richard H. Pildes, *The Unintended Cultural Consequences of Public Policy: A Comment on the Symposium*, 89 MICH. L. REV. 936, 953 (1991). See also Michael Walzer, *Socializing the Welfare State*, in DEMOCRACY AND THE WELFARE STATE, *supra* note 162, 13. I am generally less sanguine than Professor Pildes about the communal or humanizing effects of a national service program.

## VI. CONCLUSION

The above discussion comprises an initial foray into the possibilities for a revitalized liberal workfare plan. Liberal workfare, as I envision it, relies on ideals of citizenship beyond just self-support in a capitalist economy. It relies on a citizenship that includes family care, community activity, and personal involvement in one's workplace. It relies on citizenship applicable to all citizens, regardless of income level or status of employment. But most of all it relies on citizenship founded on the equality, freedom and dignity of all citizens. Certainly more needs to be done to imagine, let alone to realize, a set of programs that can bring equal citizenship to life and combat poverty. And more need be done to rework the liberal theory that this Article attempts to revitalize and apply. Perhaps by keeping our eyes on the fundamental ideals of democracy and human dignity, we can avoid the dangerous authoritarian rhetoric currently dominating (implicitly and explicitly) most discussions of citizenship and welfare reform.