FOCUS

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THE SOCIAL SCIENTIST AS EXPERT WITNESS

by

Jan Blakeslee

Service on advisory committees, presentations at scholarly conferences, testimony before Congress: These are the traditional modes, short of directly entering government service, by which scholars have sought to influence policy. But there is, in fact, another venue where the social scientist has a role to play, one that is gaining increasing significance in American society: the law courts.

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The purpose of FOCUS is to acquaint a wide audience with the work of the Institute for Research on Poverty, by means of short essays on selected pieces of research.

The material in any one issue is, of course, just a small sample of what is being done at the Institute. It is our hope that these summaries will whet the appetite of the reader to learn more about the research itself, and more about other research on poverty—an area of vital social concern—by Institute staff.

The views expressed are those of individual members of the Institute; they do not represent the position of the Institute for Research on Poverty, the University of Wisconsin, the Department of Health, Education, and Welfare, or other funding agencies.

The Law as Policymaker

The Supreme Court decision on school desegregation 25 years ago—*Brown* v. *Board of Education*—ushered in an era in which the law courts have carried an ever-growing share of the burden of social reform and policy change in this country. Even though several current members of the Supreme Court were appointed as "strict constructionists," and think of themselves as not in the business of setting social policy, their own rulings seem likely to increase judicial use of social science evidence and perspectives. It is becoming essential to understand the role and the potentialities of social science in the legal system. What follows is a case study of social science at work in a legal context.

Segregation in Schools and Housing: The Milwaukee Case

Elaboration of the meaning of the *Brown* decision, particularly its applicability to large northern cities, has been a major political issue in the 1970s and a continuing source of cases for consideration by the Supreme Court. In its *Dayton* decision (1977) [1] the Court set forth two criteria intended to clarify the circumstances that it would accept as a basis for citywide school desegregation plans with extensive busing of pupils: (1) intent to discriminate must be determined and (2) the incremental segregative effect of any violations adjudged to arise from that intent must be specified. The second of these appears, probably inadvertently, to have opened the door more widely to social science evidence, for it raised issues at least as amenable to scientific examination as to jurisprudence.

One of the several school segregation cases undergoing post-*Dayton* litigation was recently heard in Milwaukee. The case originated in a suit that was brought against the Milwaukee school system in 1965 but did not come to trial until 1973. In January 1976, Federal Judge John W. Reynolds handed down his finding that the Milwaukee school system was unconstitutionally segregated, and he ordered that a desegregation plan be developed. A phased desegregation plan was approved and put into operation that fall. The decision was appealed, and eventually the Supreme Court returned the case for reconsideration in light of the criteria established in the Dayton case—"whether or not the defendants had administered the Mil-

waukee Public School System with an intent to segregate and what present effects, if any, resulted from any intentionally segregative conduct found by the Court".[2]

The first phase of the rehearing was devoted to the criterion of intent. In June 1978, Judge Reynolds found, as he had in January 1976, that the Milwaukee School Board had administered the school system "with segregative intent" since at least 1950. They had "deliberately separated most of the whites from most of the blacks, and this the Constitution forbids." (The motives of the School Board were, as he pointed out, irrelevant.) He found, too, that School Board policies in the areas of teacher assignment, intact busing, open transfers, and school construction and boundary changes had resulted in a systemwide pattern of deliberate segregation of whites from blacks.

The judge then set hearings on the issue of incremental segregative effects—the continuing consequences of the Milwaukee School Board's past decisions. Only if such effects were found to have current systemwide effects would he, under the *Dayton* criteria, be able to mandate systemwide remedies. Both parties chose to call expert witnesses from the social sciences, thus affording an occasion in which the interaction of research and policy can be observed under rather clearly delimited circumstances. During the summer and fall of 1978, the judge heard evidence from expert witnesses for both sides. This "battle of the experts" pitted the testimony of Robert L. Green, an educational psychologist, Karl Taeuber, a sociologist and urban demographer, and Gordon Foster, a professor of education, against that of William Clark, an urban geographer, and David Armor, a sociologist.

The Evidence for the Plaintiffs

In his analysis of the effects of the deliberately segregative actions of the Milwaukee School Board, Taeuber drew attention to the intimate links between schooling and housing.

Within any metropolitan area, the perceived quality of a residential neighborhood will ultimately be linked to the character of its schools. Realtors recognize this, and frequently in their advertisements identify neighborhoods by school district. The developers of residential housing know that the location and timely opening of new schools may profoundly influence the pace and profitability of their projects. Urban planners and community organizations seeking to maintain or improve older central city neighborhoods fight to keep the schools open. People may be willing to travel some distance to work, or for shopping and recreation, but as long as the school a child attends is determined by the district in which that child lives, housing and schooling—and thus the composition of a neighborhood—will remain intimately connected. In Milwaukee, Taeuber observed, "there was a continuing reciprocal interplay between schooling and housing such that the highly concentrated black ghetto and the highly concentrated portions of the school system grew up together, and the reciprocal influence on the white areas produced solidly white residential and school areas."[3] He argued that the discriminatory actions of the school officials were an underlying cause of this total pattern of segregation. The examining attorney then explicitly introduced the issue that emerged from the criteria established in the *Dayton* case. What would have happened, he asked, had the Milwaukee School Board not engaged in intentionally segregative practices?

"There might be," Taeuber answered,". . . substantially less school segregation, substantially less housing segregation, and substantially improved race relations in all aspects of life and society in Milwaukee."

To provide a basis for that opinion, Taeuber reviewed the four general types of intentional discriminative policies that had been identified by the judge: teacher assignment, intact busing, open transfer policy, and school construction and boundary chages. He indicated how each of these school policies affected residential segregation in Milwaukee. Taeuber's analysis was directed at systemwide effects, and at the general attitudinal and psychological consequences of the Board's efforts to keep blacks and whites apart.

Teacher assignment. In 1950 there were 9 black teachers, all teaching in the 4 schools with black majorities. By 1965 there were 478 black teachers, and four-fifths of them were assigned to one-fifth of the schools—those with a majority of black pupils.

Suppose that for the past 30 years, Taeuber suggested, blacks had been affirmatively recruited to teaching and administrative positions in the public schools and had been assigned in a nonracial pattern. Pupils and parents both would have had first-hand experience with black teachers. The educational system by direct example would have taught that blacks and whites were equally capable of scholarly attainment and administrative responsibility, and of working together in harmony. More teachers might—as some teachers do—have chosen to live near their schools, thus retarding the growth of segregated neighborhoods.

Intact busing. If a school was overcrowded, or undergoing repairs, or otherwise unable to accommodate all the pupils assigned to it, children were bused to another school. If white children were involved, the students were ordinarily absorbed into the normal classes and activities of the schools to which they were sent. But black students bused to predominantly white schools, in contrast, were sent as an intact class unit, with their own teachers, under control of the school that sent them. Separate treatment was in several instances extended as far as the setting of separate recess times and denial of access to school lunch programs. And the numbers involved were not trivial. About half of Milwaukee's mainly black elementary schools, and nearly half of its white elementary schools, were directly affected during at least one semester by the intact busing program.

Public controversy over intact busing became intense in the 1960s. Taeuber asserted that the intact busing program and the ensuing controversy taught white citizens that the school system was going to great lengths to protect them and their children from contact with blacks. Black citizens learned that even in the highly structured situation of a public school they were not welcome to participate on an

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LOANS FOR BLACK BUSINESS

by

Roberta Kimmel

The notion of business development as a partial cure to the economic condition of blacks is not a new one, but black leaders have never unanimously agreed that business ownership is an effective instrument of economic success. The violence and civil disorders of the 1960s, however, spurred strong interest in programs to develop and promote both urban black business and black-owned and controlled financial institutions that attracted members of all points on the political spectrum. The goals of these programs, broadly stated, were to integrate the ghettos into the economic mainstream of American life, to raise the living standard of ghetto residents, and to give blacks greater economic self-determination.

In a new study, *Financing Black Economic Development,* Timothy Bates and William Bradford clear the air of numerous misconceptions about the recent progress of black businesses and financial institutions and the problems that have beset their development.[1] Much of the volume is given to empirical analysis of black-owned and controlled banks and savings and loan associations—institutions that, it is made abundantly clear, are given shape and substance by the banking habits of the black clients they serve, by the unique characteristics of black entrepreneurship, and by government-sponsored financial intermediaries. The questions addressed in this article concern the last influence: What role has the government played as financial intermediary for black entrepreneurs, and what policies can help develop and expand black businesses in the future?

From Builders to Bankers

An active black entrepreneurial class has long existed in this country. Even in the days of slavery there were black-owned businesses, most of them in the North, which dealt primarily in the building trades or personal services such as food catering. From the period after the Civil War until around the turn of the century, notable strides were made by black banking and insurance ventures. The business activity stimulated by World War I in the nation in general peaked in the 1920s—the most successful period for black businesses. Black corporations sprang up, producing merchandise that ranged from chemicals and household appliances to movies. That decade also gave rise to black building and loan associations, real estate agencies, and import and export houses, not to mention a variety of wildcat schemes. Between 1900 and 1940, progress was steady but, in contrast to earlier times, limited almost entirely to a segregated market. Black businesses that had previously served whites exclusively, such as deluxe barber shops and catering firms, went under in the face of keen competition from whites; in manufacturing, the problem of steep competition was exacerbated by a dearth of technical efficiency and access to capital. Since World War II, banking and insurance have again become the most impressively successful fields of black business endeavor. Other large businesses that have established healthy bases include bus lines, chain grocery stores, cosmetic firms, record companies, and machinery manufacturers, to name but a handful.

Capital Markets and Business Development

In various surveys of black business conducted in 1944, 1964, and 1968, several constants emerged. Black firms were (and still are) typically small, labor-intensive, service-oriented enterprises requiring little capital and concentrated in a small number of industries. Traditional lines of business include barber shops and beauty parlors, restaurants, groceries, cleaning and pressing shops, shoe shine and shoe repair shops, and funeral businesses. This pattern is changing with the addition of many newer black firms of types that frequently require large injections of capital. These Bates and Bradford describe as emerging lines of business. Examples are manufacturing, wholesaling, contracting services, retail apparel, and retail furniture. The stimulus for these new kinds of operations, the authors hypothesize, may lie in government programs that suddenly generate a large increase in the availability of business loans and encourage black entrepreneurs to break away from their traditional operations. Bates and Bradford predict that "if capital markets remain open, the black business community of the future may be characterized by a relatively greater number of large firms competing effectively in all lines of business."

There is a large difference in rates of profit between traditional and emerging lines of black enterprise; this implies to Bates and Bradford that financial capital is not being utilized efficiently within black inner-city areas. They suggest that ghetto businesses might prosper more if financial intermediaries existed to facilitate the flow of funds from overcapitalized to undercapitalized segments of the black business community.

Government as Financial Intermediary

The most active government agency to serve as a financial intermediary for minority businesses has been the Small Business Administration (SBA). The SBA's lending effort, however, has evolved in a direction that Bates and Bradford see as detrimental to the development of viable black businesses, as a survey of the programs shows.

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FINANCING BLACK ECONOMIC DEVELOPMENT

by

Timothy Bates and William Bradford

Academic Press (September 1979)

Prior to 1964 the SBA made no concerted effort to reach out to potential minority borrowers. In that year an experimental program was initiated that offered loans with a 6-year maturity and a $6,000 ceiling to assist disadvantaged owners of very small businesses. The following year that program was replaced by the Economic Opportunity Loan program (EOL). EOLs had more generous terms (15-year maturity, $25,000 ceiling) but, rather than being specifically aimed at minorities, they were vaguely conceived to aid "those who had been denied the opportunity to compete in business on equal terms." From 1969 to 1972 about two-thirds of all SBA loans to minorities were EOLs, but the value of the government's minority enterprise program remains seriously in doubt (an issue we will discuss at length in a later section).

Project OWN, established in 1968, sought to increase the proportion of minority business owners by stimulating increases in private-sector lending to these entrepreneurs. Guaranteeing bank loans was its *modus operandi.* In 1969 the Nixon administration renamed the program Operation Business Mainstream and made two changes: (1) loan approval procedures were simplified and a simplified guarantee arrangement with banks was instituted, and (2) the proportion of equity financing required of a borrower was lowered for minorities, and rules prohibiting loans to finance a change in ownership were relaxed. As a result, loans to minorities under the Mainstream program increased steadily. Still, the number and amount of *minority* loans as percentages of total SBA loans have declined since 1970, at the same time as the loan dollar volume of all SBA programs has increased over threefold.

The Office of Minority Business Enterprise was established in 1969. One of its first efforts was to launch, in conjunction with the SBA, the concept of the Minority Enterprise Small Business Investment Company (MESBIC). MESBICs are privately owned, privately managed corporations licensed by states. They have four objectives: (1) to provide venture capital by purchasing an equity interest in minority businesses, (2) to lend long-term capital to minority businesses, (3) to guarantee third-party loans, and (4) to provide general management and technical assistance. The general consensus is that MESBICs have promised a great deal more than they have delivered. Most of them, Bates and Bradford observe, are unable to handle the risk inherent in financing small minority businesses, and they often generate a negative cash flow while waiting for their investments to pay off. Their tendency to avoid the equity investments they were mandated to provide, and instead to favor loans, has denied businesses the significant development opportunities that had been heralded.

Order forms for FOCUS and other Institute publications are at the back.

SELECTED PAPERS

Timothy Bates, "The Potential of Black Capitalism," Institute for Research on Poverty Reprint no. 102.

Timothy Bates, "Employment Potential of Inner City Black Enterprise," Institute for Research on Poverty Reprint no. 151.

During the period 1965-1969, 30% of the SBA's business loan volume represented loans that were originated and funded by banks, and guaranteed against default risk by the SBA. By 1973 that proportion rose to 82%. One might ask what difference it makes where the businesses get their money from, so long as the loans are made. Minority business borrowers face a serious disadvantage in their dependency on the (predominantly white) banking industry to approve their loan requests. In times of tight money, such as 1974, the loan applications of black borrowers face heavy competition from big corporate borrowers. Moreover, when loans are obtained, they are under much harsher interest and maturity terms than those granted directly by the SBA, and hence that much harder to repay.

The Economic Opportunity Loan Program

The EOL program provides relatively small loans. In 1973, for example, the average loan was about $19,800; under all other SBA programs the average was $61,200. It is, however, marked by incredibly high rates of repayment failure and delinquency. Bates and Bradford examined loan application information for a sample of 554 black SBA loan recipients (in New York, Chicago, and Boston and for a comparison group of white recipients).

Their analysis consistently revealed both a low predicted probability of repayment (based on loan application information) and a very high actual incidence of delinquency: 70.2% of all *de novo* black firms—those starting from scratch—proved delinquent or defaulted; this type of firm clearly presents the worst risk. Ongoing firms under present ownership for less than nine months are worse loan risks than established firms.

In its present form, Bates and Bradford believe, the EOL program presents a paradox:

> The strongest loan recipients frequently succeed in business but these entrepreneurs come from high-income groups and they should thereby be disqualified. . . ; the truly disadvantaged loan recipients fail in droves.

Another problem is the poor set of criteria that are used to evaluate EOL and other government programs for financ-

ing minority businesses. Rather than looking at the number and dollar amounts of loans given directly or guaranteed, Bates and Bradford recommend that these programs be assessed in terms of (1) the number of firms that are assisted and remain viable, and (2) the economic value to the minority community of the various types of businesses assisted (for example, whether a significant number of new employment opportunities be generated by a loan).

Nonetheless, they found that "the EOL program was chiefly responsible for the high overall incidence of firm failure observed among government-assisted minority enterprises"—a failure rate that seriously undermines the credibility of the entire federal effort to finance minority-owned businesses.

What is the solution? Bates and Bradford suggest that if the SBA refused to lend to applicants whose probability of default exceeded some acceptable cutoff point, then the character of its lending would change and a chain of events beneficial to both the program and the borrowers would ensue, namely: (1) *de novo* firms would receive fewer loans; (2) the EOL program would be appreciably diminished; (3) non-EOL loans to ongoing and existing firms would increase; (4) the incidence of loan delinquency and default would drop sharply; (5) the SBA would not be financing the creation and perpetuation of a high proportion of nonviable and marginally viable firms; and (6) additional loan funds would be freed to finance a greater number of more viable minority-owned businesses.

Summary

The great progress in loan availability to black entrepreneurs in the 1960s has dwindled in the 1970s. The SBA has increasingly promoted black entrepreneurship via a reliance on guaranteeing bank loans against default risk, rather than through direct loans. Consequently, black borrowers have been forced to obtain loans at much higher interest rates. MESBICs, designed to provide venture capital to minority businesses, have in fact made only very small equity investments.

The credibility of government programs has been eroded by the high delinquency rates among borrowers because of the EOL philosophy which requires them to be bad credit risks, combined with recessionary conditions of the 1970s. The result was sharp cutbacks in EOL loan approvals to minorities, declining from a peak of 5,791 loans in 1972 to 2,551 loans in 1976. Bates and Bradford make a strong case for concentrating direct loan and loan guarantee efforts on businesses with reasonable repayment prospects. Tradeoffs are then inevitable: Some potentially successful operations will be denied the long-term credit that could make the difference between success and failure; *de novo* firms, which present the greatest credit risk, also offer larger incremental employment opportunities than do established firms undergoing a change in ownership. Therefore, the authors recommend some flexibility in establishing a cutoff point for approving loan applications whose probability of delinquency or default appear high.

FORTHCOMING INSTITUTE BOOK

October 1979

Erik O. Wright, **Class Structure and Income Determination**

For non-Marxists, Marxist social categories are largely unexplored territory. Erik O. Wright, a sociologist in the Marxist tradition, has made a systematic effort to bridge the gap between that theoretical perspective and the growing body of quantitative studies of social and economic inequality. His basic theme is that class, defined not as an aggregation of individuals but as positions within social relations of production, plays a central role in mediating income inequality in advanced capitalism. Wright pays particular attention to those locations in the class structure, such as managers and supervisors, which do not fit neatly into the traditional class categories of Marxist theory (i.e., workers, capitalists, and the self-employed petty bourgeoisie). He argues that in order to understand income inequality it is necessary to examine the specific structural mechanisms through which income is determined within each of these different class positions.

Working with data from the Michigan Panel Survey of Income Dynamics, the Survey of Working Conditions (1969), and the Quality of Employment Survey (1973), Wright undertakes an intensive empirical analysis of class as a predictor of income, comparing its effects with those of occupational status, education, race, and sex. His results demonstrate conclusively that class has a systematic and pervasive impact on income inequality, and that to ignore the social relations of production in social science research is to ignore one of the fundamental dimensions of inequality in capitalist society.

This book will be available from the publisher, Academic Press, 111 Fifth Avenue, New York, New York 10003.

The role of black-owned and controlled banks and savings and loans as financial intermediaries for black entrepreneurship is beyond the scope of this article, but it is treated fully in *Financing Black Economic Development*. The potential of these banks, especially via the relatively low risk medium of SBA guaranteed long-term loans to established, community firms, is viewed by Bates and Bradford as particularly instrumental to the future of black enterprise. ■

[1]Timothy Bates is an associate professor of economics at the University of Vermont; William Bradford is an associate professor of finance at Stanford University Graduate School of Business.

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equal basis. A great opportunity to teach racial tolerance was lost, and an enduring lesson in intolerance taught instead.

Open transfer policy. From 1960 to 1970 the Milwaukee school system allowed students to transfer freely from school to school, provided that space was available. Toward the end of the period, students wishing to transfer were not required to give reasons. Open transfer, of course, was a weapon that blacks could—and did—use to gain access to white schools; but it was also used by white students to escape attendance at schools that had large numbers of black students.

The effects of such a transfer program on housing patterns are varied, but in the long run the most important housing market impact comes from the increasing black percentage as white pupils transfer out of schools. The result is to make the school racially identifiable and to dry up the demand by white families for the housing vacancies that do occur in the neighborhood. In Milwaukee no policies directed at maintaining racial balance in the schools were instituted. Such policies might arguably have slowed or halted the development of solidly black ghettos.

School construction and boundary changes. Judge Reynolds had already ruled that the steps taken by the Milwaukee School Board to ease overcrowding and provide new facilities were designed to preserve as clear a border as possible between black areas and schools and white areas and schools. Taeuber suggested that no other boundary system within a city is as crucial to residential behavior as is the system of attendance zones delineated by the school authorities. Thus, the shifting school boundaries take on a larger purpose: They are used by public agencies and private persons to demarcate the shifting boundaries between racially identifiable residential areas.

The Evidence for the Defendants

The expert witnesses called by the lawyers for the Milwaukee School Board explicitly rebutted the generalist approach of Taeuber and his colleagues[4]:

> The untested claims of Drs. Green, Taeuber and Foster with respect to psychological attitudinal effects transcend the bounds of the task assigned this Court. The only issue presented is what the racial distribution of the school population would be today, not what psychological harm might have been caused and not what attitudinal concepts might have been developed because of the violations.

The Court, they argued, must determine "the present incremental effects of the constitutional violations found on a school-by-school basis, by comparing the present pupil racial composition of the schools to what would have existed had no violations occurred." Any other approach, they argued, failed to respect local school autonomy; it was as much a violation for a federal court arbitrarily to impose its will on local government as it was for that local government to violate the rights of a minority student group.

The defendants, then, sought to move the battleground from what they considered a speculative—they called it "presumptive"—ground to a "factual" zone based in strictly quantitative terms. Their intent was to limit the scope of judicial intervention to those individual schools for which specific consequences could be determined. Witnesses for the plaintiffs, they charged, had made no attempt to quantify the incremental effects of violations on the basis of detailed study of the facts and circumstances in Milwaukee; their evidence, presented in such terms as "substantial" or "not minimal," was by implication "unscientific." The witnesses for the defense sought to quantify changes in segregation through use of two common social science "segregation indices"—the dissimilarity index and the exposure index. They tabulated their findings for the effects of transfers, faculty distribution, intact busing, and boundary changes on a school-by-school basis in terms of percentage changes in these indices.

The basic defense challenge to the claim of systemwide impacts was Armor's claim that "the level of segregation that would exist in the school system in 1975-76 if all students attended schools based upon the 1950 boundaries, grade organizations and feeder patterns is virtually identical to the actual 1975-76 level of segregation." In other words, they would show that the School Board's policies over a quarter of a century had made barely one iota of difference in the racial distribution of Milwaukee schools in 1975-76. Thus, according to Armor, there was no currently measurable impact of all of the direct and indirect effects postulated by the plaintiffs.

The defense witnesses considered the issue of the reciprocal effects of housing and schooling, charging that Taeuber's opinion fell "within the realm of speculation and conjecture with no hard evidence to support it." Clark presented an updated revision of his previously published simulation study that sought to explain the development of the black residential concentration in the city of Milwaukee. Armor added a simulation of the effects of personal residential preferences of blacks and whites for living near persons of their own race. They concluded that at most a "residual of 15-20%" of racial segregation could be attributed to discrimination of all types, including private housing market discrimination. Thus, the actions of the Milwaukee School Board had made only a trivial contribution to the total set of causes of the existing school segregation.

The defense argued that the plaintiffs had thus failed to meet a burden of proof that was by law incumbent upon them—they could not demonstrate that the actions of the School Board had produced "significant present effects in identifiable schools in the system" in Milwaukee. There was, therefore, no ground upon which the Court could act to require "strong affirmative integrative programs."

The Judge's Findings

Somewhat ruefully, one suspects, Judge Reynolds commented that "the so-called 'battle of the experts' has required the Court as factfinder to . . . evaluate almost entirely contrary sociological and urban geographic theories."[5] Nor could he merely avoid choosing among the

competing theories, for in his judgement "the manner in which the Court has viewed the expert testimony . . . is in turn determinative of the outcome of the case." Federal judges are, of course, well versed in the assessment of conflicting evidence; even so, the task at hand might be considered a daunting one, given the highly technical nature of much of the argument. How the judge, then, chose to resolve the issue is of some interest to those concerned with the interaction of social science and social policy. And social policy—the future shape and direction of the entire Milwaukee school system—was very much at issue here.

Judge Reynolds's first line of march through the issues was legal. The arguments of the defendants, he noted, did not accord with his own reading of the Supreme Court decisions set out in such cases as *Keyes*[6] and *Dayton,* which deal with *de facto* segregation in school systems. After a court has demonstrated both past deliberate segregative acts and present systemwide segregation, he declared, the defendants in any such case must demonstrate conclusively that their actions did not create or contribute to the current segregated condition of the schools. Furthermore, if a school system failed to take affirmative action to end *de facto* segregation (a condition that both sides acknowledged to exist in the Milwaukee system) , then that school system rendered itself liable to the imposition by federal courts of a systemwide remedy. Legally, then, the onus of proof was on the defendants, not the plaintiffs.

Judge Reynolds then bypassed some of the methodological controversy by rejecting the defendants' argument that the *Dayton* case mandated a school-by-school analysis of the entire Milwaukee system. He cited *Keyes:* If deliberately segregative policies were found in a "substantial portion" of a school system, it was only common sense to conclude that a dual system existed. Thus, he rendered irrelevant much of the specific analysis of individual schools in which the defendants' witnesses had engaged. They were, he commented, taking far too narrow a view of the intent of the law and of the evidence; they were, furthermore, ignoring his own earlier findings that systemwide violations had been demonstrated to exist in Milwaukee.

Judge Reynolds's second line of march took him right through the thicket of competing sociological perspectives. He rejected the argument that only quantitative evidence—"hard data"—was relevant to his decision. "Any 'alternative universe' created, whether by plaintiffs' or defendants' experts, will necessarily be an approximation. . . . Consequently, the use of a term like 'substantial' . . . by a person whose expertise qualifies him to make a judgment . . . is all that is reasonably possible."

With this comment, the judge undercut much of the elaborate methodological apparatus erected by the defendants. Furthermore, he dismissed evidence based on the simulations of housing patterns as incomplete because it did not disprove competing interpretations.

These decisions, grounded in a choice among social science perspectives (rather than among technical details) as well as in law, in the judge's own values, and in his broad interpretation of the powers of the court, had, of course, major consequences. They allowed the judge, in his decision of 8 February 1979, to adopt the arguments of the expert witnesses for the plaintiffs in support of his findings that "the systemwide intentional discrimination . . . of the Milwaukee public school system . . . necessitates imposition of a systemwide remedy." For instance, he agreed with Taeuber that a school-by-school approach failed to take into account that individual School Board actions may have ramifications—especially psychological and attitudinal consequences—far beyond their impact on the immediate school or schools at which they are directed. The defendants had argued, for example, that intact busing did, after all, bring numbers of students of one race into contact with students of another race, and that therefore the busing could not be considered a segregative act. To make such a claim, Reynolds commented, is to ignore the nature of the contact. He saw no reason why he should not use the "broad and flexible equity powers" of the court to fashion a remedy to cure the adverse psychological effects of the School Board's actions.

Conclusion

In the Milwaukee case, the technical and empirical details of the social science evidence can hardly be said to have been the decisive factor in the decision: A liberal judge, disposed to interpret broadly the powers of the federal courts, had already gone on record as believing that the Milwaukee school system was in law segregated by race, and had already imposed systemwide remedies. He was asked by a higher court to reconsider. Could he have been otherwise convinced the second time around by expert witnesses for the defense? Given his belief that the law placed the onus of proof in such cases on the defendants and not on the plaintiffs, such a change seems unlikely, for it is in fact possible—especially in the area of segregation and discrimination—for equally qualified social scientists to read the chains of cause and effect in very different ways. What the evidence did provide, it appears, was more in the nature of a perspective, a clarification and an airing of the issues in relatively impersonal terms rather than through heated exchanges of anecdote and personal opinion.

But another aspect of the case is perhaps, in legal terms, equally important. The written record of a decision carries some force of precedent in law. Material incorporated as evidence may, therefore, have an influence considerably beyond its influence in the immediate legal decision. In the Milwaukee instance, the judge's findings of fact incorporated, in large part, the social science evidence adduced to the case by Taeuber and his colleagues. Such evidence is, therefore, likely to have reverberations in future decisions.

For those anxious to bring to bear upon policymaking the perceptions and the understanding derived from the social sciences, the courts emerge as a venue where the stakes, but equally the risks, may be very high. An adversary system can often be a winner-take-all system, and one individual—the judge—has very great powers.

NEW INSTITUTE SPECIAL REPORTS

SR 22 *Labor Supply and Social Welfare Benefits in the United States.* A report prepared for the National Commission on Employment and Unemployment Statistics, by Robert J. Lampman.

Since the end of World War II, public program benefits for social welfare have more than doubled as a percentage of GNP. Increasing concern has been voiced over the degree to which these health, education and welfare benefits discourage market work by recipients. This report addresses that issue by posing the following question: Would the current labor supply be larger than it actually is if the post-1950 increase in social welfare spending had not occurred, and, if so, by how much?

The author looks first to theory and then to empirical studies. He divides the social welfare system into two elements: (1) the lump-sum grants and the guarantees in earnings-conditioned grants, all of which add to the nonlabor income of beneficiaries; and (2) the taxes that go to finance the benefits and the benefit reduction rates in earnings-conditioned benefits, all of which combine to reduce net wage rates. In total it is estimated that the 1976 labor supply might have been 7% greater than it actually was, if social welfare expenditures were at their 1950 level. The effect is greatest for women and aged persons.

Better knowledge of the increasingly tentative and transitional nature of work for certain people may lead labor market analysts to design measures of unemployment that reflect more accurately the complex set of factors that determine an individual's labor market behavior.

SR 23 *Potential for Planned Experimentation in the DOL Regulatory Area.* A report prepared for the U.S. Department of Labor, ASPER, by Stanley Masters et al.

The objective of this study was to provide the Department of Labor with information on the feasibility of conducting experiments to assess the effects of possible changes in three of its regulatory programs—the Occupational Safety and Health Administration (OSHA), the Employee Retirement Income Security Act (ERISA), and the Office of Federal Contract Compliance Programs (OFCCP). The authors focus on two important issues: (1) the identification of specific policy questions relating to these programs that are amenable to experimental research and of sufficient importance to warrant undertaking such research; and (2) an examination of important design issues, including the specification of experimental treatments and outcomes, the duration of the experiment, the unit of analysis, and the prospects for cooperation from affected firms and workers. The findings are based on a review of the literature and discussions with government officials, labor and management representatives, and many leading policy researchers.

The authors find that there is considerable interest in experimentation with regard to the three regulatory programs. The most appropriate topic for experimentation in OSHA appears to be variation in targeting strategies; other possibilities include varying the average probability of inspection and/or reinspection, and providing incentives for the formation of effective labor-management committees on workplace safety and health. For ERISA, the most promising topics are variations in what plan administrators are required to report to the government, what they must disclose to enrollees, and variations in Pension Benefit Guarantee Corporation (PBGC) premiums. In OFCCP, the prime issues are variations in targeting of compliance reviews, possible financial incentives for government contractors who have good Equal Employment Opportunity (EEO) records, and possible training subsidies for those with weak EEO records.

A Postscript: The Milwaukee Settlement

In fact, the outcome in Milwaukee can be considered encouraging. Faced, on the one hand, with the prospect of pursuing an expensive and distracting legal battle, and on the other with the prospect of a desegration plan imposed by a federal court (as had been the case in Boston), both parties to the Milwaukee case presented to the Court on March 1, 1979, a jointly devised plan for remedying the patterns of segregation now existing in the Milwaukee schools. Thus the school system retains its autonomy, and the plaintiffs in this case—civil rights and affirmative action advocates in Milwaukee—secure written commitments to a course of action that is designed to maintain racial balance in the school system, and that is enforceable through a jointly appointed, permanent monitoring board that has the authority of the courts behind it.[7] ■

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[1] *Dayton Board of Education et al.* v. *Brinkman,* 45 U.S.L.W. 4910, 4915.

[2] "Settlement Agreement," U.S. District Court, Eastern District of Wisconsin, 1 March 1979, p. 2.

[3] Taeuber's testimony formed the basis for K. Taeuber, "Housing, Schools, and Incremental Segregative Effects," *Annals of the American Academy of Political and Social Science* 441:157-67.

[4] The following account is drawn from the defendants' post-trial "Memorandum of Law . . . and Proposed Findings of Fact," submitted to U.S. District Court, Eastern District of Wisconsin, 8 December 1978.

[5] This account is drawn from the "Findings of Fact, Conclusions of Law, and Decision and Order," issued by the U.S. District Court, Eastern District of Wisconsin, 8 February 1979.

[6] *Keyes* v. *School District No. 1, Denver, Colorado,* 413 U.S. 189 (1973).

[7] "Settlement Agreement," U.S. District Court, Eastern District of Wisconsin, 1 March 1979.

THE COMMUNITY ACTION PROGRAM: A STIMULUS TO BLACK POLITICAL LEADERSHIP

by

Jan Blakeslee

The prime years of the Community Action Program (CAP) of the federal War on Poverty lasted less than half a decade, and assessments of its impact have been generally rather gloomy. Faced with a choice between two community action aims—ordinary (and politically safe) service delivery or institutional change and political mobilization (abrasive and challenging to established authorities) —most CAPs, it has been argued, opted for the former, and at best provided a few jobs in the ghetto. Those, perhaps the most visible and publicized, that sought political or institutional change all too often found themselves locked in contentions with local government agencies.

A number of commentators, including Daniel Patrick Moynihan, had speculated that CAP might have one enduring monument: its contribution to the dramatic emergence, in the late 60s and early 70s, of a corps of experienced, influential, black political leaders, particularly in the cities. Peter Eisinger, professor of political science and member of the Institute for Research on Poverty, set out to test this hypothesis. His findings make it clear that we must in some measure revise the pessimistic estimate of the Community Action Program.

The Community Action Program

The program was first established under the Economic Opportunity Act of 1964, basically as a "catch-all" for projects to combat poverty: All sorts of programs, ranging from birth control through day care and consumer education to community organizing, could be funded through it. In addition, many CAPs engaged in political activity, especially pressing local governments to take greater account of the needs and desires of minorities and the poor. At its peak, the program encompassed over a thousand community action agencies; 75% were located in predominantly rural areas, but two-thirds of the funding went to urban CAPs and in the public mind it was with the inner city that CAP programs became identified.

In 1967 CAPs were stripped of their independence from local government; when OEO was abolished in 1974 those that survived came under the Community Services Administration. Their role since that time has been minor.

CAP in the Careers of Black Elected Politicians

Elected politicians, to be sure, constitute only a portion of the leadership in the black community, but a focus on their careers offers a reasonable starting point in any investigation of the effects of CAP.

In the summer of 1977, telephone interviews were held with a national sample of 210 black elected officials, representing 9% of all black mayors, aldermen or city councilmen, and state representatives who held office in 1970 or in 1976. Eisinger sought answers to three main questions.

1. *Did significant numbers of black elected officials have experience in CAP before their first election?*

The data showed that some 20% of the entire sample had been involved with CAP in one way or another, and on average for nearly four years. Many others had had experience with Headstart or in various other federally funded programs. The incidence of prior community action experience among black elected officials had steadily increased over time, suggesting that the influence of CAP has been more than a short-run, superficial phenomenon.

2. *Do those who had CAP experience differ in any important ways from other black politicians?*

The chief difficulty in answering this question lies in the fact that most of the 210 respondents had a multiplicity of preelection experiences that might have provided political visibility, training, and support. Nearly three-quarters, for instance, were significantly involved in the civil rights movement, and about one-quarter had been members of local government commissions or boards. Despite these overlapping categories of experience, however, Eisinger was able to isolate certain differences: CAP-trained officials tended to come disproportionately from the urban segment of CAP, and were substantially more likely to enter politics at the state level. The data in general suggest that CAP provided an avenue to public service for a particular generation of young and relatively well-educated activists.

3. *Did CAP experience actually serve as a training ground for leadership?*

Eisinger points out that those who aspire to elective office face a number of preliminary tasks. They must establish a public identity; they must acquire skills that will carry over into elective office; and they must acquire support for their efforts—organizational resources and manpower. To a significant extent CAP seems to have performed all three functions. For instance, the overwhelming majority of those officials who had served in CAP did so in the same town in which they had later successfully run for office, and many former CAP board members believed they had gained both personal recognition and administrative or policy-making experience there. Elected officials formerly with CAP tended also to rely rather more on grass-roots organizations than on established party structures for political help.

Why are those black elected officials with CAP experience to be found disproportionately in state office? Eisinger

(continued on page 14)

INCOME-TESTED VERSUS UNIVERSAL TRANSFER PROGRAMS

An Institute Conference held in Madison, Wis., March 15-16, 1979

Eleven papers were commissioned (titles, authors, and discussants are listed below). Each author was assigned the task of asking what social science analysis and knowledge could contribute to settling the arguments in current debate about the merits of income-testing in transfer programs. The issues of that debate are laid out in the accompanying article.

Conference participants—77 in all, including authors and discussants, drawn both from the academic community and from the public policy arena— struggled with the issue for two days. Not surprisingly, given its very basic nature, the sessions stimulated lively discussion and elicited strongly held views.

An Analysis of the Economic Efficiency and Distributional Effects of Alternative Program Structures: The Negative Income Tax Versus the Credit Income Tax by David Betson, David Greenberg, and Richard Kasten
Discussants: Henry Aaron, Edward Gramlich
Taxpayer Behavior and Administrative Principles of a Credit Income Tax by Jonathan Kesselman
Discussants: Joseph Pechman, Earl Rolph
The Welfare Economics of the Two Types of Programs by Efraim Sadka and Irwin Garfinkel
Discussants: Kenneth Arrow, Peter Diamond
Approaches Toward Universality and Recourse to Selectivity in American and European Social Policies: The Longer View by Arnold Heidenheimer and John Layson
Discussants: Robert Lampman, Harold Wilensky
Income-Tested Versus Universal Programs by Gordon Tullock
Discussants: Larry Orr, Benjamin Page
Stigma in Income-Tested Programs by Lee Rainwater
Discussants: Vernon Allen, Alvin Schorr
The Effects of Universal and Income-Tested Programs on Social Cohesion by James Coleman
Discussant: Christopher Jencks
Services In Kind by Brian Abel-Smith
Discussants: Eveline Burns, Martin Rein
Income Testing in Income Support Programs for the Aged by David Berry, Irwin Garfinkel, and Raymond Munts
Discussants: Alicia Munnell, Lawrence Thompson
Universal Versus Income-Tested National Health Insurance by Stephen Long and John Palmer
Discussants: Karen Davis, Barbara Wolfe
Single-Parent Households Under Alternative Transfer and Tax Systems by Harold Watts, George Jakubson, and Felicity Skidmore
Discussants: Robert Lerman, Judith Cassetty

THE ISSUES AT THE CONFERENCE

In the United States in 1979 it would be hard to find anyone who would disagree with the view that it is the responsibility of government to ensure a certain minimum level of living below which no one should be allowed to sink. (This is not, of course, to say that there is agreement concerning what that level should be.) Government can meet this responsibility in either or both of two ways: (1) by providing minimum standards of income, goods, and/or services for the poor, or (2) by providing them for everyone regardless of income.

The income support system of the U.S. today is a hybrid. It does both. AFDC, Supplemental Security Income (SSI), Food Stamps, and Medicaid are restricted to those with low incomes (income-tested). Public education, Social Security, and Unemployment Compensation are open to people regardless of income (non-income-tested).

The two types of program have different objectives, and different economic and non-economic effects. But income support policy has been characterized by piecemeal changes to one part of the system, then another, without any serious, general consideration being given to the kind of system that over the long run we really want to achieve.

In the belief that systematic thought about the ultimate objectives of our income support system is long overdue, the Institute for Research on Poverty held a two-day conference on March 15 and 16 of this year. The subject of the conference:

> *Should future reform of our income support system move in the direction of more or less income-testing?*

The facts of the matter are clear enough: The non-income-tested programs in our income support system dwarf the income-tested components—not only in total size, but also in the amount of benefits they provide to the *poor* and the number of people they lift out of poverty (Figure 1). It is also true, however, that since the new social policy initiatives of the War on Poverty and the Great Society, income-tested programs have increased in relative importance.

We now face a critical question: Should we continue to increase our reliance upon programs that restrict their benefits to those with low incomes? Or should we in future reforms work to reduce the role played in our income support system by income-testing? Let's take a few for instances:

- *The aged.* The major benefit programs for the aged are Social Security (non-income-tested but past-earnings related) and SSI (a federal income-tested benefit program for the aged whose Social Security entitlements and other income are insufficient to lift them out of poverty). Our society has clearly made a substantial commitment to caring collectively for our elderly. But should future policy efforts be directed toward expanding SSI or toward revamping Social Security to provide a non-income-tested guaranteed minimum?

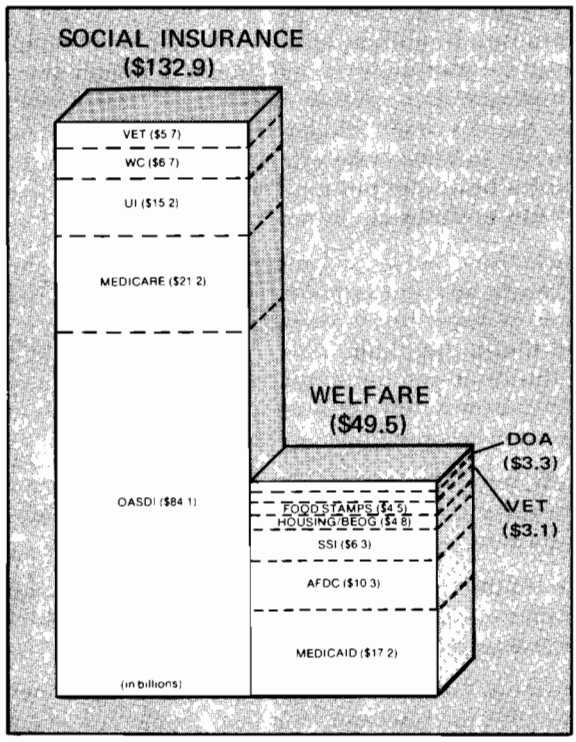

Figure 1
Estimated Social Insurance and Welfare Benefits, FY 1977

Source: Joseph A. Pechman et al. *Setting National Priorities, the 1978 Budget.* Washington, D.C.: The Brookings Institution, 1977.

Note: DOA represents child nutrition and other Department of Agriculture programs; VET represents Veterans' programs, both income- and non-income-tested.

- *Single-parent families.* The major income support program for single-parent families is what most people think of as the archetypical welfare program, AFDC. Although there is more argument about the scale of society's responsibility to this group than there is with respect to the aged, most people would agree that some income support specifically designed for these families is here to stay. It does not have to be income-tested, however. Why not replace AFDC with some form of social insurance program to which all single parents and their children are entitled?

- *Health insurance.* It is interesting to note that we now have two public programs that subsidize health care costs—one for the aged (Medicare), one for the poor (Medicaid). The program for the aged is not income-tested; the program for the poor, by definition of course, is. Why are we pursuing both approaches simultaneously in the health area? And how can we reconcile them, or choose between them, as we move in the direction of some form of national health insurance?

HOW DID WE GET HERE? A BRIEF HISTORY

The debate over the merits of income-testing is not new. In this country it goes back at least to the debate on free public education, in which it was settled in favor of free education for all. In the case of the 1935 Social Security Act there was no clearcut resolution. The legislation that finally passed included two non-income-tested components (Old Age Insurance and Unemployment Insurance) and three income-tested ones (Aid to the Blind, Aid to the Aged, and Aid to Dependent Children).

In principle, however, the architects of the act support the non-income-tested social insurance approach. They designed the act in full expectation that as these programs matured, the "welfare" components would shrink. It is, of course, old history how wrong they proved to be.

In the 1960 Presidential election the issue was again joined, this time over national health insurance. In 1965 Congress again compromised, giving us both Medicare and Medicaid. As the 1960s wore on, the many proponents who agreed on the need for more generous and more widely spread income support again split on the issue of income-testing, the debate taking the form of whether to favor a negative income tax or a children's allowance. By the end of the 1960s income-testing looked as if it had won the day in both academic and policy circles. President Johnson's Income Maintenance Commission recommended a negative income tax. And President Nixon's unsuccessful Family Assistance Plan (FAP) was essentially a negative income tax for families with children.

FAP was never enacted. Other income-tested programs were, however, and grew dramatically through the sixties and first half of the seventies. Congress enacted Food Stamps in 1964, Basic Educational Opportunity Grants (BEOG) in 1965, Medicaid (as already mentioned) in 1965, Supplemental Security Income (SSI) in 1972, the earned income tax credit in 1974.

But it should not be forgotton that the War on Poverty also led to dramatic increases in the non-income-tested social insurance programs. In addition to Medicare, Congress created the Black Lung Program, substantially liberalized Unemployment Insurance (UI) and enacted major increases in Old Age, Survivors, and Disability Insurance (OASDI) benefits on six separate occasions.

So income support policy since the Great Depression has had a split personality with regard to income support—going for income-testing on some occasions, non-income-testing on others.

The Arguments

There are five major arguments usually advanced by opponents of income-testing:

Stigma. Income-testing, so the argument goes, inflicts social humiliation (stigma) on those who are already at the bottom of the heap. A major cost of participating in "welfare" is loss of pride. So much stress in this country is placed on economic success and "making it," that to declare oneself poor is as good as proclaiming oneself a failure. Do we want to be in the business of demeaning certain members of society and, even more, do we want to be fostering the kind of negative self-image that must almost certainly reduce the victim's effectiveness in working toward economic independence?

Social Cohesion. Opponents of income-testing argue that programs which require beneficiaries to divulge their (low) income status in order to receive benefits accentuate the division between the haves and have nots. Those who are above the income eligibility line can recognize and potentially condescend to those who are below. Those who are dependent on the benefits recognize and resent the condescension—all of which raises the level of alienation in a society.

Relative Political Support. Some who proselytize against income-testing are convinced that the American people are disposed to be more generous *to the poor* if the vehicle for their generosity is a program that is not income-tested as such. The main evidence they adduce for this is that the poor receive more from the social insurance programs in this country than they do from the income-tested ones.

Economic Disincentives. Advocates of non-income-tested programs point out that in most income-testing situations, the poor face higher tax rates on any income they earn—that is, for any dollar they make they lose a higher proportion of any benefit they may be receiving—than the IRS levies on any taxpayer's earnings, however high.

Administrative Efficiency. It is argued that income-testing imposes higher administrative costs: A complex bureaucratic structure is necessary to determine people's income status and financial needs. This is both expensive and administratively inefficient.

These, then, are the major arguments usually put forward against income-testing. Income-testing, of course, has its advocates too. The most important arguments made in favor of it are economic.

Income-tested programs are asserted to be a more efficient means of helping the poor. The efficiency argument has two interpretations.

Target Efficiency. The first is that income-tested programs favor the poor. The concept underlying this assertion is the economic concept of target efficiency. This simply measures the proportion of total benefits of a given program that goes to the poor. If budgets are fixed, it is obvious that income-tested programs will reduce poverty more than non-income-tested programs—to give benefits to all out of a given budget is to waste benefits on those who do not need them. Suppose, for example, that a $5 billion surplus was all that was available in a given year for transfer expenditures in the U.S. In this circumstance, poverty is reduced most by using an income test. To forego its use is to spread the comparatively small sum of $5 billion over such a large number of people (more than 215 million) that gross benefits would amount to less than $25 per person. If the same $5 billion were expended so that only those with incomes below the poverty line benefitted, the U.S. poverty gap would be cut by nearly half.

Productivity. The second interpretation maintains that total production (measured by some aggegate like GNP) would be lower under a non-income-tested income support system than under an income-tested one. The basis for this is the argument that allowing all the nonpoor to receive benefits will reduce the work effort of this much larger and more productive group.

Finally, those who come out on balance in favor of income-testing also argue that both the stigma and social cohesion effects of income-testing are trivial at most.

How did the conference assess these issues? Let us take the arguments, considering first the social, and then the economic aspects.

Stigma. Do income-tested government transfer programs carry with them serious, negative, psychological consequences for the recipients? Lee Rainwater undertook to assess this argument. His conclusion was that actual evidence for and against was weak, but that what does exist suggests that these programs generate unfavorable attitudes toward and hence differential treatment of participants, and that participants themselves come to share society's negative attitudes toward themselves.

There was certainly no consensus regarding the extent to which means testing is *by definition* stigmatizing. It is not beyond the realm of possibility, for instance, that SSI—designed to be stigma free—may someday succeed in fulfilling that promise. It was pointed out during the discussion of health services that a program to which all have *de facto* access will be free of stigma, if those rendering the service are unaware of the income status of those receiving it. Thus, there is no inherent reason that a health scheme to which some people contribute and some do not should be stigmatizing to the latter group.

There was little doubt among conference participants that current income-tested programs (AFDC, Food Stamps, and to a lesser extent SSI) do stigmatize their beneficiaries to some degree (there was less agreement as to how much). There was also agreement that stigma is undesirable.

The general sense of the conference was that one should presume income-testing stimulates more social humiliation than does universalism, and that the burden of proof should lie, therefore, with the means-testing approach.

Social Cohesion. The assertion here is that the distinction income-testing creates between beneficiaries and nonbeneficiaries accentuates class divisions and exacerbates the alienation of those who need the benefits from the rest of society. Assessment of the evidence for this assertion was the task of James Coleman—who provided arguments and some (admittedly weak) evidence to the ef-

fect that both income-tested and non-income-tested programs may have negative effects on social cohesion. Income-testing produces class cleavages; non-income-tested programs require much more of society's business to go through government hands and thus split society between the governed and the governing. The evidence he provided for the former was public opinion polls, for the latter the political experience of Eastern Europe.

The ensuing discussion cast particular doubt on the relevance of the Eastern European experience. It was also pointed out that social cohesion was a somewhat slippery concept and that the existence of a division of opinion could not itself be taken as evidence of a threat to social cohesion. Absence of conflict may also mean absence of a relationship and therefore of the possibility of cooperation.

Relative Political Support. This is the argument that the American people will, in the long run, be more generous with their tax dollars if they believe that all, rather than merely the bottom few, are being helped. Gordon Tullock was assigned to examine these issues. His paper and the ensuing discussion made it pretty clear that there is no defensible general scientific basis for or against this argument. How generous societies are with respect to income, goods, or service programs seems to depend, rather, on the unique historical circumstances of a specific program or reform proposal.

The arguments so far have all turned upon social issues. Here, the verdict from the evidence presented at the conference was ambiguous, except in the case of stigma. Equally important, and it might seem inherently more subject to resolution, are the last four economic arguments: those revolving about work disincentives and, above all, efficiency, both economic and administrative.

Economic Disincentives. The first one is the most straightforward. No one quarreled with the notion that benefit reduction rates in income support programs are equivalent to tax rates on income received. Nor was there disagreement that an income-tested program that reduces benefits by some proportion as income rises so as to confine benefits to those below a certain income level inflicts higher tax rates on the poor than on most of the nonpoor; in consequence, it penalizes them for working more than the tax system penalizes the rest of us. The economic component of this is that we reduce their relative incentive to work. The moral component is that we stack the decks against them in "making it" the way Americans are supposed to make it, through work—thus exacerbating already existing inequalities of opportunity.

But although income-tested programs by their nature lead to regressive tax rates in the tax-transfer system, it was pointed out at the conference that non-income-tested programs do not assure against regressivity. Programs which provide benefits to rich and poor alike can in principle be financed by an equally regressive tax structure. Moreover, non-income-tested social insurance programs like Old Age, Disability, and Unemployment Insurance impose high benefit reduction rates on earnings, and therefore have some of the regressive features of income-testing.

Target Efficiency. The second assertion about efficiency was—that under income-testing, resources go where they are needed most. Obviously, a greater proportion of income-tested benefits go to the poor than non-income-tested benefits. But the superiority of income-testing in this respect only holds in cases where the budgets available for the two kinds of program are identical. Two papers, those by David Betson et al., and David Berry et al., addressed a different case—where total budget varies, but the social minimum (guarantee or maximum benefit) provided by the two kinds of program is the same, and found the opposite result.

Productivity. The third assertion about efficiency—that total production or GNP would be less under non-income-tested than under income-tested income support—was also addressed by two sets of authors, David Betson et al., and Efraim Sadka et al. Contrary to the conventional wisdom on this issue, both papers concluded that providing the social minimum to all irrespective of income may result in higher GNP than will an income-tested system. The reason for this apparent inconsistency is straightforward: The conventional method of analyzing this issue is to include the labor supply effects of income support on its beneficiaries, while ignoring the labor supply effects of the positive taxpayers who support the system. These conference papers present the first attempt to analyze the effect of income support on GNP within the appropriate framework—whether it is more productively efficient to have high tax rates on low- or high-income families.

The papers and the discussion that followed added up to the conclusion that here, as in some other areas, there is no clear victory for one side or the other. What is clear is that the results depend on many factors—including labor supply effects of high-income wives, on which there are as yet no good data, and on whether and how leisure is incorporated into the production measure. The overall sense of the conference was that the differences, in any case, seemed so relatively small that the decision whether to income-test or not would have to rest on other grounds.

Administrative Efficiency. One of the attractive features often noted in favor of non-income-testing with respect to cash programs (in particular in the classic contrast between a credit income tax (CIT) and a negative income tax) is that a CIT minimizes incentives to alter or misrepresent earning or family composition behavior. Jonathan Kesselman was given the job of assessing this claim; he concluded that administratively it was indeed superior, even when the complicating factors of a surtax on high incomes and variations of treatment among individuals (categorization) were introduced.

For the most part his analysis was not challenged on substantive grounds. Indeed nearly all economists, regardless of political persuasion, believe that a comprehensive tax base is desirable on both equity and efficiency grounds. The objections sparked by his paper had to do with the political feasibility of a credit income tax. Proposals for a credit income tax assume a comprehensive tax base—that is, *all income* is taxable. Yet the political prospects of moving to a more comprehensive tax base do not look good.

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Recently, in fact, the tax base has been steadily eroding. Participants remained divided as to whether a CIT with or without a comprehensive tax base would or could become more politically feasible in the future than it appeared at present.

Specific Cases

When the conference turned from consideration of income-testing in general to considering it in specific contexts, a much wider and more decisive consensus was reached. Three papers assessed the relative merits of income-testing in income support for the aged and for single-parent families, and in a national health insurance program.

The David Berry et al. paper on alternative methods of aiding the aged poor concluded that one cannot predict a priori which groups in the aged population will benefit from income-testing. As has already been mentioned, if guarantees are held constant, income-tested programs provide less income for the poor, and more for the rich, than do non-income-tested programs. But if earnings-replacement rates for the upper-income aged are held constant along with costs to the nonaged, income-tested programs bring about higher incomes for the poor.

One interesting aspect of the discussion which followed the paper is that many participants thought that, in contrast to the general credit income tax, a non-income-tested approach to aiding the elderly poor might now be politically feasible.

The paper by Watts et al. tackled head-on the vexing issue of income support for single-parent families. They argued convincingly that preferential treatment of the single-parent family by the tax-transfer system (whether within an income-tested or a non-income-tested framework) creates incentives for the parent who is not the primary caretaker to abandon responsibility, and that this is against society's interest. In this context, the income-testing/non-income-testing issue became translated into the need for a child support insurance program which reinforced the financial responsibilities of both parents (whatever their income level). A consensus appeared to develop that this was a promising way simultaneously to provide more support to children in single-parent families and minimize adverse incentives created by more generous treatment of single-parent families.

Stephen Long and John Palmer compared the current health care system with prototype reform proposals that focus on the income-testing issue. Their conclusion was that cost control as well as several other objectives would be better met by plans that provide coverage to all the population. It was more problematic whether benefits within a program with universal coverage should be income-tested. The formal discussants and the ensuing discussion from the floor found no quarrel with this assessment.

What did all this add up to? There are probably as many answers to this question as there were participants at the conference. One thing, however, was clear. Although conference participants were in general agreement that the short-run feasibility of grandiose reforms was slim, and that even presentation of them for public consideration might (recalling McGovern's $1,000-a-person proposal in 1972) actually set back the cause of reform, they ended the conference much more willing to reexamine their basic assumptions on the income-testing issue than they had been when they arrived. The panelists charged with summing up the conference detected an emerging consensus that all the discussion taken together suggested that (1) income-testing in the current system may have assumed too prominent a place, (2) in future reforms the presumption should be in favor of reducing reliance on income-testing, and (3) the onus of proof to the contrary should lie with those on the income-testing side of the debate. ■

The Community Action Program

(continued from page 9)

speculates that urban CAP activists may have gained special insights during their involvement in the poverty program into the limitations of city government as an instrument for social change. The often deeply antagonistic relationship between local governments and CAP may have marked city government as a hostile environment in which to launch a career. Furthermore, although the poverty populations that were the target of CAP agencies may have been considered too narrow a base for city office, their residential concentration made them ideal constituencies for the support of legislative representatives.

Leadership development was not a planned function of the Community Action Program. It evolved over time, and could not have been evident at the point when the initial rather gloomy assessments of the program were made. But to the degree that CAP trained a significant portion of a generation of black political figures and provided them an entree into political life, its influence is likely to endure long after its modest service delivery innovations and community organizing efforts have been forgotten. ■

Peter Eisinger, "The Community Action Program and the Development of Black Political Leadership," Institute for Research on Poverty Discussion Paper no. 493-78.

DUE PROCESS UNDER LAW: WHERE DOES THE SOCIAL SERVICE CLIENT STAND?

by

Stephen Wittman

Can a welfare agency cut off aid to an unmarried woman who has a child or conduct midnight raids to see if she has a man in the house? Can public housing project managers use confidential police and financial records to check on the moral character of prospective tenants? What are the rights of a student facing expulsion from public school? The growth of an enormous social services bureaucracy with great administrative discretion and a highly dependent clientele has raised grave issues of legal rights and consumer protection.

In *Protecting the Social Service Client,* Joel Handler explores, clearly and concisely, with a wealth of concrete examples, the delicate relationship between an agency's legitimate needs for flexibility and discretion, and a client's equally legitimate constitutional protections.[1] Too often, he shows, the relationship is an adversary one, and too often the client's rights are inadequately respected. Handler discusses the history of due process protection in this area; he suggests legal and structural remedies for the existing system, and examines those reforms that have been instituted over the last decade. Extending and completing the studies presented in *The Deserving Poor: A Study of Welfare Administration* (with Ellen Jane Hollingsworth) and *The Coercive Social Worker: British Lessons for American Social Services,* this volume is addressed not only to advocates for social service and welfare clients, or to those who must deal with health agencies, but also to social workers and other professionals in those agencies, and especially to those who make policy.

Procedural Rights Versus Substantive Rights

To explore the legal rights of the client of social services we must first distinguish between administrative or procedural justice, on the one hand, and substantive justice on the other. The former is the concern of Handler's study:

> The Due Process Clause [of the Constitution] grants certain kinds of procedural rights to protect the legal interests of life, liberty, and property, but the clause itself does not establish these substantive interests; they must be found in other provisions of the Constitution or . . . in statutes.

What does this distinction mean, in the context of social services? Very simply, the substantive right of a citizen to financial aid in time of need is established in welfare and social security legislation, but those acts do not necessarily guarantee that any specific individual will obtain his or her substantive rights. Due Process only guarantees that individual citizens will be treated fairly in their efforts to maintain—or obtain—these rights.

The watershed case for social service clients was *Goldberg* v. *Kelly* (1970), in which the Supreme Court ruled that the Due Process Clause applied to welfare hearings, and that a welfare recipient was entitled to a fair hearing before, rather than after, benefits were terminated. A procedural right was thus established, complementing the substantive rights dictated by the Social Security Act that created Aid to Families with Dependent Children (AFDC). The ruling was at first hailed as a milestone in the struggle for legal protection for those dependent on social services. It was followed, however, by an enormous increase in all conflict-resolution systems within the social services. AFDC has had an eightfold increase in hearings and other agencies have experienced similar increases since the *Goldberg* decision. The administrative difficulties later caused the Supreme Court to retreat from their earlier position and reduce the procedural formality necessary in social welfare hearings.

The states, too, have demanded that the Department of Health, Education, and Welfare relax its hearing rules, and Congress has called for a reexamination of Social Security Administration hearings as well as those in other regulatory agencies.

There is presently general dissatisfaction with existing methods of client protection; at the same time, impending reform in a number of existing social welfare programs (e.g., Food Stamps, public employment and wage subsidy programs) and new legislation in areas such as national health insurance and income maintenance have been proposed. It is thus timely to review the complex of issues concerning client protection in social welfare systems and suggest new approaches to the problem. Handler uses as a focal point Title XX, the federal social services program enacted in 1975, but the issues apply more generally to numerous social welfare programs.

The Implications of Title XX

The enactment of Title XX represents the culmination of nearly 20 years of amendments to the Social Security Act[2]—amendments that embodied changing and at times contradictory philosophies and goals of social services as much as they represented efforts to reform delivery of those services.

The stated goals of Title XX reflect compromise among several political groups, social service agencies, and professional groups, Handler relates:

> (a) the hard-line congressional goal of 'achieving or maintaining economic self-support to prevent, re-

PROTECTING THE SOCIAL SERVICE CLIENT: LEGAL AND STRUCTURAL CONTROLS ON OFFICIAL DISCRETION

by

Joel F. Handler

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duce, or eliminate dependency;' (b) the proposed (1970) Title XX goal of 'preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests;' and (c) the traditional social work goal of 'preserving, rehabilitating or reuniting families.' Other goals include preventing or reducing 'inappropriate institutional care,' securing referral or admission to institutions, and providing institutional services.

Title XX's broadly stated goals and authorized services—services that are both public and private—create a huge amount of administrative discretion. Succinctly stated, discretion gives officials choices; it is the opposite of fixed, clear-cut rules and conditions. In the context of Handler's study, it "refers specifically to the conditions imposed by social workers upon the recipients of social services."

To be sure, discretion is a double-edged tool, as Handler is quick to point out. Consider the case of public housing, which can be allocated either on the first-come, first-serve basis, within measurable limits of eligibility (e.g., family income level and family composition) , or as part of a general "family rehabilitation" plan. The first method, because it employs relatively concrete, objective rules, involves a minimum of discretion. The latter scheme is likely to involve loose goals, such as preventing family stress or arresting family disintegration, that are subject to individual interpretation; discretion is thus maximized. But at the same time special conditions of hardship can be taken into account—for example, families facing discrimination in the private housing sector because one or more members are disabled, or because the head of household has a work history of frequent layoffs.

Routinization can unintentionally affect client behavior in undesirable ways. A cut-and-dried income requirement for public housing may prompt an applicant to decrease earnings; eligibility based on family composition may induce a shifting of adults and children within and among families that is often socially undesirable. Another example is the current welfare system, with its numerous incentives for families to split up and poor, female-headed households with children to be created.

SELECTED PAPERS

Ronald P. Hammer and Joseph M. Hartley, "Procedural Due Process and the Welfare Recipient: A Statistical Study of AFDC Fair Hearings in Wisconsin," Institute for Research on Poverty Reprint no. 320.

Irving Piliavin, Stanley Masters, and Thomas Corbett, "Administration and Organizational Influences on AFDC Case Decision Errors: An Empirical Analysis," Institute for Research on Poverty Discussion Paper no. 542-79.

Discretion and Due Process Protection

What, exactly, is the social services claimant entitled to? What are his legal rights under the law as it now stands? The law, Handler concludes, has established that the claimant is entitled to be treated "fairly"—a slippery term—and that he has certain procedural rights. To these we will turn shortly. What he does not have, Handler stresses, are substantive rights that attach to him as an individual. He should be treated equitably in seeking public housing, for example, but if there are no units left, he still does not get one. Similarly, a great many Title XX benefits are scarce; if they are to remain real benefits, they cannot be infinitely divided. Discretion enters as the agency sets policies for allocation. An individual's claim cannot be considered a right if it is subject to a discretionary decision.

Where opportunities for official discretion exist, potentials for abuse and unequal treatment of clients abound. And as Handler makes abundantly clear, discretion exists at every point in the complex social services structure. As one moves from enabling legislation through the three- and four-tiered bureaucracy to the caseworker level, informal discretion builds on formal, legally delegated discretion, becoming ever more pervasive.

Administrative behavior is not completely unfettered, of course. Agencies must pick and choose among programs to be funded. Administrators, supervisors, and caseworkers have professional and bureaucratic norms; they have their own sense of what is lawful and proper under the laws and regulations. But such constraints on discretion arise, for the most part, outside of the legal framework: They are matters of administrative grace, not imposed by law, and therefore they will not serve as legal protections for aggrieved clients. Except for gross maladministration, the reviewing courts will not correct agency decisions because there is very little in the statutory framework that says what the agency or the caseworker is doing is out of bounds.

Problems with the Fair Hearing System

Under the system as it now exists, therefore, almost the entire burden of protecting clients' rights falls upon the fair hearing system; yet there are severe constraints on this form of protection. It is most successful in protecting the individual, Handler says, when the client has information about his rights and the resources to pursue them, but most clients lack one or both. The client is also likely to be most successful when his problem is a short-term one that does not require continuous monitoring or repeated discretionary decisions. If he has to maintain continuing relations with welfare officials, then the *fear* of retaliation—of having services withheld—may chill the pursuit of justice.

Moreover, concessions granted by a social service agency to one client do not set precedents for other clients. As a result, the fair hearing system allows the agency to respond to those complaining clients who are most able to help themselves—at the expense of those who may be in greater need of help.

What routes can HEW and the state Title XX agencies take to improve client resources and enhance client protection?

Strengthening Fair Hearings

First, Handler suggests, they might strengthen the fair hearing process. Title XX funds could be used, for instance, to strengthen the capacity of the Legal Services program which, despite its serious caseload problems, could be used in test-case litigation, in service cases, and to train paralegal or lay advocates for social service clients. A related possibility is to make greater use of the Judicare program, under which private attorneys take cases for the poor and are paid by the government according to fixed schedules. The private bar can also be utilized for "*pro bono*" activity—or legal work for a reduced or no fee. Law school clinical programs, citizen information centers, and education programs are yet more ways to "democratize" legal knowledge.

Alternatives to Adversary Representation

Is adversary representation the only route? Handler believes that it is not. As an example, he examines the role of the Wisconsin AFDC State District Director System, which existed until 1968. One of the weaknesses of the fair hearing system is that it lays sole responsibility for developing a claim on the welfare client. Under the district director system, in contrast, the government supplied the resources for investigating the factual and legal matters of the dispute that resulted in informal mediation. This form of investigative mediation has also been used in a variety of other contexts; the ombudsman system, for instance, is used to investigate all kinds of citizen complaints. Mediation and arbitration lend themselves to a variety of settings and might be especially effective as supplementary mechanisms for settling disputes between social services and their clients.

Legal and quasi-legal remedies are but one approach to client protection. Closer to the core of the problem are efforts to improve quality control and to strengthen management supervision, and these should be encouraged as a means of controlling discretion. Management's interest in ferreting out and correcting violations serves to vindicate client rights as well. In practice, however, there are severe problems in devising and implementing effective management and quality control systems within the social service context, and Handler notes that these problems pose significant dangers to clients. The two chief difficulties are devising accurate standards by which to measure the performance of an agency, and gathering the information necessary to find out whether the standards are being met. The vague, rehabilitative purposes and objectives of Title XX and other social service programs make them difficult to gauge. Moreover, determinations about the kind of information needed are themselves discretionary, and how this information will be used and disseminated is also at the discretion of administrative officials. The issue becomes one of an invasion of the client's privacy as well as that of the client-caseworker relationship.

Structural Alternatives

Rules and the organization of services also affect discretion. Vague statutory language creates discretionary authority. Although clearly stated rules may reduce much discretion, at the same time they can work against clients. The client's case may not fit the rule; more loosely drawn language allows for greater flexibility. Formulating specific rules is not an easy task, and it may not be appropriate or feasible for many social services. Nevertheless, Handler argues that there is far too much discretion created in many of the social service rules.

Organization and Delivery

Organization of the social services delivery system—the extent to which various agencies are coordinated or integrated—is another area where Handler suggests changes might be made to protect the client. Title XX avoids the issues of centralization versus decentralization by leaving the matter, at present, up to the discretion of the states and HEW. But the call for integration continues, particularly as the result of the recommendations of the National Conference on Social Work Task Forces on the Organization and Delivery of Human Services in its 1976 report, *Current Issues in Title XX Programs*. The task force envisaged a system under which a "case manager" would be the principal eligibility officer, receiving and evaluating applications, designing and managing the case plan, arranging for its delivery, and then evaluating the results. But, Handler warns, if this scheme is implemented, the case manager will have enormous discretionary power, and the client family will be extremely dependent on him.

No Easy Solutions

Problems of contolling discretion and protecting dependent clients are not readily amenable to simple solutions. Little is known about the motivations of field-level officials or of the feelings and perceptions of their clients. A high degree of discretion will always be useful if social service programs are to function compassionately on behalf of their consumers. Therefore, in Handler's words, "the challenge is to avoid simplistic approaches and to try to experiment with flexible alternatives that seek to adjust conflicting interests and needs." Opportunities now exist for both government officials and client advocates to make sensible and meaningful reforms in client protection.

Poor people are more reliant than the rest of the population on social service agencies, and so the problems of administrative justice are especially acute for them. But the issues addressed in this study have much wider applicability. Veterans, Social Security recipients, taxpayers, students—all of us, in fact—are likely to find ourselves at one time or another confronting a representative of a government agency who has the discretionary authority to grant or withhold benefits. ■

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[1]Joel Handler is Professor of Law at the University of Wisconsin and a Fellow of the Institute for Research on Poverty.

[2]Amendments were passed in 1956, 1962, 1967, and 1970.

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