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Beyond Legal Rights? The Future of Legal Rights and the Welfare System

Paul K. Legler*

I. INTRODUCTION

Poverty policy has been subject to intense scrutiny over the past decade. Some commentators have concluded that our poverty policy has been a complete failure and that the programs and laws which were designed to alleviate poverty have actually had the opposite effect of which they were intended, and have actually created more poverty.¹ Others take the position that the war on poverty was never launched to any significant degree.² Most commentators have concluded that there has been a mixed degree of success and that we can continue to make progress if we carefully analyze our successes and failures and design programs carefully tailored with the lessons of the past in mind.³

Poverty program design and implementation have largely been functions of the legislative and executive branches of government, but they have also been affected to a large degree by court challenges and rulings. The concept of welfare as a legal right was developed by advocates for the poor and implemented through both the legislature and the judiciary to recognize the role and dignity of the individual in the welfare system. Like the issue of poverty policy in general, the issue of
the legal rights system in welfare has also begun to undergo scrutiny.

Many advocates for the poor have been asking whether the present legal rights system has been successful in protecting the individual in the welfare system. Has the legal rights system made the plight of those in poverty better or has it contributed to their problems? Does the legal rights system contribute to positive change of the social and economic conditions keeping individuals in poverty, or does it actually act as an impediment to change? Is it time to move away from reliance on legal rights to protect the poor in a welfare state and, if so, what kind of system do we want in its place? The conclusions of those addressing these questions will likely differ just as those examining our poverty programs as a whole have differed. However, by looking at these questions from many perspectives perhaps we can shed enough light on the matter to begin to reach some understanding and agreement.

One theme of this article is that the legal rights system in welfare does have severe limitations. First, it may have been advanced by some as promising more than it can ever deliver because legal rights alone can never alleviate poverty. Second, the accomplishments of legal rights have been limited by setbacks in the political struggle of the poor.

While those who criticize the legal rights system argue that such a system is defective because it is subject to subversion by the political process, they are unable to offer any alternative that would not be more abusive to the dignity of the individual and subject to an even greater possibility of subversion by the political process.

While recognizing these limitations, it is my thesis that the legal rights system has improved the conditions of the poor and that it also continues to be a necessary part of the base from which social movements directed towards solving some of the problems of the poor will emerge. The legal rights system must be both completed and expanded because the scope of legal rights will continue to determine the extent of dignity available to the individual poor in the welfare state.

In part II, this article will trace the rise of the legal rights in the United States welfare system. Part III will address the criticisms of the legal rights system. Part IV will examine the validity of these criticisms, and part V will pay particular attention will be paid to issues of discretion and decentralization which have recently been proposed as part of a
necessary reform of the system. Finally, part VI suggests how legal rights can be completed, expanded, and what the future may hold.

II. THE RISE OF LEGAL RIGHTS

In order to address the issue of the direction of legal rights in the welfare system, it is helpful to briefly examine the history behind the rise of legal rights. The modern welfare system was created, in large part, at the birth of the New Deal.

The New Deal saw the enactment of the Social Security Act which attempted to alleviate some of the social problems of the depression era. The scope of the initial programs was very limited. The Social Security Act was intended to provide assistance to only certain categories of individuals that were considered deserving of governmental assistance: the blind, aged, disabled and dependent children. The means to do this was through joint federal-state cooperation—cooperative federalism—wherein the federal government provided financial assistance and general guidelines to the states. Benefits for the poor were based largely on "structured discretion" wherein the states had broad latitude in the operation of the programs.

Welfare was viewed as either a privilege or a charity. The conditions of eligibility set the outer limits for aid. But within these limits, the state could largely give or withhold aid as it saw fit and on any additional conditions it wished to impose. This discretion extended down to the bottom level of the bureaucracy where the social worker had broad discretion in dealing with the individual.

The goal of the social worker was purported to be one of rehabilitation of the poor individual. The professional social worker was to act in a professional manner with the best interest of the individual in mind. In reality, the social worker was subject to pressure and constraints of budgets, pressures

4. I use the terms "welfare" or "welfare system" as a general reference to what are traditionally considered welfare programs: Aid to Families with Dependent Children (AFDC), Social Security Insurance (SSI), food stamps and general assistance. Medical assistance and various housing assistance programs could also be included although they have somewhat different characteristics.


6. CARL WELLMAN, WELFARE RIGHTS 44 (1982).

from the bureaucracy above and social, and community pressure. The result was often an abuse of discretion due to the basing of decisions on considerations other than in the best interest of the individual poor person. Instead, the decisions were made on budgetary considerations based on the communities concept of who was deserving or the workers individual preference and identification with the individual poor person. Blacks in the South were all but excluded from participation in social welfare programs,\(^8\) and eligibility throughout the United States was often the result of arbitrary or discriminatory decisions.\(^9\)

There was no recognized constitutional right to due process. Although the Social Security Act made provision for fair hearings, the hearing procedures were limited to programs receiving federal funds and there was no requirement of a full range of procedural protections nor requirements of a hearing until after termination of benefits. The result was that the action of the state, agency or individual welfare worker could largely go unchallenged. The United States Supreme Court never considered a case involving the Aid to Families with Dependent Children (AFDC) program until 1968.\(^10\) Lawyers for the poor were almost non-existent until the middle 1960s and the states and local agencies could largely do what they wanted with their welfare programs.

The legal rights movement in welfare was largely born out of two avenues. First, advocates for the poor began to see the legal system as a possible means to address the arbitrariness and harassment existing in the system. Analogies were made to the civil rights struggle which focused on the rights of individuals in their dealing with the state and where litigation had played an organizing role.\(^11\) A number of lawyers for the poor began to map out a strategy for using the courts to impose some constraints on the system and to give power to the

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poor. Second, theorists began to address the issue of rights to government benefits. In an influential article published in the *Yale Law Journal*, titled "The New Property," Charles Reich argued that government benefits should be viewed as a right. Government had become a source of wealth and government benefits of all sort were as important to individual liberty as traditional property. As the "new property," government benefits should be accorded the same procedural and substantive legal protection as traditional property. In the late 1960s and early 1970s the courts began to address these issues of both procedural and substantive protections.

Procedural protections for government welfare benefits were recognized by the United States Supreme Court in *Goldberg v. Kelly*. The Court recognized welfare as more than a mere privilege and, while not explicitly recognizing it as a "right," the Court recognized that welfare was constitutionally protected and thus due process protections applied. While due process required a balancing of the governmental interest in summary adjudication and the recipients loss, due process did not require a judicial or quasi-judicial trial. The Court did, however, recognize a need for protections that would enable the recipient to challenge the agency's actions. The Court concluded that there was a right to a hearing, with notice, and the right to appear personally. The recipient also had the right to appear with counsel and confront and cross-examine witnesses as well as have one's own witnesses appear. Most importantly, perhaps, the Court recognized the right to a hearing in AFDC cases prior to termination of benefits. This protected benefits for the AFDC client who otherwise was at the mercy of the welfare bureaucrat. Now the recipient could confront arbitrary or unfair bureaucratic action without the risk of being terminated and going without assistance until an appeal could reinstate the grant. These procedural rights greatly increased the possibilities to challenge welfare agency action.

15. *Id.* at 262-64.
16. *Id.* at 266-67.
17. *Id.* at 267-70.
18. *Id.* at 264-65.
The substantive rights theme of legal rights was directed in three areas. First, as part of the abandonment of the right/privilege distinction, the right to privacy, travel, and some degree of family autonomy was recognized. The Supreme Court in *Shapiro v. Thompson*, 19 invalidated a one year residency requirement on the basis of a right to travel. In *King v. Smith*, 20 the Supreme Court rejected the so-called man in the house rules. Further, midnight raids were prohibited by lower federal courts. 21

Second, the concept of welfare benefits as a legal entitlement arose. 22 As a legal entitlement the recipient had a right to receive benefits within the statutory authority of the federal government and judicial process could be used to review the policies and decisions of the states. No longer could the states and localities make up their own eligibility criteria as there had to be uniformity in the system. No longer was welfare to be seen as a matter of official discretion.

This change to viewing welfare benefits as an entitlement turned the system around from one of gratuitous charity to one of giving the individual power to assert a right to benefits. It recognized that welfare like many government benefits for the non-poor, such as tax benefits, credits, or Social Security Retirement, was to be based upon law and not official discretion.

The third direction of the legal rights theme was aimed towards obtaining support for the legal rights theory as a constitutional right. Proponents wanted the courts to recognize the right to some minimum or subsistence income. 23 This third direction of the substantive legal rights theme met without success. In *Dandridge v. Williams*, 24 the Supreme Court dashed the hope that there would be a constitutionally based right to any kind of bare income. 25 The Court ruled that welfare legislation was to be tested under the traditional

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21. It was not uncommon for welfare “investigators” to make late night visits to recipients’ homes to see if the father was in the home and therefore the family not eligible for AFDC.
23. See Lawrence, *supra* note 12, at 49.
concept of equal protection, that is, minimum rationality.\textsuperscript{26} The poor were not to be given special consideration under the Equal Protection Clause of the constitution.

While not going as far as many of those involved in the struggle wanted, the legal rights development made three lasting changes in the welfare system. First, it established the notion of welfare as a legal entitlement. Welfare would never again be seen as a privilege or gratuity. If the government created benefits the individual had an enforceable interest in those benefits. Second, eligibility was federalized. States could no longer impose their own discretionary eligibility criteria on the operation of the federal programs. And third, fairness was ensured by due process procedures. Recipients could challenge decisions concerning their lives and enforce their rights.

\section*{III. The Critique of Legal Rights}

The legal rights movement, while making some long lasting changes, failed to address other concerns of the poor. It did nothing to address the adequacy of benefit levels. In \textit{Rosado v. Wyman},\textsuperscript{27} the Supreme Court refused to interfere with the states adoption of their own benefit levels. States continue to set benefit levels which do not even meet their standard of need.\textsuperscript{28} In many states the benefits continue to be woefully inadequate.\textsuperscript{29}

The use of rules which were promoted to restrict discretion were often turned on their head especially in the Reagan Era when the rules were used to restrict access to benefits. The rigid rules were often used to alienate clients as verification requirements increased beyond any logical reason. There were so many requirements that many recipients simply gave up trying to meet all the requirements imposed by the rules. Quality control pressured workers to focus on technical requirements rather than helping those in need. As a result, many of the eligible clients never received benefits.\textsuperscript{30}

\begin{itemize}
  \item \textsuperscript{26} \textit{Dandridge}, 397 U.S. at 484.
  \item \textsuperscript{27} 397 U.S. 397 (1970).
  \item \textsuperscript{28} \textit{Overview of Entitlement Programs}, Committee on Ways and Means, U.S. House of Representatives, 597 (1991).
  \item \textsuperscript{29} \textit{Id.} at 599. For a three person family maximum AFDC benefits are $124.00 in Alabama, $190.00 in Louisiana, and $120.00 in Mississippi.
\end{itemize}
Due process rights were not meaningful in many cases because of the maldistribution of power between the state and the recipient. Joel Handler has argued that in order for due process to work a number of conditions must be met: (1) the client must be aware of the injury; (2) the client must think that the agency is at fault; (3) the client must be aware that there is a remedy; (4) the client must have the resources to pursue her case; and (5) the advantages of pursuit must outweigh the costs. Handler maintains that due process protections are not meaningful because these conditions rarely exist.

Legal rights have recently been more and more narrowly construed by the Supreme Court. Unless the legislature has been very explicit, the Court is unwilling to extend any protection beyond the legislatures' clear pronouncements. The term "managerial formalism" has been used to describe a formalistic process that denies the claim of the poor against government on grounds of deference to the democratic process unless there is explicit legislative and constitutional commands and defers to the "expertise" of legislators and bureaucrats on social welfare issues.

The conservative right has had a great deal of influence in determining the extent to which the poor will receive entitlements. Not only has the legislature restricted access to benefits by narrowing the eligibility criteria but the executive agencies have used rulemaking authority to both restrict rules protecting the poor and to authorize greater agency control over the lives of the poor. The concept of entitlement is subject to subversion because its protection is shallow. It is dependent upon the political struggle to define the extent of the entitlements.

The critique of legal rights from the critical legal studies perspective goes even further. The critical legal studies view

33. ROSENBLATT, supra note 5, at 95-102.
34. Id. at 96.
argues that the struggle for legal rights has done more harm than good. In this view the legal rights struggle has legitimized oppression by deflecting the political struggle into meaningless confrontations with the bureaucracy. The legal struggle does no good because it ignores underlying symptoms while maintaining existing social and power relationships.

William Simon has argued that the substantive rights theme has actually inhibited redistributive efforts that otherwise would have been supported by a broader liberal program. He also argues that legal rights has not lead to increased participation rates but has lead to increased bureaucratization and a move from a social worker model to clerks. Law and management concerns have transformed the system wherein eligibility is based on rules, not standards, fact finding has been formalized, and quality control is used against the client. He proposes a return to standards, decentralization and downward professionalization.

IV. THE VALIDITY OF THE CRITIQUE

It is true that the promise many saw for legal rights never materialized. Advocates of legal rights in welfare were too optimistic because legal rights alone never had the potential to alleviate poverty. However, like the re-evaluation of poverty policy in the past decade the critique of legal rights has often gone too far. Many critics equate the failure of the uncompleted process of implementing the system of legal rights as a failure of the entire concept. In my view, it is not the rights concept that is the obstacle to the alleviation of poverty. The obstacle to the alleviation of poverty is the political powerlessness of the poor. The poor have, for the most part, lost the political struggle and the scope of legal rights is often determined by that political struggle. The legal rights system has not decreased the power of the poor, it has acted to check total powerlessness and the plight of the poor would be worse

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without a legal rights system.

While it is true that legal rights has faced many obstacles and setbacks, the critics fail to acknowledge its accomplishments. Contrary to William Simon's view, legal rights has opened the welfare system to participation by millions. This has been evident to almost all who have been involved in legal rights struggles. The overturning of two restrictions alone, the substitute parent rule and the residency requirement rule, opened up the system to between 300,000 and 400,000 poor people.\textsuperscript{40} Legal rights challenges in food stamp cases resulted in the poor receiving hundreds of millions of dollars of food.\textsuperscript{41} Legal rights has expanded welfare roles because people of long standing eligibility could now get benefits.\textsuperscript{42} As a consequence, millions have received benefits so that they could better feed, clothe, and house their families.

Criticism of the due process protections in legal rights ignores the fact that the adversary system did help many win important substantive rights. The due process protections also have a magnifying effect on the entire system. Arbitrary and mean-spirited denials have been reduced simply because of the threat of appeals that exists. The bureaucrats have been forced to play by the rules because of the watchdog effect of clients who are aware of their rights and are backed by legal services attorneys. Thus, the adversary system is beneficial even to those poor who do not use it directly. Lawyers for the poor are well aware of how one person's success in the adversary system can change the way an entire agency interprets a rule or deals with the issue that was challenged.

Bureaucratization has largely come from the concerns of management and not simply as a result of legal rights. Partly, it is simply the result of increased numbers to be served within tight budgets. Bureaucratization has occurred throughout government and is not limited to the welfare system. Legal rights in welfare has played only a minor role in the bureaucratization of the system. Criticism of legal rights from critical legal studies, while perhaps offering much in terms of our understanding of the legal system as a whole, offers no alternative to legal rights that is even remotely viable at this time. At times the criticism amounts to nothing more than a

\textsuperscript{40} EARL JOHNSON, JR., JUSTICE AND REFORM, 203 (1978).
\textsuperscript{41} Id. at 205.
\textsuperscript{42} PIVENS & CLOWARD, supra note 9, at 334
legal realism view coupled with utopianism. Ed Sparer has argued that the criticism of legal rights from critical legal studies has tended towards exaggeration and has not recognized the potential contribution of rights. While rights and entitlement programs can occasionally be used to legitimize oppression, they are also affirmations of human value. Until the critical legal studies movement develops more concrete alternatives we can hardly afford to abandon a legal rights system which, in the view of most practitioners, does benefit the poor in many tangible ways. Of course, the criticism of legal rights has also come from the far right who feel that the concept of legal rights in welfare is wrong because welfare should be demeaning. While I recognize that such arguments exist, it is not the purpose of this paper to address these broader poverty policy considerations that, in my view, have been largely discredited by others.

The critique of legal rights does challenge us to re-evaluate, in more detail, two specific issues concerning legal rights, discretion and decentralization.

V. LEGAL RIGHTS, DISCRETION AND DECENTRALIZATION

One result of a critical look at legal rights has been a re-evaluation of discretion. The view expressed by a number of legal theorists is that discretion is not only a necessary part, but a desirable component of a social welfare system. The discretion issue is complicated, and one that deserves careful analysis before acceptance or rejection.

Discretion in welfare generally means that there is an element of individual judgment in one's decisions or actions. It

45. Id.
46. See Murray, supra note 1.
47. See, e.g., Michael Katz, The Undeserving Poor: From the War on Poverty to the War on Welfare (1989); Ellwood, supra note 3; Fred Block, et al., The Mean Season (1987).
48. Handler, supra note 32. Apparently, Handler has reversed his position somewhat. See Handler, supra note 31. William Simon has also argued for more discretion. Simon, supra note 37.
is not to say that there are no rules but that in an area of conduct generally covered by rules, the rule’s dictates are indeterminate allowing for the exercise of judgment.49

In the welfare system discretion can occur at multiple levels. It is important for those proposing more discretion and those opposed to it to specify the particular level of discretion to which they are referring. Discretion can exist at the state level, agency level, or the street level. At the state level discretion allows the individual state to both decide whether certain programs will be implemented and/or how the programs will be run. Discretion at the agency level is usually more limited but agencies are sometimes given discretion on the same basis as states to decide certain facets of an implementation policy. At the street level discretion allows the person who has the actual face to face encounter with the client to make a judgment decision affecting the client.

At the state or agency level, discretion is seen as a positive goal in that it allows for experimentation and innovation.50 Few claim to have all of the answers to the difficult questions about how social welfare programs should be operated. Experimentation and innovation are necessary to test different proposals while the states serve as laboratories for experimentation. Discretion also allows programs to be tailored to meet local economic and social conditions, such as local labor market conditions. A work program in the inner-city may need to be operated differently than a work program in a rural area because the employment conditions facing clients are quite different.

Some discretion at the street level is a fact of life.51 The clients’ circumstances, needs, and abilities to interact with the street level worker are subject to incalculable differences. It is impossible, even if it is desirable, to write rules to cover every single possibility facing the street level worker dealing with the client. In fact, if there are too many rules, the worker would simply use discretion out of necessity because the volume of rules constantly being revised makes it impractical to use.

51. For a valuable analysis of discretion at “street level,” see MICHAEL LIPSKY, STREET LEVEL BUREAUCRACY: DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICES (1980).
Emergency assistance is a good example of the need for some discretion in the system. Emergency assistance is an optional component of the AFDC program, and it allows for differences in the needs of individual clients. People are subject to unforeseeable events. Their household goods may be destroyed in a fire, their furnace may break down, they may be faced with unexpected evictions or utility shutoffs. Emergency assistance provides a cash supplement to their ordinary AFDC grant to allow them to deal with the emergency. Since the term "emergency" cannot be defined with precision there must be an element of judgment exercised by the street level worker to determine both what constitutes an emergency and what amount of cash is necessary to alleviate the immediate need.

Another example of the need for discretion is in the determination of what constitutes a disability under the Social Security Disability and Supplemental Security Income programs. Whether someone is or is not disabled can be dictated by rule to a certain extent and the Social Security Administration has done so by creating rules stating that certain medical conditions will automatically be considered a disability. However, it is impossible to create a rule for every conceivable medical condition that could be disabling. Since the determination of disability under the law involves vocational as well as medical considerations for most claimants, the Social Security Administration has promulgated another set of rules in the form of tables or "grids" to take into consideration various statutory factors such as age, education, work experience, and residual functional capacity. This has all been done in an attempt to add consistency and predictability to the decisions of the administrative law judges making the disability determination.

While the Social Security Administration has attempted to limit the discretion of the law judges by the promulgation of rules, advocates for the disabled have generally attempted to expand the discretion arguing that people are entitled to an individualistic determination and that rules alone cannot

52. Joel F. Handler argues that a discretionary system for emergencies and special needs should have been maintained to a greater extent than it was. While some states have maintained emergency assistance, others have not. See Joel F. Handler, Last Resorts (1988); Joel F. Handler, Discretion in Social Welfare: The Uneasy Position in the Rule of Law, 92 YALE L.J. 1270 (1983).
54. 20 CFR § 404, Subpart P, App. 2.
provide the individual assessment that is necessary. Also, administrative law judges have sufficient independence to make decisions without undue political or public pressure and without abusing their discretion by denying benefits based upon budgetary considerations rather than the disability determination. In this context some discretion may be viewed as a desirable thing from the client's perspective. It allows the client's case to be decided upon an individualistic assessment which includes many considerations that rules, no matter how detailed, can provide. Individual assessments are necessary in determinations such as disability cases because of the elements of observation and judgment in the determination.

Discretion allows the street level financial worker to consider individual needs and differences of the welfare client. There are areas where the application of a rule may not be clear in the individual case and the financial worker will then have some degree of discretion to decide how to apply the rule. A responsible financial worker can consider the client's individual needs and make a decision in the best interest of the client. Questions arise as to whether the areas where discretion is given need to be expanded and whether the discretion will be responsibly exercised.

Some writers have argued that discretion should be broadly expanded. In his book, The Conditions of Discretion, Joel F. Handler\(^5\) argues that the system of rights and procedural remedies developed over the last several decades have not worked, that the system is conceptually inadequate and that we should create a system wherein decisions are discretionary.\(^6\) Due process has failed both because of the maldistribution of power and because it has conceptual flaws.\(^7\) The formal adversary structure under due process should fade as a new discretionary system arises. The alternative would foster cooperation and increase communication between agency and client.

Handler uses the Madison, Wisconsin special education program as a model for the system that he proposes. He poses four "conditions of discretion" necessary for the system: (1) a decentralized system which would encourage the creative use of


\(^{56}\) Id. at 19-40.

\(^{57}\) Id. at 7.
discretion; (2) a changed role of the bureaucracy wherein incentives and structures at agency level would make the bureaucracy part of the community; (3) social movement groups at a grass roots level that would be seen as creating communicative conflict, not adversarial conflict; and (4) cooperative decision-making as in informed consent in its ideal form. Handler is admittedly optimistic but sees the possibility of a more humane system promoting understanding, cooperation and communication in place of one where the powerlessness of the individual is increasing.

While there is a place for limited discretion in the welfare system, the dangers of its abuse will continue until some fundamental changes have occurred in our political environment. The problems of discretion, to a large extent, have not changed from the pre-legal rights era although some new dangers have arisen.

At the street level, clients in a discretionery system are faced with a sense of powerlessness as they confront the bureaucrats who hold the key to their perceived wellbeing. The self-regard of clients decreases as the power of the bureaucrats increases. Clients are, therefore, subject to possible manipulation and exploitation.

Arbitrariness, while probably less common than perceived, is a problem simply because it is perceived as a possibility. Clients feel that the decision, whatever it is, is arbitrary because they have no way of knowing how the criteria for the decision will be applied in their case.

Having represented many clients in seeking assistance under emergency assistance programs, I have seen how it can be used to reward “good,” “deserving” clients in the bureaucrat’s eyes and used to punish the “bad,” “undeserving” clients. Granted, the system is not always abused, but the potential is always present. Generally, the more room for discretion in social welfare the greater the potential for abuse that exists under the present social and political conditions.

At a state level, the AFDC program has always allowed some discretion. States have always had many options which they could choose to implement. For example the states, set their own benefit levels with the result that a state like Mississippi could set a monthly grant at $120.00 for a family of

58. Id. at 1-15.
59. Id. at 300.
three\textsuperscript{60} and states have, in the past, been able to choose whether to provide benefits to two parent families where both parents are unemployed.\textsuperscript{61} In my home state of North Dakota, individual counties are given wide discretion in the general assistance program in determining eligibility criteria. The result, not unexpectedly, is that the counties create an almost totally discretionary system and almost no one ever receives any assistance. Discretion granted to states and agencies makes it more difficult to use broad-based political or legal action to challenge the inadequacies of the programs.

One of the major reasons that discretion is abused in welfare is simply because of budgetary considerations. Legislators looking for areas to save money, look to the welfare system. Administrators in response to statutory dictates, are bound to provide certain minimal benefits and have only a narrow range in which to make cuts. Wherever there is discretionary spending of money the agency will make cuts thereby reducing benefits. This desire to control spending by reaching discretionary areas extends all the way down to street level. In many instances the street level bureaucrat would like to provide assistance to help those in need but they are facing direct and implicit pressure to use whatever discretion they have to prevent further expenditure of money.

Another reason that discretion is so often abused is simply due to irresponsible administrators and street level workers. By irresponsible, I mean that they are unduly affected by pressures to conform their behavior to what they perceive to be the public expectation regardless of what is right or what is best for the recipient. They perceive a public expectation that they should keep the poor in their place because the poor are poor due to character or cultural defects. This public expectation has been created, in part, because of the success of the right in characterizing the problems of poverty as cultural rather than as one caused by economic conditions\textsuperscript{62} or class divisions.\textsuperscript{63} In this view, the poor are the undeserving and

\textsuperscript{60} For a look at poverty in rural Mississippi, see Ken Auletta, The Underclass 13 (1982).


\textsuperscript{62} Ellwood, supra note 3 (identifies the causes of poverty as largely economic in origin).

\textsuperscript{63} See Barbara Ehrenreich, Fear of Falling (1989) (an analysis of how class division affects poverty.).
therefore, if there is any room for discretion all decisions should go against them.

In order for discretion to work in social welfare you must have both responsible administrators or bureaucrats and reliable and adequate budgets. Some possible means to bring about those criteria are discussed in the next section.

As for Handler's conditions for discretion, they are largely a utopian dream insofar as he proposes a system that promises more than an extremely limited role. We need visions of a new and different future to challenge us to change in the present. The danger is that some may come to believe that we can create the discretionary system now and the system will then change people's behavior. Handler's system fails on a number of counts.

First, Handler's system is dependent upon a much reformed bureaucracy. He sees a better educated and more professionalized bureaucrat. Handler is not alone here as others have called for professionalism as part of the remedy for what supposedly ails the legal rights system. But that is not going to happen in the welfare system until there is both a new attitude about welfare and adequate budgets. Better trained and more professionalized bureaucrats will not emerge from current conditions and the present system.

Second, it is difficult to see how the street-level bureaucrat is going to be professionalized given that she/he is faced with routinization of tasks due to the sheer number of poor. Professionalization at the street level would require a revolutionary change in the delivery of social-welfare benefits. While this change may be desirable, it would be folly to move towards a discretionary system believing that professionalism of the bureaucrat is going to follow.

Bureaucratic accountability will decrease if discretion is increased. Given the present social and political climate discretion would continue to largely be used as a way to deny benefits to keep welfare budgets down. As discretion increases it becomes more difficult to challenge agency or bureaucratic action because courts will almost always defer to agency action where the agency is given discretion.

Discretion in the welfare system is inherently attractive

with the public because the public generally feels that one function of a welfare system is to separate the deserving poor from the undeserving poor. Since each individual feels that they would be able to make such a determination based upon their own criteria for who is deserving, they see nothing wrong with giving such discretion to someone else. In reality, however, the criteria one endorses for determining the deserving varies from person to person. More discretion creates a larger zone in which the bureaucrat can exercise his or her own personal criteria for making determinations.

Before we impose more discretion in social welfare we should ask whether it would be tolerated in other areas of governmental actions affecting us as individuals. Would we tolerate more discretion in the tax system? Would we want an Internal Revenue Service agent to have discretion in determining whether we get tax deductions or credits? Most people would not want a government official to have discretionary power over their lives unless they knew that the discretion would be exercised fairly and responsibly and with their input or participation in the decision making. By the same token, we should provide the same considerations to the poor. Why we do not is largely a function of the current social and political climate which sees the poor as different than the rest of society. Discretion is most dangerous in social welfare programs involving the poor precisely because the poor are unable to participate in the decision making process. Participation requires that one possess power; or otherwise, one is solely dependent upon the other party to exercise fairness and goodwill. In social welfare, clients are presently dealing from a powerless position.

Discretion may well work in Madison's special education program, but Madison is a poor experimental model for the rest of the country at this time. As anyone who has been to Madison will realize, it is a rather unique social and political environment. Most importantly, however, special education is viewed differently in Madison than the way other types of welfare are viewed in the rest of the nation. Bureaucracy tends to reflect the prevailing social and political outlook and society views welfare as very different from special education because welfare carries a stigma that special education does

not. Handler's system requires that the welfare system undergo a fundamental change in ideology, structure and organization, yet he fails to address how this will be brought about in the political process.

Handler admits that a discretionary system requires a sharing of power between the service provider (in most cases, the state) and the client. His system requires that the bureaucracy will promote and foster the sharing of power. However, those that have power are much less likely to share it voluntarily than he assumes. The poor will only gain power in a slow process of individual empowerment through assertion of their rights and dignity and the aggregation of that power in social and political movements.

In conclusion, there is nothing inherently wrong with discretion in social welfare and, in fact, it is desirable in many respects. It will, by necessity, have a place where highly individualistic decisions are required, such as in disability determinations where rules cannot address every individual circumstance and observation and judgment are necessary. The use of discretion, however, must be limited wherever there is a potential for abuse.

Given the present social and political climate the danger of abuse of discretion in the area of social welfare is great. It is not enough to simply say that we need a few conditions to be put in place and a discretionary system will work. There must be more than changes in structural conditions, there must be deeper changes both in how society views the poor and the extent to which the poor have control in the political arena. When that happens, there is a possibility for responsible bureaucrats and adequate budgets so that discretion will be used in a responsible manner with the poor participating in the decision-making.

Many theorists have also called for decentralization of welfare. Decentralization has been pushed from the political left as well as from the right. Decentralization, like discretion, allows for judgment to be exercised in the operation of social welfare programs. Decentralization, however, goes

beyond discretion in that it usually involves a transfer of the funding mechanism to the state or local level as well. Insofar as it allows for experimentation, innovation and flexibility in these programs it is attractive. Certainly we need to see new approaches and experiments in order to develop a better system.

There is also desirability in tailoring programs to meet local conditions. In theory, decentralization allows for greater local participation in decision-making. The hope is that it will lead to greater cooperation and human interaction. Under the present political realities, however, decentralization faces many of the same flaws as discretion.

General Assistance\(^68\) is the ultimate decentralized component of social welfare. There are no federal rules or funding and even the states transfer much or all of these roles to the county level. Given the social and political pressures on the welfare system the grants where the programs do exist are extremely small and many states and/or counties have no general assistance at all.\(^68\)

The chief problem impeding decentralization of the federal welfare programs as a viable alternative is budgetary considerations. The current social and political climate places social welfare funding low on the list of priorities for state government, and the states do not have the revenue raising capacity of the federal government. In addition, there is competition between states which has a greater effect on social welfare spending than in other spending areas. Competition for new business creates a call for the lowest possible taxes and thus state government looks toward social welfare budgets as an area to curtail spending. The view is that low taxes attract business while the degree that the poor, homeless, disabled, and elderly are taken care of is of little concern to business.\(^70\)

In addition to the competition to lower taxes many states also compete to keep social spending low with the belief that higher spending would simply attract more poor to the state.\(^71\)

The push towards discretion and decentralization as an alternative to the legal rights system is dangerous because it is

\(^68\) State-run welfare programs are available for those not eligible for AFDC.
\(^69\) Michael Katz, In the Shadow of the Poorhouse 283-85 (1986).
\(^71\) This has been a frequent argument in Wisconsin, Minnesota, California, and among other states.
likely to be subverted and used against the poor. Handler, Simon and others argue for a restructuring of major social welfare programs to allow for their approach. However, it is not enough to base discretion and decentralization on simply structural changes. They underestimate the extent to which major political and social change would be necessary for their vision to work. Until that happens increased discretion and decentralization would be unlikely to serve the interests of the welfare community. Legal rights would be reduced and this would leave the poor with even less power than they presently possess.

VI. COMPLETING AND EXPANDING LEGAL RIGHTS

Although the promise of legal rights is yet to be fulfilled, legal rights have the potential of empowering the individual. When I speak of legal rights as empowering the individual, I mean the use of legal rights as a means of giving the individual power in his or her relationship with the state or against powerful private and corporate interests. It is a means of forcing authority to recognize the power of the individual. This is not to mean that this power alone will enable the poor to lift themselves out of poverty. As I have stated, that will require a social and political transformation that is beyond the scope of the legal system alone. However, the empowerment of individuals can be the first step on the road to a change of consciousness. This in turn can lead to an increase in political power.

Those lawyers in legal services who have day to day contact with great numbers of poor see many instances in which clients are empowered when they assert their legal rights. I don't mean to imply that the assertion of legal rights has an effect on all clients or even on the majority but it happens much more frequently than critics of legal rights will admit. It is especially prevalent in civil rights and welfare cases. I have witnessed many instances where minorities have used their legal rights to challenge the power structure in civil

72. See Joel F. Handler, Dependent People, the State and the Modern/Postmodern search for the Dialogic Community, 35 UCLA L. REV. 999 (1988).
rights cases. Both individually and collectively civil rights cases can be used to empower minorities, building a sense of cohesion and creating a consciousness of the potential for power.

The same process can occur in welfare cases. Clients are often invigorated and awakened by their own actions in asserting themselves and appealing an adverse agency action. They are questioning authority, often for the first time, which can change them and their perception of their role with the state. They will also tell others of their experience which will give others the courage to assert their own rights. Again, this is not to suggest that the empowerment that comes with asserting legal rights happens in a great percentage of cases. However, it has happened often enough so that the consciousness of many of the poor have been changed. It is part

73. I will give one example from my own experience to illustrate the point. Three related families of migrant farmworkers had come from Texas to the Red River Valley of Minnesota as they annually do to work in the sugar beet fields. They secured housing in an apartment complex by entering into a lease with the resident manager. The owner of the apartments showed up some weeks later and, discovering the color of the skin of her new tenants, ordered them out stating that she didn't want any "damn Mexicans" in her building. The farmworkers were forced to leave the apartment and were unable to find other housing in the area and therefore lost their contract for working in the sugar beet fields. As usually happens in these kinds of cases, the owner denied making any such remarks and said they left for other reasons. The owner rigorously contested all the allegations. The matter came up for trial in November the following year. This meant that the farmworkers had to leave their work in Texas, travel across the country and stay for several days in order to present their case in court and at best, have a chance to recover rather minimal damages that would not cover their time and costs. At that time in an action under the state's human rights laws the farmworkers were limited to actual damages. I discussed these facts with them as well as the fact that this was a case of their word against the owner and her witnesses and that the local judge could easily find against them. These factors were quickly dismissed by the family members. They weren't in this for the money and, in fact, they did not expect to win. They were coming for the trial because they felt that what was done to them was not right and if they stood up for their legal rights they would demonstrate to the owner that they should not be treated that way. If their lawsuit did not win them damages they could at least help other farmworkers who might face the same discrimination. I remember vividly the chilly November day before the trial when I met with all twenty-one family members who came up from Texas to assert their rights. We met and sat at a picnic table in the park where they were sleeping in their cars because they could not afford the cost of motel rooms. They were totally resolute, not because they believed that the system would work, but because their legal rights gave them the power to bring the owner into court to be confronted by them as to the wrong against them. In this respect, the process of asserting legal rights was empowering for these people. While we were able to get a favorable judgment, it really did not matter so much to them as having the process by which to assert their rights.
of the process by which they come to think of entitlement benefits not as a charity but as a right that they can enforce. They realize that they can question the authority of the bureaucrat and the state. It is this realization that creates a basis for change and which can be used to foster social movements. The fact remains that the legal rights system in welfare has worked for millions of people. They were granted benefits because they met the criteria of definite rules and they had a due process system to back them up if they were not treated as the law required. Many, if not most, of those persons were able to receive their benefits without undue disregard of their privacy due to protections of legal rights. Legal rights enabled them to have some dignity during a difficult time.

While the legal rights system in welfare has made life better for many, the promise of legal rights for the individual has admittedly fallen short of its goal in two respects. First, it does not work for all individuals because some are unaware of their rights or unable to assert them. There is a continuous need to provide education about rights both on an individual and community basis. As to social welfare rights this requires a continuous effort because the recipients of social welfare are continuously changing as new people fall into poverty to replace those who rise out of it.

For those unable to assert their rights on their own we must provide lawyers with training in welfare law. This requires expanded legal services for the poor. The effort to replace the trained staff legal services attorney with other forms of legal services delivery systems such as mandatory pro-bono attorneys and judicare, should be resisted. While there is a valuable place for pro-bono attorneys and other delivery systems in legal services for the poor, the place is not in providing service in welfare law. It is difficult to turn over representation in welfare cases to attorneys who have little training in an area that requires special training and expertise which comes from extensive involvement in this specialty.

Second, the legal rights system has been subverted through the political process in this country. The subversion has come from the effort to restrict legal rights by legislative and executive action. The past decade has seen a gradual erosion of many legal rights both by limiting the entitlements

of the poor and the use of rules against the poor. This erosion of legal rights is a product of the political struggle and the same legal rights that can be limited through the political process can also be expanded by political struggle. This problem is not something that is inherently defective in legal rights any more than any other alternative system. The political struggle will always exist and the struggle must be viewed as a continual process with the potential for subversion no matter what the system. Legal rights, however, can empower those involved in the political struggle, making each successive struggle on a different level. The level of the struggle is changed as legal rights grow because once a legal right is established it becomes more difficult to take it away. It can be subverted to a degree but the right enters the consciousness of the possessor of the right and the longer it exists the more difficult it becomes to eliminate.

While empowerment through legal rights alone will never eliminate poverty it can be an essential component of a process which will reduce poverty. Those involved with the legal system as judges, lawyers, and legal advocates must constantly be aware of the potential for empowerment that does exist. They must not only use legal rights as a tool for individual change but must also link that individual empowerment with the political struggle. This requires a continuous dialogue between those in the legal system and the poor on both the potential and present limitation of legal rights. Those asserting their rights must be aware that the assertion of legal rights as an individual must be linked with the ongoing political struggle. In this respect the party must be made aware of others who are having the same problems and of groups that are working towards political change on the issues of concern to the party.

The assertion of legal rights, if approached in this way, can be instrumental in developing social movements. Individual empowerment if linked to the larger political struggle and funneled into social movements can begin to work towards addressing the underlying causes of poverty.

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75. See Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659 (1988). While I agree with the thrust of this article, the critique of rights is too harsh. This theory of dialogic empowerment should be read by all legal advocates for the poor, but it may be too optimistic.
In addition to fulfilling the promise of establishing individual legal rights, we need to think about expanding legal right entitlements beyond those currently established. Legal right entitlements in welfare, insofar as material benefits are concerned, have generally been limited to: (1) modest cash assistance to eligible categories of persons such as families with dependent children (AFDC) and the disabled (SSI); (2) food stamps; and (3) medicaid.

It is entirely realistic to look towards expanding entitlement benefits beyond this present limited scope. However, it will be necessary to look largely to Congress and state legislatures to create entitlement rights because the Supreme Court is unlikely to recognize rights unless there is fairly explicit legislative action or a change in public consensus. There is, however, the possibility of using state courts and state laws in some instances to create rights to benefits.

Some have suggested that the original goal of legal rights was the recognition of the right to a minimum income. That never developed either through the courts or Congress and, at the present, the public support for such a proposal is very low. Although the present make-up of the United States Supreme Court makes it highly unlikely that the Supreme Court would recognize such a right, writers, such as Peter Edelman, have suggested that the theoretical foundation be laid now since it is realistic that a fundamentally different Court could exist in the future. For the present, however, it is unlikely that there will be much progress in the area of a minimal income.

One possibility that is probably more realistic is developing the concept of the right to a job. Those advocating reform of the welfare system often suggest that jobs will have to be provided by the government because the economy cannot create enough jobs and is subject to too many fluctuations. It will be easier to develop the political support for the right to a job rather than a right to a minimum income because of the strong work ethic in our national conscience. The right to a job would

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76. Sard, supra note 10, at 375.
77. Id. at 381.
80. Ellwood, supra note 3, at 124.
require that the government create jobs whenever and wherever the economy could not provide jobs through the private sector. Of course, to be a meaningful right, the right to a job would require that the right be to a decent job at a decent wage.

It is also realistic to begin to recognize the right to health care, day care, and housing for all Americans. Medical assistance coverage can be expanded or merged with a national health care system. While health care is not a poverty issue by itself it is an area where the interests of the poor and other classes merge. The right to day care for all of the working poor is an area where political support is continuing to grow. The idea of some type of minimal housing as a right for the homeless is also gaining acceptance.

Once these social programs become established and people grow accustomed to and dependent on them, they will become rights which, although legislatively created, will acquire public support, making them as valuable as other rights that the public now takes for granted. The ideas put forth here are only the most obvious ones for creating an expanded list of legal entitlements and is not meant to be exhaustive. The political struggle will ultimately determine which of these and other ideas are accepted or rejected.

All rights, of course, imply that someone has corresponding obligations. One way of expanding beyond our present reliance on rights is to focus more attention on the obligations of those bureaucrats who bear official responsibilities and duties in the area of social welfare. In this respect, one looks at the actions bureaucrats are required to take and the outcomes that they are responsible for.

Bureaucratic obligations can be greatly expanded. Bureaucrats can be expected to be evaluated on how they fulfill their obligations. Obligation-based controls on bureaucrats allow oversight that is less dependent upon the welfare client to exercise control. In order for this approach to work, we must establish criteria for evaluation that considers the effect of all bureaucratic action on the poor. For instance, instead of evaluating a welfare agency simply on the present quality control criteria, which focuses largely on the number of ineligibles receiving benefits, one could turn it around and

81. Goodin, supra note 49, at 256.
evaluate the agency on the number of those who are turned down or turned away at the door who were, in fact, eligible. For jobs programs, one could look at the number of persons who received long term, not temporary, good paying jobs. Incentives can be built into the system for those agencies who have the best outcomes. This is the “carrot” approach where agencies and states are positively reinforced for their outcomes.

In addition to incentives for outcomes, some agencies will need the “stick” approach as well as the carrot. Where agencies disregard the legal rights of those it is supposed to serve there may have to be fines and penalties. If welfare recipients are to be penalized under the guise of welfare fraud when they make mistakes, perhaps welfare bureaucrats should face punitive action when they callously disregard the law in denying or restricting benefits to the poor. Compensatory and punitive damages could be awarded when states, agencies or welfare bureaucrats ignore the law. The use of writs of mandamus should be expanded to require reluctant bureaucrats to carry out their statutory obligations.

By imposing and enforcing bureaucratic obligations we will ensure that administrators are held responsible for agency decisions. Responsible administrators will focus on the duties and obligations they have to develop agencies responsive to the needs of the poor. This will be one step towards the responsible use of discretion and decentralization.

Another way of expanding the scope of legal rights is to begin to look beyond individual legal rights to group rights. The concept of group rights suggests that groups can possess rights and enforce them irrespective of individual applications. Courts have indirectly recognized group rights by granting them remedies for racial discrimination. The idea of discrimination in employment law, for example, presupposes that groups have rights.

Group rights have also been indirectly recognized when class action suits have resulted in broad remedies wherein refunds have been ordered to a “group” of consumers. Groups, such as industry employees, could be protected by legislation

82. See Timothy J. Casey & Mary Mannix, Quality Control in Public Assistance: Victimizing the Poor Through One-Sided Accountability, 22 CLEARINGHOUSE REV. 1381 (1988).
83. ROSENBLATT, supra note 5, at 104.
84. See TUSHNET, supra note 65, at 282.
restricting plant closings and corporations moving out of the state or country. Whether groups are naturally formed as groups of Afro-Americans and American Indians or artificially formed such as consumer or poverty groups, both legislatures and courts can expand benefits and remedies to broad groups that have otherwise fared poorly in the political struggle. The development of group rights will be slow as society sorts out the obligations owed and the groups to be protected.\textsuperscript{85} It requires the re-evaluation of the public's view of the duty owed to the weak in society. Such embedded ideology will change only slowly and therefore expansion of rights to groups will, as a practical matter, come only slowly.

The content and scope of legal rights will ultimately be determined through the political struggle. In order to build political support to reverse the subversion of legal rights and to expand the scope beyond the present individual legal rights, it will be necessary for the poor to seek a convergence of interests with other social and political groups. To seek a convergence of interests is to find a common ground of interests and to work together in the political arena for a solution.

The history of the last twenty-five years suggests that the poor will need the help of other interest groups in political alliances to gain any large degree of political power. As much as many advocates for the poor feel that the poor themselves need to become empowered and rise up to demand significant change of the social and economic conditions that keep them in poverty, it has become apparent to most of them that while the problems facing such a task are not insurmountable, they are extremely imposing. The best chance for empowerment of the poor rests in their finding common ground with other interest groups and classes. The social movements of the poor must be converged with those of other groups and classes, where possible, in order to create wider based social programs. This is not to say that we should abandon all means-tested programs but that, in some instances, broader programs will have broader political support and hence not be subject to subversion by conservative administrations.\textsuperscript{86}

\textsuperscript{85} See Allan C. Hutchinson, Law and Community (1989) (An especially good article is by Mark Tushnet, "Law and Group Rights: Federalism as a Model.").

\textsuperscript{86} William Julius Wilson argues for a comprehensive program that combines employment policies with social welfare policies and that features universal as
The broadest area for developing a convergence of interests is in the common interest of the working class and even the middle class. The common interests can be developed in a number of areas. Many economic interests are shared by these different classes. The working class and the poor often share a common interest in preventing the abandonment by businesses of the inner cities, government supports and subsidies for creating jobs, adequate daycare, expanded medical care, and adequate wages for work. Another common interest among the poor, the working class, and the middle class is the interest in seeing that the wealthy pay a larger share of taxes.

The poor must also continue to develop a convergence of interests with feminists. The "feminization of poverty" is real and the majority of poor families are now headed by women. In many respects the interests of the feminists are the same interests as those of the poor because so many women are poor. Feminists and poor women share an interest in many policy areas including ending sex discrimination in the labor force, expanding job training for women, promoting equal pay for equal work, enforcing child support obligations, and providing affordable quality daycare. Feminists and the poor must begin to form an alliance to use the political process to address their common concerns. Feminists in the legal system, as lawyers and judges must use their influence in the legal system to give broad meaning to the rights of women.

As interests are converged solutions will be proposed that solve the broader interest. These solutions will have the broad political support necessary to get programs and laws enacted. The legal rights of the poor will be rights supported by larger interests and will not be subject to the degree of subversion that is possible when legal rights are more narrowly drawn.

VII. WHAT WILL THE FUTURE HOLD?

The Family Support Act of 1988 (hereinafter FSA) will affect the welfare system in many respects that will influence legal rights. A major part of the Act is its emphasis on job opposed to race- or group-specific strategies. WILLIAM J. WILSON, THE TRULY DISADVANTAGED (1987).


89. See Timothy J. Casey, Family Support Act of 1988, 23 CLEARINGHOUSE REV.
training. States are required to set up job programs with the goal of requiring AFDC recipients to work. Success of this program will be dependent on the ability of the states to create or find jobs for recipients. Therefore, it will be especially important for advocates of the poor to focus on the right to a decent job. Some people will find jobs as welfare recipients have always done but the goals will largely be unmet because the Act does not address the economic problems which foster high unemployment. The common interests of the poor and the working class must first merge to address the policies of using recession and high unemployment as the means to fight inflation.

To some extent the FSA allows states to have discretion and decentralization in the creation of its JOBS\textsuperscript{90} programs. As I have argued, without adequate budgets and a responsible administration, this change to discretion and decentralization will create continued abuses of discretion. Many states will impose degrading and unreasonable conditions on recipients in an effort to get them off welfare.

In other areas, the FSA has taken away discretion as all states will be required to have AFDC-UP programs.\textsuperscript{91} However, the states retain the discretion to set benefit levels. This discretion in benefit levels will continue to result in tragically low benefit levels in many states. The push to abandon state discretion and set a national minimum AFDC standard will likely continue.

Given the present direction of welfare reform,\textsuperscript{92} we can expect that the next decade will continue to see a great deal of discretion in the continued experimentation with training and employment programs. These will necessarily involve some individual discretion as the selection of training programs is by its nature a highly individualistic one. Sanctions will be imposed on those that do not meet the new expectations. We can expect that unfairness will creep in to some degree as to those who are sanctioned as the street level bureaucrat makes distinctions based upon those he/she feels are deserving or

\footnotesize\textsuperscript{930} (1989).
\footnotesize\textsuperscript{91} Id. at 102 Stat. 2393-2400 (1988).
\footnotesize\textsuperscript{92} See PHOEBE COTTINGHAM & DAVID T. ELLWOOD, WELFARE POLICY FOR THE 1990s (1989).
undeserving. There is likely to be a continued shift in program design, operation and control from the federal to the state level. Whether this will result in any improvement again will depend on whether states will provide adequate budgets and whether the administrators will be working in an environment that encourages them to act responsibly towards the needs of the poor. This, in turn, will depend upon the success of the political struggle, the ability of the poor to form social movements, and the ability to converge their interests with other groups.

The poor will continue to face a threat to any progress out of poverty from the political far right in this country. As long as the far right is successful in convincing the public that the problem of poverty is simply the problem of individuals who are deviant or culturally different than the rest of the public any progress will be limited. The far rights control and shift of the dialogue should not be underestimated. To a large degree they have been able to seize the avenues of public discourse in the past decade to serve their own ends. 93

The task of the poor is formidable. Some would say it is even insurmountable. But whether or not we continue to see progress in ending poverty, it is clear that legal rights serve not as an impediment to change but as a catalyst for change. Legal rights have given some power and dignity to the struggles of the poor and its potential has not yet been realized.