

Michigan Law Review

Volume 100 | Issue 6

2002

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Recommended Citation

Gene R. Nichol, *Poverty and Equality: A Distant Mirror*, 100 MICH. L. REV. 1661 (2002).

Available at: <https://repository.law.umich.edu/mlr/vol100/iss6/23>

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POVERTY AND EQUALITY: A DISTANT MIRROR

Gene R. Nichol*

FIGHTING POVERTY WITH VIRTUE: MORAL REFORM AND AMERICA'S URBAN POOR, 1825-2000. By Joel Schwartz. Bloomington and Indianapolis: Indiana University Press. 2000. Pp. 353. Cloth, \$39.95.

MOTHER JONES: THE MOST DANGEROUS WOMAN IN AMERICA. By Elliott J. Gorn. New York: Hill & Wang. 2001. Pp. 408. Cloth, \$27.

In one sense, Joel Schwartz's¹ new effort, *Fighting Poverty with Virtue*, is tremendously timely. Bill Clinton's Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was designed to "end welfare as we know it," turning greater attention to poor people's habits than to their pocketbooks.² George Bush's compassionate conservatism is meant to pick up the pace, overtly seeking "to save and change lives."³ The White House's ominously entitled "Office of Faith-Based and Community Initiatives" is apparently set to unleash new waves of moral reformers.⁴

Schwartz's book seeks to provide moral, philosophical and historical sustenance for these initiatives. He focuses on four "largely forgotten figures" (p. xvi): Joseph Tuckerman, a Unitarian minister who

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1. Joel Schwartz has taught political science at the universities of Michigan, Toronto, and Virginia. He is currently a contributing editor for *Philanthropy*.

2. *The End of Welfare As We Know It?*, U.S. NEWS & WORLD REP., Jan. 3, 1996, at 32; Robert Pear, *As Welfare Compromise Emerges, Clinton Aide Says Veto is Certain*, N.Y. TIMES, Nov. 13, 1995, at A1.

3. See Leslie Lenkowsky, *Finding the Faithful: When Bush is Right*, COMMENTARY, June 2001, at 19; see also, Joel Schwartz, *Bracing Lessons for Bush*, WKLY STANDARD, Sept. 11, 2000, at 16 (discussing President Bush's 'compassionate conservatism': "Governor Bush particularly supports faith-based charities, which 'have shown the ability to save and change lives'"). The jacket to Schwartz's book advertises it as exploring "the effects of a 'compassionate conservative' in the past."

4. The jacket also advertises that "the author discusses the renewed commitment to a self-help strategy for fighting poverty evident in the widespread interest in the work of faith-based charities and recent shifts in public policy." Schwartz has also lauded the role of faith-based initiatives in "doing much to encourage the poor to fight poverty with virtue." Joel Schwartz, *What the Poor Need Most*, AM. ENTERPRISE, Mar. 1, 2001, at 52-54.

served the poor in Boston in the 1820s and 1830s; Robert Hartley, founder of New York's Association for the Improvement of the Poor; Charles Loring Brace, a Methodist minister who directed the New York City Children's Aid Society in the mid-nineteenth century; and Josephine Shaw Lowell, a civil war widow who helped found New York's Charity Organization Society in 1882. Examining their individual careers, Schwartz documents their collective belief that "the poor [can] best help themselves by practicing humble virtues like diligence, sobriety and thrift" (p. xv). We can make the poor "less poor," they claimed, "by making them more virtuous" (p. xv). Poverty policy is moral, not economic. Changing behavior is more vital, and more beneficial, than transferring cash.

If this sounds newly familiar, it should. After "a long historical detour," Schwartz writes, happily "we are returning to an anti-poverty approach reminiscent of [these] moral reformers" (p. xix).

No one, it seems, could be more out of step, less concordant with the dominant trends of contemporary American poverty policy, than Mary Jones, the colorful, courageous labor organizer whom U.S. Attorney Reese Blizzard once labeled "the most dangerous woman in America" (pp. 96-97). Elliott Gorn's⁵ first-rate biography of "Mother Jones," the "mother of the commonwealers" (p. 63), effectively chronicles the life of a rabble-rouser unlike any on the political landscape today — even at the fringes. Amidst violence, massacres, boisterous organizing tours, surprisingly powerful electoral campaigns, and countless strikes, successful and unsuccessful, Mother Jones fought for decades to lift the fortunes of the economically powerless.

For Jones, the "lived experience of class" gave "insight into the suffering of working families" — a suffering that boldly contradicted the vacuous homilies of American equality (p. 303). Accordingly, she sought to turn our much-applauded civic religion to radical social change (p. 184). Reaching across barriers of race, gender, ethnicity and citizenship, Jones worked to offer the excluded hope for redemption (p. 270) — making real the promises of the American democracy.

She had no use for charity, only justice (p. 99). She did not seek to improve the poor, but to empower them. She had few doubts about the causes of poverty. "I know what Lincoln would say to that crew on Wall Street," she spat: "The nation first, and you last."⁶ Introducing a group of mill children to a university audience at Princeton, she cried, "[h]ere's a textbook on economics . . . [they] get[] three dollars a week" (p. 133). Rough and tumble to the end, she dreamed that working people would organize to create a just society. For Jones, rank, systematic, unyielding poverty was not a "teachable moment." It

5. Professor of History, Purdue University.

6. P. 159. Jones regularly railed against "the national burglars of Wall Street." P. 180.

was, instead, a rejection of the undergirding premises of democratic government. Citizens are sensible, therefore, to struggle to defeat it, to govern themselves, to secure their dignity. Equality is not a gift, but a demand of justice. And Mary Jones was willing to demand it.

With the advent of a new century, a new economy, a new politics, a new global insecurity, and a “new paternalism,” we are apparently much closer as a society to Schwartz’s “moral reformers” than to Gorn’s Mary Jones. I’m not sure that’s something to celebrate.

I. REFORMING THE POOR

For nineteenth century reformers like Tuckerman, Hartley, Brace, and Lowell, assisting the poor was a moral rather than a fiscal endeavor. Despite their individual differences, they shared a belief that society could best help the impoverished by enabling them to help themselves through the inculcation of virtue. All four openly sought to manage the behavior of the poor. They consistently opposed “the dole” and other welfare plans that would only work “to pauperize” recipients (p. xvi). Instead, they sought, through personal contact — typically by wealthier volunteers offering guidance and counseling — to teach diligence, sobriety, and thrift to those trapped at the lowest rungs of American society. By learning to practice certain character traits, even the poorest among us would become self-reliant. Since destitution and misery resulted from “moral causes,” they would “admit only to moral remedies” (p. xvii). People who practiced virtue, generally speaking, would escape poverty. No mere economic program would manage that.

Of course, the hard edge of such poverty policies eventually fell from favor. Critics like Jane Addams and Walter Rauschenbusch derided the focus on “industrial” virtues and emphasized structural causes of poverty (pp. 109-30). The ravages of the Great Depression made it difficult to argue that a third of Americans merely lacked requisite character. And modern poverty analysts like William Ryan and Frances Fox Piven convinced us, at least by the 1970s, that blaming the victims of poverty for its pervasiveness was neither accurate nor effective.⁷

Still, Schwartz finds the “moral reformers” enlightening. At the least, they remind us that largesse alone can hardly end the specter of poverty. We practiced moral reform for generations, even if success was less than complete. Then, with the advent of the Depression and the 1960s, we stopped asking the poor to help, and to correct, themselves. Now, thankfully, Schwartz finds, we’re returning to higher

7. P. 133 *et seq.*; FRANCES FOX PIVEN & RICHARD A. CLOWARD, *REGULATING THE POOR: THE FUNCTIONS OF PUBLIC WELFARE* (1971); WILLIAM RYAN, *BLAMING THE VICTIM* (1971).

ground. And we return to it at a time in which the prospects for success are powerfully improved (pp. 211-37). The reformers may have been wrong to think that focusing on people's habits alone could cure poverty. But modern welfare policies have also demonstrated convincingly that unconditioned dollars lead to dependency. So the welfare reformers are on the right track. Both logic and history, in short, are on their side.

Schwartz's task, though, is a curious one. It would be simple enough to argue that poor Americans who work hard, avoid wasting their resources on drugs and alcohol, and save every spare penny will fare better economically than those who don't. Our welfare programs, therefore, should be molded to encourage these behaviors. But *Fighting Poverty* is not a naked claim for best practices. It seeks, instead, the stronger pedigree of history. Our poverty policies were different, and perhaps more admirable, in the past. By embracing moral reform now, we turn warmly to our truer heritage.

But Schwartz's book is not only history. It ventures back and forth from nineteenth century practice to occasionally inserted philosophical meanderings⁸ to twenty-first century policy disputes (pp. 9, 49, 74). This may lend freedom to form. But it also gives the historical investigations a strongly diminished credibility. Like "lawyer's history," it can seem designed merely to sustain previously determined positions. Schwartz's goal, therefore, appears to be something different than constructing a history of poverty policy. Steeping ourselves in the lives of Tuckerman, Hartley, Brace, and Lowell may convince us, he thinks, of the power and desirability of modern welfare reform measures designed to force more constructive habits on recipients. That may be Schwartz's purpose. He does not, however, present a very appealing case.

First there are the obvious reasons. The nineteenth century moral reformers were not notably successful, and they eventually grew quite pessimistic about their own prospects for changing people's behavior. Character reform, one of them wrote, is "devoutly to be wished, seldom achieved" (pp. 74, 76). Lowell eventually moaned that "it produces but small results," while Brace claimed it is "like pouring water through a sieve" (pp. 85, 87). Nor are the reformers' efforts helpful in dealing with the modern era's largest welfare "character" issue — the decomposition of the family.⁹ The complexities and challenges of single-parent families, so integral to welfare challenges today, were far less severe a century ago.¹⁰ As a result, they constituted no significant

8. See, e.g., p. 68 (an amateurish use of Plato's concept of self-knowledge).

9. Schwartz concedes those drawbacks repeatedly. Pp. xxii, 58, 220.

10. Family decomposition, of course, has a tremendous impact on poverty. And the trends are alarming. In 1958, 5% of children were born to unmarried women. By 1969, it rose to 10%. In 1980, 18% of kids were born to single women; in 1999, the figure was 33%.

part of the reformers' agenda. Schwartz's models also frequently showed a powerful ability to ignore the structural causes of poverty. His aficionados accepted poverty's existence as given, essentially "unalterable" (pp. 7-8). They not only opposed relief (pp. 19-21), but also spoke out against housing subsidies (p. 90), more humane working hours (p. 28), and efforts to stimulate urban jobs (p. 19). They showed no interest in social security, workers' compensation, or unemployment insurance (p. 150). They translated appalling conditions into questions of character, and largely left them at that.

But Schwartz's fuller examination of the moral reformers' work also reveals stronger shortcomings. The role of religion in their campaigns, for example, could prove immensely troubling. Despite Schwartz's focus on seemingly civil virtues like thrift and sobriety, Tuckerman regarded "religious instruction . . . without doubt [as] the most important" component of moral reform (p. 88). And in nineteenth century America, this meant Protestant Christian education. Brace and Hartley were stunningly anti-Catholic. Brace decried the "chilling formalism of the ignorant Roman Catholic" (p. 83) and the "opposition of the bigoted poor under the influence of . . . prejudiced priests."¹¹ Hartley complained of the "rude," "uninstructed" Irish (p. 164) and the unfortunate influence of the "Romish church" (p. 82). Perhaps it is only because I am a Catholic that I find it hard to warm to the gems Schwartz apparently finds among these somewhat coarser stones. But it should remind us that proponents of "faith-based initiatives" usually assume that it's their own faith that provides the common ground.

The appealing work of social gospel advocate Walter Rauschenbusch, which Schwartz also highlights, shows religious complication from another direction. Rauschenbusch criticized the moral reformers for being, in effect, un-Christian (pp. 100-26). For the likes of Hartley and Brace, he claimed, "the morality of the church is not much more than what prudence, respectability and good breeding demand" (p. 125). This, simply put, represents "the dulling off of Christ's teaching" (p. 123). The moral reformers would make "the indiscriminate charity of which Christ speaks a great evil." And while Tuckerman and others may have been obsessed with thrift, "Christ forbids . . . us to insure ourselves against the future by the hoarding of wealth" (p. 126). Rauschenbusch, in other words, took seriously the Sermon on the Mount as social policy. The moral reformers apparently pushed a

In 1999, 48.4% of children born to women between the ages of twenty and twenty-four were born to unmarried mothers. See George Will, *Family the Key to Good Education*, THE TIMES UNION, Jan. 6, 2002, at B5; see also Ned Glascock, *Out of Wedlock Births on Rise*, RALEIGH NEWS & OBSERVER, Oct. 14, 2001, at A1.

11. P. 83. Nonetheless, Brace maintained that he "certainly had no prejudice against the Romanists." P. 83.

more capitalist-friendly Protestantism. In the realm of private conscience, of course, this is untroubling — to each his own. But in the new age of faith-based initiatives, religious and governmental partnerships present unavoidable conflicts between more and less desirable beliefs, organizations, and practices. And mixing government and religion, as we've seen, threatens both.

Nor, to be candid, do Schwartz's moral reformers exude egalitarianism generally. One of the reasons Tuckerman, Brace, and others were less successful than they might have been, Schwartz concedes, was "the upper class pretentiousness" of the volunteers who sought to cure the habits of impoverished people they didn't know or understand (p. 36). The "teachers" were "undeniably products of an American social elite" (p. 212); the students were not. And if Robert Hartley felt compelled to improve the habits of poor people, he apparently wasn't forced to like or respect them. "Because of [his advisees'] disgustingly filthy and ragged appearance," he explained, "reputable people will not employ [them]" (p. 22). Other poor candidates had "vile habits" and "no decency" (p. 79). A colleague explained that the impoverished are "thrifless . . . mean and self-indulgent" (p. 44). William Ellery Channing complained to Tuckerman that his clients "bring misery upon themselves by evil-doing" (p. 9). Josephine Lowell reasoned "the rich man does not feel the effect of his extravagance as does the poor man, because his purse yields him a margin for imprudent spending" (p. 45). Schwartz's book leaves no hint that his highlighted moral reformers saw their impoverished clients as peers or equal members of a democratic community. They appear only as inferiors in need of correction by their betters.¹²

Schwartz even slips into similar tones in casting his own arguments. He concludes that "for the most part the very poor are not, finally, all that different from you and me in their assessment [as opposed to their practice] of the virtues" (p. 198). One doubts that impoverished clients would swoon over his approval. He also has little apparent doubt that the poorest among us should seek, mightily, to be like "you and me." He seems unable to resist the temptation to regard the disadvantaged as alien. Schwartz also mildly urges the privileged to meet more effectively the demands of noblesse oblige: "to the extent that the decline in savings by the affluent reflects a disdain for prudence, it does not send a salutary message to the poor" (p. 202). Neither Schwartz nor his reformers radiate a muscular sense of equality — though poverty policy is intrinsically self-defeating without one. It is

12. Schwartz concludes that the reformers were not uniformly antagonistic towards urban blacks because they were said to be, unlike the Irish, "generally an honest, humble, hard-working people." P. 165. The compliment likely says more about their anti-Catholicism than their acceptance of racial equality. And even here, it assumes that blacks should be appropriately humble.

likely only because curing other people's habits is regarded as more important than egalitarianism that Schwartz can claim, breathtakingly, that "the problem of poverty is no longer insoluble, because it has been largely solved" (p. 155). If the impoverished were in control of their own lives, he adds, "they would seldom be poor for long in the first place" (p. 220). I will return to such sentiments in the conclusion of this brief Essay. But if one seeks an ennobling sense of the American aspiration to equality, it won't be found in Tuckerman, Hartley, Brace, Lowell or Schwartz. There is more hope in Mary Jones.

II. MOTHER JONES

In 1902, Mary Harris "Mother" Jones, whom Clarence Darrow¹³ called "the most forceful and picturesque figure" (p. 300) in the history of the American labor movement, was arrested for violating a federal injunction banning union-organizing demonstrations (p. 95). Federal Judge John J. Jackson had issued the order at the request of the Fairmont Coal Company in West Virginia. He determined that any demonstration conducted within the sight of mineworkers, even on property leased by the union, threatened the property rights of out-of-state investors. Jones spoke in defiance of the order in Clarksburg, excoriating the mine owners and Judge Jackson and calling the miners who didn't join the fight cowards. "Thirty-nine years ago the black slaves were freed," she thundered a few days later. "[T]oday we are white slaves to a corrupt judiciary" (pp. 95-96).

During her subsequent trial before Judge Jackson, U.S. Attorney Reese Blizzard depicted her as a danger to the nation (p. 97), because on her words alone thousands of working men laid down their tools and challenged the established order. Judge Jackson seemingly agreed, explaining that Jones would not be allowed to hide behind the Declaration of Independence and the First Amendment (p. 97). Finding her guilty of contempt, he added the following counsel:

I cannot forbear to express my great surprise that a woman of the apparent intelligence of Mrs. Jones should permit herself to be used as an instrument by designing and reckless agitators, who seem to have no regard for the rights of others, in accomplishing an object which is entirely unworthy of a good woman. It seems to me that it would be better far for her to follow the lines and paths which the Allwise Being intended her sex should pursue. There are many charities . . . that she could engage in of a lawful character that would be more in keeping with what we have been taught and what experience has shown to be the true sphere of womanhood. (p. 97)

13. University of Michigan Law School, Class of 1878.

Mother Jones thanked him for the advice. She explained she had no martyr complex. But she did have a duty to carry out. She indicated that she was not surprised the judge had sided with the coal companies because, in her experience, “robbers tend to like each other” (p. 981). As always, she would “pray for the dead and fight like hell for the living” (p. 282). Referring to Judge Jackson’s lecture, she later wrote that she wanted “to tear down every charitable institution in the country and build on its ruins a temple of justice.”¹⁴

If Schwartz’s moral reformers spent almost no time exploring and challenging the structural injustices that locked so many Americans into poverty, Mother Jones fought and railed against little else. If the reformers thought dramatic, unrelenting economic inequity was an inescapable component of our national existence, Jones thought it violated the foundational norms of our democracy. And if the reformers thought principally that they were saving troubled souls, Mother Jones thought she was toiling to help save a troubled nation.

A. *Crusading for Economic Justice*

As Gorn’s book demonstrates with care and art, Mary Jones’s life story is a remarkable one. Details of much of her life are sketchy, or controverted. At the beginning of her career as a labor organizer, she was an amazingly unlikely candidate for greatness. Poor, elderly, female, Irish, and widowed, she had already survived the potato famine, the death of her husband and children from yellow fever, and the great Chicago fire. Rather than continuing the brutal life of a seamstress growing old alone, at age sixty she re-invented herself as Mother Jones. With fiery speeches, a flair for the theatrical, a near complete freedom from fear, and a willingness to go repeatedly to jail, in relatively short order she became one of the most famous women in America. To socialist leader and labor organizer Eugene V. Debs she was the “modern Joan of Arc” (p. 64).

The times, no doubt, were different as well. Jones faced tremendous violence — particularly at Ludlow in Colorado and Blair Mountain in West Virginia. She did not urge passive resistance. “Tie up every industry — for every working man they kill, you kill one of them” (pp. 230-33). Her labor protest demonstrations would draw tens of thousands of enthusiasts. Her traveling companion, Eugene V. Debs, received over six percent of the nation’s presidential vote in 1912 (p. 164). The Socialist Party burgeoned. At the height of her influence, Jones had private meetings with presidents Theodore Roosevelt and William Howard Taft (pp. 159, 164). In every corner of the nation she cried, “I know of no East or West, North or South when it

14. P. 99 (letter to Henry Demerest Lloyd).

comes to my class fighting the battle for justice” (p. 106). Her political philosophy was forged in “the lived experience of class,” gleaned directly from the humiliations of working families (p. 303). Gorn concludes that “it was her insistence on speaking for the poor, not as an outsider but as one of them” that provided the key to her success (p. 303). The “poor were her people whom she knew as no one else — no one save Jesus or Mary” (p. 122).

Of course Mother Jones’s dramatic pursuit of economic justice seems foreign today. Politically, neither major party makes the concerns of the impoverished a significant aspect of its agenda. In the academy, we rightly explore claims of racial, sexual, and sexual orientation inequality with fervor. Cultural discrimination has become a central focus of our attentions. The philosophical underpinnings of legal norms are debated with rigor. But economic justice has fallen from view. It is, somehow, less compelling than other explorations of difference.¹⁵

Jones’s career, though, teaches how economic rights and other civil liberties claims can be intricately tied.

You are told that every American-born male citizen has a chance of being president. I tell you that the hungry man with a bed in the park would sell his chance for a good square meal. And these little toilers, dwarfed in body, soul, and morality with nothing but toil before them . . . don’t have the dream that they might someday have a chance at the presidential chair. (p. 137)

While organizing striking workers across the country, Jones fought against the invigorated racism of the 1920s (p. 270). In a speech to immigrants and blacks, she urged: “You are all miners, fighting a common cause, a common master. The iron heel feels the same to all flesh. Hunger and suffering and the cause of your children bind more closely than a common tongue” (p. 106).

She held massive free speech rallies to contest raids and deportations under the Espionage Act of 1917 (p. 211). She challenged government decisions to shut down leftist newspapers and foreign language publications (p. 251). She campaigned for revolutionaries in Mexico (pp. 154-61, 211). She needed constant recourse to habeas corpus (p. 211). She registered unionists at the polls: “a scab at the ballot box is more despised than one at the factory” (p. 143). In con-

15. See ANNE PHILLIPS, WHICH EQUALITIES MATTER? 12 (1999) (“Politicians who once placed themselves on opposite ends of the political spectrum now seem united in their defense of wide-ranging income differentials and their condemnation of ‘simple’ or ‘leveling’ equality.”); RICHARD RORTY, ACHIEVING OUR COUNTRY: LEFTIST THOUGHT IN TWENTIETH CENTURY AMERICA (1998); Diana Coole, *Is Class a Difference that Makes a Difference?*, RADICAL PHIL., May 1, 1996, at 19; Gene R. Nichol, *Law’s Disengaged Left*, 50 J. LEGAL EDUC. 547 (2000) (work of legal academic left largely ignores issues of economic justice); Gene R. Nichol, *Taking Economic Equality off the Table*, 63 LAW & CONTEMP. PROBS. 353 (2000) (issues of poverty removed from mainstream political discourse).

text, she even made powerful pleas for the Second Amendment. After hired detectives had massacred strikers, she spat: “buy guns? Yes. I would borrow money or steal it to buy guns for my boys” (p. 238).

Perhaps most fundamentally, Mother Jones’s sense of the scourge of poverty amidst plenty was not just that it was sad, or unfortunate, or lacking in nobility, or, even, tragic. For Jones, dramatic economic injustice represented the collapse of America’s democratic promise.¹⁶ She sought, in this sense, to re-imagine our politics, revitalizing foundational notions of equality and liberty. A society in which millions are effectively locked out penalizes us all. It robs us of our highest aspirations, our best selves. It suggests that our constitutive commitments are but platitudes; too thin and too phantom to affect the way we govern our lives. For Mary Jones, that wasn’t enough. She demanded that we actually believe the things we teach our children; believe them, and make them real.

III. FORGETTING EQUALITY

Our present focus on questions of poverty more closely tracks Tuckerman, Hartley, Brace, and Lowell than it does Mary Jones. We speak much of an undeserving poor. Political points are scored by being tougher than one’s opponents on the disadvantaged. Public discourse aims less at hardship than at perceived misbehavior. So long as it seems possible for some to escape poverty, we remain unworried that millions, including millions of children, don’t.

But what if we accepted Mother Jones vision of the call of American democracy? What if we took seriously what Bernard Bailyn has called the central theme of American revolutionary ideology: “the belief that through the ages it ha[s] been privilege — artificial, man-made and man-secured privilege — ascribed to some and denied to others . . . [that] ha[s] crushed men’s hopes for fulfillment”?¹⁷ What if we believed, with Lincoln, that the core idea of America is that the weak shall gradually be made stronger and ultimately all will have an equal chance? The great promise of our national life, Lincoln wrote, “is that in due time the weights would be lifted from the shoulders of all.”¹⁸

Twenty-first century American life, for all its marvels, cannot be

16. Gorn makes this point. Jones was, in his view, “a prophetic voice . . . raised in the cause of renewing America’s democratic promise.” P. 303.

17. BERNARD BAILYN, *FACES OF REVOLUTION: PERSONALITIES AND THEMES IN THE STRUGGLE FOR AMERICAN INDEPENDENCE* 220 (1990).

18. Abraham Lincoln, *Address at Independence Hall, Philadelphia, Pennsylvania* (Feb. 22, 1861), in *SELECTED WRITINGS AND SPEECHES OF ABRAHAM LINCOLN* 113 (T.H. Williams ed., 1943); accord *THE LIVING LINCOLN: THE MAN IN HIS TIME, IN HIS OWN WORDS* 205 (Paul M. Angle & Earl Schenck Miers eds., 1995) (“I had thought the Declaration contemplated the progressive improvement in the condition of all.”).

squared with these sentiments. We are, without doubt, the strongest economic power in human history. Despite that, 11.3% of Americans, (thirty-one million people) live in poverty.¹⁹ The number increases significantly if state and federal taxes are included.²⁰ Given the economic travails of recent months, we can expect even worse showings in the future. A disproportionate share of the poor are children — as if any theory of justice or virtue could explain the exclusion of innocent children from the American dream.²¹ Over 16% of those under eighteen live in poverty.²² The figures are worse still for racial minorities: 22% of Black and Latino kids are impoverished.²³ The world's mightiest economic engine has one of the highest child-poverty rates of the advanced industrial nations.²⁴ And the federal poverty designation, it should be remembered, is exceedingly tough medicine. For a family of four, for example, the poverty threshold is met only if total annual income is less than \$17,603.²⁵ A single parent with three kids raking in \$20,000 a year is not impoverished. It takes a studied blindness, therefore, to conclude with Joel Schwartz that poverty is a “non-problem,”²⁶ having “largely been solved” (p. 155). The fact that we also set the pace in the industrial world for wealth concentration and income inequality only makes our transgressions worse.²⁷

19. See JOSEPH DALAKER, U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2000, at 3 (Sept. 2001), available at <http://www.census.gov/prod/2001pubs/p60-214.pdf>; *State's Prosperity Has Eluded Many*, RALEIGH NEWS & OBSERVER, Aug. 11, 2001, at A1 (“An estimated 13% of North Carolina residents were in poverty last year, little changed since 1991.”).

20. See U.S. Census Bureau, Historical Poverty Tables, available at <http://www.census.gov/hhes/poverty/poverty00/table5.html> (18.9% poverty rate after including social security payroll taxes and 17.7 percent poverty rate after including state income taxes).

21. As Daniel Weinberg of the U.S. Census Bureau noted, “Children make up 37% of the poor but only 26% of the total population.” Daniel Weinberg, Press Briefing on 2000 Income and Poverty Estimates. (Sept. 25, 2001), available at <http://www.census.gov/hhes/income/income00/prs01.asc.html>.

22. *Id.*

23. *Id.*

24. Robert Borosage, Campaign for America's Future, *A Nation Split By Its Wage Gap*, July 10, 1998, at <http://www.ourfuture.org/readarticle.asp?ID=247>.

25. Weinberg, *supra* note 21.

26. Joel Schwartz, *What the Poor Need Most*, AM. ENTERPRISE, Mar. 1, 2000, at 52 (“The goal of welfare reform . . . is ultimately less economic . . . than moral [and therefore we should not focus on] the non-problem of money.”).

27. ROBERTO UNGER & CORNEL WEST, THE FUTURE OF AMERICAN PROGRESSIVISM 4 (1998); James Lardner, *The Rich Get Richer: What Happens To American Society When the Gap in Wealth and Income Disparity Grows Larger?*, U.S. NEWS & WORLD REP., Feb. 21, 2000 at 38. Last year, the top 20% of American households received 49.7% of the aggregate income. U.S. Census Bureau, Measures of Household Income Inequality, Current Population Survey, March 2000 and 2001, available at <http://www.census.gov/hhes/www/iing.incpov00/fig12.html>.

The lack of economic resources, of course, leads to myriad consequential deprivations. After a decade of unrelenting political posturing, almost forty million Americans (14%) still have no health care coverage.²⁸ Among households making less than \$25,000 a year, over one-quarter are uninsured.²⁹ Almost 30% of Latino children have no coverage.³⁰ Over three-quarters of the uninsured are employed, or are a wage earner's dependent.³¹ Often, they are among the hardest working — holding down more than one job but still unable to purchase insurance. Last year, six million Americans failed to participate in employer-sponsored health plans because they couldn't afford to pay the fare.³² The comparison with other industrial nations, on this front, is appalling — since we stand alone in failing to assure universal coverage.³³ According to the World Health Organization, the United States ranks twenty-fourth in the quality of health care among the nations of the world, though we spend more per capita than any other country.³⁴

We countenance separate public education systems for the rich and poor as well. In one of its lowest moments, the United States Supreme Court ruled that the Constitution is untroubled by dramatic disparities in public school funding.³⁵ So if a state education system spends four or five times as much on the children of wealthy parents as it does on the poorest kids, the Fourteenth Amendment's guarantee of equal protection of the laws is not denied.

In the years since *Rodriguez*, over forty states have faced lawsuits challenging grossly unequal funding schemes.³⁶ Children from low wealth districts struggle with inferior resources, facilities, libraries, sci-

28. U.S. Census Bureau, Health Insurance Coverage: 2000, at <http://www.census.gov/hhes/hlthins/hlthin00/hlt00asc.html>.

29. U.S. Census Bureau, Health Insurance Coverage: 1998, at <http://www.census.gov/hhes/hlthins/hlthin98/hlt98asc.html>.

30. *Id.*

31. *Hearing on Uninsured Americans Before the Subcomm. on Health of the House Comm. on Ways and Means*, 106th Cong. 19 (1999) (testimony of John Sheils, Vice President, Lewin Group).

32. *The Quest for Health*, RALEIGH NEWS & OBSERVER, Jan. 6, 2002, at A22; see also *supra* note 31.

33. See DEREK BOK, *THE STATE OF THE NATION* 249 (1996) (“[In the other industrial nations] either everyone is covered, or those who remain outside are a small minority of well-to-do people who prefer to purchase their own health care in the private market.”).

34. WORLD HEALTH ORG., *WORLD HEALTH REPORT 2000*, at annex tbl. 1, available at <http://www.who.int/whr/2001/archives/2000/en/contents.htm>.

35. *San Antonio Ind. Sch. Dist. v. Rodriguez*, 411 U.S. 1 (1973) (upholding Texas funding scheme heavily dependent upon local property tax revenues creating huge disparities between wealthy and poor school districts, refusing to recognize education as a fundamental constitutional right).

36. *School Finance: State Efforts to Equalize Funding Between Wealth and Poor School Districts*, SPECTRUM: J. STATE GOV'T, 1998, at 20.

ence labs, advanced placement opportunities and, often, teachers and administrators.³⁷ It is past surprising that so stark a violation of the equal opportunity we say we so strongly prize triggers little attention. After all, every other sort of public school reform proposal imaginable works its way into our political discourse — every one except the one we most need. It's not as if children can select where, or to whom, they are born. Jonathan Kozol has explained it this way:

All religions say that every child is equal in the eyes of God and, in the eyes of God, obviously they are. But they are not equal in the eyes of America. They come into public school with a price tag on their foreheads It shouldn't be that way in a democracy.³⁸

The legal system, as we know, is even worse. Rhetorically we announce, famously, that “any person hauled into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him.”³⁹ But in the civil justice system we let such high-flown sentiments recede. Eighty percent of the civil legal need of the poor is unmet,⁴⁰ and the situations in which they are left unrepresented concern the most crushing problems of human life.⁴¹ Middle-income Americans fare little better.⁴² In the last two decades, federal money spent on legal services has been cut by a third.⁴³ Legislative restrictions further limit the effectiveness of representation for the impoverished.⁴⁴ We spend far less than the other industrial nations on representing the

37. See, for example, my own state's decision in *Leandro v. State*, 488 S.E.2d 249 (N.C. 1997) (documenting dramatic disparities between high and low wealth school districts in North Carolina, and announcing limited state constitutional right to adequate education funding).

38. Alan Borsule, *The Future of Children*, MILWAUKEE J.-SENTINEL, June 4, 2000, at 1.

39. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1962).

40. Deborah Rhode, *Access to Justice*, 69 FORDHAM L. REV. 1785, 1785 (2001) [hereinafter Rhode, *Access to Justice*]; see also DEBORAH RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION (2000) (providing a powerful critique of the legal profession's commitment to equal justice); Rosalie Young, *The Search for Competent Counsel: Perceptions of Applicants for Subsidized Legal Assistance*, 36 FAM. L. 551 (1997).

41. See *Ortwein v. Schwab*, 410 U.S. 656 (1973) (no right of access or representation in welfare benefits case); *United States v. Kras*, 409 U.S. 434 (1973) (indigent seeking voluntary bankruptcy enjoys no right to effective access or representation). See generally, Gordon J. Beggs, *Defend the Rights of the Poor*, 37 CATH. LAW. 1 (1996); Victor Marrero, *Committee to Improve the Availability of Legal Services: Final Report to the Chief Judge of the State of New York*, reprinted in 19 HOFSTRA L. REV. 755, 768 (1991) (“[T]he unmet need for civil legal services for the poor in New York is a critical problem that has a devastating impact on the lives of vast numbers of poor people who need legal assistance and cannot afford it.”); Rhode, *Access to Justice*, *supra* note 40, at 1788 (“[Even] middle income Americans are now priced out of the legal process, or collective concerns such as environmental risks, community economic development and racial discrimination in public education.”).

42. Rhode, *Access to Justice*, *supra* note 40, at 1785.

43. *Id.* at 1786.

44. *Id.*

poor.⁴⁵ Most lawyers provide no significant pro bono service to the poor.⁴⁶ The affluence of the last decade eroded, rather than expanded, support for pro bono programs.⁴⁷ The legal system can thus be both inequitable and inefficient, providing over-lawyering for those who can afford it, and complete exclusion for those who can't. We tolerate a system in which "money often matters more than merits and equal protection principles are routinely subverted in practice."⁴⁸ Equal access to justice is reserved for carvings on courthouse walls.

And the effects of poverty, of course, hardly stop with these powerfully fundamental interests. Poverty leads to tremendous disparities in housing, crime, transportation, environmental quality, access to higher education, proximity to employment — the list is endless. We have embraced a massive regime of economic apartheid featuring differentials of wealth, access, and opportunity that mock our claims of equal citizenship. Our separation submerges formal equality in a torrent of disadvantage. It mocks equal dignity and concern, opting instead for invisibility and remove. It renders hollow the call for one nation under God. Yet no broad-based movement rises up to crusade against it. National political campaigns come and go without its mention. After the culture-altering heroism demonstrated by police and firemen on September 11, 2001, President Bush and the Congress responded primarily with "stimulus" bills that provide massive tax cuts for the wealthiest among us. We have, quite literally, taken economic equality off the national agenda. And we seem satisfied with the result — so long as most of us remain on the more comfortable side of the economic divide. Lincoln thought that the central idea of America was that the weak would gradually be made stronger and eventually all would have an equal chance; we apparently disagree.

But turning away from the most disadvantaged among us, as Mary Jones forced everyone within earshot to hear, is more than a mere lost opportunity in moral instruction. It abandons the foundational premises of our democracy. It ironically diminishes the pull and weakens the tug of Americanism, for we say, implicitly, that it is no longer the case that we are all in this together. The obligation to be "one nation" carries no compulsion, triggers no requirements. If some are left out, so be it. Since it's not feasible for all to make it to the table, we simply turn our gaze away. In the process, of course, we forget who we are; we discard who we mean to be.

45. *Id.*

46. *Id.* at 1809.

47. *Id.* at 1809-15.

48. *Id.* at 1786.

This point is made forcefully in yet a third recent book — Ralph Ellison's posthumously published novel, *Juneteenth*. There, Ellison's central character says this:

We are a nation born in blood, fire and sacrifice. Thus we are judged, questioned, weighed — by the revolutionary ideals and events which marked the founding of our great country. It is these transcendent ideals which interrogate us, judging us, pursuing us, in terms of that which we do or do *not* do. They accuse us ceaselessly and their interrogation is ruthless, scathing, seldom charitable. For the demands they make are limitless.⁴⁹

Our constitutive commitment to equality “interrogates” us, “judges” us, “pursues” us and “accuses” us. It does so even when, as a society, we choose to ignore our best selves. Mary Jones understood that, even if Joseph Tuckerman and Robert Hartley didn't. Mary Jones understood it, even if we have forgotten.

49. RALPH ELLISON, *JUNETEENTH* 14 (2000).