

# Learning to Work: A Functional Approach to Welfare and Higher Education

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Work. n. 1. exertion or effort directed to produce or accomplish something; labor; toil. 2. something on which exertion or labor is expended; a task or undertaking. “The students finished their work in class . . . .”<sup>1</sup>

## INTRODUCTION

In 1996, the long-standing federal welfare program called Aid to Families with Dependent Children (AFDC), part of the Social Security Act of 1934, was repealed.<sup>2</sup> In its place, Congress enacted Temporary Assistance to Needy Families (TANF), a part of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).<sup>3</sup>

The differences between these two programs go beyond nomenclature. Although AFDC went through several overhauls during its sixty-two year existence, its core mission had remained steady: to help struggling families raise children in their own homes.<sup>4</sup> In the 1930s, this was

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1. RANDOM HOUSE WEBSTER’S COLLEGE DICTIONARY 1506 (2d rev. ed. 2000); Dictionary.com, <http://dictionary.reference.com/browse/work> (last visited Dec. 6, 2009).

2. See generally RON HASKINS, WORK OVER WELFARE (2006) (describing the welfare reform debate of the 1990s that resulted in the repeal of AFDC). Ron Haskins was a key congressional aide during the debate.

3. Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. §§ 601-619 (2006). The program was reauthorized, with some modifications, in 2005 with the Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7101, 120 Stat. 4, 135.

4. 42 U.S.C. § 601 (2006) (noting that AFDC provides financial assistance to needy families “for the purposes of encouraging care of dependent children in

accomplished through grants targeted at widows.<sup>5</sup> During the 1940s and 1950s, the demographics of the program changed, with more single, unmarried mothers (disproportionately women of color) receiving grants.<sup>6</sup> In response, many states adopted more stringent criteria for welfare receipt, to limit support available to “unworthy” mothers.<sup>7</sup> By the late 1960s, work requirements for welfare recipients had expanded.<sup>8</sup> Yet the larger context of providing family support remained on the books as the guiding principle of the program.<sup>9</sup> Further, when states sought to use welfare benefits to promote certain decisions about family composition, litigation successfully challenged at least some of these state initiatives, drawing on the overall purposes of the federal AFDC program as a limitation on state discretion.<sup>10</sup> In 1988, the Family Support Act (FSA), crafted largely by Senator Daniel Moynihan, reshaped AFDC to stress both education and work as routes out of poverty while continuing to emphasize the existing

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their own homes”); *see also* *Brush v. Alcala*, 420 U.S. 575, 582-83 (1975) (reviewing AFDC purposes). *See generally* WINIFRED BELL, *AID TO FAMILIES WITH DEPENDENT CHILDREN* (1965).

5. *See* BELL, *supra* note 4.

6. Teresa L. Amott, *Black Women and AFDC: Making Entitlement out of Necessity*, in *WOMEN, THE STATE, AND WELFARE*, 280, 287-89 (Linda Gordon ed., 1990); Christine N. Cimini, *Welfare Entitlements in the Era of Devolution*, 9 *GEO. J. ON POVERTY L. & POL'Y* 89, 94 (2002).

7. *See, e.g.*, *King v. Smith*, 392 U.S. 309, 320-22 (1968) (describing “suitable home” provisions intended to exclude “unworthy” poor from AFDC).

8. Sylvia A. Law, *Ending Welfare as We Know It*, 49 *STAN. L. REV.* 471, 478 (1997) (book review); *see also* MICHAEL B. KATZ, *THE PRICE OF CITIZENSHIP: REDEFINING THE AMERICAN WELFARE STATE* 64-65 (2002) (“In 1967, with the Work Incentive (WIN) Program—now known as workfare—the federal government revived work as a precondition of relief.”).

9. *See* Social Security Amendments of 1967, Pub. L. No. 90-248, § 204(a), 81 Stat. 821, 884 (“It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.”).

10. *See King*, 392 U.S. at 333 (striking down state’s effort to redefine the term “parent” as inconsistent with federal statute). *But see Dandridge v. Williams*, 397 U.S. 471, 473 (1970) (upholding “maximum grant regulation” that limited benefits available to large families, in part to encourage family planning).

family in situ as the focus of these interventions and incentives.<sup>11</sup>

On paper, these federal policy approaches were aimed at making the AFDC family self-supporting on its own terms, without pro-active government intervention to alter family composition.<sup>12</sup> Under these earlier programs, particularly the Family Support Act, a single head of household could use education or work, or a combination of both, to try to increase income and move off welfare.<sup>13</sup> Marriage might have well been in the future of a single mother or father, but the federal law did not take a formal position promoting that possibility.

That changed with the enactment of PRWORA. The 1996 law, for the first time, added a new element to the federal welfare mission: to encourage formation of two-parent families.<sup>14</sup> This change in the statutory purpose of federal welfare opened new doors to states seeking to influence family composition of their poor residents. For example, because of this change in focus, TANF funds could be used by participating states to support new “healthy

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11. See MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE* 309 (1996); U.S. GEN. ACCOUNTING OFFICE, *WELFARE TO WORK: STATES SERVE LEAST JOB-READY WHILE MEETING JOBS PARTICIPATION RATES* (1992) (describing job training and educational placements).

12. Many observers, however, criticized the unintended consequences of the AFDC structure, which purportedly discouraged formation of two-parent families. See, e.g., Robert A. Moffitt et al., *Beyond Single Mothers: Cohabitation and Marriage in the AFDC Program*, 35 *DEMOGRAPHY* 259 (1998) (noting perception that AFDC Program discouraged marriage).

13. *Iowa Dep't of Human Servs. v. United States*, 961 F.2d 769, 770 (8th Cir. 1992); HARRELL R. RODGERS, *AMERICAN POVERTY IN A NEW ERA OF REFORM* 87 (2000) (describing JOBS Program).

14. See the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. § 601(a) (2006), stating that the purposes of TANF are to:

- (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
- (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- (4) encourage the formation and maintenance of two-parent families.

marriage activities.”<sup>15</sup> A number of states have used these funds to develop pro-marriage programs, including classes, counseling, and even marketing efforts.<sup>16</sup>

At the same time that marriage became part of the TANF agenda, TANF turned away from the anti-poverty possibilities offered by higher education.<sup>17</sup> The specific provisions of TANF departed from the FSA approach by actively discouraging participation in educational programs, particularly programs of higher education, as a route out of poverty.<sup>18</sup> Whereas the FSA had offered subsistence welfare benefits to support students while they participated in degree-granting college programs, TANF forced states to channel welfare recipients directly into low-wage work or into shorter-term vocational programs or work preparation programs—generally denominated as “work-first” programs.<sup>19</sup> In combination, these two new focuses of TANF—first, emphasis on marriage, and second, more stringent work participation requirements for welfare recipients—supplanted the prior emphasis on educational participation as a route for providing stable, suitable homes for children cared for by their parents.<sup>20</sup> The Deficit

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15. NAT’L HEALTHY MARRIAGE RES. CTR., TANF FUNDS AND HEALTHY MARRIAGE ACTIVITIES (2007), <http://www.healthymarriageinfo.org/docs/tanffundhmact.pdf>.

16. *See, e.g.*, OFFICE OF THE GOVERNOR & DEP’T OF HEALTH & SOC. SERVS., ALASKA STATE PLAN FOR THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES PROGRAM 31-32 (2004), *available at* <http://www.hss.state.ak.us/dpa/features/pubcomment/stateplan/TANFplan2005-2006proposed.pdf>; REPORT ON THE VIRGINIA INDEPENDENCE PROGRAM AND OTHER PROJECTS FUNDED WITH THE TEMPORARY ASSISTANCE FOR NEEDY FAMILIES BLOCK GRANT 8-10 (2007), *available at* [http://www.dss.virginia.gov/files/about/reports/financial\\_assistance/tanf/2006/vip\\_annualreport\\_sfy2006.pdf](http://www.dss.virginia.gov/files/about/reports/financial_assistance/tanf/2006/vip_annualreport_sfy2006.pdf); Oklahoma Marriage Initiative, <http://www.okmarriage.org> (last visited Dec. 6, 2009).

17. *See* Rebekah J. Smith et al., *The Miseducation of Welfare Reform: Denying the Promise of Postsecondary Education*, 55 ME. L. REV. 211 (2002).

18. *See id.*

19. KATHLEEN M. SHAW ET AL., PUTTING POOR PEOPLE TO WORK: HOW THE WORK-FIRST IDEA ERODED COLLEGE ACCESS FOR THE POOR 27 (2006). The authors note that while some provisions of the FSA reflected the work-first philosophy, it “had not yet become dominant.” *Id.*

20. *See id.* at 35.

Reduction Act, which reauthorized TANF in 2005, confirmed this policy direction.<sup>21</sup>

PRWORA is slated for reauthorization in late 2010.<sup>22</sup> This is an appropriate occasion, then, for assessing whether PRWORA's emphasis on marriage and work-first, at the expense of education, has proven to be an effective policy approach to addressing family poverty. This Article contributes to that effort not through empirical study of PRWORA's results (though some prior empirical results are catalogued), but through legal and policy analysis that draws on a range of philosophical, normative, and empirical observations.

Others have commented extensively on the data showing that government-funded marriage-promotion programs mounted through the PRWORA efforts have had little impact.<sup>23</sup> This result should come as no surprise. Indeed, Senator Moynihan, a sociologist and long-time student of government welfare programs predicted as much. Asked to comment on PRWORA's marriage-promotion provisions, Moynihan replied, "If you think a government

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21. Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 7101, 120 Stat. 4, 135.

22. The TANF block grant was initially funded through the end of federal fiscal year 2002. After several short-term extensions, Congress reauthorized in the Deficit Reduction Act of 2005. TANF is now authorized through September 30, 2010. See LIZ SCHOTT, CTR. ON BUDGET AND POLICY PRIORITIES, AN INTRODUCTION TO TANF 2 (2009), <http://www.centeronbudget.org/cms/index.cfm?fa=view&id=936>.

23. See, e.g., TAMI RICHARDS & DONALD BRUCE, CTR. FOR BUS. & ECON. RESEARCH, EVALUATING THE ROLE OF MARRIAGE FOR TENNESSEE WELFARE RECIPIENTS 1 (2004), available at <http://cber.utk.edu/TDHS/ffjun0402.pdf> (finding no evidence that marriage leads to improved outcomes for measures of poverty or child well-being for Families First participants or recent welfare leavers); Marianne P. Bitler et al., *The Impact of Welfare Reform on Marriage and Divorce*, 41 DEMOGRAPHY 213 (2004), available at <http://www.econ.ucdavis.edu/faculty/hoynes/publications/BGHZ-Demography-Final.pdf> (reporting statistical data indicating that the welfare reform has led to fewer new marriages); Jane G. Moulton et al., *Attitudes of Welfare Recipients Toward Marriage and Childbearing*, 23 POPULATION RES. & POL'Y REV. 595 (2004) (finding that TANF had little effect on attitudes and marriage rates in Indiana and Delaware).

program can restore marriage, you know more about government than I do.”<sup>24</sup>

Others have also written persuasively and at length on the effects and flaws of “work-first” programs that fail to support the long-term human development that would likely have a greater impact on poverty reduction, particularly during harder economic times.<sup>25</sup> Many of these books and articles have focused on the benefits of education as a strategy for long-term poverty reduction.<sup>26</sup> For example, in *Putting Poor People to Work: How the Work-First Idea Eroded College Access for the Poor*,<sup>27</sup> the authors address the on-the-ground tension between work-first policies and higher education, describing the implementation of work-first approaches and the ways in which policy commitments to education have been eroded by bureaucratic incentives that emphasize immediate job placements. Citing extensive

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24. James Q. Wilson, *Pat Moynihan Thinks About Families*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 28, 33 (2009).

25. See, e.g., JOHN DESKINS & DONALD BRUCE, CTR. FOR BUS. & ECON. RESEARCH, WORK REQUIREMENTS AND WELFARE: WORK OR EDUCATION FIRST? 1 (2004), available at <http://cber.utk.edu/TDHS/ffjun0403.pdf> (“[M]ore education translates into better outcomes across the board.”); SHAW ET AL., *supra* note 19.

26. See, e.g., Min Zhan & Shanta Pandey, *Economic Well-being of Single Mothers: Work First or Postsecondary Education?*, J. SOC. & SOC. WELFARE, Sept. 2004, at 87 (using data showing that education significantly improves earning status to challenge the work-first model and call for anti-poverty policies that develop human capital); see also SHUT OUT: LOW INCOME MOTHERS AND HIGHER EDUCATION IN POST-WELFARE AMERICA (Valerie Polakow et al. eds., 2004).

27. SHAW ET AL., *supra* note 19; see also RECLAIMING CLASS: WOMEN, POVERTY, AND THE PROMISE OF HIGHER EDUCATION IN AMERICA (Vivyan C. Adair & Sandra L. Dahlberg eds., 2003) (discussing welfare reform). Two other recent works address higher education as a general anti-poverty strategy without any special focus on welfare policy: a book, AMERICA’S UNTAPPED RESOURCE: LOW-INCOME STUDENTS IN HIGHER EDUCATION (Richard Kahlenberg ed., 2004); and a report, BRYAN COOK, AM. COUNCIL ON EDUC., LOW-INCOME ADULTS IN PROFILE: IMPROVING LIVES THROUGH HIGHER EDUCATION (2004), available at [http://www.acenet.edu/bookstore/pdf/2004\\_improving\\_lives.pdf](http://www.acenet.edu/bookstore/pdf/2004_improving_lives.pdf). Two older books that pre-date the 1996 welfare reform law also address this general issue of poverty and higher education: ARTHUR LEVINE & JANA NIDIFFER, BEATING THE ODDS: HOW THE POOR GET TO COLLEGE (1996); and LOVE OF LEARNING: DESIRE FOR JUSTICE: UNDERGRADUATE EDUCATION AND THE OPTION FOR THE POOR (William Reiser, S.J. ed., 1995). In contrast to my analysis, these works all focus on the social and policy benefits of promoting higher education without a critical examination of the conceptual distinctions and overlaps between education and work activities.

data, Shaw and her coauthors argue that higher education serves the long-term policy goals of welfare reform and should therefore be an available option for welfare recipients seeking to comply with their welfare-to-work obligations.<sup>28</sup>

In this Article, I join with these commentators in critiquing the current welfare law's attempt to enforce a work-education dichotomy. However, my approach is different from that reflected in prior literature on this subject in two respects. First, most commentators have addressed a more narrowly circumscribed set of welfare- and work-related issues.<sup>29</sup> Few books or articles have focused on welfare and education, with even fewer addressing higher education.<sup>30</sup>

Second, and more importantly, in contrast to earlier efforts, this Article challenges the assumption underlying the 1996 welfare law and its 2005 reauthorization that work and education are wholly distinct concepts and activities. I ask: why does welfare law and policy distinguish between work and education, and is this distinction justified by the nature of these activities? Prior scholarship in this area explores the tension between work and education and argues for an expansion of welfare-to-work policies to encompass education.<sup>31</sup> I reach the same end result, but instead focus on the significant conceptual and functional overlap between work and education as the basis for a new, broader understanding of welfare-to-work activities. Thus, instead of pitting these two policy approaches against each other, as was done during the legislative debate and in post-

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28. SHAW ET AL., *supra* note 19, at 5-7.

29. See, e.g., FINDING JOBS: WORK AND WELFARE REFORM (David E. Card & Rebecca M. Blank eds., 2000); HASKINS, *supra* note 2; NANCY E. ROSE, WORKFARE OR FAIR WORK: WOMEN, WELFARE, AND GOVERNMENT WORK PROGRAMS (1995); ROBERT M. SOLOW, WORK AND WELFARE (Amy Gutmann ed., 1998); Noah Zatz, *Welfare to What*, 57 HASTINGS L.J. 1131 (2006); Noah D. Zatz, *What Welfare Requires from Work*, 54 UCLA L. REV. 373 (2006).

30. See Kathleen M. Shaw, *Using Feminist Critical Policy Analysis in the Realm of Higher Education: The Case of Welfare Reform as Gendered Educational Policy*, 75 J. HIGHER EDUC. 56, 57 (2004) (“[W]elfare reform has received relatively little attention among higher education researchers.”); Smith et al., *supra* note 17, at 226-30 (describing the successes of Maine’s postsecondary education program for welfare recipients).

31. See *supra* notes 24-25.

implementation analyses, I argue that these concepts have considerable overlap. This overlap can easily facilitate the design of welfare programs that build human capital while also conveying important values and skills necessary for workplace success.

Not surprisingly, the unacknowledged overlap between the concepts of work and education has important implications for the implementation of welfare reform laws. When the most recent welfare reform laws were enacted, in 1996 and 2005, federal lawmakers assumed that the states and policymakers who make up welfare reform's constituents shared an understanding of a clear dichotomy—and a bright line—between work and education. But after more than a decade, it is clear that there is no such common understanding.

In part, this lack of definitive consensus reflects substantive policy disagreements. The current federal law discourages pursuit of higher education, yet some state policymakers believe that the welfare system should provide general support for low-income individuals who are diligently and responsibly pursuing higher education as a means to leave poverty permanently.<sup>32</sup> To implement their vision despite the restrictions of the current system, they may strategically stretch definitions and exploit loopholes in the federal law and regulations.<sup>33</sup> But as even dictionary definitions reveal, it is also the case that “work” and “education” are complex concepts that often share similar functions and involve similar activities; the presence or absence of a wage is not a determining factor in distinguishing between these two activities. Thus, the lack of consensus about these terms also reflects different understandings of work itself, its relationship to higher education, and the role of both work and higher education in individual lives and society. Indeed, federal law treats work and higher education inconsistently across policy areas, adding to the confusion about the exact natures of these activities, their functions, and the roles that they should properly play in social programs.

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32. See Smith et al., *supra* note 17, at 223-24.

33. See EVELYN GANZGLASS, CTR. FOR LAW & SOC. POLICY, STRATEGIES FOR INCREASING PARTICIPATION IN TANF EDUCATION AND TRAINING ACTIVITIES (2006), available at [http://www.clasp.org/publications/tanf\\_ed\\_training.pdf](http://www.clasp.org/publications/tanf_ed_training.pdf).

This Article proceeds as follows. In Part I, I provide some general background on the venerable relationship between work and education, particularly higher education, demonstrating that the overlap between these concepts is by no means new. I look at these developments from both the perspective of integrating work into education and the perspective of integrating education into work. I also examine specific developments linking work and higher education in the twentieth century, including the growth of the cooperative education movement, the expansion of community colleges, and workforce development initiatives that increase integration of educational opportunities into work settings. To frame these developments, I introduce specific educational theories and workforce policies that bring work and higher education together—what some commentators have called the “third way.”<sup>34</sup>

In Part II, I examine more specifically how higher education and work have been treated in both federal and state welfare law in the past century, from the original Mother’s Pensions of the Progressive Era through the JOBS and TANF programs. I also explore possible explanations for measures intended to separate higher education from U.S. welfare policy, and discuss the functional overlaps of education and work from the perspective of low-income individuals and communities.

In Part III, I examine alternative work and education policies in the U.S. and abroad. As part of this discussion, I reference comparative welfare programs in Great Britain and Germany, as well as international regimes that have recognized the policy roles and interrelationships of both higher education and work. I also discuss U.S. domestic laws outside of the welfare arena that incorporate policies directed at work and higher education, including the successive iterations of the G.I. Bill. Of special interest is the way in which many of these policies treat liberal arts programs or graduate training that is not overtly linked to particular employment.

Finally, I conclude with policy recommendations that flow from these observations about the changing natures and policy functions of work and education, as well as their interrelationships. In particular, this review makes clear

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34. Richard M. Freeland, *The Third Way*, ATLANTIC, Oct. 2004, <http://www.theatlantic.com/doc/200410/freeland>.

that adherence to a strict dichotomy between work and higher education not only misrepresents the nature of each activity, but also precludes the construction of more effective public policies.

#### I. INTEGRATING WORK AND EDUCATION: A SHORT HISTORY

What exactly is “work”? What distinguishes it from “education”? On one level, these are existential questions, addressed by many of the most prominent public intellectuals of the past centuries.<sup>35</sup> For my purposes, common understandings are the most relevant. The *Random House Dictionary* definition quoted above emphasizes “exertion,” “effort,” and a direction or goal as the key components of work.<sup>36</sup> Similarly, according to the *American Heritage Dictionary*, the first definition of work is “[p]hysical or mental effort or activity directed toward the production or accomplishment of something.”<sup>37</sup> Subsequent definitions in that volume identify work as a possible synonym for “job.”<sup>38</sup>

The *American Heritage Dictionary* also unhelpfully defines education as “[t]he act or process of educating or being educated,” but adds as a second definition, “[t]he knowledge or skill obtained or developed by a learning process.”<sup>39</sup>

The overlap between these definitions of work and education is clear. Both activities may require “mental effort,” and in some instances, “physical . . . effort,” and both are part of larger processes that yield results, either the “accomplishment of something” or the acquisition of “knowledge or skill.”<sup>40</sup> Indeed, under these definitions, it seems apparent that education is itself simply a type of work that has as its goal the acquisition of knowledge or skill.

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35. See generally JOANNE B. CIULLA, *THE WORKING LIFE: THE PROMISE AND BETRAYAL OF MODERN WORK* 22-34 (2000) (reviewing definitions of work).

36. *RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY* 1506 (2d rev. ed. 2000).

37. *AMERICAN HERITAGE DICTIONARY* 1981 (4th ed. 2006).

38. *Id.*

39. *Id.* at 569.

40. *Id.* at 569, 1981.

Yet, during the 1996 welfare reform debate, as well as during more recent policy skirmishes in the course of welfare reauthorization, the majority of policymakers treated work and education as if they were entirely different concepts. For example, during the 1996 debate, Senator Phil Gramm of Texas opined on what he saw as the clear differences between work and education:

[W]ork does not mean sitting in a classroom. Work means work. Any farm kid who rises before dawn for the daily chores can tell you that. Ask any of my brothers and sisters what “work” meant on our family’s dairy farm. It didn’t mean sitting on a stool in the barn, reading a book about how to milk a cow. “Work” meant milking cows.<sup>41</sup>

In making this statement, Senator Gramm echoed the sentiments of Senator William L. Armstrong of Colorado, expressed a decade earlier. Senator Armstrong asserted: “People on welfare ought to work, work, work . . . because it is good for the soul, because it is fair to the taxpayers, because it rankles people who are paying taxes to support these programs to see people who are recipients not get out and work.”<sup>42</sup>

Senator Armstrong, invoking the “soul” of the worker, appeals directly to the notion of work as a route to spiritual salvation.<sup>43</sup> Years later, Senator Gramm built on this notion by contrasting work with the indulgences of education. Senator Gramm’s characterization of work as doing (“milking”) in contrast to the theory of education (“sitting on a stool”), reflects a firm belief in the separate spheres of work and education.<sup>44</sup> In his reference to rising “before dawn for the daily chores,” he summons the idea of work as uniquely unpleasant or punitive, in contrast to the selfish gratifications of education.<sup>45</sup> While the *student* is “sitting on

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41. 141 CONG. REC. S13,788 (daily ed. Sept. 19, 1995) (statement of Sen. Gramm).

42. KATZ, *supra* note 11, at 306 (quoting Senator Armstrong).

43. *See id.* On salvation and work, see generally ADRIAN FURNHAM, THE PROTESTANT WORK ETHIC 5 (1990), who notes that the Protestant work ethic gave employers a “transcendent sanction” for poor work conditions.

44. 141 CONG. REC. S13,788.

45. *Id.* For a discussion of both individual and societal benefits of higher education, see HOWARD BOWEN, INVESTMENT IN LEARNING (Johns Hopkins Univ. Press 1997) (1977).

a stool in the barn, reading a book about how to milk a cow,” she presumably shirks while others, the real *workers*, are busy accomplishing something concrete—and saving their souls in the bargain—by getting messy and actually doing the milking.<sup>46</sup>

In 2006, ten years after Senator Gramm’s statement, hostility towards education was still a key aspect of policymaking in the welfare arena. In legislation reauthorizing welfare reform that reaffirmed a work-focused approach, Congress directed the U.S. Department of Health and Human Services (HHS) to promulgate regulations setting out appropriate activities for welfare recipients, such as what would count as the requisite “work” for purposes of continued receipt of benefits and compliance with federal law.<sup>47</sup> Posted for comment in June 2006, the interim final rule issued by the HHS Administration for Children and Families (ACF) proposed a much more restrictive standard for postsecondary training than the prior 1996 law.<sup>48</sup> The clear intent of the proposed regulations was to reduce the number of educational activities that states could count as work, particularly targeting postsecondary education.<sup>49</sup> Indeed, the preamble to the proposed regulations stated that welfare—which provides financial support for shelter, transportation, childcare and other necessities, but does not provide any direct educational benefits—“was not intended to be a college scholarship program for postsecondary education.”<sup>50</sup>

After significant public comment, these proposed regulations were substantially modified before their final adoption, with the final regulations representing an unexpected broadening of criteria for acceptable work activities.<sup>51</sup> Characterizing the February 2008 regulations

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46. 141 CONG. REC. S13,788.

47. 42 U.S.C. § 607(i) (2006) (“Not later than June 30, 2006, the Secretary shall promulgate regulations to ensure consistent measurement of work participation rates under State programs funded under this part . . .”).

48. Reauthorization of the TANF Program, 71 Fed. Reg. 37,475 (June 29, 2006).

49. *See id.*

50. 71 Fed. Reg. 37,460.

51. *See* 45 C.F.R. §§ 261.2, 261.31, 261.33 (2008).

as a “breath of spring,” welfare rights advocate Maureen Lane of the Welfare Rights Initiative reported:

The new regulations count college and other education and training programs as activities that will lead people to employment and out of welfare, whereas for the last 12 years they have not. The regulations represent a major shift in policy thinking. The new rules are not everything people need to access education but they are a big step forward.<sup>52</sup>

However, Lane’s exuberance may have reflected her low expectations after years of advocacy to expand the availability of higher education to welfare recipients. In fact, the final regulations indicate that only “vocational educational training” (which may include educational programs at postsecondary institutions) is counted as acceptable work activity, and that such training “may only count for a total of 12 months for any individual” during their period of welfare receipt.<sup>53</sup> Further, after only twelve months of full-time vocational education, welfare recipients must engage in twenty hours a week of “core activities” such as job searching, job readiness, community service, job training, and so on.<sup>54</sup> Continued participation in an educational program can only be an add-on after these initial twenty hours of job-related activities.<sup>55</sup> In short, the final regulations continue to distinguish sharply between “work” activities and “educational” activities, making it easier for welfare recipients to maintain their supportive benefits while engaged in the range of activities that the welfare law defines as “work”—such as job searching, on-the-job training, or community service.<sup>56</sup>

As discussed below, this effort to wall off higher education from the arena of work has some historical basis.

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52. Posting of Maureen Lane to DMIBlog, [http://www.dmiblog.com/archives/2008/02/an\\_early\\_spring\\_new\\_welfare\\_re.html](http://www.dmiblog.com/archives/2008/02/an_early_spring_new_welfare_re.html) (Feb. 6, 2008, 07:24 EST).

53. 45 C.F.R. § 261.33(a).

54. 45 C.F.R. § 261.31(b). The activities designated in 42 U.S.C. § 607 (c)(1)(a) are often referred to as “core activities.” See, e.g., *Hearing to Assess Impact of Recent Changes to Programs Assisting Low-income Families: Hearing Before the Subcomm. on Income Security & Family Support of the H. Comm. on Ways & Means*, 110th Cong. 10 (2007) (statement of Sidonie Squier, Office of Family Assistance, Dep’t of Health & Human Services).

55. 45 C.F.R. § 261.31(c).

56. 45 C.F.R. §§ 261.2, 261.31, 261.33.

However, whatever truth there might have once been to the historical dichotomy between work and education, it has been largely superseded by more contemporary and integrated understandings of these related concepts.

A. *Integrating Work into Education*

Senator Gramm's description of work and education as distinct, even warring categories, has deep historical roots. Because of the monastic origins of educational institutions in the Western world, education was long seen as an activity reserved for those who did not engage in productive labor.<sup>57</sup> With education viewed as a luxury available only to the wealthy elite, the notion that education and work were antithetical or in opposition became embedded in both of these concepts.<sup>58</sup> Education, a selfish pursuit, was for the few. Work, in contrast, was for the masses (while degrading the individual). Yet even a brief review of the history of education reveals that from an early stage, education was also viewed as a mechanism for the broad transmission of skills, combining theory with practice.<sup>59</sup> More recently, specific reforms have rejected paradigms of education as inherently elite and egocentric, and have instead sought to expand access to the full range of educational opportunities as a means to promote equality and strengthen democratic institutions.<sup>60</sup>

Of course, informal forms of education stretch back to the beginning of human existence. The modern university, however, began to emerge in Western society toward the end of the twelfth century, growing out of an earlier era of local ecclesiastical instruction.<sup>61</sup> As the church's influence waned at the end of the Middle Ages, a stronger interest in secular studies developed, which formed the foundation for

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57. See Annette Hayton & Anna Paczuska, *Introduction* to ACCESS, PARTICIPATION AND HIGHER EDUCATION: POLICY AND PRACTICE 1, 2-3 (Annette Hayton & Anna Paczuska eds., 2002).

58. See Rev. J. Hirst Hollowell, *Modern Tendencies in Education*, EDUC., Nov. 1899, at 143, 151 (noting that the "old delusion" that work and education are antithetical has been superseded by more modern approaches).

59. See discussion *infra* at pp. 161-63.

60. HAYTON & PACZUSKA, *supra* note 57, at 3.

61. See John C. Scott, *The Mission of the University: Medieval to Postmodern Transformations*, 77 J. HIGHER EDUC. 1, 6-9 (2006).

the modern approach to education.<sup>62</sup> This “humanist” tradition emphasized the importance of “the dignity and value of humankind and . . . the welfare of human beings.”<sup>63</sup> By the mid-1600s, science, modern languages, and sports became a central focus of school curricula, and many schools emphasized the manual arts as a component of preparing students to provide economic and political leadership.<sup>64</sup>

While education was still reserved for the economic elite, humanists recognized that education was a continuous, lifelong process.<sup>65</sup> This insight served as a basis for expanding educational opportunities through emerging educational institutions and work arrangements in the American colonies.<sup>66</sup> In 1642, the Commonwealth of Massachusetts ordered masters and parents to instruct their apprentices, minor servants, and children in basic reading and writing.<sup>67</sup> Similarly, Virginia enacted statutes ensuring orphans were educated in a “manual trade”<sup>68</sup> and allowing judges to send children to “public flax houses” if their parents’ poverty interfered with their moral and educational upbringing.<sup>69</sup>

By the eighteenth century, even more of the vestiges of the religious origins of education were abandoned, particularly in the United States.<sup>70</sup> Benjamin Franklin,

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62. *See id.* at 13-14.

63. Mary Harter Mitchell, *Secularism in Public Education: The Constitutional Issues*, 67 B.U. L. REV. 603, 619 (1987).

64. *See* ANNA MARIE FRANK, *SPORTS AND EDUCATION: A REFERENCE HANDBOOK* 39-40 (2003) (discussing the role of sports in Renaissance education); Wolfgang Behringer, *Arena and Pall Mall: Sport in the Early Modern Period*, 27 GERMAN HIST. 331, 338-39 (2009) (noting in European academies in the mid-1600s, “sporting activities could take up more of the day than academic pursuits”); Scott, *supra* note 61, at 10-14.

65. Scott, *supra* note 61, at 13-14.

66. *Id.* at 14-15; *see also* Lyon Gardiner Tyler, *Education in Colonial Virginia. Part I: Poor Children and Orphans*, 5 WM. & MARY C.Q. HIST. MAG. 219, 221 (1897).

67. Massachusetts Law of 1642, <http://www.extremeintellect.com/ei2007/educationhistory/masslaw1642.html> (last visited Dec. 6, 2009).

68. Tyler, *supra* note 66, at 221.

69. *Id.* at 223 n.1.

70. *See generally* FREDERICK RUDOLPH, *THE AMERICAN COLLEGE AND UNIVERSITY: A HISTORY* (1990); Tyler, *supra* note 66.

himself a product of vocational instruction, led this movement by establishing the Philadelphia Academy, with a mission to teach “every thing that is useful.”<sup>71</sup> Teaching was increasingly conducted in modern languages rather than Latin and the sciences were emphasized, along with instruction in inductive and deductive reasoning.<sup>72</sup>

The U.S. movement toward common, state-sponsored primary schools, free and open to all, came into its own in the nineteenth century.<sup>73</sup> Massachusetts was the first state to adopt the system, and others followed. Public high schools also began to develop.<sup>74</sup> The first Massachusetts public school provided free instruction in practical topics that included surveying, navigation, geography, and civics, as well as more traditional intellectual pursuits.<sup>75</sup> Secular institutions of higher education also proliferated, reflecting a commitment to broadening access to higher education.<sup>76</sup> In particular, the 1862 Morrill Act granted a cache of land to every state that established a public “agricultural and mechanical college”—30,000 acres for each congressman, aggregating to almost 11 million acres across the country.<sup>77</sup> According to historian Allan Nevins, the primary motive

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71. BENJAMIN FRANKLIN, PROPOSALS RELATING TO THE EDUCATION OF YOUTH IN PENNSYLVANIA 11 (1749), available at [http://dewey.library.upenn.edu/sceti/printedbooksNew/index.cfm?TextID=franklin\\_youth&PagePosition=9](http://dewey.library.upenn.edu/sceti/printedbooksNew/index.cfm?TextID=franklin_youth&PagePosition=9); see WALTER ISAACSON, BENJAMIN FRANKLIN: AN AMERICAN LIFE 18-20 (2003) (describing Franklin’s lack of formal education).

72. See LAWRENCE A. CREMIN, AMERICAN EDUCATION: THE COLONIAL EXPERIENCE 375-86 (1970) (discussing reforms proposed by Benjamin Franklin and implemented by others, including William Smith in his proposed curriculum for the College of Philadelphia).

73. See R. FREEMAN BUTTS, PUBLIC EDUCATION IN THE UNITED STATES: FROM REVOLUTION TO REFORM (1978); JAMES A. JOHNSON ET AL., INTRODUCTION TO THE FOUNDATIONS OF AMERICAN EDUCATION (13th ed. 2004).

74. See BUTTS, *supra* note 73; JOHNSON ET AL., *supra* note 73.

75. See Carl F. Kaestle & Maris A. Vinovskis, *From Apron Strings to ABCs: Parents, Children & Schooling in Nineteenth-Century Massachusetts*, 84 AM. J. SOC. (SUPP.) S39, S48-49 (1978); Stephen Lassonde, *Learning and Earning: Schooling, Juvenile Employment, and the Early-Life Course in Late Nineteenth-Century New Haven*, 29 J. SOC. HIST. 839, 839-40 (1996).

76. Lassonde, *supra* note 75, at 840-41.

77. U.S. GENERAL LAND OFFICE, ANNUAL REPORT OF THE COMMISSIONER OF GENERAL LAND OFFICE TO U.S. DEPARTMENT OF INTERIOR 104-05 (1868); Kaestle & Vinovskis, *supra* note 75, at S48.

behind this legislation, which made higher education newly accessible to those in western states and territories, was “the principle that every child should have free opportunity for as complete an education as his tastes and abilities warranted. . . . No restrictions of class, or fortune, or sex, or geographical position—no restrictions whatsoever—should operate.”<sup>78</sup> Reflecting the breadth and depth of this sentiment, even female academies, instructing girls in the practical and intellectual arts, became a feature of American education by the mid-1800s.<sup>79</sup>

While recent decades have seen the pendulum swing away from many forms of public instruction—with privatization and home schooling on the rise on the secondary education level—the notion of higher education as a way to provide practical preparation and training as well as intellectual grounding for community life has persisted and even expanded.<sup>80</sup> Indeed, about half of high school graduates now enter college or other postsecondary education.<sup>81</sup> Following the path carved out by the humanists centuries before, institutions of higher education increasingly have developed programs that combine practical experience with classroom instruction.<sup>82</sup> The cooperative education and community college movements

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78. ALLAN NEVINS, *THE STATE UNIVERSITIES AND DEMOCRACY* 16-17 (1962).

79. BARBARA MILLER SOLOMON, *IN THE COMPANY OF EDUCATED WOMEN: A HISTORY OF WOMEN AND HIGHER EDUCATION IN AMERICA* 23-24 (1986); Barbara Matthews, *Women, Education and History*, 15 *THEORY INTO PRAC.: DEMOCRACY IN EDUC.* 47, 49 (1976).

80. See generally Päivi Tynjälä et al., *Pedagogical Perspectives on the Relationships Between Higher Education and Working Life*, 46 *HIGHER EDUC.* 147 (2003).

81. NAT'L CTR. FOR EDUC. STATISTICS, *THE CONDITION OF EDUCATION 2004: INDICATOR 17, INTERNATIONAL COMPARISON OF TRANSITION TO POSTSECONDARY EDUCATION* 62, 139 (2004), available at [http://nces.ed.gov/programs/coe/2004/pdf/17\\_2004.pdf](http://nces.ed.gov/programs/coe/2004/pdf/17_2004.pdf).

82. See Tynjälä et al., *supra* note 80, at 147 (attributing this shift, in part, to globalization, diversification, and new forms of knowledge production). High schools are also engaged in experiments integrating work and education. See THOMAS R. BAILEY ET AL., *WORKING KNOWLEDGE: WORK-BASED LEARNING AND EDUCATION REFORM* (2004) (surveying high schools as well as colleges); Electa Draper, *Students Prepped, Ready to Grow*, *DENVER POST*, June 8, 2007, at A1 (describing Arrupe Jesuit High School in Denver, a college-preparatory high school serving a low-income students where students work one day per week at “entry-level white-collar jobs”).

provide good case studies of these developments in higher education.

The National Commission for Cooperative Education defines “cooperative education” as “a structured educational strategy integrating classroom studies with learning through productive work experiences in a field related to a student’s academic or career goals.”<sup>83</sup> Professor Herman Schneider created the first cooperative education program in 1901 as a component of the engineering education at Lehigh University.<sup>84</sup> Schneider himself described his initiative as an epiphany, in which he “realized what should have been perfectly obvious before”—that exposure to both theory and practice was necessary to train engineers.<sup>85</sup> Interesting, Schneider’s insight did not emerge directly from academic traditions of the time, but from his review of the classical writings of Marcus Vitruvius Pollio, the architect and city planner for August Caesar.<sup>86</sup> Opining on the training necessary to be qualified as an architect, Vitruvius advocated both theoretical and manual instruction, writing that “knowledge is the child of practice and theory.”<sup>87</sup>

In 1909, Northeastern University followed Lehigh and became the second institution in the country to adopt cooperative education in its engineering program.<sup>88</sup> One of the earliest comprehensive co-op programs was developed in 1921 at Antioch College, in Ohio, which required its students to divide their time between the study of traditional subjects and full-time work.<sup>89</sup> In the next decades, the influential work of John Dewey, the

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83. Nat’l Comm’n for Coop. Educ., *The Cooperative Education Model*, <http://www.co-op.edu/aboutcoop.htm> (last visited Dec. 6, 2009).

84. John-Pierre Smollins, *The Making of the History: Ninety Years of Northeastern Co-op*, *NORTHEASTERN UNIV. MAG.* (Boston, Mass.), May 1999, at 36, 37, available at <http://www.numag.neu.edu/9905/history.html>.

85. Stephen R. Herr, *Academic Yearnings—Cooperative Responses*, 35 *J. COOPERATIVE EDUC.* 35, 35 (2000) (quoting Letter from Herman Schneider to F.M. Feiker (Oct. 19, 1912) (on file with University of Cincinnati Archives)).

86. *Id.* at 36.

87. *Id.*

88. Smollins, *supra* note 84, at 38.

89. Patricia L. Linn & Jane Ferguson, *A Lifespan Study of Cooperative Education Graduates: Quantitative Aspects*, 34 *J. COOPERATIVE EDUC.* 30, 32 (1999).

progressive educator, further supported the relationship between experience and education.<sup>90</sup> By the end of the twentieth century, cooperative education had expanded far beyond these initial few schools, with a dramatic rise in integration of work experiences with classroom learning through externships as well as co-ops.<sup>91</sup> Indeed, as a measure of the cooperative movement's influence, in 2006, Drexel University opened the first new law school established by a major university in more than 25 years. Its educational model was cooperative education.<sup>92</sup>

Responding to the same demands for integrating work and education, and defying the strictures of Senator Gramm's rigid dichotomy between these two activities, the twentieth century also saw the creation and expansion of the junior college—generally a two-year school offering vocational and technical instruction as well as college-level courses. The first such college was Joliet Junior College in Illinois, founded in 1901, and others soon followed.<sup>93</sup> During the Depression, community colleges responded to high unemployment rates by offering targeted job-training

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90. See, e.g., JOHN DEWEY, *EXPERIENCE AND EDUCATION* 7-8 (Nicholas Drake & Grant E. Mabie eds., Kappa Delta Pi 1998) (1938) (“[T]he fundamental unity of the newer philosophy is found in the idea that there is an intimate and necessary relation between the processes of actual experience and education . . . basing education upon personal experience may mean more multiplied and more intimate contacts between the mature and the immature than ever existed in the traditional school, and consequently more, rather than less, guidance by others.”).

91. As of 1996, 91% of U.S. colleges and universities offered internships, 57% provided a cooperative education program, and 45% participated in some other kind of work-based learning. Of the latter group, 31% collaborated with local high schools in offering such paid programs. AM. COUNCIL ON EDUC., *CAMPUS TRENDS 1996: ADJUSTING TO NEW REALITIES* 51 (1996); see also Nat'l Commission for Coop. Educ., *Trends in Higher Education and the Need for the Integration of Learning and Work*, <http://www.co-op.edu/resources.htm> (last visited Dec. 6, 2009).

92. See The Earle Mack Sch. of Law at Drexel Univ., *Knowledge, Skill, Duty: About the Earle Mack School of Law*, <http://www.drexel.edu/law/about-us.asp> (last visited Dec. 6, 2009); see also The Earle Mack School of Law at Drexel University, *History of Drexel University*, <http://www.drexel.edu/law/history.asp> (last visited Dec. 6, 2009).

93. Am. Ass'n of Community Colls., *Community Colleges Past to Present*, <http://www.aacc.nche.edu/aboutCC/history/Pages/pasttopresent.aspx> (last visited Dec. 6, 2009).

programs.<sup>94</sup> Underscoring their flexibility and responsiveness to local communities, community colleges were singled out by the 1947 Truman Commission report on *Higher Education for American Democracy*, which noted that “[w]hatever form the community college takes, its purpose is educational service to the entire community, and this purpose requires of it a variety of functions and programs.”<sup>95</sup> In 2008, there were 1195 community colleges in the United States, educating almost half of the nation’s undergraduates.<sup>96</sup>

The educational philosophy reflected by these two twentieth-century developments—cooperative education and community colleges—embraces the idea that work and education are not strictly separable and are, in fact, intimately related. Further, this approach rests on the precept that together these two human activities can achieve what neither can achieve alone. Both Sir Francis Bacon in the seventeenth century and Herman Schneider in the twentieth century shared the understanding that students would be best able to acquire knowledge when classroom order and instruction were united with experience.<sup>97</sup> Influential educational theorist John Dewey also subscribed to this approach, writing in his book *Democracy and Education* that “[t]he vocation acts as both magnet to attract and as glue to hold. Such organization of knowledge is vital, because it has reference to needs; it is so expressed and readjusted in action that it never becomes stagnant.”<sup>98</sup>

Building on Dewey, in 1984, David Kolb further defined the components of experiential learning from an educational theory perspective.<sup>99</sup> According to Kolb, learning takes place through integration of (1) concrete experience; (2) reflective

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94. *Id.*

95. PRESIDENTIAL COMMISSION ON HIGHER EDUC., *HIGHER EDUCATION FOR AMERICAN DEMOCRACY, VOLUME I, ESTABLISHING THE GOALS* 67 (1947).

96. Am. Ass’n of Community Colls., *Community College Fast Facts*, <http://www.aacc.nche.edu/research.htm> (last visited Dec. 6, 2009).

97. Herr, *supra* note 85, at 37-38.

98. JOHN DEWEY, *DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION* 362 (1916).

99. *See generally* DAVID KOLB, *EXPERIENTIAL LEARNING: EXPERIENCE AS THE SOURCE OF LEARNING AND DEVELOPMENT* (1984).

observation; (3) abstract conceptualization; and (4) active experimentation. Two of these components—concrete experience and active experimentation—involve “doing,” perhaps in the context of a work placement.<sup>100</sup> The other two components involve “considering,” an activity that is shaped by a classroom instructor, but that ultimately promotes a more complete engagement in both the classroom and work placement experiences.<sup>101</sup>

Moving from theory to practice, in 1999, educational historian Richard Freeland, then-President of Northeastern University, catalogued some of educational changes that have been driven by, he believed, the general student dissatisfaction with rigid distinctions between work and education.<sup>102</sup> He then identified a specific educational movement for integrating work and education that incorporates both Dewey’s and Kolb’s theories: “The Third Way.”<sup>103</sup> According to Freeland, this curricular approach “integrates liberal education, professional education, and off-campus experience to produce college graduates who are both well educated and well prepared for the workplace.”<sup>104</sup> He calls this approach “practice-oriented education,”<sup>105</sup> a term that encompasses experiential and cooperative learning as well as other integrative approaches that have often been led by community colleges.

Among the demographic factors initially encouraging this integration—both at community colleges and at traditional postsecondary institutions—was the post-World War II G.I. Bill, which offered financial support to veterans returning to school.<sup>106</sup> Following World War II, some eight million veterans were provided with tuition and living

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100. See Jeela Jones & Don Quick, *Cooperative Education: An Educational Strategy with Links to Experiential and Connected Learning*, 41 J. COOPERATIVE EDUC. & INTERNSHIPS 30, 31 (2007).

101. *Id.*

102. Richard Freeland, *Practice-Oriented Education: A New Model of Undergraduate Learning*, NORTHEASTERN UNIV. MAG. (Boston, Mass.), May 1999, at 32, 32.

103. Freeland, *supra* note 34, at 141.

104. *Id.*

105. *Id.*

106. See generally SUZANNE METTLER, *SOLDIERS TO CITIZENS: THE G.I. BILL AND THE MAKING OF THE GREATEST GENERATION* (2005).

expenses while they pursued higher education.<sup>107</sup> In 1949, these students—often older, supporting families, and vocationally directed—made up forty-nine percent of enrolled students in higher education.<sup>108</sup> Inevitably, schools across the educational spectrum responded to this influx by adapting their curricula to the demands of these new students. From this beginning, the process continues today, with hundreds of thousands of students across the nation engaged in “practice-oriented” learning.

“Practice-oriented,” cooperative or experiential learning approaches take many forms. Some programs combine work and educational programs simultaneously, for example, with classes in the morning and a work placement in the afternoon, or work and classes on alternate days.<sup>109</sup> Others use blocks of time during the school year so that students alternate between full-time study and full-time paid employment.<sup>110</sup> Community colleges offer specific vocational programs alongside general educational courses so that students can select a range of courses that will prepare them to contribute to a demanding and changing workplace.<sup>111</sup>

Practice-oriented higher education is not a panacea, but as described below, many studies indicate that a practice-oriented education approach to postsecondary education, that recognizes the overlaps and synergies between work and education, has long-term benefits that are relevant in the welfare-to-work context. Such programs combining work and education are consistent with both associate degrees and baccalaureate programs.

For example, several studies indicate that cooperative educational programs have the effect of enhancing career maturity.<sup>112</sup> Students report that participation in

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107. *See id.*

108. *Id.* at 42.

109. Freeland, *supra* note 102, at 34-35.

110. *See id.*; *see also* Jones & Quick, *supra* note 100, at 30 (describing typical cooperative educational program).

111. DAVID LEVINSON, COMMUNITY COLLEGES: A REFERENCE HANDBOOK 120 (2005).

112. *See* David R. DeLorenzo, *The Relationship of Cooperative Education Exposure to Career Decision-Making Self-Efficacy and Career Locus of Control*, 35 J. COOPERATIVE EDUC. 15, 15-16 (2000) (citing studies); Cheryl Keen, *A Study*

cooperative education boosts their workplace confidence.<sup>113</sup> Further, earnings were increased by participation in cooperative programs, a highly relevant finding for low-income workers.<sup>114</sup> Finally, these programs have a proven track record of engaging students as lifelong learners.<sup>115</sup> Antioch College, which requires that students complete six quarters of cooperative education, was ranked by the former education editor of the *New York Times* first of all schools in the United States in its capacity to change students' lives.<sup>116</sup> As Richard Freeland put it,

Students in academic fields will better grasp the significance and power of their subjects if they have a chance to see them put to use in more practically oriented course work. . . . Similarly, students interested in professional fields will get more out of their studies if they also take courses in the basic disciplines that typically provide the underpinnings of applied work.<sup>117</sup>

As set out in more detail below, at the same time that educators such as Dewey, Kolb, and Freeland advocated for integrative approaches, the general philosophy underlying labor management and economics has shifted to also emphasize the relationship between work and education. The former U.S. Secretary of Education under President George W. Bush, Margaret Spellings, acknowledged this phenomenon; the high-level Commission that she appointed to examine higher education in the United States issued a

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*of Changes in Intellectual Development from Freshman to Senior Year at a Cooperative Education College*, 36 J. COOPERATIVE EDUC. 37 (2001) (citing studies of cooperative educational programs).

113. Linn & Ferguson, *supra* note 89, at 38-39.

114. Philip D. Gardner et al., *Starting Salary Outcomes of Cooperative Education Graduates*, 27 J. COOPERATIVE EDUC. 16, 22-25 (1992) (discussing (1) the significant difference in starting salaries of those students who had at least three academic quarters of cooperative work experience; (2) the higher starting salaries for those students who accepted a position with a previous co-op employer as opposed to those who accepted a position with other employers; and (3) finding that women participating in co-op education especially benefited from higher starting salaries).

115. CHRISTOPHER K. KNAPPER & ARTHUR J. CROPLEY, LIFELONG LEARNING IN HIGHER EDUCATION 104-06 (3d ed. 2000) (describing value of cooperative education for lifelong learning).

116. LOREN POPE, COLLEGES THAT CHANGE LIVES 131-32 (1996).

117. Freeland, *supra* note 102, at 33-34.

strong call for education that is articulated with the new “knowledge-driven economy.”<sup>118</sup> Following the Spellings’ Commission’s 2006 report, the successor administration of President Barack Obama has also called for dramatic changes in our collective approach to work and higher education.<sup>119</sup> As President Obama stated in his February 24, 2009 address to a Joint Session of Congress:

[T]onight, I ask every American to commit to at least one year or more of higher education or career training. This can be community college or a four-year school; vocational training or an apprenticeship. But whatever the training may be, every American will need to get more than a high school diploma. . . . That is why we will provide the support necessary for you to complete college and meet a new goal: by 2020, America will once again have the highest proportion of college graduates in the world.<sup>120</sup>

While it remains to be seen whether this presidential rhetoric will be translated in the enacted legislation, President Obama’s statement clearly recognizes the strong connection between higher education and work.

These recent high-level national policy statements underscore the need to revisit the treatment of higher education in the welfare arena. Especially if, as it is under the PROWRA, welfare is now deliberately framed as a work support program for low-wage workers rather than as a cash assistance program for families, its provisions regarding worker *education* are woefully inadequate in today’s economy and contrary to the vast majority of recommendations for development of the national labor force.<sup>121</sup>

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118. U.S. DEP’T OF EDUC., A TEST OF LEADERSHIP: CHARTING THE FUTURE OF U.S. HIGHER EDUCATION, A REPORT OF THE COMMISSION APPOINTED BY SECRETARY OF EDUCATION MARGARET SPELLINGS 1 (2006).

119. See, e.g., Tamar Lewin, *A Boon to 2-Year Colleges, Affirming Their Value*, N.Y. TIMES, July 14, 2009, at A14; *The Obama Plan*, INSIDE HIGHER ED, July 15, 2009, <http://www.insidehighered.com/news/2009/07/15/obama>.

120. Remarks of President Barack Obama, Address to Joint Session of Congress (Feb. 24, 2009), available at [http://www.whitehouse.gov/the\\_press\\_office/remarks-of-president-barack-obama-address-to-joint-session-of-congress/](http://www.whitehouse.gov/the_press_office/remarks-of-president-barack-obama-address-to-joint-session-of-congress/).

121. See, e.g., MARGY WALLER & SHAWN FREMSTAD, THE BROOKINGS INST., NEW GOALS AND OUTCOMES FOR TEMPORARY ASSISTANCE: STATE CHOICES IN THE DECADE AFTER ENACTMENT 7 (2006) (“Since the vast majority of Temporary

In sum, though Senator Gramm described work and education as entirely distinct, throughout the twentieth century and continuing today there has been a concerted movement toward blending work and higher education. The ideas underlying this integrated view are far from new, but had their seeds in the influential humanist tradition of the 1600s that recognized the important role of education in the secular world. In more contemporary times and in the American context, concepts of equality and broad democratic participation have also served as touchstones for reformers who see these developments as critical to providing appropriate education, including higher education for all.

### B. *Integrating Education into Work*

Work has also changed over time. Like education, work predates recorded history. However, the concepts that underlie the earliest recorded understandings of work continue to have some resonance today. In terms that echo Senator Gramm's formulation, the early Judeo-Christian religious tradition regarded work as "a curse devised by God explicitly to punish."<sup>122</sup> Because work was considered punitive, this religious framework demanded that work—in contrast to education or other more pleasurable activities—be something that one would not do voluntarily and would not find enjoyable.<sup>123</sup> Beginning in the seventeenth century, the Protestant tradition turned this notion on its head, identifying work with the fulfillment of a religious "calling" and salvation.<sup>124</sup> Senator Armstrong's assertion that "work, work, work" is "good for the soul" fits squarely into this

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Assistance parents have considerable low-wage work experience, officials should emphasize advancement by extending education and training opportunities to parents."); see also Margy Waller & Shawn Fremstad, *It's Not Welfare Anymore*, AMERICAN PROSPECT, Aug. 22, 2006, [http://www.prospect.org/cs/articles?article=its\\_not\\_welfare\\_anymore](http://www.prospect.org/cs/articles?article=its_not_welfare_anymore) (noting that welfare is now properly viewed as a work support program).

122. MICHAEL ROSE, REWORKING THE WORK ETHIC: ECONOMIC VALUES AND SOCIO-CULTURAL POLITICS 28 (1985); see also *Genesis* 3:23 (discussing the fall of man and banishment from Eden).

123. ROSE, *supra* note 122, at 28.

124. CIULLA, *supra* note 35, at 51-53.

tradition.<sup>125</sup> However, by the early twentieth century, growing secularism combined with Taylorism and mechanization ensured that workers in industrial settings often felt spiritually alienated from their work.<sup>126</sup> Charlie Chaplin's assembly-line worker in the classic 1936 film *Modern Times* is an iconic representation of this more contemporary, alienated worker.<sup>127</sup>

In *Modern Times*, Charlie Chaplin's character was highly specialized, responsible for tightening one screw while widgets filed rapidly—too rapidly—past him on a conveyor belt.<sup>128</sup> Generally, the narrower the specialization, the less education and training is required as a precursor to the job. Thus, work's level of specialization is a critical factor in assessing the benefits of postsecondary education and work integration. The assembly line worker who simply tightens screw after screw needs little training to perform that isolated task, though the inhumanity of the work itself may lead to boredom and spiritual malaise. In contrast, workers who are expected to contribute more to the production process will generally require more training and a wider educational background and can be expected to be more engaged with the work processes.

Specialization was not new in the machine age—it is a very old phenomenon in human culture. As early as the Neolithic period, the earliest agricultural period, humans began to develop special areas of expertise.<sup>129</sup> By Greek and

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125. KATZ, *supra* note 11, at 309.

126. See, e.g., MICHAEL L. BERGER, *THE AUTOMOBILE IN AMERICAN HISTORY AND CULTURE: A REFERENCE GUIDE 77* (2001) (noting worker alienation arising from Taylorism). On worker alienation, see generally MAX WEBER, *THE PROTESTANT ETHIC AND THE "SPIRIT" OF CAPITALISM AND OTHER WRITINGS 186* (Peter Baehr & Gordon Wells eds., trans., Penguin Books 2002) (1905).

127. *MODERN TIMES* (Charles Chaplin Productions 1936).

128. In 1952, Lucille Ball inserted a similar, memorable sequence into an episode of *I Love Lucy*, this time at a chocolate factory. The Classic Sitcom Guide: *I Love Lucy*, <http://www.classicsitcoms.com/shows/lucy2.html> (last visited Dec. 6, 2009).

129. See, e.g., E.B. Banning, *The Neolithic Period: Triumphs of Architecture, Agriculture, and Art*, 61 *NEAR EASTERN ARCHAEOLOGY* 188, 189-91 (1998) (discussing the Neolithic period, definitions and specialized technological advances during the period); Pascal Favre & Stefanie Jacomet, *Branch Wood from the Lake Shore Settlements of Horgen Scheller, Switzerland: Evidence for Economic Specialization in the Late Neolithic Period*, 7 *VEGETATION HIST. &*

Roman times, specialized craft workshops facilitated the transmissions of skills.<sup>130</sup> In the medieval world, craft guilds formalized the transmission of specialized knowledge; master craftsmen supervised journeymen, who in turn supervised apprentices in the acquisition of skills over a period of several years.<sup>131</sup>

But the Industrial Revolution, and particularly the factory system that emerged in the seventeenth and eighteenth centuries, transformed the notion of specialization from mastery of a complex process of production to mastery of one isolated component of the assembly.<sup>132</sup> In the late nineteenth and early twentieth centuries, the growth of such assembly lines led to a dramatic increase in the demand for unskilled workers.<sup>133</sup>

A century later in the United States, the assembly line has largely been replaced by fully automated production.<sup>134</sup> This growth of automation has once again put a premium on U.S. workers' skills, flexibility, and breadth of knowledge. As the U.S. General Accounting Office recently noted, "Technology is redefining the labor market for workers and employers."<sup>135</sup> With fewer individuals involved in production, those who work with automated machinery need new, more sophisticated technical skills in order to oversee the processes.<sup>136</sup> As in the medieval guilds, familiarity with just one narrow aspect of a process is not enough. Once again, highly skilled workers are in demand, and demand for lower skilled, less educated workers is

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ARCHEOBOTANY 167, 176-77 (1998); Paul Halstead, *Pastoralism or Household Herding? Problems of Scale and Specialization in Early Greek Animal Husbandry*, 28 WORLD ARCHAEOLOGY 20, 33 (1996).

130. See HERBERT APPLEBAUM, *THE CONCEPT OF WORK: ANCIENT, MEDIEVAL, AND MODERN* 48, 101-05 (1992).

131. See *id.* at 211-309.

132. *Id.* at 410-11; HENDRICK VAN DEN BERG & JOSHUA J. LEWER, *INTERNATIONAL TRADE AND ECONOMIC GROWTH* 71 (2006) (discussing Adam Smith, specialization, and the Industrial Revolution).

133. APPLEBAUM, *supra* note 130, at 409-512.

134. *Id.* at 525-26.

135. U.S. GEN. ACCOUNTING OFFICE, *THE PROMOTION OF WORK OPPORTUNITIES AND THE PROTECTION OF WORKERS* 1 (2007), <http://www.gao.gov/sp/strobj13.pdf>.

136. APPLEBAUM, *supra* note 130, at 537-38.

declining.<sup>137</sup> In the service sector, for example, office workers must now have mastery of a range of technical skills as well as the capacity to acquire new skills as technology changes.<sup>138</sup>

In this current work environment, workers expect to have more autonomy and more input into the management of the workplace or organization. Bringing specific skills to the workplace, they also expect an opportunity to acquire new skills and for education and advancement. The “stakeholder” model of workplace organization—favoring participatory management—has largely been accepted in the American workplace since the 1960s.<sup>139</sup> It favors open lines of communication between workers and management, and involvement in problem solving at all levels of the organization.<sup>140</sup> Many researchers have concluded that the skills, knowledge, and adaptability that workers bring to such a workplace enhance the organization’s productivity. In fact, they argue, the full benefits of new technologies cannot be realized unless the workers are given sufficient training and organizational influence to fully participate in solving the problems of the workplace.<sup>141</sup>

Because of these changes in workplace organization, highly competent or skilled blue-collar workers are simply not promoted.<sup>142</sup> Instead of specific knowledge acquired on the job, value is placed on a broader range of skills that draw on a variety of disciplines—not incidentally, one of the fruits of higher education. In this context, the greater the individual’s formal education, the greater their earnings

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137. *Id.* at 538-39; U.S. GEN. ACCOUNTING OFFICE, *supra* note 135; see also Rashid Amjad, *Employability in the Global Economy and the Importance of Training: A Summary of the 1998-99 ILO World Employment Report*, 20 COMP. LAB. L. & POL’Y J. 715, 723 (1999).

138. U.S. GEN. ACCOUNTING OFFICE, *supra* note 135, at 4 (“Increasingly, the jobs that are available require sophisticated skills . . .”).

139. See, e.g., R. EDWARD FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH*, at vi (1984).

140. See Cynthia P. Ruppel & Susan J. Harrington, *The Relationship of Communication, Ethical Work Climate, and Trust to Commitment and Innovation*, 25 J. BUS. ETHICS 313 (2000).

141. *Id.*; see also APPLEBAUM, *supra* note 130, at 543-44.

142. See APPLEBAUM, *supra* note 130, at 487.

prospects in the long run, the greater their job security, and the greater their prospects for advancement.

The desire for educated workers has also given rise to an increased demand for continuing postsecondary education programs for individuals who are already employed.<sup>143</sup> More and more employers provide additional training opportunities on-site or opportunities for off-site higher education, such as tuition reimbursement programs or lifelong learning accounts.<sup>144</sup> One estimate places the amount spent by employers annually on on-site training programs at \$20 billion.<sup>145</sup> Further, Eduventures, a higher education-consulting firm, reports that one in two adult learners is supported by employer tuition assistance.<sup>146</sup> Indeed, employers view this as an investment in their business, like capital investment in buildings or machinery.<sup>147</sup>

In short, just as educational programs have increasingly incorporated elements of work, so has the work world increasingly valued and supported postsecondary education, integrating it as a critical component of a modern workplace. Far from the stark dichotomy outlined by Senator Gramm, “work” in today’s economic environment includes “education,” while “education” often incorporates “work.”

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143. See, e.g., Fred D. Baldwin, *Supplying the Demand for Training*, APPALACHIA MAG., Jan.-Apr. 1998, <http://www.arc.gov/index.do?nodeId=1325> (describing training initiatives for existing workers).

144. Auta Main, *Maine’s Lifelong Learning Accounts: Good News for Workers, Businesses and the Economy, Communities and Banking*, COMMUNITIES & BANKING, Fall 2008, at 18, available at [http://www.mainearecenter.com/lilas/LilA%20Articles/0908\\_lila\\_article.pdf](http://www.mainearecenter.com/lilas/LilA%20Articles/0908_lila_article.pdf).

145. *Id.* at 20.

146. Press Release, Eduventures, *Eduventures Report Explores Financing and Tuition Assistance for Adult Learning* (Feb. 27, 2007), [http://www.eduventures.com/about/press/news-1/news\\_02\\_27\\_07](http://www.eduventures.com/about/press/news-1/news_02_27_07).

147. APPLEBAUM, *supra* note 130, at 539-43.

## II. WORK AND EDUCATION IN THE U.S. WELFARE SYSTEM

A. *Welfare and Higher Education from Mothers' Pensions to TANF*

These widely acknowledged shifts in the worlds of work and education, reflecting new educational theories and contemporary economic realities, have yet to be recognized in current U.S. welfare policy. This section reviews the development of that policy in greater detail. As described below, the TANF approach of attempting to draw sharp distinctions between work and education and to discourage the latter deviates from the more flexible view of work and education employed through much—though certainly not all—of U.S. welfare history, particularly by the states.

Federal funding of welfare programs came into its own in 1935 with the Social Security Act and the creation of the Aid to Dependent Children Program.<sup>148</sup> Prior to 1935, most states had initiated their own state-level welfare programs for women and children, denominated “Mothers’ Pensions.”<sup>149</sup> The primary purpose of these programs was to provide support to widows—presumed to be unemployable—so that they could care for their children in their homes.<sup>150</sup> The support provided was minimal; many of the widows still needed to engage in paid employment of some kind in order to provide for their families.<sup>151</sup> However, there were no legal restrictions on the mothers’ activities. Had they chosen,

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148. Paul H. Stuart, *Social Welfare (United States): Before the Social Security Act in* ENCYCLOPEDIA OF SOCIAL WELFARE HISTORY IN NORTH AMERICA 375, 377 (John M. Herrick & Paul H. Stuart eds., 2005) (“[After 1935, it seemed that t]he federal government would be at the forefront of social welfare in the United States.”); see also Aid to Families with Dependent Children, ch. 531, § 401, 81 Stat. 916 (repealed 1996).

149. See LINDA GORDON, PITIED BUT NOT ENTITLED: SINGLE MOTHERS AND THE HISTORY OF WELFARE 28 (1994). These laws were advertised as “widows’ pensions” because such women were considered to be in a morally superior, and thus worthier, class than other single mothers. Because “mother” and “widow” were used interchangeably in legislation, single mothers in all situations were eligible for aid. *Id.* at 27-28.

150. See Sylvia A. Law, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1253 (1983) (discussing women’s presumed unemployability).

151. GORDON, *supra* note 149, at 30-31.

they could have pursued educational opportunities while continuing to receive the support of the state. At the time, however, both educational options and employment opportunities for women—particularly mothers—were very limited.<sup>152</sup>

In addition to Mothers' Pensions, some states offered "general relief" programs to assist low-income individuals.<sup>153</sup> In contrast to the family support provided through the Mothers' Pensions, general relief programs often drew directly on the Elizabethan Poor Laws to demand labor in exchange for receipt of subsistence benefits.<sup>154</sup> Not coincidentally, general relief programs provided assistance primarily to men, while Mothers' Pensions were explicitly reserved for women.<sup>155</sup> When the Federal Social Security Act superseded the state-run Mother's Pensions programs in 1935, general relief programs remained the province of the states.

The AFDC Program of 1935 largely tracked the provisions of the pre-existing Mother's Pension programs.<sup>156</sup> Federal funds, matched by state contributions, were made available to single parents with children who met certain criteria establishing financial need.<sup>157</sup> There was initially no work requirement, but also no prohibition on participation in work or education, provided that the recipient remained financially eligible for government support.<sup>158</sup>

Over time, however, the program grew and the composition of the recipient pool changed. Rather than poor white widows, AFDC recipients were increasingly single

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152. *Id.* at 22-24.

153. JOEL F. HANDLER, *THE POVERTY OF WELFARE REFORM 90-91* (1995).

154. JOEL F. HANDLER & YEHESEKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA 45-48* (1991).

155. Nancy E. Rose, *Gender, Race, and the Welfare State: Government Work Programs from the 1930s to the Present*, 19 *FEMINIST STUD.* 319, 320 (1993).

156. JO ANNE SCHNEIDER, *SOCIAL CAPITAL AND WELFARE REFORM: ORGANIZATIONS, CONGREGATIONS, AND COMMUNITIES 42* (2006).

157. Marisa Chappell, *Aid to Families with Dependent Children*, in 1 *ENCYCLOPEDIA OF U.S. LABOR AND WORKING-CLASS HISTORY*, 37, 38 (Eric Arnesen ed., 2007).

158. GORDON, *supra* note 149, at 297 ("When the Social Security Act was passed, only ADC required that clients be 'needy.'").

women of color raising children “out of wedlock.”<sup>159</sup> As the recipient population shifted from the “deserving” widows of the 1930s to so-called “undeserving welfare queens” of the 1960s, harsh work requirements were increasingly imposed by state-level administrators.<sup>160</sup> For example, in Alabama and other southern states, mothers and children receiving AFDC benefits were often cut off from government aid during the harvest season in order to force them to work in the fields.<sup>161</sup> By 1967, twenty-one states had adopted work requirements for welfare recipients.<sup>162</sup> Further, with the expansion of the AFDC Program in 1961 to include two-parent families, the federal government developed work and training programs for men on welfare who, in contrast to women, were deemed employable.<sup>163</sup>

The earliest federal work program for mothers on AFDC was enacted in 1968: the Work Incentive Program.<sup>164</sup> Rather than mandate a job, the program simply set up a structure for job referrals.<sup>165</sup> However, the 1971 amendments to the law made work registration and referral mandatory for single mothers while preserving choice for those in two-parent families.<sup>166</sup> As explained by Sylvia Law, after these changes, the WIN Program created three sex- and family-based groups of low-income adults:

First, men are required to register for work and are given preferred status in the allocation of jobs and training. Second, women with men are relegated to the pedestal; they are not forced into wage work, but if they choose to do it the Act mandates that they be given second priority in the distribution of jobs and training. Finally, the women without men, the single parents who bear the greatest burden in managing dual responsibilities to

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159. MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* 318-19, 352-54 (1988).

160. Rose, *supra* note 155, at 329.

161. This state regulation was held unconstitutional in *Anderson v. Burson*, 300 F. Supp. 401 (N.D. Ga. 1968).

162. *N.Y. Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 414 (1973).

163. Public Welfare Amendments of 1962, Pub. L. No. 87-543, 76 Stat. 172, 190 (repealed 1996).

164. Social Security Amendments of 1967, Pub. L. No. 90-248, 81 Stat. 821, 884 (repealed 1996).

165. *Id.*

166. Law, *supra* note 150, at 1264.

work and to children, are both required to work and disfavored, relative to men, in the distribution of jobs and training.<sup>167</sup>

Though the imposition of work requirements on low-income women was a significant change from the initial policy goals of AFDC, as a practical matter, these requirements only affected a small percentage of welfare recipients. First, low enforcement rates and the absence of a rigid definition of work gave states considerable flexibility in implementing these requirements.<sup>168</sup> Second, many welfare recipients were not captured by the programs used to implement WIN.<sup>169</sup> Instead, these individuals remained able to make whatever educational arrangements they could cobble together, without worrying about competing work requirements and often without even notifying their caseworkers regarding their educational pursuits.<sup>170</sup>

States took advantage of this flexibility by establishing a range of educational programs and supports for welfare recipients. In California, for example, the Greater Avenues to Independence (GAIN) Program, founded in 1985, granted access to job-related higher education for welfare participants for up to two years.<sup>171</sup> Two other California programs, Expanded Opportunity Program and Services (EOPS, founded 1969) and Cooperative Agencies Resources for Education (CARE, founded in 1982), provided important supportive services like academic assistance.<sup>172</sup>

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167. *Id.* at 1267.

168. HANDLER & YEHEKEL, *supra* note 154, at 141-42, 156-58.

169. MICHAEL TANNER, THE END OF WELFARE: FIGHTING POVERTY IN THE CIVIL SOCIETY 113 (1996) (noting that 2.5 million AFDC recipients were exempt from WIN).

170. ERIKA KATES, CTR. FOR WOMEN POL'Y STUDIES, MORE THAN SURVIVAL: ACCESS TO HIGHER EDUCATION FOR LOW INCOME WOMEN 20 (1991), *available at* <http://www.centerwomenpolicy.org/pdfs/POV5.pdf> (noting the practice of welfare recipients attending college without their caseworkers' knowledge).

171. JAMES RICCIO ET AL., MANPOWER DEMONSTRATION RESEARCH CORP., GAIN: BENEFITS, COSTS AND THREE-YEAR IMPACTS OF A WELFARE-TO-WORK PROGRAM, at v, 6 (1994), *available at* [http://eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/13/5f/87.pdf](http://eric.ed.gov:80/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/13/5f/87.pdf).

172. AVIS A. JONES-DEWEEVER & BARBARA GAULT, INST. FOR WOMEN'S POL'Y RES., RESILIENT AND REACHING FOR MORE: CHALLENGES AND BENEFITS OF HIGHER EDUCATION FOR WELFARE PARTICIPANTS AND THEIR CHILDREN 9 (2006), *available at* <http://www.iwpr.org/pdf/D466.pdf>.

However, the federal government generally discouraged welfare recipients' participation in higher education. One manifestation of that hostility was the federal policy of counting Pell Grants, federal need-based grants to undergraduate and graduate students, against food stamp benefits.<sup>173</sup> Massachusetts, among other states, resisted implementing this policy.<sup>174</sup> However, in 1985, threatened with a reduction in federal reimbursements, the state notified low-income students in October, after the start of the school term, that their food aid would be cut.<sup>175</sup> Forced to choose between feeding their families and pursuing their education, many low-income students simply dropped out.<sup>176</sup>

In contrast to prior policies that at best reflected ambivalence about welfare recipients' participation in higher education, the 1988 reform of the federal welfare system championed by New York Senator Daniel Patrick Moynihan, addressed education and training directly, and even encouraged it.<sup>177</sup> The Family Support Act (FSA) mandated that states place graduated percentages of AFDC recipients in a program called the Job Opportunities and Basic Skills Training (JOBS) Program.<sup>178</sup> But in contrast to the current TANF law, JOBS recognized education, including higher education, as an appropriate activity for welfare recipients.<sup>179</sup> Under the FSA, by 1995, twenty

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173. KATES, *supra* note 170, at 19.

174. *Id.*

175. *Id.* at 27 n.15.

176. *Id.* In 1986, the Higher Education Act (HEA) modified this policy. Under the Act, "No portion of any student financial assistance received by an individual . . . which is used by that individual for [costs of attendance] shall be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds." Higher Education Amendments of 1986, Pub. L. No. 99-498, 100 Stat. 1268 (amended by Higher Education Amendment of 1992, Pub. L. No. 1-2-135, § 479B, 106 Stat. 448, 606 (codified at 20 U.S.C. § 1087uu (2006))).

177. Matthew Diller, *Working Without a Job: The Social Message of the New Workfare*, 9 STANFORD L. & POL'Y REV. 19, 21 (1998).

178. Jobs Opportunities and Basic Skills Training Program, Pub. L. No. 100-485, §§ 201-204, 102 Stat. 2343 (1988) (repealed 1996); *see also* Diller, *supra* note 177, at 33 n.9 ("Mandatory participation rates . . . rose from 7 percent in 1990 to 20% in 1995.").

179. Diller, *supra* note 177, at 21; *see also* Family Support Act, 42 U.S.C. § 602(a)(19)(F)(i) (1988) (repealed 1996).

percent of participants with children over three,<sup>180</sup> who were physically and mentally able, were required to participate in education and training programs.<sup>181</sup> There were no time limits on participation in these programs, and of course, those who fell outside of the twenty percent mandate were free to pursue education without constraints.<sup>182</sup> Though many of the programs focused on providing basic education, GEDs and English as a Second Language instruction, higher education was permitted under the FSA.<sup>183</sup> The regulations promulgated by HHS in April 1989 were somewhat more discouraging, promising “special scrutiny” of state plans permitting higher education.<sup>184</sup> Nevertheless, most states allowed welfare participants to participate in postsecondary education; only Michigan, Nevada, and Oregon denied such access.<sup>185</sup> True to their mission, community colleges often played a critical role in providing appropriate training and education programs.<sup>186</sup>

During the relatively brief period during which the JOBS Program was being implemented, some jurisdictions did more than simply permit education—they embraced the prospects of higher education for welfare recipients. For example, in Westchester County, New York, it “was found that forty-two percent of welfare recipients tested were ready for college level work.”<sup>187</sup> To provide a supportive environment for these women, the county welfare agency established “Moms on the Move” to encourage them to enroll in health care, engineering, and technical courses.<sup>188</sup> In 1991, four years after the FSA’s enactment and on the eve of the next welfare reform debate, it was estimated that nearly fifteen percent of welfare participants nationwide

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180. See 42 U.S.C. § 602(a)(19)(F)(i); see also KATES, *supra* note 170, at 20.

181. KATES, *supra* note 170, at 20.

182. *Id.*

183. *Id.*

184. *Id.*

185. JONES-DEWEEVER & GAULT, *supra* note 172, at 6 n.1.

186. Am. Ass’n of Community Colls., *supra* note 93.

187. KATES, *supra* note 170, at 21.

188. *Id.*

met their JOBS requirements through postsecondary education.<sup>189</sup>

By 1992, however, promises made during the presidential campaign instigated a new round of welfare reform debates.<sup>190</sup> By pledging to “end welfare as we know it” and appealing to Americans who feared the impact of a recession, Democratic candidate Bill Clinton moved the parameters of the welfare debate to the right.<sup>191</sup> This time, congressional rhetoric emphasized work, emphatically distinguishing it from education. Members of Congress explicitly rejected the idea that recipients of federal welfare funds should be able to shoulder their work obligations by pursuing an educational program, particularly one involving postsecondary education. In part, this debate drew on anti-elitist sentiments that had been strategically employed by Republican activists for many years to further various political agendas.<sup>192</sup> Certainly, as Senator Gramm and others intimated, welfare recipients should not imagine that they were somehow above getting their hands dirty and putting in an honest day of hard labor.<sup>193</sup>

#### B. *From TANF to the Deficit Reduction Act*

The resulting 1996 welfare reform law, the PRWORA, made a number of dramatic alterations to the then-existing federal welfare system. Since its enactment in 1935 as part of the Social Security Act, the Federal Aid to Families with Dependent Children (AFDC) Program had provided support to low-income families in the form of an entitlement to a certain level of financial and material assistance, with the

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189. REBECCA LONDON, CTR. FOR JUSTICE, TOLERANCE, AND COMTY., *THE ROLE OF POSTSECONDARY EDUCATION IN WELFARE RECIPIENTS' PATHS TO SELF-SUFFICIENCY* 3 (2004), <http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1004&context=cjtc>.

190. Jason DeParle, *The 1992 Campaign: Talk of Cutting Welfare Rolls Sounds Good, but Progress Is Far from Sure*, N.Y. TIMES, Oct. 17, 1992, at A9.

191. *Id.*

192. *See, e.g.*, Claire Collier, Letter to the Editor, *Armies of the Rights, in Populist Disguise*, N.Y. TIMES, Aug. 12, 2006, at A14 (describing anti-elitist rhetoric of forces opposing teaching of evolution).

193. 141 CONG. REC. S13,788 (daily ed. Sept. 19, 1995) (statement of Sen. Gramm).

specific amounts set state-by-state.<sup>194</sup> PRWORA purported to strip the entitlement, and replaced AFDC with a new program—TANF—subject to periodic reauthorization.<sup>195</sup>

Likewise, though the details of the AFDC Program had been modified many times since 1935, its basic promise had held fast over decades: that children in poor families needed and deserved public support, and that the best means to provide that support was in their own home through their parents (usually the mother).<sup>196</sup> PRWORA altered that understanding by conditioning support of children on parental behavior, even permitting states to impose full-family sanctions cutting children off when parents failed to comply with stringent program standards.<sup>197</sup>

Finally, TANF rejected the JOBS Program's emphasis on education and instead advanced a "work-first" philosophy.<sup>198</sup> Parents who failed to conform to strict work requirements were sanctioned.<sup>199</sup> After five years of receiving welfare benefits, whether continuously or in the aggregate, TANF recipients were "timed out," even if they had followed the prescribed work rules.<sup>200</sup>

The new federal welfare-to-work program, TANF, required work participation beginning with twenty hours per week in 1997 and increasing up to thirty-five hours per week in 1999—time commitments that would make it difficult for parents already juggling child care to also pursue educational opportunities.<sup>201</sup> There was no requirement that the work assignments be close to the participant's home or school, nor was it necessary that the work placement relate to the recipient's long-term

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194. Aid to Families with Dependent Children, Pub. L. No. 90-248 § 426, 81 Stat. 916 (1968) (repealed 1996).

195. Temporary Assistance to Needy Families (TANF), 42 U.S.C.A. §§ 601-619 (2006).

196. GORDON, *supra* note 149, at 25.

197. ELIZABETH LOWER-BASCH, MATHEMATICA POLICY RESEARCH, INC., REVIEW OF SANCTION POLICIES AND RESEARCH STUDIES 1-2 (2003), available at <http://aspe.hhs.gov/hsp/TANF-Sanctions03/>.

198. 42 U.S.C. § 607 (2006).

199. 45 C.F.R. § 261.14 (2008).

200. *See* 42 U.S.C. § 607.

201. *See* 45 C.F.R. § 261.31.

educational and employment interests.<sup>202</sup> As of today, the law allows “vocational education” to count as work for only twelve months of a recipients’ stay on welfare, and no more than thirty percent of working TANF participants in a state can be in such assignments.<sup>203</sup>

However, the federal TANF legislation and subsequent regulations lacked clarity on the matter of what activities specifically constitute work. Examples of appropriate work activities in the 1996 law included unpaid as well as paid endeavors running the gamut from actual paid employment to community service and taking instruction in resume preparation.<sup>204</sup> While postsecondary education was not spelled out as a permissible work activity, states could choose to classify it as falling within “jobs skills, training, or education directly related to employment,” which TANF permitted participants to engage in without any time limits other than the overall five-year lifetime limit.<sup>205</sup> In implementing the TANF regulations, some states developed approaches (with HHS assent) that gave them considerable flexibility, including permitting welfare recipients to participate in educational programs at four-year colleges as part of their “work participation.”<sup>206</sup>

Not surprisingly, given the emphasis on “work-first,” after 1996, the numbers of welfare recipients participating in postsecondary educational degree-granting programs plummeted. The Center for Law and Social Policy reported that across the country the number of welfare recipients in college fell from 172,176 in 1996 to 58,055 in 1998.<sup>207</sup> Welfare recipient enrollment at the City University of New York “dropped from more than 27,000 students in 1996 to fewer than 10,000 in 2000.”<sup>208</sup> Community college

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202. JONES-DEWEEVER & GAULT, *supra* note 172, at 7.

203. 45 C.F.R. § 261.33 (2008).

204. 42 U.S.C. § 607(d).

205. 42 U.S.C. § 607(d)(9).

206. *See, e.g.*, ME. EQUAL JUSTICE PARTNERS, PARENTS AS SCHOLARS: EDUCATION WORKS (2002), <http://www.mejp.org/PaSeduworks.htm>.

207. MARK GREENBERG ET AL., CTR. FOR LAW & SOC. POLICY, STATE OPPORTUNITIES TO PROVIDE ACCESS TO POSTSECONDARY EDUCATION UNDER TANF 40 (2000), [http://www.clasp.org/publications/state\\_opportunities\\_to\\_provide\\_access.pdf](http://www.clasp.org/publications/state_opportunities_to_provide_access.pdf).

208. JONES-DEWEEVER & GAULT, *supra* note 172, at 7.

enrollment of welfare recipients in Massachusetts fell by fifty percent from 8000 before 1996 to 4000 after welfare reform.<sup>209</sup> The impact was nationwide. At Eastern Washington University in Spokane, numbers of welfare recipient enrollments dropped from 435 in 1994 to 217 in 1998, against a backdrop of increased overall enrollment in the school.<sup>210</sup> At the same time that the overall numbers of welfare recipients in Associate Degree programs and Bachelor's Degree programs declined, the number enrolled in short-term certificate programs rose forty-three percent.<sup>211</sup>

Faced with these numbers, states responded. The federal government did nothing to deny states the flexibility inherent in the legislation and the implementing regulations; the final TANF regulations issued in 1999 failed to define "work activity," leaving states with the option of permitting at least some postsecondary education.<sup>212</sup> By 2002, forty-nine states and the District of Columbia allowed at least some access to postsecondary education by defining it as a permissible "work activity," though the permissible length of participation was generally short of that necessary to obtain a four-year degree.<sup>213</sup> Oklahoma was the sole state that did not allow postsecondary education as a permitted work activity.<sup>214</sup>

In fact, several states felt that programs of higher education were critical to the success of their welfare plan. Maine's Parents as Scholars (PaS) Program is the most extensive postsecondary education program for welfare participants.<sup>215</sup> Rather than exploit the flexibility provided under the federal regulations, Maine funded the program

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209. *Id.*

210. THOMAS KARIER, THE JEROME LEVY ECON. INST. OF BARD COLL., WELFARE COLLEGE STUDENTS: MEASURING THE IMPACT OF WELFARE REFORM 2 (2000).

211. Shaw, *supra* note 30, at 64.

212. CTR. FOR WOMEN POLICY STUDIES, FROM POVERTY TO SELF-SUFFICIENCY: THE ROLE OF POSTSECONDARY EDUCATION IN WELFARE REFORM 14 (2002), <http://www.centerwomenpolicy.org/pdfs/POV1.pdf>.

213. *Id.* at 9.

214. JONES-DEWEEVER & GAULT, *supra* note 172, at 7 n.2.

215. MARK GREENBERG, CTR. FOR LAW & SOC. POLICY, THE TANF MAINTENANCE OF EFFORT REQUIREMENT (2002), <https://www.policyarchive.org/bitstream/handle/10207/14041/TANFMaintenanceofEffortRequirement.pdf?sequence=1>.

through its Maintenance of Efforts (MOE) dollars, an expenditure of state dollars mandated by the federal government as a condition of participating in TANF.<sup>216</sup> Under TANF, states retained almost complete discretion in how they spent their MOE dollars; significantly, that discretion was severely limited by passage of the Deficit Reduction Act of 2005, which imposed new restrictions on MOE spending.<sup>217</sup>

Maine used its MOE funds to establish a state-funded program parallel to TANF for welfare recipients pursuing higher education.<sup>218</sup> PaS students may enroll in two- or four-year undergraduate degree programs.<sup>219</sup> By taking these recipients off of TANF and shifting them to the PaS Program, Maine avoided counting these clients as part of the welfare rolls, and therefore could discount them for purposes of meeting the federal government's work participation requirements.<sup>220</sup> At any given time, approximately 900 people are participating in the program, with about sixty percent enrolled in two-year colleges and the rest attending four-year institutions.<sup>221</sup>

PaS students receive the same cash assistance that they would have received under TANF, plus "support such as childcare, transportation reimbursement, car repair assistance, eye and dental care, and books and supplies."<sup>222</sup> Consistent with the view that the welfare system does not offer scholarships, no funds are provided for tuition except

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216. *Id.*

217. See ELIZABETH LOWER-BASCH, CTR. FOR LAW & SOC. POLICY, EDUCATION AND TRAINING FOR TANF RECIPIENTS: OPPORTUNITIES AND CHALLENGES UNDER THE FINAL RULE 2 (2008), [http://www.clasp.org/publications/ed\\_and\\_training\\_rules\\_for\\_tanf\\_2008.pdf](http://www.clasp.org/publications/ed_and_training_rules_for_tanf_2008.pdf).

218. ME. EQUAL JUSTICE PARTNERS, *supra* note 206.

219. CTR. FOR WOMEN POLICY STUDIES, *supra* note 212, at 38.

220. MARK GREENBERG ET AL., *supra* note 207, at 19-20. Under the Deficit Reduction Act, the participation rate applies to the PaS Program, even through the assistance is provided with state-only funds. See MARK GREENBERG & SHARON PAROTT, CTR. FOR LAW & SOC. POLICY, SUMMARY OF TANF WORK PARTICIPATION PROVISIONS IN THE BUDGET RECONCILIATION BILL (2006), <http://www.clasp.org/admin/site/publications/files/0269.pdf>.

221. Elyse Ashburn, *New Regulations Could Push More Welfare Recipients Out of College*, CHRON. OF HIGHER EDUC., Aug. 11, 2006, at A23.

222. JONES-DEWEEVER & GAULT, *supra* note 172, at 7.

in situations of extreme need; instead, students must piece together financial aid and loans, just as most other students do.<sup>223</sup> After completing two years towards their degree, PaS participants must increase their hours of program participation to thirty-five hours a week, including their class time and study time—an additional obligation that is often discharged through work-study placements, externships, internships or school-related practicums such as student-teaching.<sup>224</sup> Throughout their participation in the PaS Program, students must make “satisfactory academic progress” in order to remain eligible.<sup>225</sup> Defying the five-year limit placed on federal TANF participants, Maine’s PaS students who meet these standards are permitted to continue pursuing their degree for up to six years.<sup>226</sup>

Other states worked more directly within the federal framework to provide access to at least two years of education. For example, Kentucky’s welfare program allowed participants to study for up to twenty-four months at a two-year or four-year college.<sup>227</sup> Likewise, Wyoming permitted a college option under the rubric of TANF.<sup>228</sup> Illinois allows up to thirty-six months of postsecondary education and training.<sup>229</sup> Hawaii’s Bridge to Hope Program was created by the Hawaiian state legislature and the University of Hawaii’s system in 2000 to help single parents gain self-sufficiency before their benefits end.<sup>230</sup> Bridge to Hope participants attend college full-time and maintain a campus job for eight hours per week.<sup>231</sup> From 2001 to 2002, Bridge to Hope put 127 welfare parents into part-time

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223. Ashburn, *supra* note 221.

224. See CTR. FOR WOMEN POLICY STUDIES, *supra* note 212, at 38.

225. *Id.*

226. Ashburn, *supra* note 221.

227. *Id.*

228. CTR. FOR WOMEN POLICY STUDIES, *supra* note 212, at 69.

229. *Id.* at 31.

230. Beverly Creamer, *Welfare Reform May Hurt Education Program*, HONOLULU ADVERTISER, Aug. 5, 2002, available at [http://www.hawaii.edu/bridgetohope/archived\\_news\\_articles/Welfare%20reform%20may%20hurt%20education%20program.pdf](http://www.hawaii.edu/bridgetohope/archived_news_articles/Welfare%20reform%20may%20hurt%20education%20program.pdf).

231. See *id.*

campus jobs throughout the UH system while they attended school full-time.<sup>232</sup>

Slated for reauthorization in 2002, the PRWORA was instead subject to a series of continuing resolutions until it was finally reauthorized as part of the Deficit Reduction Act of 2005.<sup>233</sup> During the four years of congressional debate over the reauthorization, a central issue was the scope of authorized activities that would both permit welfare recipients to continue receiving their supportive grants and allow states to meet the stringent work participation requirements imposed by the federal government as a condition of receiving federal TANF funds.<sup>234</sup> While many states with successful welfare-education programs urged Congress to allow such programs to continue as permitted activities for welfare recipients,<sup>235</sup> many in the Bush Administration and in Congress reiterated Senator Gramm's sentiments. The definition of work had become too lax, they claimed, and the federal government needed to tighten the reins on the states.<sup>236</sup> As Wade F. Horn, the Department of Health and Human Services' Assistant Secretary for Children and Families, provocatively asserted, "[s]ome [states] defined as work bed rest, going to a smoking-cessation program, getting a massage, doing an errand with a friend."<sup>237</sup>

Several bills introduced during this period would have expanded postsecondary educational opportunities—for example, doubling the amount of time permitted for training and education,<sup>238</sup> or explicitly permitting state programs such as Maine's Parents as Scholars initiative—

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232. *Id.*

233. Pub. L. No. 109-171, 120 Stat. 4.

234. Amy Goldstein, *Welfare Changes a Burden to States: Work Rules Also Threaten Study, Health Programs*, WASH. POST, Aug. 7, 2006, at A1.

235. See e.g., Press Release, Senator Olympia J. Snowe, TANF Investment (Mar. 30, 2004), [http://snowe.senate.gov/articles/art033004\\_4.htm](http://snowe.senate.gov/articles/art033004_4.htm).

236. Goldstein, *supra* note 233.

237. *Id.*

238. LONDON, *supra* note 189, at 3; see also Sargent Shriver Nat'l Ctr. on Poverty Law, TANF Reauthorization: "Building Secure and Healthy Families Act of 2002" Introduced in the U.S. Senate—Immediate Action Needed (Sep. 10, 2002), [http://www.povertylaw.org/news-and-events/woman-view/2002\\_09\\_10.1998](http://www.povertylaw.org/news-and-events/woman-view/2002_09_10.1998).

but none of these proposals were adopted by Congress.<sup>239</sup> Rather than take the opportunity to encourage education, and rather than continue to give states the flexibility to arrive at their own, more generous definitions of work, Congress directed HHS to define “work activities” for purposes of TANF.<sup>240</sup> This legislative compromise may have bought members of Congress a pass with their state constituents who favored educational options, but it had the practical effect of returning the higher education hot potato to an executive branch that was already on record as opposing welfare recipients’ participation in postsecondary education.

HHS issued its final interim regulations implementing the reauthorized welfare law in June 2006.<sup>241</sup> The interim rules reiterated the new statutory requirement of work participation by fifty percent of all single-parent welfare recipient families and ninety percent of all two-parent families on welfare.<sup>242</sup> In defining “work activities,” the rules went well beyond the underlying federal statute.<sup>243</sup> The proposed regulations provided that states could no longer define “work activity” to include postsecondary education in pursuit of a bachelor’s or even an associate’s degree.<sup>244</sup> While

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239. Rebecca London, *Welfare Recipients’ College Attendance and Consequences for Time-Limited Aid*, 3 (Center for Justice, Tolerance, and Community, Paper No. 2004-01, 2004), available at [http://repositories.cdlib.org/cjtc/pis/cjtc\\_RL\\_2004\\_01/](http://repositories.cdlib.org/cjtc/pis/cjtc_RL_2004_01/); Press Release, *supra* note 234 (announcing the proposed “Personal Responsibility and Individuality for Everyone (PRIDE)” Act).

240. 42 U.S.C. § 607(i) (2006).

241. Reauthorization of the TANF Program, 71 Fed. Reg. 37,458-60 (June 29, 2006).

242. In 2003, between 26 and 35% of recipients participated in work activities under the broader definitions of work under the 1996 law. Ashburn, *supra* note 221, at A23 (32%); see also WALLER & FREMSTAD, *supra* note 121, at 7, 10 n.21 (discussing various estimates ranging from 26% to 34%). Though the 1996 law also required 50% participation by 2002, that participation was offset by the numbers of participants who left the welfare rolls. Because of dramatic caseload reductions after 1996, no state actually was required to meet the 50% participation rate under the 1996 law’s formula. See KARIER, *supra* note 210.

243. Ashburn, *supra* note 221.

244. See Reauthorization of the TANF Program, 71 Fed. Reg. 37,458-60 (June 29, 2006); John Dean, *Perspectives: Welfare Recipients Told They’re Not Wanted in College*, DIVERSE ONLINE, July 26, 2006, <http://diver>

the rules permitted vocational educational training directly related to qualifying an individual for a specific job opportunity,<sup>245</sup> education supporters felt that without more in-depth training combined with an adequate grounding in general education, many welfare recipients would be unlikely to leverage such minimal vocational programs into jobs that would keep them off of the welfare rolls in the long term.<sup>246</sup>

In addition, the proposed rules imposed practical constraints on efforts to place welfare recipients in educational programs. In particular, colleges had to verify students' daily attendance and report it twice a month in order for class time to count as work.<sup>247</sup> According to one report, "[c]ollege officials say that developing a system to track students will be burdensome and costly."<sup>248</sup> Because private study time could not be counted as work, schools could be asked to develop monitored study halls for students.<sup>249</sup> These requirements would also frustrate students attempting to pursue online training, an increasing trend, since schools could not monitor students' online time.<sup>250</sup>

Finally, the interim rules would have disallowed programs, such as Maine's, that use state MOE dollars to support educational programs. Even those welfare

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seeducation.com/article/6164/perspectives-welfare-recipients-told-they-re-not-wanted-in-college.html.

245. Reauthorization of the TANF Program, 71 Fed. Reg. 37,458-59.

246. Criticizing the regulations, education activist Maureen Lane asserted that "People on public assistance need to build skills and credentials to move themselves out of poverty. We have found in New York that education actually does help people move from welfare and into jobs." Cassie Chew, *Welfare to Work Proposal Would Limit Vocational Training*, DIVERSE ISSUES IN HIGHER EDUC., Aug. 10, 2006, at 15.

247. Reauthorization of the TANF Program, 71 Fed. Reg. 36,461; ELIZABETH LOWER-BASCH ET AL., CTR. FOR LAW & SOC. POLICY, ANALYSIS OF NEW INTERIM FINAL TANF RULES 29 (2006), available at <http://www.cbpp.org/files/7-21-06tanf.pdf>.

248. Ashburn, *supra* note 221.

249. *Id.*

250. SHARON PARROTT, CTR. ON BUDGET & POLICY PRIORITIES, CHANGES IN FEDERAL TANF RULES COULD HELP STATES MEET WELFARE REFORM GOALS 10 (2007), available at <http://www.cbpp.org/files/6-29-07tanf.pdf>.

recipients supported solely with state dollars would be counted in setting work participation rates.<sup>251</sup> To spell out the impacts more clearly: there are approximately 13,000 TANF recipients in Maine, including PaS participants.<sup>252</sup> Fifty percent of those recipients must participate in the work requirements in order for the state to avoid financial penalties.<sup>253</sup> Those participating in the Parents as Scholars Program would not be counted toward achieving the fifty percent work participation rate.<sup>254</sup> Because Maine operates several other programs that cannot be counted towards the work participation rate either, Maine would risk financial penalties for continuing this innovative approach to integrating work and education for welfare recipients.<sup>255</sup>

Anticipating that the final rule would be implemented as proposed, many states and localities with more generous definitions of work participation scrambled to get ready. “We are scrounging,” Marshall Cupe, a case manager in Prince George’s County, Maryland’s Family Investment Division, told the *Washington Post*, expressing concern about the available work placements for welfare recipients if educational programs were no longer available.<sup>256</sup> The proposed regulations will throw “a real wrench into everything,” Shuana King-Simms, director of adult education, partnerships, and transitions for the Kentucky Community and Technical College system, told a reporter at the *Chronicle of Higher Education*.<sup>257</sup>

Happily for these educators, the final regulations were dramatically different from the proposed final rule. Rather than increase restrictions, the final regulations granted states a bit more flexibility than had previously been

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251. Ashburn, *supra* note 221.

252. For more information about Maine’s Parents as Scholars Program, see the pamphlet at the website of Maine Equal Justice Partners, <http://www.mejp.org> (last visited Dec. 6, 2009).

253. SHARON PARROTT ET AL., CTR. ON BUDGET & POLICY PRIORITIES & CTR. FOR LAW & SOC. POLICY, IMPLEMENTING THE TANF CHANGES IN THE DEFICIT REDUCTION ACT: “WIN-WIN” SOLUTIONS FOR FAMILIES AND STATES 42 (2007), available at <http://www.clasp.org/admin/site/publications/files/0339.pdf>.

254. *Id.*

255. *Id.*

256. Goldstein, *supra* note 234.

257. Ashburn, *supra* note 221.

permitted under the 1996 law. Still, the distinction between work activities and education persists. The federal regulations limit vocational education (including programs at postsecondary institutions) to twelve months and, just as the interim regulations did, restrict states from using their own state funds to extend educational options.<sup>258</sup> Further, as a matter of statute, educational pursuits are not deemed a “core” activity, and so must yield priority to the federally-sanctioned work participation activities such as job searching, job readiness and community service.<sup>259</sup> As a practical matter, welfare recipients must continue to strain against a system that seeks to channel their efforts away from higher education as a means out of poverty.

*C. Why Does the Work/Education Distinction Persist in Welfare Law and Policy?*

Certainly, placements in both higher education and employment serve one of the explicit statutory purposes of the federal welfare law, to “end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage.”<sup>260</sup> To date, this aspect of the welfare debate between the states, Congress and the executive branch has been framed by commentators as a controversy about the long-term value of education as an anti-poverty strategy versus the short-term value of immediate employment that will enable the particular welfare client to get off welfare, if not out of poverty.<sup>261</sup> But why must federal welfare policy favor one approach over the other? At the very least, with differing state needs and with the system-wide capacity to make individualized caseworker assessments, why not leave it to states to determine which approach works best for their economy in the aggregate or for individual welfare recipients in particular?

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258. 45 C.F.R. § 261.33 (2008).

259. 45 C.F.R. § 261.33(a).

260. 42 U.S.C. § 601(a)(2) (2006) (the other purposes are providing assistance to children in the home, deterring out-of-wedlock pregnancies and encouraging the formation of two-parent families).

261. *See supra* notes 16-19 and accompanying text.

Like so many political decisions, the answer cannot be explained by policy analysis and data, which would seem to support greater access to higher education than the one-year that is currently permitted.<sup>262</sup> Rather, Senator Gramm hinted at one source of the distinction in his “farm chore” speech on the Senate floor.<sup>263</sup> Work, he suggested, is hard, messy, maybe painful and involuntary; education, on the other hand, is pleasurable and self-directed.<sup>264</sup> Building on this perceived contrast between the two endeavors, Congress and the executive branch have continued to draw a bright line between work activities and educational pursuits, both rhetorically and through regulation, in part to show that they are tough on welfare and welfare recipients and that welfare is not simply a “college scholarship” program that allows low-income people to leapfrog over the struggling middle class. As a form of constraint, work is an appropriate punitive consequence of being on welfare. In contrast, education—perceived as personally fulfilling and unproductive—would reward poverty instead of leading to the just deserts of a low-wage job.

As Sylvia Law observed in analyzing earlier welfare-to-work programs, the impetus for this punitive approach may also be particularly driven by the population primarily identified with TANF: single, low-income women with children.<sup>265</sup> After the 1996 welfare reform, according to Kathleen Shaw:

Women who receive welfare are not, by and large, able to pursue education and training, and those who do have a tenuous hold on the educational process. Moreover, the type of education available to welfare recipients is short-term and nontransferable, a fact that renders it far less useful than more traditional forms of education.<sup>266</sup>

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262. See, e.g., RICCIO ET AL., *supra* note 171 (delineating the success of California’s GAIN Program); see also R. KENT WEAVER, ENDING WELFARE AS WE KNOW IT 160-61 (2000) (noting that empirical research played little role in the development of welfare reform).

263. 141 CONG. REC. S13,788 (daily ed. Sept. 19, 1995).

264. *Id.*

265. Law, *supra* note 150, at 1252.

266. Shaw, *supra* note 30, at 74.

Given that adequate education is one of the most certain routes out of poverty, it is hard not to see the marginalization of this option as reflecting a lack of concern for women's autonomy and well-being. Indeed, the welfare reform law more vigorously promotes marriage and dependence on a partner as an anti-poverty strategy than it promotes the education of women.

Since status-based "punishment" is not one of the overt purposes of the welfare law, it is a valid question whether such sentiments should have any place in welfare policy formulation. Should the question not be: what works, short of impermissibly biased policies, to maintain children in their homes, to prepare low-income individuals for a job, to promote marriage, and to discourage illegitimate births—the four explicit purposes of the welfare law?<sup>267</sup> Tellingly, the most extreme articulations of the more punitive sentiments seem to be the special province of the federal government. Even in the face of the formidable hurdles posed by TANF restrictions, some state governments permit welfare recipients to pursue two-year and even four-year postsecondary degrees.<sup>268</sup> They do so because they reject the ancient connections between work and punishment, education and elitism. Rather, these local governments are responsive to contemporary understandings of work and education that blur the lines between these two concepts and recognize their interrelationships and the value that these interrelationships bring to the state.

There are other examples in law and policy, outside of the welfare context, where the lines between work and education are blurry. For example, definitions of "employee" must often be stretched (or not) to include individuals such as interns who are performing all of the functions of an employee, under the employer's control, but who are doing so only for educational or training purposes.<sup>269</sup> Definitions of employment are also tested by prisoners, whose "work" is not for compensation, but part of a penal rehabilitation

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267. 42 U.S.C. § 601(a) (2006).

268. See discussion *supra* at pp. 181-83.

269. See, e.g., 5 U.S.C. § 5351 (2006) (defining "student employee" per government wage and hour regulations); 26 U.S.C. § 3121(b)(7)(C)(ii) (2006) (specifying taxes imposed employment, including that of interns).

program.<sup>270</sup> Likewise, as discussed further below, there are numerous examples of courts recognizing the close relationship between education and work. The affirmative action case *Grutter v. Bollinger* is an example, where the experience of diversity in education was directly linked to the ability to work later in diverse environments.<sup>271</sup> As these examples illustrate, the overlap between work and education extends beyond the integration of the two practices in educational and economic institutions to the actual functions of work and education within a society, a community, and an individual.

From a societal perspective, there is no doubt that both work and education are generally productive. Workers produce goods or services; scholars and students produce knowledge. Both activities respond to larger societal needs and apply human knowledge and labor to addressing those needs.

Likewise, in community terms, both work and education are beneficial. Greater numbers of employed persons may have an immediate bolstering effect in a community, but if those who are employed are primarily in the lowest wage, least stable jobs, the impact will be limited. If some members of the community have access to more education, and therefore more skilled jobs, the stability of the community will be enhanced.<sup>272</sup> Indeed, the social benefits of education are well documented, including strong evidence

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270. See *Morgan v. MacDonald*, 41 F.3d 1291 (9th Cir. 1994) (prisoner participating in job-training program is not employee for purposes of federal labor law); *Carter v. Dutchess Cmty. Coll.*, 735 F.2d 8 (S.D.N.Y. 1984) (finding that Congress intended the FLSA to be as broad as possible, so prisoner employed by third party can be considered employee for federal purposes).

271. 539 U.S. 306, 330-33 (2003). In *Grutter*, a number of the amicus briefs stressed the need for diversity in undergraduate and graduate education as part of training students to be successful in diverse work environments. See, e.g., Brief for American Educational Research Association et al. as Amici Curiae in Support of Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003), No. 02-241, 2003 WL 398292.

272. See Ted To & V. Bhaskar, *Making Low Wage Work Pay: Why Minimum and Living Wages May Make Economic Sense*, NEXT AM. CITY, June 2003, at 39. (noting the positive impact of living wages on communities).

suggesting that “graduates are more likely to be more engaged citizens.”<sup>273</sup>

Further, while the benefits of employment may be distributed through the community in the forms of money and structure (i.e., keeping a regular schedule, behaving responsibly), the benefits of education may also be distributed as those who have benefited share their skills and insights.<sup>274</sup> Indeed, developing nations have long recognized the ways in which education can bring stability to communities.<sup>275</sup> Among other things, many of these nations have provided substantial educational benefits to students to study abroad, with the understanding that they will bring their training and education back to their home country.<sup>276</sup> While some of these countries have experienced a brain drain, others have experienced so-called “brain circulation,” in which the newly trained entrepreneurs return to their home countries to engage their countrymen in starting new enterprises.<sup>277</sup> Those who stay or return to contribute their skills to the community “arguably [have] a greater positive impact on the progress of a developing

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273. DEP’T FOR EDUC. & SKILLS, THE FUTURE OF HIGHER EDUCATION 59 (2003), available at <http://www.dcsf.gov.uk/hegateway/uploads/White%20Pape.pdf>.

274. Phillip Brown & Hugh Lauder, *Education, Globalization & Economic Development*, 11 J. EDUC. POLY 1 (1996) (discussing expectations of industrialized nations for the distributive societal effects of higher education with in developing countries).

275. See discussion *infra* at notes 276-78 and accompanying text.

276. See, e.g., Shahin Abbasov, *Come Back Kids*, TRANSITIONS ONLINE, Oct. 9, 2007, <http://www.tol.cz/look/TOL/article.tpl?IdLanguage=1&IdPublication=4&NrArticle=19046&NrIssue=239&NrSection=3> (describing government-sponsored program to send up to 15,000 Azerbaijan students to study in the U.S., France, Germany, Russia and other countries, on condition that they return to Azerbaijan when they graduate); New Zealand Development Scholarships (NZDS), [http://www.cambodia.idp.com/new\\_zealand\\_scholarships.aspx](http://www.cambodia.idp.com/new_zealand_scholarships.aspx) (last visited Dec. 6, 2009) (offering multi-year postgraduate study program to Cambodian nationals so that “awardees . . . gain knowledge and skills that will contribute to their home country’s human resource development needs.”).

277. Stephanie Hanson, *Is Brain Drain Good for Africa?*, COUNCIL ON FOREIGN REL., Aug. 21, 2008, [http://www.cfr.org/publication/16986/is\\_brain\\_drain\\_good\\_for\\_africa.html](http://www.cfr.org/publication/16986/is_brain_drain_good_for_africa.html). In response to the brain drain problem, many developing countries have focused on increasing high quality educational opportunities within their own borders by “import[ing]” educational resources. See, e.g., Donald Lien, *Borderless Education and Domestic Programs*, 14 EDUC. ECON. 297, 297-98 (2006).

country” than they could have in a more developed setting.<sup>278</sup> In these instances, the work-education connection is clear, and is being exploited by the developing nations that pay students to “work” at obtaining their education.

Work and education may also serve similar roles within the family. Much has been made of the importance of providing workers, particularly working mothers, as role models for low-income children.<sup>279</sup> But pursuit of postsecondary education also provides inspirational role models—perhaps even more effective because of the aspirational aspects of education (i.e., bettering oneself) that are often missing from low-wage work. For example, researchers evaluating the effectiveness of the Maine PaS Program found that the program had measurable benefits for the younger generation, and that the children of PaS participants articulated higher personal aspirations than before their parent’s participation in the program.<sup>280</sup>

Finally, for the individual, work and education may function in very similar ways. Both require responsible behavior and conformity to structure. Both require expenditure of individual labor—whether studying, writing, or performing work-related tasks. But interestingly, for an individual, combining work and education may strengthen the personal impact of each. As David Kolb proposed, learning may be most effective, engaging, and long-lasting when it is combined with opportunities to execute on one’s knowledge.<sup>281</sup> And workers may be most productive—and most likely to become the lifelong learners that the U.S. needs in the workforce—if they are given opportunities to reflect and conceptualize their work, enabling them to contribute to the whole. It is recognition of those opportunities for reflection and conceptualization that is missing entirely from the federal government’s welfare-to-work approach.

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278. Lisa Leiman, *Should the Brain Drain be Plugged? A Behavioral Economics Approach*, 39 TEX. INT’L L.J. 675, 684 (2004).

279. See Interview by Jodie Levin-Epstein with Jason DeParle, Author, Ctr. for Law & Soc. Policy (Sept. 10, 2004), available at [http://www.clasp.org/publications/deparle\\_ac\\_transcript.pdf](http://www.clasp.org/publications/deparle_ac_transcript.pdf).

280. See Smith et al., *supra* note 17, at 223.

281. See discussion *supra* at pp. 167-68.

Of course, at first blush, there seems to be one glaring dissimilarity between work and education. In general, work pays, and in general, education does not. This distinction itself, however, underscores the fallacy of trying to draw bright lines between these concepts, as they have changed over the centuries. In fact, practice-oriented education often does include wage-earning activities that are integrated into the student's educational program, and, as described elsewhere in this Article, many education programs do fund, or pay, students while they obtain their degrees.<sup>282</sup> In addition, investment in welfare recipients' education in the short term holds long-term benefits by ensuring that they will be able to move beyond unstable, low-wage jobs and remain off of government support in the long term.<sup>283</sup> On the other hand, much "work" does not pay. TANF defines "community service" and "unpaid work" as work, for example, and many individuals in special settings such as prisons or training programs "work" with little or no remuneration. Pay, or the lack thereof, does not define work versus education.

### III. WORK AND EDUCATION POLICIES: ALTERNATIVE MODELS

Policies that promote work and education abound, both abroad and in various U.S. contexts. This part reviews some of these approaches to assess possible alternatives to the distinctions currently drawn between work and education in federal welfare law. As described below, many of these approaches incorporate the emerging integrative model of work and education.

#### A. *Comparative Data*

As in the United States, other industrialized nations are confronting the need to produce educated workers. Often, these nations have responded by combining work experiences and postsecondary education, providing time frames for training that are sufficiently generous to allow

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282. See Freeland, *supra* note 102.

283. See *supra* notes 16-19 and accompanying text.

for both hands-on experience and classroom reflection.<sup>284</sup> At the same time, not all aspects of these programs may fit the American experience. Rigid approaches which “track” students into vocational or higher education programs at an early stage of their studies would likely meet with significant resistance in the United States, where a culture of mobility across class lines is often driven by long-term investment in educational opportunities open to all. Nevertheless, these examples provide important lessons about the ways in which other nations have utilized the work-education connection.

In Germany, for example, work experience is integrated into the postsecondary education system through two principal routes. First, the educational system itself works in partnership with the labor sector to track individuals into higher education or vocational programs.<sup>285</sup> About seventy percent of German students are tracked into vocation and training programs.<sup>286</sup> During their three-year apprenticeship program, they spend part of their time in classroom instruction and part of their time participating in on-the-job training.<sup>287</sup> This integrated approach is similar to that increasingly adopted by postsecondary institutions in the United States, but with a far more generous time frame than that provided through the U.S. welfare system.<sup>288</sup> Upon completion of this initial program, the students are certified in their trade.<sup>289</sup> Continuing education and training, however, may be required if the students are to move up within their chosen occupation, and many students continue training for several more years following this initial certification.<sup>290</sup>

The second route to integrating work experience and higher education is available to those students attending more traditional universities. Among those students, a

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284. See U.S. DEP'T OF EDUC., THE EDUCATIONAL SYSTEM IN GERMANY: CASE STUDY FINDINGS (1999), available at <http://www.ed.gov/pubs/GermanCaseStudy/chapter1a.html>; DEP'T FOR EDUC. & SKILLS, *supra* note 273, at 5.

285. DEP'T FOR EDUC. & SKILLS, *supra* note 273, at 5.

286. *Id.*

287. *Id.*

288. *Id.*

289. *Id.*

290. *See id.*

significant percentage (twenty-five percent) attend Fachhochschulen, institutions of higher education that are particularly organized to provide practice-oriented education.<sup>291</sup> Originating in the 1970s, these universities, located throughout Germany, train students through a combination of study and cooperative work placements with employers.<sup>292</sup> Graduates of these institutions enjoy strong reputations among employers and Fachhochschulen reportedly has great success in placing students in jobs.<sup>293</sup>

England employs a distinctly different approach, with less formal tracking and is, in fact, moving toward providing greater access to higher education.<sup>294</sup> Of course, England is justly proud of its system of higher education, with several elite universities recognized as among the best in the world. But in a 2003 assessment of the future of higher education in England, the secretary of state for education and skills recommended expanding and increasing access to the nation's institutions of higher education.<sup>295</sup> The imperative for these initiatives is economic, i.e., the need to produce workers who have sufficient training to adapt to, and thrive in, the current economic environment.<sup>296</sup> As the secretary's report observed, "A comprehensive review of the academic literature suggests that there is compelling evidence that education increases productivity, and moreover that higher education is the most important phase of education for economic growth in developed countries."<sup>297</sup>

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291. JEROEN HUISMAN, COUNTRY REPORT: HIGHER EDUCATION IN GERMANY, CENTER FOR EDUCATION POLICY STUDIES 15 (2003). *See generally* ULRICH TEICHLER, HIGHER EDUCATION SYSTEMS: CONCEPTUAL FRAMEWORKS, COMPARATIVE PERSPECTIVES, EMPIRICAL FINDINGS (2007) (discussing higher education systems in Germany and other European countries); VOCATIONAL EDUCATION: INTERNATIONAL APPROACHES, DEVELOPMENTS AND SYSTEMS (Linda Clarke & Christopher Winch eds., 2007) (describing the German philosophy of vocational education); WORKING KNOWLEDGE: THE NEW VOCATIONALISM AND HIGHER EDUCATION (Colin Symes & John McIntyre eds., 2000) (discussing the German education model and the use of vocational education in setting trends for higher education institutions throughout the world).

292. HUISMAN, *supra* note 291, at 16-17.

293. *Id.* at 18.

294. DEP'T FOR EDUC. & SKILLS, *supra* note 273, at 57.

295. *Id.*

296. *Id.*

297. *Id.* at 58.

A centerpiece of the Education Department's effort is increased coordination with employers and integration of study with work.<sup>298</sup> For example, the secretary of education intends to increase participation in two-year, work-focused degrees.<sup>299</sup> According to the secretary, such education can foster a "culture of continuous professional development."<sup>300</sup> This transformation of higher education to include more flexible approaches to learning will also emphasize "the importance of work experience placements."<sup>301</sup>

Not surprisingly, the integrative approaches to work and education found in other nations are also increasingly codified in modern treaties and other sources of international law. This has been a gradual change. When the Universal Declaration of Human Rights was completed in 1948, education and work were treated as essentially separate spheres.<sup>302</sup> Article 23 of the Universal Declaration set out a fundamental right to work and a right to certain work standards.<sup>303</sup> Article 26 deals with the right to education.<sup>304</sup> The only intimation that there might be some overlap between these two rights was the statement in article 26(1)—the education provision that "[t]echnical and professional education shall be made generally available."<sup>305</sup>

By 1966, when the International Covenant on Economic, Social and Cultural Rights (ICESCR) was opened for signature, the understanding of these concepts had evolved. Article 6 of the ICESCR deals with the right to work, providing, among other things, that "the full realization of this right shall include technical and vocational guidance and training programmes, policies and

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298. *Id.*

299. *Id.* at 7. Most university degrees in England are three-year degrees. See Seonag MacKinnon, *Call for Three-Year Uni Courses*, BBC NEWS, Nov. 6, 2008, [http://news.bbc.co.uk/2/hi/uk\\_news/scotland/7714027.stm](http://news.bbc.co.uk/2/hi/uk_news/scotland/7714027.stm) (noting that three-year degrees are the norm in England).

300. DEP'T FOR EDUC. & SKILLS, *supra* note 273, at 16.

301. *Id.* at 42.

302. Universal Declaration of Human Rights, G.A. Res. 217A, at 26, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948).

303. *Id.* at 23.

304. *Id.* at 26.

305. *Id.*

techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.<sup>306</sup>

Article 13, dealing with the right to education, also cross-references vocational training programs.<sup>307</sup> More significant, however, is the General Comment issued by the Committee on Economic, Social and Cultural Rights in 1999 elucidating the meaning of these provisions.<sup>308</sup> According to the Committee, "Technical and vocational education (TVE) forms part of both the right to education and the right to work (art. 6 (2)) . . . . [T]he Committee takes the view that TVE forms an integral element of all levels of education."<sup>309</sup>

Further, the Committee indicates that vocational and professional training programs "should be understood as a component of general education."<sup>310</sup> Quoting the UNESCO Convention on Technical and Vocational Education (1989), the Committee opines that TVE consists of "all forms and levels of the educational process involving, in addition to general knowledge, the study of technologies and related sciences and the acquisition of practical skills, know-how, attitudes and understanding relating to occupations in the various sectors of economic and social life."<sup>311</sup> Such training is important because, among other things, "[i]t enables students to acquire knowledge and skills which contribute to their personal development, self-reliance and employability and enhances the productivity of their families and communities, including the State party's economic and social development."<sup>312</sup> The Committee

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306. International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), at 6, U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966).

307. *Id.* at art. 13.

308. U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm. on Economic, Social and Cultural Rights, *The Right to Education*, ¶ 15, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999).

309. *Id.*

310. *Id.* ¶ 16 (citing Universal Declaration of Human Rights, *supra* note 302).

311. *Id.* ¶ 16 (internal citation omitted).

312. *Id.* ¶ 16(a).

particularly notes the relationship between such training and the anti-discrimination provisions found elsewhere in the Covenant, emphasizing the importance of “programmes which promote the TVE of women, girls, out-of-school youth, unemployed youth, the children of migrant workers, refugees, persons with disabilities, and other disadvantaged groups.”<sup>313</sup>

The international community has continued to refine the concept of TVE, and to articulate its relationship with more general education. If anything, recent developments have made the relationship closer. As UNESCO and the ILO recently observed in a joint report on technical and vocational education, “education and training are rapidly becoming inseparable.”<sup>314</sup> In sum, reflecting the approaches of individual nations, international law also clearly recognizes the considerable overlap between work and education.

#### B. *Federal and State Workforce and Education Policies*

Within the United States, welfare policy—which should be rationally integrated with both work and education policies—is an out-lier in its de-emphasis of education. As Frances Julia Riemer has noted:

This separation of welfare-related training from other forms of adult education is a reflection of the historical fragmentation of funding in the United States across all levels (i.e., K through 12, adult education, higher education), kinds of education (vocational education, literacy education, bilingual education), and economic status (welfare recipients, dislocated workers, unemployed, tuition assistance for lower and middle class).<sup>315</sup>

Among other things, this fragmentation has also allowed punitive aspects of welfare policy to go unchallenged, since welfare is viewed as *sui generis* instead

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313. *Id.* ¶ 16(e).

314. UNITED NATIONS EDUC., SCIENTIFIC & CULTURAL ORG. & INT’L LABOR ORG., TECHNICAL AND VOCATIONAL EDUCATION AND TRAINING FOR THE TWENTY-FIRST CENTURY: UNESCO AND ILO RECOMMENDATIONS 3 (2002), available at <http://unesdoc.unesco.org/images/0012/001260/126050e.pdf>.

315. FRANCIS JULIA RIEMER, WORKING AT THE MARGINS: MOVING OFF WELFARE IN AMERICA 227 (2001).

of as an integrated part of U.S. social and educational policy.

Outside of the areas explicitly labeled welfare policy, the federal government has often recognized the relationship and overlap between work and education. Successive laws have explicitly addressed the issue, providing federal funds to assist workers in obtaining the education that they need to remain employable.<sup>316</sup> At times, this has included higher education with such education becoming a higher priority in recent years.

For example, the Job Training and Partnership Act (JTPA), enacted in 1983, focused efforts on displaced workers, youth, and other hard-to-employ workers.<sup>317</sup> Among other things, JTPA funds supported training for these workers.<sup>318</sup> Though the programs provided were exclusively short-term, the JTPA's impact in the educational community was widespread.<sup>319</sup> One study of the JTPA program's interaction with community colleges found that almost ninety percent of the postsecondary institutions studied had some direct or indirect relationship to JTPA.<sup>320</sup>

The JTPA was superseded by the Workforce Investment Act of 1998 (WIA).<sup>321</sup> Like the JTPA, WIA distributes federal funds through state and local entities, administered through statewide Workforce Investment Boards (WIBs) that tailor services to particular communities.<sup>322</sup> And like JTPA, the programs are generally limited to short-term training, with occupational skills training, on-the-job training, and skill-update programs

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316. *See id.*

317. Job Training and Partnership Act, 29 U.S.C. § 1501 (1988) (repealed 1998).

318. *Id.*

319. MORGAN V. LEWIS, NAT'L CTR. FOR RESEARCH IN VOCATIONAL EDUC., VOCATIONAL EDUCATION—JOB TRAINING PARTNERSHIP ACT COORDINATION: SECOND ANNUAL REPORT 56 (1988), available at [http://www.eric.ed.gov/ERIC Docs/data/ericdocs2sql/content\\_storage\\_01/0000019b/80/1c/5a/6e.pdf](http://www.eric.ed.gov/ERIC Docs/data/ericdocs2sql/content_storage_01/0000019b/80/1c/5a/6e.pdf) (noting "substantial" flow of federal funds to vocational education through JTPA program).

320. *Id.* at 57.

321. Workforce Investment Act of 1998, Pub. L. No. 105-220, 112 Stat. 936 (codified as amended in scattered sections of 29 U.S.C.).

322. *Id.*

available to those who have not succeeded despite assistance with front-line skills such as job searching, resume preparation, and so on.<sup>323</sup> Once a WIB provides WIA funds to support such educational services, it is subject to performance measures that assess its ultimate success in job placement, a provision of the law that tends to discourage WIBs from offering educational programs.<sup>324</sup> On the other hand, WIA's relatively new program of Individual Training Accounts, which can be used by individuals to access such training, is expanding postsecondary training options for low-income individuals.<sup>325</sup>

More recently, federal education policy has explicitly recognized the relationship between work and higher education and has called for greater government leadership in ensuring an educated workforce. For example, reflecting on the inadequacy of WIA, the U.S. Department of Education recently acknowledged the need to integrate postsecondary education with workforce development approaches in order to secure U.S. economic competitiveness.<sup>326</sup> As the report of the secretary of education's Commission on the Future of Higher Education states:

The transformation of the world economy increasingly demands a more highly educated workforce with postsecondary skills and credentials. Ninety percent of the fastest-growing jobs in the new information and service economy will require some postsecondary education. Job categories that require only on-the-job training are

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323. See W. Norton Grubb et al., *Community Colleges and the Equity Agenda: The Potential of Noncredit Education*, 586 ANNALS AM. ACAD. POL. & SOC. SCI. 218, 231-32 (2003) (critiquing quality of programs provided through JTPA and WIA).

324. See Workforce Investment Act, 29 U.S.C. § 2871 (2006).

325. MARK GREENBURG & NISHA PATEL, CTR. FOR SOC. DEV., COORDINATING INDIVIDUAL DEVELOPMENT ACCOUNTS AND THE WORKFORCE INVESTMENT ACT TO INCREASE ACCESS TO POSTSECONDARY EDUCATION AND TRAINING 2 (2006), <http://csd.wustl.edu/publications/documents/RP06-09.pdf>; see also RIEMER, *supra* note 315, at 229.

326. DEP'T OF EDUC., A TEST OF LEADERSHIP: CHARTING THE FUTURE OF U.S. HIGHER EDUCATION (2006), available at <http://www.ed.gov/about/bdscomm/list/hiedfuture/reports/final-report.pdf>.

expected to see the greatest decline. In high demand fields, the value of postsecondary credentials and skills is likely to rise.<sup>327</sup>

Responding to these concerns, the Obama administration and Congress have proposed a number of measures to expand access to higher education, and included an increase in the size of Pell grant awards in the final stimulus package.<sup>328</sup>

At the same time, federal policy has employed educational benefits in a variety of ways to accomplish a variety of social goals—in particular, to reward certain types of work, to address gaps in the labor market, and to strengthen communities. While some of the benefits available are strictly limited to tuition and other direct school expenses, other programs extend living allowances of the type that welfare recipients rely on while they participate in education and training programs.<sup>329</sup> Four of these programs are described below.

1. *G.I. Bills*. First, through successive G.I. Bills, educational benefits have been used as means to “reintegrate” returning military personnel.<sup>330</sup> As mentioned above, the post-military education programs following World War II and the Korean War had a tremendous impact on higher education in the United States.<sup>331</sup> Subsequent programs that extended the educational benefits for military personnel have not involved the same numbers or concentration of students.<sup>332</sup> The structure of the program, however, is worth examining from the perspective of education policy, in part because it overtly acknowledges the role of education in U.S. workforce policies.

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327. *Id.* at 7.

328. See Sam Dillon & Tamar Lewin, *Pell Grants Said to Face a Shortfall of \$6 Billion*, N.Y. TIMES, Sept. 18, 2008, at A21; Charles Dervarics, *Pell Grant Increase Preserved in Stimulus*, DIVERSE ISSUES HIGHER EDUCATION, Feb. 12, 2009, [http://www.diverseeducation.com/artman/publish/article\\_12284.shtml](http://www.diverseeducation.com/artman/publish/article_12284.shtml).

329. See, e.g., Post- 9/11 Veterans Educational Assistance Act of 2008, Pub. L. 110-252, § 5001, 122 Stat. 2323, 2357 (2008); Peace Corps Act, 22 U.S.C. §§ 2501-2523 (2006).

330. See 38 U.S.C. § 3011 (2006).

331. See generally MILTON GREENBERG, THE GI BILL: THE LAW THAT CHANGED AMERICA 50, 106 (1997).

332. Melissa Murray, *When War is Work: The G.I. Bill, Citizenship, and the Civic Generation*, 96 CAL. L. REV. 967 (2008).

In effect until August 2009, the Montgomery G.I. Bill required that veterans serve a minimum of three years on active duty in order to receive the full range of benefits.<sup>333</sup> The statutory language creating the program indicated that educational assistance is viewed as an incentive for enlistment in the military and a tool for developing skills that would benefit the nation's productivity and economic interests.<sup>334</sup> Further, the purposes of the program centered on the role of education as integrating individuals into the community and the workforce after a period of military service.<sup>335</sup> The statutory purposes included:

(1) to provide a new educational assistance program to assist in the readjustment of members of the Armed Forces to civilian life after their separation from military services; (2) to extend the benefits of a higher education to qualifying men and women who might not otherwise be able to afford such an education; (3) to provide for vocational readjustment . . . to those service men and women who served on active duty after June 30, 1985 . . . [and] to enhance our Nation's competitiveness through the development of a more highly educated and productive work force.<sup>336</sup>

Expenses for education funded through this program included tuition, fees, books, laboratory fees, and expenses for other classroom materials.<sup>337</sup> In 2004, Major Charles C. Poche estimated the value of these benefits at \$40,860, available for enrollment of up to four years.<sup>338</sup>

In August 2009, the Montgomery G.I. Bill was superseded by the "Post 9/11 G.I. Bill," signed into law on June 30, 2008.<sup>339</sup> Under this new program, eligible veterans, including Reserve and Guard members who have been activated, get "full tuition and fees, a new monthly housing

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333. 38 U.S.C. § 3011(a)(1)(A)(i), (a)(3)(D).

334. 38 U.S.C. § 3001 (2006).

335. *Id.*

336. *Id.*

337. 10 U.S.C. § 2143 (2006).

338. Major Charles C. Poché, *Whose Money Is It: Does the Forfeiture of Voluntary Educational Benefit Contributions Raise Fifth Amendment Concerns?* ARMY L., Mar. 2004, at 1, 1.

339. Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. 110-252, § 5001, 122 Stat. 2323, 2357; see also Military.com, New GI Bill Overview, <http://education.military.com/money-for-school/gi-bill/new-gi-bill-overview> (last visited Dec. 6, 2009).

stipend, and \$1000 a year stipend for books and supplies.”<sup>340</sup> According to one supporter, the new law provides expanded educational benefits worth an average of \$80,000.<sup>341</sup> Benefits can also be transferred to other family members.<sup>342</sup>

Interestingly—and perhaps consistently with the view of education adopted in the welfare reform law—the Bush administration and many Republicans, including Senator John McCain, opposed the new measure because of the concern that the opportunity to draw down generous education benefits after only a few years in the service would discourage veterans from re-enlisting.<sup>343</sup> This view, however, did not prevail. The congressional findings supporting the new law reiterate the functional rationales for such benefits: “Educational assistance for veterans helps reduce the costs of war, assist veterans in readjusting to civilian life after wartime service, and boost the United States economy . . . .”<sup>344</sup>

2. *Peace Corps.* In stark contrast to the U.S. military, the Peace Corps is a civilian volunteer program fully funded by the federal government.<sup>345</sup> The Peace Corps had its origins in the cold war as a component of U.S. policy to “win hearts and minds in the non-aligned developing countries.”<sup>346</sup> During their term of service, Peace Corps volunteers are given modest living allowances and accumulate a readjustment allowance totaling \$5400 at the end of two years.<sup>347</sup>

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340. TurboTap.org, New GI Bill Overview, [http://www.transitionassistanceprogram.com/portal/transition/news/New\\_GI\\_Bill\\_Overview](http://www.transitionassistanceprogram.com/portal/transition/news/New_GI_Bill_Overview) (last visited Dec. 6, 2009).

341. Rep. Virginia Foxx, A 21st Century GI Bill That Is Fit for America’s Veterans (Nov. 1, 2008), <http://www.foxx.house.gov/index.cfm?sectionid=57&parentid=54&sectiontree=54,57&itemid=1330>.

342. 38 U.S.C. § 3020 (2006).

343. 2008 *Legislative Summary: ‘GI Bill’ Expansion*, 66 CQ WEEKLY 3240, 3288 (2008).

344. H.R. REP. NO. 110-636, at 54 (2008).

345. 22 U.S.C. §§ 2501-2523 (2006).

346. Lex Rieffel, *The Peace Corps in a Turbulent World* 8 (Oct. 27, 2003) (unpublished manuscript, on file with the Brookings Institution), available at <http://www.brookings.org/views/papers/rieffel20031015.pdf>.

347. *Id.* at 4.

In a vivid example of experiential education in practice, volunteers may receive academic credit for their Peace Corps service.<sup>348</sup> In the “Masters International” program, the student studies on campus for one year, then earns academic credits during a two-year stint at a related Peace Corps project.<sup>349</sup> The Peace Corps’ website notes that “most schools provide students in this program with opportunities for research or teaching assistantships, scholarships or tuition waivers for credits earned while serving in the Peace Corps.”<sup>350</sup> Similar scholarships or reduced tuition are also available to volunteers who complete their two years of service and “make a commitment to work in an underserved U.S. community as they pursue an advanced degree in a variety of disciplines.”<sup>351</sup> Service in the Peace Corps is also a ground on which the government may cancel a percentage of debt accumulated under Federal Perkins student loans.<sup>352</sup>

3. *AmeriCorps*. In two other federal programs discussed here, the AmeriCorps Program and the National Health Service Corps Scholarship Program, educational benefits have been tied directly to public service as a way to encourage individuals’ participation in the programs.<sup>353</sup> This approach suggests the ways in which linking work and education can help build strong communities.

The statute creating AmeriCorps, the Community Service Act, sets out as one purpose “to expand educational opportunity by rewarding individuals who participate in national service with an increased ability to pursue higher education or job training.”<sup>354</sup> Following one year of service, AmeriCorps members are eligible for grants of up to \$4725 that can only be used to pay for college or graduate school, or to repay student loans.<sup>355</sup> In one survey, seventy-one

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348. Peace Corps, Educational Benefits, <http://www.peacecorps.gov/index.cfm?shell=learn.whyvol.eduben> (last visited Dec. 6, 2009).

349. *Id.*

350. *Id.*

351. *Id.*

352. 20 U.S.C. § 1087ee(a)(2)(E) (2006).

353. See About AmeriCorps, <http://www.americorps.gov/about/ac/history.asp> (last visited Dec. 6, 2009); National Health Service Corps Scholarship, <http://nhsc.hrsa.gov/scholarship/> (last visited Dec. 6, 2009).

354. 42 U.S.C. § 12501(b)(3) (2006).

355. Rieffel, *supra* note 346, at 10.

percent of AmeriCorps members reported that the educational awards influenced their decision to join the program.<sup>356</sup>

4. *National Health Service Corps.* The National Health Service Corps Scholarship (NHSC) Program was created in 1976 to provide medical professionals to segments of the United States designated as “health professional shortage areas.”<sup>357</sup> The NHSC Program provides enrolled medical, physician’s assistant, nursing or dental students with scholarships for payment of tuition, fees, and other reasonable education expenses. In addition, students receive a monthly stipend.<sup>358</sup> Upon completion of medical training, the recipient is required to serve in a designated health professional shortage area, practicing full-time, for up to two years.<sup>359</sup>

In sum, in each of these federal programs, opportunities for educational benefits connected to work are used strategically—to encourage and prepare a ready workforce, to encourage national service, to support the nation’s global agenda, and to strengthen communities. Rather than draw a bright line between work and education, these policies strategically link the two activities in pursuit of a series of shared social goals.

### C. *In the Federal and State Courts*

Both federal and state courts have also repeatedly recognized that work and education are not entirely separable, and share important functional commonalities. The Federal Constitution provides neither the right to work nor the right to education. However, the relationship between these two concepts has formed the underpinning, sometimes unspoken, for a number of Supreme Court cases. Professor Kenneth Karst has argued that the link between education and work was in the mind of Justice Brennan

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356. LAMONICA SHELTON ET AL., CORP. FOR NAT’L & CMTY. SERV., AMERICORPS: CHANGING LIVES, CHANGING AMERICA: A REPORT ON AMERICORPS’ IMPACT ON MEMBERS AND NONPROFIT ORGANIZATIONS 3 (2007), available at [http://www.serve.illinois.gov/national\\_service/pdfs/AmeriCorps\\_Lives\\_America.pdf](http://www.serve.illinois.gov/national_service/pdfs/AmeriCorps_Lives_America.pdf).

357. 42 U.S.C. § 254d(a)(1) (2006).

358. 42 U.S.C. § 2541(g).

359. 42 U.S.C. § 254m(b)(5)(A).

when he penned his opinion in *Plyler v. Doe*, holding that Texas could not constitutionally exclude undocumented alien children from public schools.<sup>360</sup> To rule otherwise, Justice Brennan suggests, would run the risk of creating a permanent lower caste.<sup>361</sup> Presumably, because the economic impact of the children's lack of education could never be overcome. Likewise, Professor Karst asserts, Chief Justice Warren, writing for the Court in *Brown v. Board of Education*, described education as "the very foundation of good citizenship," surely understanding that citizenship "went well beyond voting" to include participation in work.<sup>362</sup>

In *Grutter v. Bollinger*, however, there is no need to read between the lines.<sup>363</sup> Both *Brown* and *Plyler* dealt with basic primary education. But in *Grutter*, dealing with graduate education, the Supreme Court made explicit the connection between higher education and work.<sup>364</sup> The plaintiffs in *Grutter* challenged the University of Michigan Law School's affirmative action program for law school admissions on the ground that the university's program violated their equal protection rights.<sup>365</sup> Initially, Justice O'Connor, writing for the Court, canvassed Justice Powell's earlier opinion in *Regents of University of California v. Bakke*.<sup>366</sup> Justice Powell opined that educational diversity might serve as a justification for affirmative action in medical school admissions.<sup>367</sup> According to Justice O'Connor, "Justice Powell emphasized that nothing less than the 'nation's future depends upon leaders trained through wide exposure' to the ideas and mores of students as diverse as this Nation of many peoples."<sup>368</sup>

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360. *Plyler v. Doe*, 457 U.S. 202, 229-30 (1982); see also Kenneth L. Karst, *The Coming Crisis of Work in Constitutional Perspective*, 82 CORNELL L. REV. 523, 534 (1997).

361. See *Plyler*, 457 U.S. at 218-19.

362. Karst, *supra* note 360, at 534 n.58 (citing *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954)).

363. 539 U.S. 306 (2003).

364. *Id.* at 330.

365. *Id.* at 317.

366. 438 U.S. 265 (1978).

367. *Id.* at 311-12.

368. *Grutter*, 239 U.S. at 307 (quoting *Bakke*, 438 U.S. at 313).

Justice O'Connor proceeded to make the education-work connection even more directly. After noting the various amici touting the educational benefits of student body diversity, O'Connor observed that "numerous studies show that student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'"<sup>369</sup>

Finally, O'Connor concluded, what happens in the educational setting has direct and immediate relevance in the work world.<sup>370</sup> The benefits of diversity are "not theoretical," she wrote, "but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."<sup>371</sup> Citing both *Plyler* and *Brown*, she drew the connections that were only implicit before: "We have repeatedly acknowledged the overriding importance of preparing students for work and citizenship, describing education as pivotal to 'sustaining our political and cultural heritage' with a fundamental role in maintaining the fabric of society."<sup>372</sup>

Federal courts have also acknowledged the overlapping relationship of education and work in considering claims by prisoners to various education and training programs while in prison. Often, these programs are not limited to primary

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369. *Grutter*, 539 U.S. at 330 (quoting Brief for American Educational Research Association et al. as Amici Curiae in Support of Respondents at 3, *Grutter*, 539 U.S. 306, No. 02-241, 2003 WL 398292); see also W. BOWEN & D. BOK, *THE SHAPE OF THE RIVER* 220-30 (1998); *COMPELLING INTEREST: EXAMINING THE EVIDENCE ON RACIAL DYNAMICS IN COLLEGES AND UNIVERSITIES* (Mitchell J. Chang et al. eds., 2003); *DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION* 115-16 (Gary Orfield & Michael Kurlaender eds., 2001).

370. *Grutter*, 539 U.S. at 330.

371. *Id.*

372. *Id.* at 331 (citing *Plyler v. Doe*, 457 U.S. 202, 221 (1982)). According to O'Connor, "[t]his Court has long recognized that 'education . . . is the very foundation of good citizenship.' For this reason, the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity. . . . Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized." *Id.* at 331-32 (citing *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954)).

and secondary education, but encompass sophisticated technical training and even liberal arts and graduate programs. In *Klinger v. Department of Corrections*, the Eighth Circuit Court of Appeals considered the legality of unequal training and education programs for male and female inmates, concluding that they were permissible because the male and female inmates were not similarly situated under the equal protection clause.<sup>373</sup> In his dissent, Judge McMillian noted the significance of training and education for the inmates' future employability, in terms that are particularly relevant in the welfare context:

The female inmates incarcerated at NCW are for the most part poor, undereducated, and lack the vocational training necessary to become self-supporting. The female inmates' gender places them at the bottom of the list of the unemployed and unemployables in this country. In other words, gender itself will disadvantage the female inmates as they attempt to enter or re-enter the workforce. Clearly, their need for educational and vocational training to obtain employment and become self-sufficient upon release is equal to that of males at [Nevada State Prison], who are also in general poor, undereducated, and lack vocational training. All released ex-offenders, irrespective of gender, encounter enormous difficulty in securing employment. Plaintiffs are entitled to the same opportunity as their male counterparts to learn marketable skills, which will enable them to obtain employment upon release from prison.<sup>374</sup>

State courts have also often addressed the relationship between education and work. In contrast to the Federal Constitution, many state constitutions recognize both a right to education and a right to certain work conditions.<sup>375</sup> Addressing litigation under these provisions, state courts have frequently noted the underlying relationship between education and work. For example, in *Lujan v. Colorado*

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373. 31 F.3d 727, 731 (8th Cir. 1994).

374. *Id.* at 735 (McMillian, J., dissenting).

375. For example, the New York State Constitution establishes a right to minimum wage for laborers performing public work, and explicitly states: "Employees shall have the right to organize." N.Y. CONST., art. 1, § 17; see also Martha F. Davis, *The Spirit of Our Times: State Constitutions and Human Rights*, 30 N.Y.U. REV. L & SOC. CHANGE 359, 372-73 nn.60-62 (2006); Josh Kagan, *A Civics Action: Interpreting "Adequacy" in State Constitutions' Education Clauses*, 78 N.Y.U. L. REV. 2241, 2241 (2003) ("Nearly every state constitution requires the state to provide its children with an education.").

*State Board of Education*, an unsuccessful challenge to the state's method of financing public education, the Colorado Supreme Court stated:

[w]e recognize unequivocally that public education plays a vital role in our free society. It can be a major factor in an individual's chances for economic and social success as well as a unique influence on a child's development as a good citizen and on his future participation in political and community life.<sup>376</sup>

Similarly, in the education funding case of *Sheff v. O'Neill*, the Supreme Court of Connecticut quoted the New Jersey Supreme Court approvingly on this point:

Although the constitutional basis for the plaintiffs' claims is the deprivation that they themselves are suffering, that deprivation potentially has an impact on "the entire state and its economy—not only on its social and cultural fabric, but on its material well-being, on its jobs, industry, and business. Economists and business leaders say that our state's economic well-being is dependent on more skilled workers, technically proficient workers, literate and well-educated citizens. And they point to the urban poor as an integral part of our future economic strength. . . . So it is not just that their future depends on the State, the state's future depends on them."<sup>377</sup>

Thus, in both *Sheff* and *Abbott*, the courts struck down the methods of financing public education that resulted in gross inequities among state districts noting, among other things, the impact that such disparities would have on future employment of the residents of poor districts.

State constitutional decisions are not the only places where state courts have discussed the nexus between education and work. The issue has come up frequently in the context of divorce and alimony, with courts specifically addressing the question of whether the higher earner (generally the father) should be required to shoulder the financial burden of a child's postsecondary education. While there is no general rule requiring that higher education be included in a divorce settlement, courts have shown an inclination to enforce agreements between the parties to that effect, in part because of the relationship between

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376. *Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1017 (Colo. 1982).

377. *Sheff v. O'Neill*, 678 A.2d 1267, 1290 (Conn. 1996) (quoting *Abbott v. Burke*, 575 A.2d 359, 411-12 (N.J. 1990)).

higher education and work.<sup>378</sup> For example, in *Howell v. Howell*, the court addressed the issue at great length, going so far as to entertain the idea that a college education was a “necessary” that should be required by the courts. As the *Howell* court observed:

In the instant case, tuition is not exorbitant, and the training sought by the daughter is of a type and character which will fit her for earning a livelihood. Temple University is not a finishing school type of institution, and there can be no claim that pursuit of a secretarial course at the university level is ephemeral in character. . . . Additional reasons of law and policy exist which indicate the tuition should be paid. College tuition and/or support, in a proper case, is a necessary. Generally, the duty to support includes the duty to provide such food, clothing, shelter, medical care and education as are “necessaries,” and “necessaries,” being relative, vary with the station of life of the father. . . . A secretarial course is extremely utilitarian in nature, and the daughter had sufficient ability to be admitted to Philadelphia’s famed and historic Girls’ High School, to graduate therefrom, and to be admitted to Temple Community College.<sup>379</sup> . . . The need for better trained people has become a national cry.<sup>379</sup>

Other courts have also upheld the assertion that higher education is a necessity in some circumstances.<sup>380</sup>

Finally, like federal courts, state courts have dealt with the relationship of work and education in the context of prison litigation. Pursuit of educational programs while in prison is frequently offered as an ameliorative consideration when seeking early parole.<sup>381</sup> Interestingly, pursuit of higher education is viewed as a positive factor rather than a

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378. See, e.g., *Dunham v. Dunham*, 178 N.W. 551, 559 (Iowa 1920) (enforcing settlement provision requiring support of children’s education, requiring that the parties consult “the reasonable wishes of the children, their inclination and adaptability for any particular business or profession, and an education to that end”).

379. *Howell v. Howell*, 26 Pa. D. & C.2d 22 (Cty. Ct. 1961), *aff’d*, 181 A.2d 903 (Pa. Super. Ct. 1962).

380. See, e.g., *Woody v. Woody*, 265 A.2d 467, 472 (Md. 1970).

381. See *Ogle v. Bd. of Prison Terms*, No. CIV S-06-0213 LKK JFM P, 2007 U.S. Dist. LEXIS 59929, at \*3 (E.D. Cal. Aug. 15, 2007) (noting that Board of Parole evaluates factors such as plans for employment and education); *Johnson v. Mich. Parole Bd.*, No. 1:06-cv-777, 2007 U.S. Dist. LEXIS 26345, at \*6 (W.D. Mich. Apr. 10, 2007) (noting petitioner’s successful completion of prison education as a mitigating factor).

negative one. For example, in *In re Diez-Arguelles*, the Florida Supreme Court considered whether a former prisoner serving time for a felony who had completed a bachelor's degree, a juris doctor and a master's in taxation while in prison might be permitted to join the Florida Bar.<sup>382</sup> The court concluded that Diez-Arguelles's pursuit of higher education contributed to demonstrating his character and fitness to practice law.<sup>383</sup>

#### CONCLUSION: WELFARE AND EDUCATION POLICY RECOMMENDATIONS

As others have argued, the current obstacles facing welfare recipients seeking to pursue higher education—including both associate's and bachelor's degrees—seem shortsighted and contrary to the national economic interest. In addition, I argue that they rest on a misconception about the nature of both work and education. In the twenty-first century, these concepts are increasingly integrated, both in theory and in practice, a fact that has been repeatedly recognized in U.S. policy outside of the welfare sphere and by peer nations that are concerned with developing an educated, flexible workforce. For this reason, offering educational opportunities that include higher education does not undermine the “welfare-to-work” philosophy driving welfare reform, but rather promotes it.

##### A. *Expansion of Postsecondary Educational Opportunities*

The overarching recommendation flowing from this analysis is that the federal welfare law should be revised to permit and encourage participation in postsecondary and other higher education programs, recognizing that such programs increasingly integrate work with educational experiences in ways that motivate and engage students and prepare them for work in a changing economy, with economic benefits that flow beyond the individual student to low-income communities and the nation. As a practical matter, this would mean that hours spent in the classroom, studying and completing homework, participating in vocational and other training activities, and participating in

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382. 401 So.2d 1347 (Fla. 1981).

383. *Id.* at 1348-49.

work-study and internships, would be considered “core activities” for purposes of assessing an individual’s compliance with TANF participation requirements. Rather than discourage welfare recipients from participating in educational programs, welfare caseworkers would be trained to assist participating recipients in juggling demanding education and training programs with family responsibilities in the short term, while developing long-term goals for training and education than are currently feasible under the welfare law that severely limits educational participation.

Permitting pursuit of postsecondary education would recognize that today, work and education are conceptually and practically integrated, and that a well-conceived “welfare-and-education” program can lead an individual to long-term stable productivity at least as well as, or more likely better than, a rigid one-size-fits-all welfare-to-work program. Many states have already recognized this in their development of their own welfare programs. Instead of posing obstacles, the federal government should learn from their successes and encourage such initiatives as an important component of overall federal workforce and education policy.

In fact, there are already results supporting such approaches based on existing programs. One of the most thoroughly documented programs, Maine’s highly touted Parents as Scholars (PaS) Program, has many elements of a cooperative learning program, encouraging practical experience by requiring that students combine work and education in their third and fourth years in the program, while providing supportive programs that encourage participants’ reflections on their work experiences.<sup>384</sup> In 2002, researchers from the University of Maine and the University of Southern Maine conducted a comprehensive evaluation of PaS.<sup>385</sup> They found that participants increased their earnings by nearly fifty percent. Further, ninety percent of the PaS participants were able to leave welfare behind at the end of their educational program.<sup>386</sup> Four years later, when the Maine researchers once again

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384. See discussion *supra* at pp. 185-87.

385. Smith et al., *supra* note 17.

386. *Id.*

contacted the cohort, the study participants' economic security had continued to increase, with a statistically significant increase in average wages and an increase in job benefits.<sup>387</sup>

B. *Strategic Use of Education to Address Social Needs*

Viewing education and work as functionally on a par for purposes of welfare-to-work programs opens up new spaces for policy development in service of social needs. The strategic use of such benefits in other federal programs such as the G.I. Bill, AmeriCorps, and others, and in developing countries that seek to increase community infrastructure and stability, provide some models.<sup>388</sup> For example, even as educational opportunities are opened up to TANF recipients as a general matter, those participating in educational programs might be allowed to earn additional support—perhaps tuition assistance or additional quarters of benefit eligibility or supportive services—by committing to service-oriented internships or community service work in their home communities during the course of their study. For those working toward a degree program, incentives might be attached to participation in programs that would particularly serve local community needs—perhaps programs involving technology, early childhood development, or entrepreneurship. Properly administered, these incentives might “nudge” participants to invest the fruits of their education back into their home communities.<sup>389</sup> Because of welfare's divorce from U.S. workforce and education policies, and because it has been long mired in a punitive policy framework, these sorts of programs—long accepted in other areas—have yet to be piloted in the welfare context.

Of course, at any given time, many women receiving welfare will not have the necessary academic preparation to participate in postsecondary educational opportunities. However, the past experiences under the Family Support

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387. Sandra S. Butler & Luisa S. Deprez, *The Parents as Scholars Program: A Maine Success Story*, ME. POL'Y REV., Summer 2008, at 40, 45, available at [http://denali.asap.um.maine.edu/mcs/files/pdf\\_mpr/butler\\_v17n1.pdf](http://denali.asap.um.maine.edu/mcs/files/pdf_mpr/butler_v17n1.pdf).

388. See *supra* notes 275-78, 330-59 and accompanying text.

389. See, e.g., RICHARD H. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS passim* (2008).

Act and the current experiences of programs like Maine's Parents as Scholars initiative suggest that a sizable percentage of welfare recipients are academically ready for postsecondary training, including a four-year college education. Yet, because of antiquated ideas about bright-line distinctions between work and education, combined with the underlying notion that marriage is a preferable anti-poverty strategy to an approach of increasing women's economic autonomy through education, current welfare law has essentially walled-off higher education as a possibility.

Functionally, however, as scholars, courts, and state governments have recognized, both higher education and work have the potential to bring the same benefits of stability, connectedness, and productivity to low-income communities, families and individuals. Instead of actively discouraging higher education as an anti-poverty option, federal law should work to integrate welfare policy with other federal policy initiatives directed at workforce development and higher education expansion and reform. In a range of policy areas, the federal government has used education benefits creatively to expand the positive social impact of its programs. A functional perspective on welfare, work and education opens up new possibilities for similar innovations and positive impacts in this all too often marginalized policy arena.